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ALBERTA WORKERS' COMPENSATION REVIEW

SUBMISSION

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AUPE 

EXECUTIVE SUMMARY

The Alberta Union of Provincial Employees welcomes the launch of a comprehensive review process for the *Workers' Compensation Act*¹, its regulations and the policies and operations of the Workers' Compensation Board (WCB). WCB has strayed from its core purposes and principles and it is crucial that a government with a commitment to workers' rights addresses the pressing need for realign Alberta's workers' compensation system with the needs and wellbeing of workers. Our recommendations, which are more fully described below, include:

- A fundamental reorientation of the WCB system to recommit to the Meredith Principles and to return the focus to workers.
- Amend WCB Policy 01-01 Part I to require surpluses to be reinvested in worker safety and support programs.
- Eliminate Schedule A of the Workers' Compensation Regulation to include all workers in WCB.
- Eliminate experience rating, Partners in Injury Reduction program, custom industry pricing and internal staff bonus programs that subvert the purposes of WCB and lead to claim suppression and inappropriate claim management.
- Return WCB practice to joint assessments between medical professionals and WCB case managers for permanent disability claims as per section 43(1) of the Act.
- The list of presumed conditions that qualify as permanent disabilities should be expanded to include occupational diseases and psychological injuries and should be reviewed regularly as medical and scientific understanding grows.
- Eliminate the arbitrary and unfair immediate fatality exception for non-economic loss payments as per Policy 04-04 Part II Application 2.
- Allow a workers' existing health team to provide assessment, advice and treatment as necessary and remove rigid quotas and timelines from service agreements with treatment providers.
- Remove the caps on maximum insurable earnings and wage loss compensation rate that merely subsidize employer premiums at the expense of workers.
- Introduce into the Act a mandatory obligation for employers to provide appropriate and meaningful work to an injured worker returning to work and the right for a worker to be returned to full wage-loss benefits if an employer fails to meet this obligation.
- Require vocational rehabilitation plans to align better with a worker's actual educational and employment history, skills and capacity and current labour market conditions.
- Eliminate the deemed earnings policy and only allow benefits to be reduced in cases where there is clear evidence of bad faith on the part of the worker.
- Significantly invest in and enhance programs and supports for workers in processing, appealing and understanding their claims.
- Expand the role of the Medical Panels to be able to provide advice and guidance to injured workers and to allow workers to trigger their review of conflicting medical opinions.
- Eliminate the requirement that the Appeals Commission for Alberta Workers' Compensation (Appeals Commission) hear representations from the WCB as per section 13.2(6)(b) of the Act.
- Build a fund to allow workers in some cases to access legal counsel and to proceed to judicial review when there is a public policy need to challenge an aspect of WCB.
- Expand presumptive coverage for Post-Traumatic Stress Disorder to all workers.
- Amend WCB Policy 03-01 Part 2 Application 6 must be amended to reflect an appropriate causation policy with regard to psychological injuries and illnesses.
- Develop guidelines and standards for WCB staff to appropriately manage claims for psychological injuries and illnesses.

¹ R.S.A. 2000 c. W-15 (the "Act").

- Explicitly list mental health conditions arising from bullying and harassment as a compensable injury in the Act, similar to British Columbia.
- Continually review Schedule B of the Workers' Compensation Regulation to expand presumptive status for occupational diseases.
- Amend the causation policy to reflect recent legal developments and to ensure that a common causation standard applies to all types of injuries and illnesses.

AUPE thanks this government for the opportunity to present these recommendations and we look forward to continued participation in the review process in the months to come.

As Alberta's largest union, representing more than 89,000 members in both public and private sectors, the Alberta Union of Provincial Employees is pleased to offer its recommendations on the much overdue review of workers' compensation in Alberta.

As with all workers, our members rely on the availability of an accessible and efficient workers' compensation system that treats workers with respect – whether for themselves directly, or to ensure that their colleagues are able to recover and to eventually return to work healthy. Over 40,000 of our members work in health care, a sector with injury rates three to four times that of the general workforce. Another 22,000 work in the Government of Alberta, where a number of occupational injuries and diseases are prevalent, but for which claims processing can be difficult. The bulk of our members work in frontline public service delivery, meaning they are some of the most vital, but most vulnerable, employees in the province.

With a significant lack of leadership and commitment to workers' rights from past governments, WCB has devolved from an institution designed to support and assist workers in healthy and safe employment into a profit-driven vehicle for employers. A comprehensive review is badly needed to address this shift and to realign workers' compensation with its founding goals and the principles of workers' rights.

Furthermore, while AUPE applauds the government for launching this review, it is our position that WCB and occupational health and safety legislation and regulations are inextricably linked. Though WCB and OHS codes serve different purposes and are relevant at different points in a worker's job cycle, neither can operate optimally for the protection and promotion of worker safety and health without the other. As such, AUPE stresses the need for a similar comprehensive review of the OHS Code, regulations and operational and policy matters forthwith.

A RETURN TO THE MEREDITH PRINCIPLES

The workers' compensation system currently in place in most Canadian jurisdictions arose from a historic compromise between workers and employers. This compromise was founded in the recommendations of Ontario Chief Justice William Meredith in 1913, and the guiding principles of workers' compensation have therefore come to be known as the "Meredith Principles".

The basic compromise underlying this system is that workers give up their right to sue their employers for workplace injuries or illnesses in return for the stability, predictability and efficiency of compensation funded from the shared responsibility of employers, paid through premiums.

The Meredith Principles are:

- I. **No fault compensation** - There is no argument over responsibility or liability for an injury and injuries are treated equally no matter how they arose. The worker and employer waive the right to sue. This shifts the focus to providing compensation and healing the worker.
- II. **Collective liability** - The total cost of the compensation system is shared by all employers who contribute to a common fund. Financial liability becomes their collective responsibility.
- III. **Guaranteed benefits** - A fund is established to guarantee that compensation monies will be available for all injured workers.
- IV. **Independent administration** - The governing board is separate from government and both autonomous and non-political. The administration of the system is focused on the needs of its employer and worker clients, providing service with efficiency and impartiality.
- V. **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 underlying purpose of WCB is to compensate workers for illness or injury experienced as a result of their work or workplace. The goal should be to return each worker to employment safely and in good health, and compensation and support for the duration of a recovery is instrumental in achieving this outcome. Where a worker's injury is severe enough that return to full employment is not possible, workers' compensation assists to fill the financial gap, so that public health and social services programs are not overburdened.

Over time, however, the underlying rationale and principles of workers' compensation policy have been obscured. Focus has shifted to the "bottom line" and to operating WCB as a cost-saving insurance plan. It is important to note that WCB funds are not public money and only injured workers are entitled to them. It is inappropriate to approach WCB from the perspective of "tax savings" or "cost reduction". Furthermore, it is inaccurate to represent WCB as "fully employer paid". Employers include the WCB premiums they pay for their workers in total compensation. Workers, therefore, essentially fund WCB premiums as part of their salaries.

WCB annual reports, websites and communication materials consistently and proudly highlight how the WCB is keeping costs low for employers, updates on surpluses and rebates, and points to resources and information on how employers can further reduce their premiums. These should not be the guiding objectives of our WCB system. While prudently managing its funds and investments to ensure that adequate reserves are always available to pay workers the compensation to which they are entitled is important, WCB was not intended to serve employers as a profit-driven insurance scheme.

This focus on profitability and maintaining low premiums, often artificially low premiums, subverts the fundamental purpose of workers' compensation and leads to inappropriate claims management, claim suppression behaviour and other responses by both employers and WCB that lead to the denial in full or in part of compensation entitlements and the erosion workers' rights.

WCB Policy 01-01 Part I² should be amended to ensure that any surpluses that arise from better-than-expected returns be reinvested in worker safety and compensation programs rather than be distributed to employers through rebates. Since 2004, employers have received annual rebates eight times and, in the past three years alone, this has amounted to more than \$1.5 billion being paid to employers.³ Rebates are contrary to the fundamental premise of workers' compensation and the compromise that employers share responsibility for funding worker safety and health. Rebates also exacerbate the mentality that WCB should be primarily concerned with lowering costs and protecting profits for employers and the systematic incentives that result, ultimately subverting the purpose of WCB.

A return to the original purpose of workers' compensation, underpinned by the Meredith Principles, should be the ultimate objective of all reforms to policies, programs and legislation and should be communicated clearly by the government in its expectations of WCB operations and training.

Relatedly, Schedule A of the Workers' Compensation Regulation should be eliminated. It is contrary to the purpose of workers' compensation and the Meredith Principles to continue to exclude hundreds of thousands of workers from WCB. When workers are not covered by WCB, the costs of their workplace injuries and illnesses transferred to the workers themselves, their families, publicly provided health and social services and our economy as a whole through lowered productivity and labour market participation. This subverts the principle that employers should be responsible for the safety and wellbeing of their workers.

EXPERIENCE RATING, PREMIUM ADJUSTMENTS AND CLAIMS SUPPRESSION

As described above, WCB has shifted to operating as a corporate-style insurance company, focused on lowering employer costs at the expense of fair compensation to workers. The WCB has a number of programs and incentive schemes that are designed around these employer-friendly objectives. AUPE recommends that these programs be eliminated in their entirety.

Premiums are set by industry sector rates based on injury rates and costs, which ostensibly meets the Meredith principle of pooling and sharing risk. Employers with lower than average injury rates are then often eligible for experience rating discounts, which can amount to significant cost reduction for the employer of up to 40 per cent.⁴ Similarly, an employer might be on the hook for a surcharge if injury rates are significantly higher. Either way, basing premium discounts or surcharges on the experience rating system encourages employers to manage their injury rates and cost patterns through illegitimate means like pressuring workers to under report both the frequency and severity of injuries or rushing employees back to work on inappropriate timelines or work duties.

Similarly, Alberta operates the Partners in Injury Reduction (PIR) program, which offers additional discounts for employers of up to 20 per cent⁵, as well as custom industry pricing (CIP), where employers can pay

² https://www.wcb.ab.ca/assets/pdfs/employers/EFS_WCB-Alberta_funding_policy.pdf

³ <http://calgaryherald.com/business/local-business/alberta-employers-to-receive-507-million-wcb-refund>

⁴ https://www.wcb.ab.ca/pdfs/public/policy/manual/printable_pdfs/0702_2_app2.pdf

⁵ <https://www.wcb.ab.ca/insurance-and-premiums/lower-your-premiums/partnerships-in-injury-reduction-%28pir%29.html>

discounted premium rates without participating in PIR or experience rating. 51 per cent of industries representing 46 per cent of all covered workers in Alberta participate in CIP, including employers with injury rates well above average like Alberta Health Services.⁶ These programs do nothing to enhance worker safety or help workers with recovery and safe return to work, but rather encourage claims suppression as described above and keep employer premiums artificially low, effectively letting employers off the hook for their obligations to injured workers and the overall funding and functioning of the WCB system.

These premium reduction programs also create incentives for employers to spend considerable resources and time fighting a worker's compensation entitlements and participating in appeals processes. Ultimately, these actions do little to improve worker safety or WCB performance, but rather create more hurdles for workers (thereby increasing the likelihood of abandoned but legitimate claims) and more inefficiencies in the WCB system.

Furthermore, WCB offers a number of internal incentive programs for their own employees that compound the problems of inappropriate claims management and suppression. WCB staff receive bonuses based on statistical performance measures like time taken to close files and number of workers deemed fit to return to work. Incentivizing WCB employees to minimize claim costs is entirely inappropriate and incongruent with the fundamental principles upon which WCB should be based.

The funds that would be saved by eliminating these programs should be redirected into programs that assist workers – including additional supports and funding for workers throughout the process, as well as appeal and judicial review funds, as discussed below. This way, money paid into WCB with the ultimate objective of ensuring that workers are safe and healthy in their workplaces goes to that exact purpose, whether through compensation payments or through additional programming and funding.

PERMANENT DISABILITY CLAIMS AND MEDICAL FILE MANAGEMENT

Increasingly, WCB requires the input of medical professionals in the adjudication process for permanent disabilities. Section 43(1) of the Act requires that a case manager and a doctor make determinations on the file, but the WCB has required that every assessment be conducted by their selected medical expert only. Essentially, this usurps the role of the case manager, who is trained to apply the principles and policies of WCB to the individual worker's case. Moreover, physicians employ a different standard of proof than that which is required in administrative or civil law. While sound medical opinions are a crucial element of each case, the role of medical professionals should be advisory and to provide guidance to case managers, but not to serve as final adjudicators. In order to restore natural justice for workers through the administrative decision making process, WCB practice should return to a joint assessment as per the Act.

The list of conditions that are presumed to give rise to permanent total disability should be expanded to include occupational diseases and mental health and cognitive conditions, in accordance with current medical understanding and an appropriately revised causation policy, as discussed below. Furthermore, as accessibility has improved in workplaces for many disabilities, this list should be reviewed regularly.

In addition, the immediate fatality exception as per Policy 04-04 Part II Application 2 for non-economic loss payments should be eliminated. 30 days is an arbitrary period and in no way reflects whether a fatality was a result of a workplace injury or illness or whether the loss is worthy of compensation. This amounts to an absurd and unfair situation where one worker's survivors will be compensated for this additional loss when she dies on the 31st day after an injury, while another worker's family will be denied this coverage simply because he died on the 30th day.

TREATMENT AND ACCESS TO HEALTH CARE TEAMS

Furthermore, treatment providers are expected to meet rigid standards and guidelines with regard to return to work timelines and worker treatment as per WCB agreements. These standards do not meet each worker's particular needs in order to be returned to work safely. Treatment providers should be able to create flexible plans oriented to each worker.

In many cases, and especially in cases of psychological injury or illness, a worker's treatment and healing process will be improved by his ability to seek treatment and assessment from his own existing team

⁶ https://www.wcb.ab.ca/assets/pdfs/employers/EFS_ICP_industries.pdf

of health professionals, with whom he is comfortable and who understand his unique medical history. Decisions about a worker's file, his treatment, a return to work plan or other aspects of WCB should be made in conjunction with professional advice or opinions from these practitioners. Workers should be able to access medical treatment from their choice of professional.

MAXIMUM INSURABLE EARNINGS AND COMPENSATION RATE

Alberta currently caps both the insurable earnings amount that a worker can be compensated for if injured at \$98,700 in 2016, as well as the amount of a worker's wage loss for which WCB will compensate at 90 per cent of net earnings. The effect of both of these policies is that workers subsidize employer premium costs and these caps should be removed.

While \$98,700 is quite high, Alberta is a province with high wages and a high cost of living. A worker who has based financial decisions, like her mortgage, for example, on a significantly higher salary might find herself and her family in a difficult financial situation through no fault of her own if injured at work and relying on WCB. Worse yet, if a worker was permanently disabled due to a workplace injury, the future compensation entitlements, upon which he will be reliant for the rest of his life, would be based on this lower maximum rate.

Similarly, failing to compensate a worker for the loss of their full earnings during their convalescence serves no purpose but to force workers to subsidize their employers for a portion of their own earnings to which they are entitled. Furthermore, it creates a possible incentive for workers to return to full pre-injury work more rapidly than they medically should, raising the risk of re-injury or exacerbation and prolongation of their condition.

Both of these policies fundamentally subvert the underlying purpose of our WCB system, which is to compensate injured workers fairly and ensure they are able to heal and return safely to work. WCB was not intended to be a corporate-style insurance provider for employers, with an objective of reducing employer costs at the expense of the worker. As such, AUPE recommends that both caps be eliminated and that a worker's full salary determine both her insurable earnings (and the employer premiums paid therefor) and her wage-loss compensation rate.

RETURN TO WORK OBLIGATIONS

A central purpose of workers' compensation is to provide a worker with necessary supports to heal and to eventually return to work safely and in good health. But Alberta's WCB legislation currently contains no guarantee of a return to meaningful work for the worker nor does it include an obligation on the employer to provide this.

While human rights legislation does require accommodations be made for any worker, some employers play fast and loose with this obligation, either finding specious reasons to terminate or transfer the employee or eliminate the position or by assigning the employee work that does not align with his previous duties or which is not appropriate for his skills or qualifications. This can lead to job satisfaction and performance issues, which then might be relied upon later by an employer to terminate or discipline a worker. Moreover, by requiring workers to rely on a complaints process under a separate piece of legislation to enforce a worker's right to return to work is cumbersome, inefficient and often leaves a worker with no adequate compensation while the complaint is proceeding.

In addition, the vocational rehabilitation plans developed by WCB often do not adequately align with current labour markets, the worker's employment and educational history, and the reasonable expectations of skills maintenance or development or occupational capacity. When these plans are not reflective of the work an injured employee can access and do, it affects their WCB benefits through flawed deeming procedures, as discussed below, and their overall wellbeing.

Alberta's WCB legislation and policy should therefore include an obligation that employers provide workers with appropriate and meaningful work in accordance with their specific needs for a safe and healthy return to work.

Ontario, for example, requires that employers return an injured worker to the same position she held before the injury or to alternative employment that is of a nature and at earnings comparable to her pre-injury position. If the employer fails to do so, the worker will be returned to full wage-loss benefits for a period of a year and the Workplace Safety and Insurance Board will levy fines upon and publish the name of the employer for failing to meet its obligation.⁷

Alberta should include a similar obligation to ensure that workers do not lose compensation and income for the employer's unwillingness to provide them with meaningful work that is the same or similar to their pre-injury job.

DEEMED EARNINGS

If an injured worker is deemed fit to return to work but is unable or unwilling to secure employment, modified or not, that would return him to his former earning capacity, then WCB may estimate his current earning potential and reduce his wage-loss benefits by that amount. The underlying rationale is that WCB should only compensate a worker to the extent of their loss of income attributable to their workplace injury. However, this policy does not consider a worker's particular circumstances or any number of labour market and economic factors that could affect a particular worker's employability or earnings potential – nor does it consider a worker's good faith attempts to secure well-paying employment. It also fails to recognize that many workers would have continued to progress through their employment had they not been injured, thereby securing raises or promotions.

Furthermore, it is well known that workers with disabilities face particular discrimination and barriers in seeking stable and decent employment. Statistics Canada reports that, in 2011, the employment rate for people aged 25 to 64 who reported having a disability that limited their activity was 49 per cent, compared with 79 per cent among those who did not report having a disability. That study also found that workers with disabilities were more likely to be working in lower paying occupations (retail and service sector) and were less likely to retain a job year-to-year and that discrimination in hiring practices is common.⁸

Many workers who are unable to find suitable employment after a workplace injury are in this position. These workers are doubly victimized by their initial injury and then by its ongoing impact on their employability and financial security. Deeming policies that result in reduction in compensation and unreasonably high expectations on the worker are essentially making the worker pay twice for something that, under a functioning WCB system, he should never have to pay for at all.

Again, the purpose of WCB is to compensate workers and make them whole. It is not to act as a corporate, profit-driven insurance vehicle for employers looking to lower costs.

Many practitioners report that WCB frequently reaches unreasonable conclusions on a worker's expected income and relies on labour market data that over-estimates available wages for many workers. Practitioners also report that the Office of the Appeals Advisor has been successful in getting the majority of deeming decisions overturned and, recently, in requiring that deemed earnings be reviewed on an annual basis. All of this suggests a fundamentally flawed policy, for which workers are bearing the brunt.

AUPE recommends that the current deeming policy be eliminated and replaced with one where WCB may only deem a worker's earnings when there evidence of malfeasance or bad faith on the part of the worker in obtaining comparable post-injury employment.

APPEALS AND CLAIM ASSISTANCE

WCB is a complex system with lengthy and difficult processes for even highly trained practitioners. Many workers do not have access to the expertise of these practitioners and are in particularly vulnerable situations at the very time when they need to engage with WCB. This can lead to claim abandonment or workers unknowingly or knowingly ceding rights or entitlements.

More support must be available to help guide workers through the system in order to enhance efficiency of the overall WCB and to ensure fairness. Because the process has become so adversarial, support and counsel should be delivered at arm's length so that workers can be confident of the advice and assistance they receive and so that staff are not placed in positions of conflict of interest.

⁷ *Workplace Safety and Insurance Act*, 1997 R.S.O. 1997 c. 16 sections 41 and 86.

⁸ <http://www.statcan.gc.ca/pub/75-006-x/2014001/article/14115-eng.htm>

For example, many workers and workers' representatives report satisfaction with the assistance of Medical Panels in resolving conflicts when the medical opinions of the worker's physician and the WCB medical consultant vary. This is an important function because a worker's benefits and their return to work and treatment plans can depend on these medical findings. However, the role of Medical Panels is currently limited to adjudicating these conflicts and only when triggered by the WCB or the Appeals Commission. The advice of an impartial, independent body with occupational medical expertise, like these Medical Panels, could assist workers in understanding their rights and options within the WCB system and within the workplace going forward. Furthermore, a worker should have the same ability to initiate the Medical Panel review process as the WCB or Appeals Commission. Expanding the role of Medical Panels into advisory and support services for workers from the perspective of specialized medical expertise will build confidence in the WCB system and improve outcomes for workers.

In addition to enhancing support for workers, AUPE recommends that the Act be amended to remove the requirement that the Appeals Commission hears representations from the WCB in an appeal.⁹ As discussed above, WCB currently views its role as the guardian of the employer's bottom line. Both the employer and the WCB therefore have the same interests in an appeal. The employer and the WCB also have vastly more resources at their disposal in order to ensure success on appeal. There is no need to stack the deck against the worker by allowing both the WCB and the employer to make representations on appeal.

Judicial review serves an important role in a democratic society by ensuring that tribunals like WCB uphold and follow the principles of fundamental justice and administrative law, as well as the underlying policy objectives of their enabling statutes and the fundamental constitutional rights of all Albertans. However, with rising legal costs and overburdened courts, judicial review is an avenue available only to the very few with adequate resources or legal knowledge and training.

As such, AUPE recommends that access to legal counsel be made at no or low cost to workers with meritorious challenges in order to facilitate the continued improvement of the laws and policies of WCB through judicial review. A small portion of employer premiums could be diverted into a dedicated fund for this purpose, which could then be administered at arm's length of the WCB by those with expertise in worker compensation and occupational health and safety. (For example, a panel with representatives from the Office of the Appeals Advisor, labour and groups of worker's representatives.)

PRESUMPTIVE COVERAGE FOR PTSD

AUPE applauded the granting of presumptive coverage for Post-Traumatic Stress Disorder (PTSD) through Bill 1: Workers' Compensation Amendment Act, 2012. However, by restricting the bill to "first responders" (firefighters, police officers, sheriffs and paramedics), the former PC government left many frontline workers vulnerable.

Presumptive coverage serves an important purpose, particularly in the context of psychological injuries, in making workers' compensation accessible and fair. The system can be daunting for an ill or injured worker at the best of times and, for those experiencing mental health issues, proving a claim can be triggering or traumatizing in and of itself. Simplifying the process helps to make sure workers can and do make claims when they need to and that those claims are processed quickly in order to support the worker's wellbeing and healing. Granting presumptive status also encourages workers experiencing symptoms of PTSD to seek help, diagnosis and treatment and alleviates some of the stigma still prevalent for mental health conditions. In order to ensure that our workplaces remain safe for all employees and that all Albertans continue to receive the highest quality of public service delivered by healthy, dedicated staff, it is therefore vital to make PTSD diagnosis and treatment as accessible as possible for all frontline workers.

The reality is that many frontline workers besides first responders experience high rates of PTSD and work in environments that raise the risk of developing PTSD through exposure to trauma and high levels of stress and fatigue. Furthermore, even without the statutory designation, many nurses, caregivers, social workers and correctional officers, amongst others, are in fact often first responders to those in crisis.

Health care and social service workers in particular often experience vicarious or secondary trauma, where they absorb the psychological or traumatic effects of exposure to their clients' stories and experiences. Furthermore, for all workers, working day in and day out on the frontlines to help and heal other Albertans often leads to cumulative psychological trauma that may not be apparent for many years.

⁹ s. 13.2(6)(b)

For example, a researcher in the United States found that 15 per cent of social workers experienced PTSD, double the rate of PTSD diagnosis in the general population in his state.¹⁰ A further 55 per cent of those surveyed met one diagnostic criteria and 20 per cent met two criteria of PTSD symptoms. For example, 26 per cent felt emotionally numb, 27 per cent reported irritability and 28 per cent reported concentration difficulties.

In 2012, AUPE, in conjunction with researchers at the University of Calgary, conducted our own survey of Local 006 Human Services employees working in a range of social services settings.¹¹ This study did not specifically look at PTSD rates, but its findings confirmed that social workers are an occupational group who experience many of the symptoms that lead to or signal PTSD. 28 per cent of social workers were dealing with high rates of emotional exhaustion and, on average, these frontline employees worked eight hours and one hour of overtime each day.

Similarly, as a caring profession, many health care workers are exposed to primary, secondary or cumulative trauma. Studies suggest that about 14 per cent of general service nurses and between 24 to 29 per cent of intensive care nurses experience PTSD.¹² In another study, about 86 per cent of nurses surveyed met the criteria for burnout syndrome.¹³

Social workers and health care employees are also often the victims of violence in the workplace themselves. Statistics Canada's 2005 National Survey of the Work and Health of Nurses found that 34 per cent of nurses providing direct care in hospitals or long-term care facilities reported physical abuse within the past year and 47 per cent reported emotional abuse. Licensed practical nurses (LPNs) and registered psychiatric nurses (RPNs) were at elevated risk over registered nurses (RNs), while nurses working in long-term care were most likely to experience physical violence (50 per cent).¹⁴ A study in the United States found that between 50-88% of social workers have experienced violence in the workplace.¹⁵

In addition, a study by the Correctional Service of Canada found that 86 per cent of correctional officers had witnessed physical assaults, 58 per cent had witnessed a complete suicide and over two-thirds had been exposed to a riot.¹⁶ Only 2 per cent of officers were not exposed to traumatic events in the correctional work environment. It should be no surprise therefore that the study found fully three-quarters of officers were experiencing some symptoms of traumatic stress, varying in severity, with at least 17 per cent experiencing full blown PTSD. Another study in Saskatchewan found that 26 per cent of correctional officers were suffering from PTSD, a rate higher than that found in war veterans.¹⁷

Thus, while providing for presumptive status for certain first responders was a welcome improvement in Alberta's approach to WCB coverage for PTSD, the statutory entrenchment of presumptive status for PTSD must be expanded to include all workers who are vulnerable to work-related trauma, stress or violence.

Ontario's newly passed Bill 163 extends presumptive PTSD to correctional officers as first responders, going beyond Alberta's current narrow definition, but similarly fails to include other frontline workers like nurses and social workers. Manitoba, therefore, is generally considered the gold standard in Canada. There, PTSD is recognized as a work-related occupational disease on a presumptive basis for all workers. The legislation requires that a worker have been exposed to the traumatic event or events that trigger PTSD and that the worker be diagnosed by a physician or psychologist in order to qualify for the presumption.

AUPE recommends a similar approach to Manitoba where the exposure to conditions in the workplace that might lead to PTSD is the determining factor in a worker's eligibility for presumptive status as opposed to strict divisions based on occupational classification alone.

¹⁰ Bride, BE. "Prevalence of secondary traumatic stress among social workers." *Social Work*. Jan. 2007 52(1), pp. 63-70.

¹¹ Graham et al. 2012. *Stress and Well-Being among AUPE Local 006 Members: 2012 Summary Report*.

¹² Mealer et al. "Increased Prevalence of Post-traumatic Stress Disorder Symptoms in Critical Care Nurses." *American Journal of Respiratory and Critical Care Medicine*, Vol. 175, No. 7 (2007), pp. 693-697.

¹³ Mealer, M., Burnham, E. L., Goode, C. J., Rothbaum, B. and Moss, M. (2009), "The prevalence and impact of post traumatic stress disorder and burnout syndrome in nurses." *Depress. Anxiety*, 26: 1118-1126.

¹⁴ <http://www.statcan.gc.ca/pub/82-003-x/2009002/article/10835/findings-resultats-eng.htm>

¹⁵ Spencer, P. C, and Munch, S. (2003) "Client violence toward social workers: The role of management community mental health programs." *Social Work*, 48, pp. 532-544.

¹⁶ <http://www.csc-scc.gc.ca/research/forum/e041/e041m-eng.shtml>

¹⁷ <http://www.rpnas.com/wp-content/uploads/PTSDInCorrections.pdf>

EXPANDING AND IMPROVING WCB COVERAGE AND ACCESSIBILITY FOR PSYCHOLOGICAL INJURIES

On the other side of the same coin, PTSD is not the only psychological injury commonly experienced by many frontline workers. As understanding of mental health grows, we must also ensure that our workplace health and safety policies and human rights protections are responsive to the experiences of working Albertans. One in five Canadians will experience a mental health problem each year, resulting in 30 per cent of disability claims and 70 per cent of disability costs in Canadian workplaces.

Untreated or undiagnosed psychological illnesses and injuries, including PTSD, lead to absenteeism, high turnover rates, increased risk of additional accidents at work, lower productivity, plummeting morale, job performance and satisfaction problems and a host of interpersonal and relationship problems both at home and at work that can impact colleagues and family members. Estimates show that around \$50 billion is drained out of the Canadian economy by the financial effects of mental illness. In Alberta alone, that figure is \$14.4 billion – one of the highest in the country.

While much can be done through occupational health and safety policies and programs, there are also improvements to mental health care and accommodation that can be achieved through workers' compensation.

The basic premise of WCB is to compensate all workers for all workplace injuries. As such, there should be no distinction between a physical injury and a psychological injury that arises from the workplace. As such, the causation policy for psychological injuries must be revised to match the standard required for all other compensable injuries and to meet the requirements of the recent Supreme Court of Canada case, which will be discussed below. In this regard, the current requirement that a workplace event be a “predominant” factor in the development of the psychological injury must be removed.

In particular, WCB Policy 03-01 Part 2 Application 6 must be amended to remove the requirement for chronic onset stress compensation that “the work-related events are excessive or unusual in comparison to the normal pressures and tensions experienced by the average worker in a similar occupation.” As described above, many frontline workers experience deeply stressful or traumatic events or environments as a very normal part of their jobs. The current policy puts the frontline workers at risk by denying them the compensation they require to take necessary time off, obtain treatment and make a healthy and safe return to work when they are capable and ready.

Furthermore, the definition of “normal pressures and tensions” as including “interpersonal relations and conflicts, health and safety concerns, union issues, and routine labour relations actions taken by the employer, including workload and deadlines, work evaluation, performance management (discipline), transfers, changes in job duties, lay-offs, demotions, terminations, and reorganizations, to which all workers may be subject from time to time” must be eliminated. The current policy does not accord with evolving understanding of psychological injuries nor does it contemplate that workers experience occupational stresses in different ways.

In addition to changes to legislation and policy, the government must show a commitment to training and education of WCB staff in enhancing awareness of psychological injuries and how to appropriately process and adjudicate these claims. Workers with psychological injuries might be particularly vulnerable to certain stressors throughout the claims process that can aggravate conditions or impede recovery. Specific guidelines and standards should be developed in conjunction with mental health professionals and supports for both workers and case managers should be developed and implemented.

Furthermore, harassment and bullying should be included in both WCB and occupational health and safety legislation (which is outside the scope of this review and submission). Quebec, Saskatchewan, Ontario, Manitoba and British Columbia all include workplace harassment and bullying as occupational hazards and British Columbia explicitly lists mental disorders arising from bullying and harassment as compensable injuries in their Workers' Compensation Act.

While a variety of psychological injuries might be accepted by WCB today under the current legislation and policy, it is important for certainty and consistency, for both workers and WCB staff, to include explicit guarantees or standards that are clear and easily understood and applied. This is particularly true in the context of mental health where stigma and subjectivity continues to exist.

OCCUPATIONAL DISEASES AND PRESUMPTIVE STATUS

Similar to the need to ensure presumptive status applies to all workers experiencing PTSD, many other injuries or diseases are so closely linked to occupational conditions that the presumptive coverage list must be significantly expanded in scope.

Part of the difficulty in adjudicating many cases of psychological injury or occupational disease is that causality is often much more complex and much less clear than for physical injuries that are the result of an accident. However, the granting of presumptive status is specifically designed to address this barrier that a worker faces in obtaining compensation for these types of injury or illness.

Scientific and medical understanding of occupational diseases continues to expand every day. The list of conditions granted presumptive status on Schedule B of the Workers' Compensation Regulation should be continually reviewed and amended to add diseases as the link to occupational causes becomes clearer.

AUPE recommends a comprehensive and regular review process to expand the list of occupational diseases to which presumptive status is accorded. This process should rely on occupational and environmental health specialists in the particular fields in question for each disease. Current notable omissions include repetitive stress injuries (which is particularly prevalent in most female dominant professions), multiple chemical sensitivity disorder resulting from known hazards and occupational stress injuries and PTSD as described above.

CAUSATION - POLICY 02-01 PART II APPLICATION 7

The central component of much of the above discussion about psychological and occupational illnesses and injuries is the overwhelming difficulty that many workers have experienced over the years in establishing a sufficient causal link to work to meet the current "but for" policy of the WCB. Further difficulty has arisen from the strict application of medical or scientific standards of proof to this "but for" test as mentioned above. The result is that a worker must be able to prove with scientific certainty that her injury or illness would not have occurred were it not for the workplace factor, a standard that is overly demanding and conflates the principles of fairness and justice.

On June 24, 2016, the Supreme Court of Canada released its judgment in *British Columbia (Workers' Compensation Appeal Tribunal) v. Fraser Health Authority*.¹⁸ In this case, the Court confirmed that applying stringent standards of proof prevalent in scientific study or even civil tort claims runs counter to the principles and purposes of WCB. Instead, a standard that the workplace be of "causative significance" or "more than a trivial or insignificant aspect" in the development of the injury or illness better reflects and serves a central policy purpose of WCB, which is to provide workers with compensation quickly, efficiently and without the need for court proceedings or significant scientific or medical study and evidence.¹⁹ Furthermore, this standard as articulated by the Supreme Court better accommodates the range of complex and multifactorial illnesses where the workplace is a significant cause within several, as well as cases of latent or chronic onset.

The Court was clear that, even where evidence is inconclusive or contrary to expert evidence, causation can nonetheless be inferred from other evidence, even "merely circumstantial evidence". The medical certainty required to meet the "but for" test demands a much higher standard, which disenfranchises many workers from their rights to compensation.

The causation policies of Alberta's WCB system should be amended to reflect this legal development and streamline various types of injuries or illnesses into one, common causation standard. The standard should be that the workplace was of causative significance or more than a trivial or insignificant aspect. Where the evidence is evenly weighed on causation, the determination must be in the worker's favour, as per the Supreme Court of Canada.

CONCLUSION

The Alberta Union of Provincial Employees thanks this government for taking action to launch a comprehensive review of workers' compensation in Alberta. WCB today is profoundly broken and has strayed from its foundational principles. A workers' compensation system should always be oriented toward the workers themselves and to ensuring that they are able to access the necessary supports and compensation to heal, to work safely, and to be made whole in all cases. We appreciate the opportunity to provide our recommendations and look forward to continued engagement in the review process over the coming year as we recommit to the rights and wellbeing of Alberta's workers.

¹⁸ 2016 SCC 25.

¹⁹ Ibid para 31.



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