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

Dear Mr. Chairperson and Committee Members:

Re: Bill No. 7 – Workers' Compensation Act

Pictou County Injured Workers' Association (PCIWA) 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.

We are grateful for the Government to introduce this Bill with the intent to provide presumptive benefits to first responders and others dealing with emergency related events who suffer from work related post traumatic stress disorder (PTSD). However, the proposed legislation is not sufficient to meet the stated goal.

Automatic Assumption v. Presumption

The consultation materials identify the purpose of the amendment is to ensure PTSD experienced by emergency first responders will be presumed to be the result of their work and they will not be required to prove the work relatedness of the condition.

The proposed amendment does not provide any greater presumption of work relatedness than that which currently exists in the legislation. Section 10(4) of the Workers' Compensation Act ("The Act") presumes that **all injuries** have arisen out of and in the course of employment, unless the contrary is shown. A worker needs only to show a causal connection between the injury/condition and the workplace activity. The proposed amendment contains essentially the same language as that in section 10(4). It is not the legislation that results in the worker having to prove the work relatedness of the PTSD, it is the WCB's policy and adjudicative practices.

The current requirement of establishing a claim for psychological injury pursuant to the section 2 definition of accident is a worker must link the psychological condition to a traumatic event at the workplace, that is, make a causal connection. This can be accomplished usually via the WCB Injury Report and medical documentation from treating physicians/psychologists. WCB Policy 1.3.9 requires the worker to provide a diagnosis, in accordance with the DSM (Diagnostic and Statistical Manual of Mental Disorders) by a registered psychologist or psychiatrist. The proposed amendment does not change this criteria...it simply codifies in legislation the WCB's policy process. The current Bill does not provide faster adjudication of a PTSD claim and does not alleviate the burden upon a worker to re-live their experience.

PCIWA suggests Bill 7 be amended to establish an "Automatic Assumption" for PTSD claims. The language should be clear and unambiguous:

“Any worker diagnosed by a treating medical practitioner as displaying characteristics of PTSD shall have their claim for compensation accepted.”

The WCB would then be able to accept the claim promptly in order to provide any wage replacement benefits and expedite treatment with a psychiatrist or registered psychologist. The formal diagnosis of PTSD pursuant to the DSM can be done in due course. It is vital to note the definition of “accident” in section 2 does not require a diagnosis of PTSD. A psychological condition arising as the result of a traumatic event is a compensable condition which may result in a loss of earnings, require ongoing medical treatment and lead to a permanent impairment. The codification of the WCB Policy requirements into legislation would be inconsistent with the section 2 definition of “accident”

Workers Eligible for Coverage

All workers experiencing a traumatic workplace event and who develop PTSD symptoms should be included in this legislative assumption/presumption. For example, a pedestrian is struck and killed by a professional driver (delivery truck, snow plow, bus, etc.) Under the proposed legislation the paramedics, police officer, fire fighters, nurses, etc, who develop PTSD as a result of the traumatic event would be covered by WCB for benefits and services via the presumption. However, the driver of the vehicle would not. The driver would be required to endure the lengthy process of proving to WCB the PTSD is related to the accident. This is unfair and creates a potential Charter challenge.

Prescribed Diagnostician

Persons who may diagnose a worker with PTSD should be defined in the Act not in the Regulations. PTSD is a serious disorder which significantly affects a person's ability to work, to interact with other people and to function in all aspects of life. The treatment of this condition requires specialized skills and training. Such treatment should only be provided by psychiatrists and registered psychologists with experience and training in PTSD. Recently, a PCIWA client diagnosed with severe PTSD was informed by a WCB Tier 3 clinic psychologist that she lacked the training and skills to treat his PTSD. Within weeks, the psychologist informed the worker she could now commence treatment because she was provided with a book by WCB and that the worker would be her "guinea pig" regarding the treatment of PTSD. Without clear legislative direction on this issue, PTSD sufferers will receive "cost effective" treatment rather than therapeutically effective treatment.

Time Limitation for Claim Recognition

Section 8(d) authorizes the Government to prescribe by regulation the time period following the worker ceasing employment within which a diagnosis for PTSD must be made in order for the presumption to apply. The inclusion of any time frame for this purpose is inconsistent with the Government's *Backgrounder for Stakeholder Consultation* document of August 2017. On page 1, under the heading "What is Post Traumatic Stress Disorder" the Department of Labour and Advanced Education writes:

"A person can develop PTSD soon after the triggering event or days, months, or even years later."

The imposition of a legislated limitation within which to be diagnosed is inappropriate considering the PTSD may not be diagnosed for years following the traumatic event and which may occur years after the person ended employment as a first responder. The current legal test utilized in adjudication is the section 83 time limits on filing a claim commence when a person reasonably becomes aware the condition or symptoms are related to a traumatic workplace event. The inclusion of a legislated time frame in this Bill makes it more difficult for those suffering from PTSD to file a claim rather than making it easier. Imposing time limits is inconsistent with the intent of the legislation. No time limits should be identified in the Act or in the regulations.

Systemic Changes Required

Major changes to the legislation, WCB policies and WCB adjudicative practices are required in addition to the assumption/presumption amendment.

First, the current mindset of WCB adjudication is that all claims fit into the same box. The injury occurs, the worker is sent to physiotherapy for an assessment to determine the weight a person can lift, push, pull and carry and the worker is deemed fit to return to work in some capacity. Unfortunately, WCB adjudicators and case managers appear to have no sensitivity or awareness of the issues relating to psychological or mental health related injuries. For example, a WCB Case Manager will interpret an injured worker's unwillingness or inability to return to work or undergo certain medical treatment as non-

cooperation and non-compliance when, in fact, it is the psychological condition that may be inhibiting the Worker from participation. WCB staff persons require significant sensitivity and diversity training in order to effectively adjudicate psychological injury claims.

Second, the current legislation identifies maximum gross annual earnings of 135.7% of the average industrial wage upon which to calculate benefits paid to a worker. For the year 2017, the maximum gross annual earnings are \$59,300.00. Many first responders, such as police officers, fire fighters and nurses, earn more than the maximum allowable amount. For example, a first responder earning \$95,000.00 per year would only be entitled to WCB benefits calculated at the rate of 75% or 85% of the net earnings of \$59,300.00. This dramatic loss of income would only increase the psychological damage already being experienced by the PTSD condition. Many first responders would be better served by receiving disability benefits from a private insurer rather than being on WCB benefits. The intent of Government to make it easier for PTSD sufferers is undermined by the financial penalties contained in the current legislation. Numerous sections of the Act relating to financial penalties need to be amended.

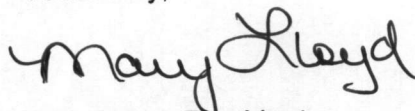
Third, the WCB focus on disentanglement and upon meeting the corporate performance measures of reducing the number and duration of claims results in adjudicative decisions which are inconsistent with the legislated requirements of sections 186 and 187 to base all decisions on the real merits and justice of each case, to be made in accordance with the Act, Regulations and Board Policy and to grant the benefit of a doubt to a worker. This adjudicative approach of reducing costs as opposed to treating and insuring the worker gets the treatment and help that is needed will add further psychological harm to an individual suffering from PTSD.

Our association has grave concerns the current Bill, if passed, will not provide the prompt adjudication and treatment necessary for workers suffering psychological injury as a result of traumatic workplace events.

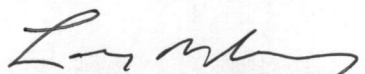
Our association strongly encourages the Government to ensure such serious issues as time limits for claim recognition, prescribed diagnosticians and workers covered by the Bill are defined in legislation and not in regulation. The Minister has already indicated the creation of regulations would be strongly influenced by the Workers' Compensation Board.

All of which is respectfully submitted this 16th day of October, 2017.

Yours truly,



Mary Lloyd, President



Larry Maloney, Vice President