



Pictou County Injured Workers Association
142 Provost Street Suite 1
New Glasgow, Nova Scotia
B2H 2P7
Tel: 902 - 695-7249
Fax: 902-695-3153 E-mail: pciwa@eastlink.ca

October 23, 2023

Law Amendments Committee
c/o Legislative Counsel Office
CIBC Building, Suite 802
1809 Barrington Street
Halifax, NS B3J 2X1

Re: Bill No. 332 – Amendment to the *Workers' Compensation Act*

Dear Committee Members

Our organization is grateful for the opportunity to provide commentary on Bill 332 and is pleased legislation has been introduced for this issue which continues to have devastating impacts on many Nova Scotians.

The intent of the legislative amendment is applauded however, we suggest some changes are necessary.

First, the effective date of September 1, 2024 is not appropriate. The clause "*but does not include stress other than an acute reaction to a traumatic event*" was determined to be an infringement of s. 15(1) of the *Charter of Rights and Freedoms* by virtue of the Workers' Compensation Appeals Tribunal decision # 2014-706-AD, dated September 11, 2019. The infringement based upon mental disability determined the clause to be unconstitutional. Any law found to be unconstitutional is rendered to be of no force or effect.

However, the Workers' Compensation Board (WCB) continued to apply the discriminatory stress exclusion in the adjudication of claims since September 11, 2019. Some claims were formally adjudicated by WCB with written decisions being provided but many others were denied verbally. Only written decisions can be appealed. A small number of appealed decisions are currently in abeyance at the Appeals Tribunal pending the legislative change.

As the impugned clause was determined to be unconstitutional on September 11, 2019, Bill 332 should confirm that all claims since September 11, 2019 are eligible for re-filing regardless of whether WCB issued a formal decision, and whether or not a written decision was appealed.

Numerous amendments to the *Workers' Compensation Act* since the 1995-96 "New Act" legislation have included dates which resulted in the disentitlement of benefits to a significant number of otherwise eligible claims. These disentitlement dates are unfair and biased to injured workers. Despite the limitations and restrictions on entitlement to injured workers, employers continue to benefit from 100% immunity from civil liability, rate rebates, and stable average assessment rates.

Respectfully, restricting the re-filing of claims which were adjudicated by application of discriminatory and unconstitutional legislation from September 11, 2019 onward is absurd and grossly inappropriate.

The WCB does not require one year to plan and prepare for the adjudication of gradual onset stress claims. WCB adjudicated such claims for many years under the federal *Government Employees Compensation Act*, which did not exclude gradual onset stress. The WCB Board of Directors approved Policy 1.3.6 in July 2005 to adjudicate such claims. The policy was rescinded in 2015 following an Appeals Tribunal decision which determined the definition of accident in the *Workers' Compensation Act* would be used to adjudicate the federal claims.

The WCB currently adjudicates psychological injuries which arise secondary to physical injuries and from traumatic incidents. WCB has ample resources, including access to psychiatrists and psychologists qualified to provide treatment for gradual onset stress claims. In fact, the WCB's Service Provider Directory contains 16 pages of individuals and agencies that provide psychology services. The WCB's position that one year is required to plan and prepare for the adjudication of gradual onset stress claims is unwarranted.

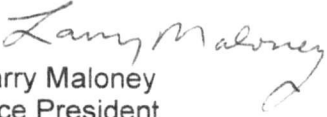
Second, the intent of the *Workers' Compensation Act* is to entitle all injuries arising out of and in the course of employment to benefits and services from the WCB. Regardless as to whether psychological harm in the workplace results from interpersonal conflict, bullying, harassment, a change in working conditions, discipline, or termination, it arises out of and in the course of employment.

Adjudication of the real merits and justice of the claim will determine entitlement to benefits and services. Again, as employers receive 100% immunity from civil liability, workers should be entitled to compensation for all physical and mental injuries related to their employment.

Third, the increase in compensation payable for funeral/cremation expenses is supported by our association. The amendment should clarify the funeral expenses are payable not only for deaths occurring from acute incidents at the worksite, but also to deaths resulting from occupational diseases and other injuries where the compensable injury is found to be a contributing factor.

Thank you for considering this submission in your deliberations.

Yours truly,


Larry Maloney
Vice President