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July 19, 2019

**Janet Patterson**  
**Reviewer**  
**Workers' Compensation System Review**

**VIA EMAIL: [info@wcbreview.ca](mailto:info@wcbreview.ca)**

Dear Ms. Patterson,

I write this submission on behalf of Morneau Shepell, a human resources consulting and technology company. While we are most commonly known for providing employee assistance programs, another of our lines of business is representation of medium to large employers in Workers' Compensation claims and appeals matters.

We gave direct input to Paul Petrie during the stakeholder engagement portion of the process, prior to the completion of his report last year.

We have reviewed and we endorse all of the content of the submission by the Employers' Forum. We offer the following additional submissions:

### **RECOMMENDATIONS DEALING WITH IMPROVED CASE MANAGEMENT OF INJURED WORKERS – Term of Reference #1(d)**

We agree that there is little consistency in the application of Policy #34.11 by Board Officers. While we support timely and sufficiently detailed modified duty offers to injured workers, our experience is that many Board Officers look far too hard for “loopholes” in the modified duty offers, so as to not have to deny wage loss. We endorse fair decisions with respect to #34.11; however, we find that Board Officers set the bar so unattainably high that it is extremely difficult for many employers to meet it with their modified duty offers. For example, I have seen modified duty offers be rejected by Board Officers for something as minor as not specifying whether the worker would be earning their regular hourly wage while on modified duties. We have no issues with the contents of Policy #34.11 as it exists now but are of the view that many Board Officers are erroneously adding to the criteria in policy for modified duty offers. Practice Directive C5-5 is excellent but decisions are rarely made with its guidance, in our experience.

It is also concerning to see Board Officers reject modified duty offers when a worker later informs the Board Officer of some concern (e.g. “I didn't know when the duties were supposed to start” or “I didn't know if I was able to elevate my foot or not”) that was never brought up by the worker to the employer at the time of the offer as a barrier to accepting the offer. This essentially relieves the worker of their role in facilitating timely RTW.



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I have recently heard one of the VPs at the Board say, "We do not see it as the job of attending physicians to completely sign people off work." That was music to my ears; however, the front-line adjudicative staff are not making their decisions in line with this. Policy #34.11 specifically states that in some cases, a layperson can easily determine that the modified work is safe and poses no risk of harm, yet it is *extremely rare* to find a Board Officer who will make a decision that goes against what the physician says, even if there's little or no evidence to support it or rationale behind it. The policy gives them the ability to override the physician, but the majority of them will not do this even when it is appropriate. Of course, in many cases the physician is not even aware of the details of the modified duties offered to the worker (or that they've been offered at all).

We concur that in many cases, the lack of detail in Board Officers' written decisions, as to the rationale behind the decisions, creates a hardship and an unnecessary barrier for employers. Morneau Shepell deals with a large volume of appeals and we agree that in many cases, the employer is forced to appeal a decision just to get access to the file disclosure in the hopes that there will be additional information as to how the Board Officer arrived at his/her decision. This creates unnecessary volume in the appeals system and often comes at a substantial cost to the employer in terms of resources and is, no doubt, stressful to workers as well. Our experience is often that many Board Officers are unreceptive to even discussing their rationale by phone when asked to do so -- very quickly saying, "You can just appeal my decision". This creates a lack of confidence in the quality of their decision and does not foster a transparent and cooperative stakeholder relationship.

**SPECIFIC STEPS REQUIRED TO INCREASE CONFIDENCE OF WORKERS AND EMPLOYERS IN THE WORKERS' COMPENSATION SYSTEM (INCLUDING BUT NOT LIMITED TO THE FAIR PRACTICES OFFICE) – Term of Reference #1(e)**

We too are concerned about the sustainability of the Workers' Compensation System with some of the already-occurred changes and proposed changes ("the changes"). While we support fair compensation to injured workers, in order to avoid financial devastation to some employers (which will have detrimental effects on workers on a much broader level), there also needs to be a fair balance. The funds of BC employers are not limitless and we submit that the changes simply cannot be expected to occur without having somewhat of a domino effect that will be detrimental to workers in terms of job availability. Naturally, the compensation to workers will never be perfect in the eyes of some; however, the broader picture cannot be ignored. We question the value of some of the changes to the system if many employers cannot afford the changes and, as a result, they are able to employ fewer workers.

Regarding the Fair Practices Office, we are unclear as to how it can be of value to employers. The handful of times we have contacted the FPO produced zero results/



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assistance. We have also experienced claims staff who, when asked, refused to discuss how they arrived at their decisions and instead direct us to the instead.

With respect to timely communications from Board Officers, many of them do not return calls or require multiple phone calls to them to get any response at all, usually at a significantly delay. The Board has provided the Employers' Forum with a document entitled "Service Standards & Contact List" which includes (but not limited to) the following service expectations that, in our view, are often not met by the Board Officers:

- Returning voice mail messages **by the end of the following work day**
- Identifying another person whom the worker can contact when the officer is out of office
- Showing respect in interactions with workers and employers
- Listening to workers' and employers' concerns
- Responding to requests in a timely manner
- Explaining decisions that affect a claim in conversation and in clearly written letters

I have called Board Officers and received voicemail, stating they are out of the office with no end date and no alternate Officer to contact in their absence. Upon then calling the call centre, I have been told many times that "there is only emergency coverage". On one occasion, upon contacting the CSM for assistance, the CSM casually laughed and told me that the Board Officer "will return eventually but I don't know when" and offered nothing further except dead silence.

While we appreciate that the lack of response and delay of response from Board Officers may sometimes be the result of excessively high case loads that don't allow them to meet these service standards, this is an operational problem for the Board to address. We are of the view that workers are experiencing this to the same degree as employers and can only assume how distressing that might be.

In conclusion, we thank you for your consideration, Ms. Patterson, and look forward to further engagement in the stakeholder process of your review.

Sincerely,

A handwritten signature in black ink, appearing to read "S. Luck".

Susannah Luck, BHK, CDMP  
Claims & Appeals Specialist  
Morneau Shepell