



# UNIFOR

## Local2301

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Workers Compensation Review Submission

July 19, 2019

This submission is made on behalf of Unifor Local 2301. We represent over one thousand workers and retirees at the Rio Tinto aluminum smelter in Kitimat B.C. Our members work to produce hydro electricity for the smelter and primary aluminum for sale around the world.

The aluminum smelting operation is hazardous in terms of the physical nature of the work and also the exposures related to the process. Our Union has advocated for our members for close to 65 years dealing with various cancers and physical injuries resulting from their employment.

We have a long history establishing workplace exposures to the cancers our members have suffered which resulted in changes to Schedule B recognizing the connection.

The Royal Commission on the WCB in BC completed in early 2000 resulted in many changes that didn't favor workers and their survivors. In our opinion the results didn't balance interests, they clearly favoured employers and hurt working people.

We welcome the opportunity to raise some of the areas of the workers compensation system that we feel need to be improved. I have no doubt that you will be aware of most of the issues raised in our submission we hope that adding our name to the record will result in comprehensive changes which will benefit workers and their families.

I've prepared my comments in a relatively general format focusing on identifying areas we feel require improvement. We trust that what follows will provide advocates a further opportunity to speak to specific changes that are to be considered.

### Wage loss

Workers who suffer injury and/or illness found to be due to the nature of their employment should not suffer any loss of wage or benefits. Formulas that result in a reduction of “take home pay” and caps on eligible earning level must in no way result in a loss to the worker and their family. Previous changes resulted in losses between thirteen and fifteen percent and this needs to be readjusted in favour of the worker.

### Pension

The system needs to return to a more favourable system which, once again, results in no loss for the worker compared to their situation prior to injury or illness. If the worker is able to return to employment at the same wage that’s good but if it’s at a lower wage then the old system which provided the higher value between their permanent functional impairment award and the loss of earnings award must apply.

Pension awards need to be returned to where the worker receives it for life. While the worker may no longer have working income after retirement, in many cases, they continue to suffer the effects of permanent injury and/or illness.

### Statutory time limits

The bar to allow an extension on statutory time limits is set very high. While we can appreciate some of the rationale for this, many workers simply don’t know or don’t respond to time limits that are set. When advocates miss time lines the argument changes, but even then, we don’t feel the worker should suffer due to a breach of the process. If there were some way to decide procedural breaches based on prima facia review that may allow for legitimate claims to be considered and not discounted due to the breach of timelines that would be an improvement.

### WCAT

In our experience, there was a time when WCAT was able to reconsider their decisions on the basis of “patently unreasonable errors of fact and law”. Under the current system this option no longer exists. We have members whose cancer claims were denied at WCAT pre 2016 where we feel that they erred applying too stringent test(s) regarding “standard of proof”. Giving workers an avenue to request a reconsideration would help to add fairness to the process.

### Vocational Rehabilitation

We’ve had many workers moved through the system and reached the point where vocational rehabilitation was required. We feel that there is a growing gap between the role of the Board and services provided post 2002. The overall mission of vocational rehabilitation seems to have changed. We see a much larger reliance on contracted services, the elimination of on-site services at the Board facilities in Richmond and a generally limited discretion afforded to rehabilitation consultants.

### Duty to Accommodate/return to work

We believe the Board has a larger responsibility to promote their role in the duty to accommodate those workers who suffer injuries and/or illness` due to their employment. We often see workers who are faced with real life dilemmas dealing with their health condition(s) and the Board looking to cut them off and an employer looking for ways to get them off the books. There needs to be changes which result in these injured or sick workers being accommodated with their employer provided their personal physician clears them to return in some capacity. More emphasis has to be placed on the personal physician guiding the process to ensure the worker is ultimately accommodated but also to ensure that the employer makes the effort to work with the personal physician in identifying appropriate accommodation. In short, no easy buttons for the employer or the Board to find ways to move injured or sick workers off their books.

### Employers Advisors Office/ Workers Advisors Office

This branch of the Ministry of Labour is basically a free service to employers such as Rio Tinto which use them at every level to fight workers claims. The funding employers provide to make this service available is noted but we suggest access is disproportional given that our employer has many claims compared to other payees in this employer group.

Workers on the other hand have access to the Worker`s Advisors Office, an independent branch of the BC Provincial government. Our experience with this office is that they are much harder for a worker to access than the employer`s office is to employers. The first question a worker faces when contacting the worker`s advisor is whether they have a union or not and, if so, they are referred back to speak with their union. These workers are being wrongly advised and should receive the service of this office the same way multi-national companies do with the employer`s office.

The worker`s advisor`s office is established under the same pretence as the employer`s advisor`s office yet workers and their unions appear to shoulder more than employers and don`t receive the same access to help. The labour code doesn`t require unions to represent workers with WorkSafe BC claims so how can the worker`s advisor`s office refuse to represent workers if they have a union? This is wrong and changes need to be made to level the playing field for workers and unions.

### Medical Review Panel

The system is now overly restrictive. We call for the Medical Review Panel to be re-instituted into the process. The current system relies on WCAT vice-chairs that are not medically trained yet they have the discretion to seek independent medical opinions or not and they are not obligated to take the advice when they get it. We believe that this has the potential to hurt workers on matters pertaining to medical disputes. Independent medical opinions are very expensive so not all workers are able to access evidence in support of their claim. The Medical Review Panel was independent, expert based and all parties had the benefit of equal access to their knowledge. We are finding that doctors and specialists we deal with are often consultants to the Board as well as. There appears to be a real reluctance on the part of some of these professionals to provide the medical evidence to support their patient. The doctors I`m

referring to appear to be conflicted with obligations to their patients and not treading too heavily in challenging colleague`s opinions from the Board. This is a hard one to pin down but more and more this is the feeling we get.

#### Chronic Pain Pension

We feel that the fixed rate of 2.5% for those who qualify underscores the suffering that some of our members endure. We feel that the existing format makes it harder to achieve a chronic pain award and then the fixed rate doesn`t always reflect the suffering. We would like to see an easier path to achieving chronic pain awards with a fixed minimum of 2.5% but the ability to have a higher award if certain criteria are met.

#### Interest on money owed

Workers who win appeals must be entitled to receive interest on the money owed. Prior to 2002 both workers and employers received interest and since then only employers do. This is wrong and not balanced so changes must be made.

#### Case Manager Workload

We believe that the current workload of Case Managers Is too high. This lack of adequate workforce to service injured workers results in compensation claims falling through the cracks because there is so much red tape and lack of response to worker inquiries. There has to be a reasonable case load limit for WSBC workers, so that they can provide the service they are mandated to do.

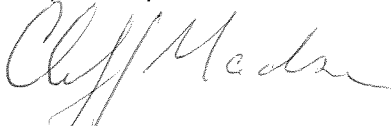
#### Board Medical Advisors

In our opinion, Board Medical Advisor`s opinions are given more weight than the actual attending physician and/or specialist that actually examined the injured worker. In some cases, WSBC decision makers disregard a specialist`s opinion and favor that of a GP. There needs to be a proper criterion in place that forces Case Managers to respect the hierarchy of the credentials of the medical professional and their opinions. Board Medical Advisors should have to actually examine an injured worker and do a site visit before providing an opinion on the mechanism of injury.

#### Case Law

Case Managers and the Review Division should have to consider previous compensation claim decisions that are used by injured workers to advocate for their claims to be accepted.

Respectfully submitted



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