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Honourable Ross Landry, Chair
Law Amendments Committee
Nova Scotia Legislative Counsel
PO Box 1116
Halifax, NS B3J 2X1

Dear Mr. Chairperson and Committee Members:

Re: Bill No. 54 – Widows' Pension Act

Pictou County Injured Workers' Association is a not for profit association providing support and assistance to injured workers and their families. Founded in 1992, our association advocates for change to the workers' compensation system to ensure it maintains consistency with its founding principles which include compensation regardless of fault, the total cost of the system being shared by all employers, the assurance and security of prompt compensation and future benefits, and the Board being a neutral third party administrator which is autonomous and non-political.

Although our association agrees in principle with the provision of retroactive benefits to the disenfranchised widows pursuant to Bill 54 – the *Widows' Pension Act*, we do have concerns regarding this Bill.

First, this bill was brought forth without consultation with key stakeholders. Our association, and other stakeholders, has brought forth to Government proposed amendments. Without exception, we were informed by the Minister, Labour and

Advanced Education Department staff or Workers' Compensation Board officials that any proposed legislative amendments must be first brought to the attention of the Workplace Safety and Insurance System and undergo thorough review and consultation by system stakeholders. It is obvious our association was misled; the proposal of Bill 54 without WSIS system stakeholder consultation proves such consultation is not necessary to amend the *Workers' Compensation Act*. Our association will immediately commence discussions with our elected representatives and Labour and Advanced Education staff to propose legislation to end the unfair treatment and improper compensation for all injured workers in the Province.

Second, given the current state of the Workers' Compensation Board's financial situation, with a reported unfunded liability of \$604.4 million, is it financially prudent to spend an estimated \$10 million in retroactive payments to 108 disenfranchised widows when there are tens or even hundreds of thousands of workers who have been treated unfairly, inadequately compensated and unjustly denied retroactive benefits?

The unanimous endorsement of Bill 54 by all parties supports the Government and opposition parties feel it is financially prudent to amend the Act to remedy unfair treatment and improper compensation. As all parties agree that past injustices must be remedied because it is the right thing to do, then the resulting increase in the unfunded liability is an acceptable consequence in correcting such past injustices.

Our association is pleased to hear this firm message from the Members of the Legislative Assembly. The Workers' Compensation system has historically been unfair and unjust to all injured workers and our association anticipates the Government and opposition parties will make the same commitment to remedy the injustice to the tens and hundreds of thousands of injured workers just as it has done for the 108 disenfranchised widows subject to Bill 54.

Examples of injured workers who have historically been unjustly denied retroactive benefits include:

- those injured before the March 23, 1990 Hayden Decision are denied entitlement to wage loss benefits and many have had such severe injuries that they were unable to return to work on a full time basis or return to work at all due to the severity of the injury;
- Supplementary Benefits for those injured before March 23, 1990 did not include retroactive payments and these benefits were effective only to the date of enactment in 2000;
- A significant number of injured workers injured before March 23, 1990 were not entitled to Supplementary Benefits because they were not in receipt of a periodic pension. The Act forced the Workers' Compensation Board to commute into a single lump sum payment any PMI with less than a 15 percent rating but entitlement to a Supplementary Benefit was limited to those workers receiving periodic pension payments;
- those injured during the window period (March 23, 1990 to the date of the *New Workers' Compensation Act* in 1996) were denied two years of wage loss benefits as the Act restricted entitlement to retroactive wage loss benefits to November 25, 1992 rather than March 23, 1990;
- only those injured during the window period and experiencing chronic pain (Section 10 E) were entitled to a 12.5 percent Permanent Impairment Benefit, all others in the same situation are entitled only to 3 or 6 percent Pain Related Impairment. Workers with a 12.5 percent rating were entitled to receive an additional 3 or 6 percent Pain Related Impairment Rating.

The above-noted are just a few examples of injured workers having been treated unfairly and provided with improper compensation due to legislation. These men and women have been treated unjustly and have endured and continue to endure intolerable hardship and suffering due to restrictions on entitlement placed upon them by the Nova Scotia Legislature.

Hansard records The Honourable Frank Corbett, Minister of Labour and Advanced Education, stating the following on April 25, 2013:

"Every woman whose husband is killed on the job should be treated fairly and compensated properly. In the past, this didn't happen. This wasn't acceptable to our government and we're doing something about it and we're doing the right thing today..."

And later:

"For these women this issue is more than just about fighting to see whether this would be held up in court. It has been an issue of fairness. Denying these women their rights any longer would just not be tolerable."

All injured workers who have been treated unfairly and who have received improper compensation deserve the same remedy as the disenfranchised widows. If the Government and opposition are "...doing the right thing..." for the 108 widows they should also do the right thing for the tens and perhaps hundreds of thousands of injured workers who have also been unfairly and inequitably treated by successive Governments.

Our association submits the estimated \$10 million expenditure to meet the obligations of Bill 54 would be better spent on enhancing the Consumer Price Indexing of benefits as it would help all injured workers who have been treated unfairly rather than just a few.

Suggested Legislative Remedy

An amendment to Section 70 of the *Workers' Compensation Act* to index all benefits to 100 percent of the Consumer Price Index would have an immediate and positive impact on all injured workers.

Benefits are indexed at only 50 percent of the annual inflation rate as a result of the 1994-1995 revised *Workers' Compensation Act*. Previously, benefits were indexed at 100 percent of the inflation rate. From 1993 to 2000 benefits were not indexed at all due to the Government imposed freeze on wage increases for civil servants for which the Workers' Compensation Board decided to apply to injured worker benefits. This results in severe hardship for injured workers and their families as the costs of necessary goods are continuously increasing but the benefits are not keeping pace. Workers are required to utilize food banks and other social services programs to obtain the necessities of life, creating a further burden on public funds.

The introduction and passage of legislation to amend Section 70 of the *Workers' Compensation Act* before the adjournment of the current sitting of the House would send a clear message to the injured worker community and, indeed, to all Nova Scotians the Members of the Legislative Assembly believe in fair and equitable treatment for all individuals killed or injured due to workplace activities.

The Government has demonstrated it can act quickly to implement legislation when it has a willingness to do so. The recent amendment to Section 35 (Automatic Assumption) and the *Widows' Pension Act* are examples.

Bill 151 amended Section 35 of the *Workers' Compensation Act* so that coal miners receiving a Permanent Medical Impairment under automatic assumption would

only have the benefit increased and not decreased if there was a change in pulmonary lung function testing. Bill 151 was introduced on November 27, 2012, received Second Reading on November 29th, was discussed by the Law Amendments Committee on December 3rd, passed Third Reading on December 6th and received Royal Assent on December 6th. Legislation can be passed quickly when there is a willingness to do so.

Bill 35 protected only a few injured workers and was detrimental to others. The Workers' Compensation Board, following the Bill receiving Royal Assent, proceeded to assess workers not protected by Section 35 to undergo lung function tests which will have the likely result of reducing previously awarded Permanent Medical Impairment ratings.

Does the Government have the willingness and desire to remedy an injustice to all injured workers by passing legislation, prior to the end of the current sitting of the House, to fully index pensions to 100 percent of the Consumer Price Index?

Does the Government have the willingness and desire to immediately introduce and pass legislation to amend Section 71 of the *Workers' Compensation Act* to ensure Permanent Medical Impairment will only be enhanced, and not decreased.

Summary

Bill 54 was brought forth without the consultation and endorsement of Workplace Safety and Insurance System stakeholders. This action supports such consultation and endorsement is not a necessary requirement for legislative change. Commencing immediately, our association will bypass the Workplace Safety and Insurance System when proposing legislative changes and bring such proposals directly to Government.

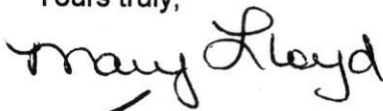
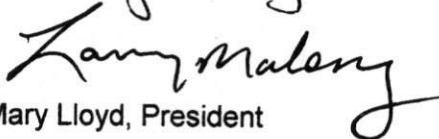
The proposed retroactive payments and resulting increase to the unfunded liability which will result from the passage of Bill 54 is a welcomed and fundamental change to the reform of the workers' compensation system. The message from Government and the opposition parties is clear; it is appropriate to increase the unfunded liability when taking remedial action to do the right thing to remedy historical, legislative unfairness and injustice to injured workers and their families. It is appropriate to address unfair treatment and improper compensation for all injured workers not just a select few. The \$10 million cost associated with Bill 54 would be better allocated to enhance the indexing of benefits which would impact all injured workers, including the disenfranchised widows.

A legislative amendment to Section 70 of the *Workers' Compensation Act* to index benefits to 100 percent of the inflation rate, retroactive to 1993, should be introduced and passed by the House of Assembly prior to the end of the current sitting. The duty to end unfairness and injustice to all injured workers requires this prompt action.

A legislative amendment to Section 71 of the Act to ensure Permanent Medical Impairments will not be decreased is necessary in order to ensure all workers with Permanent Medical Impairments are treated fairly.

All of which is respectfully submitted this 29th day of April, 2013.

Yours truly,

Mary Lloyd, President

Larry Maloney, Vice President