



Office of the Citizens' Representative
Newfoundland and Labrador

Report on the History and Treatment of
Donald Dunphy by WorkplaceNL
Citizens' Representative File #485CF16

Issued Pursuant to Section 16 of the *Citizens' Representative Act*

March 10, 2017

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Statutory Basis for Citizens' Representative Investigation

Section 16 of the *Citizens' Representative Act* states:

16. The Lieutenant-Governor in Council may refer to the Citizens' Representative, for investigation and report by him or her, a matter relating to administration in or by a department or agency of the government, or by an officer, employee or member of it, and the Citizens' Representative shall,

(a) subject to a special direction of the Lieutenant-Governor in Council, investigate the matter referred to him or her so far as it is within his or her jurisdiction; and

(b) make a report to the Lieutenant-Governor in Council that he or she considers appropriate.

The Workplace Health, Safety and Compensation Commission (re-branded in 2016 and hereinafter referred to as "WorkplaceNL") is subject to the jurisdiction of the Office of the Citizens' Representative ("OCR") as it is found in the Schedule of jurisdictional public bodies in the *Citizens' Representative Act*.

An Order in Council (enumerated as OC2016-206) was communicated to the Office of the Citizens' Representative ("OCR") on or about September 23, 2016. The Order in Council cited Section 16 above and referred "the matter of the history and treatment of Donald Dunphy's claim by WorkplaceNL to the Citizens' Representative for investigation and report, and the Citizens' Representative shall (a) make a report to the Lieutenant-Governor in Council that the Citizens' Representative considers appropriate; and (b) deliver a copy of the report to the Dunphy Family in the manner that the Citizens' Representative considers appropriate."

The Investigation

A notice of intent to investigate the matter, together with a copy of the Order in Council, was provided by us to the CEO of WorkplaceNL on September 27, 2016.

The General Counsel for WorkplaceNL acknowledged receipt of the notice of intent to investigate on September 28, 2016 and requested a meeting with the Assistant Citizens' Representative, which took place at the head office of WorkplaceNL on October 12, 2016, with both the General Counsel and the Director of Policy, Research and Internal Review in attendance. At that time an initial transfer of documentation took place.

On November 23, 2016 a request was made under Section 31 of the *Citizens' Representative Act* for all documentation in the possession and control of the Workplace Health Safety and Compensation Review Division (hereinafter "WHSCRD") was made.

A second transfer of documentation from WorkplaceNL, completing their disclosure process, took place on November 25, 2016, after the information technology branch of WorkplaceNL completed its search of all WorkplaceNL servers for data relating to Mr. Dunphy's claims.

A disclosure package was received from the WHSCRD on November 29, 2016.

A meeting was held with Ms. Meghan Dunphy and her legal counsel on January 6, 2017. Ms. Dunphy was invited to provide any commentary she considered relevant to the OCR.

In all, 1835 pages of disclosure, including the complete WorkplaceNL and WHSCRD files, were reviewed. The disclosure consisted mainly of claims notes, medical opinions, medical records, medico-legal reports, tax information, claims payment information, incoming and outgoing correspondence, security documents, handwritten notations, emails, excerpts from Mr. Dunphy's Twitter account, education and rehabilitation information.

There are two limitations on our investigation. First, because of his death, we do not have direct access to Mr. Dunphy's perceptions of "the history and treatment" of his claim to WorkplaceNL. This limitation is somewhat overcome by the significant amount of written material a workers compensation claim generates. This material is often generated contemporaneously with the events that precipitated it and is generally considered reliable.

Second, our investigation is not an inquiry into the effectiveness and/or efficiency of WorkplaceNL legislation and policies. That type of inquiry would need input from a variety of stakeholders (employer, government, injured workers, academia, and medical professionals.) Our investigation is an ombudsman review to determine if the existing WorkplaceNL legislation and policies were applied fairly to Mr. Dunphy's claims.

The following legislation and policy documents were analyzed:

- *The Workers' Compensation Act, 1983*, S.N. 1983, c. 48,
- *The Workers Compensation Act*, RSNL 1990, c. W-11.
- *An Act to Amend the Workers Compensation Act*, S.N. 1992, c. 29.
- *Occupational Health and Safety Act*, RSNL 1990, c. O-3
- *Citizens' Representative Act*, SNL 2001, c. C-14.1
- Clothing Allowance Policy Circular No. 84-02.
- Home Care Allowance Policy Circular No. 83-02.
- Travel Allowances – Claimants Policy Circular No. 83-05.
- Personal Care Allowance Policy Circular No. 81-05.
- Permanent Functional Impairment Rating Schedule revised August 1988.
- Appeals Policy Circular No. 83-01.
- Job Search Allowance Policy Circular No. 83-09.
- Referrals of Claims to Rehabilitation Policy Circular No. 84-15.

- Extended Earnings Loss Policy No. CM-01.
- Permanent Functional Impairment Policy No. EN-01.
- Overpayments Policy Circular No. 82-17.
- Formal Retraining Policy No. RH-05.
- Self-Employment Policy No. RH-06.
- Appeal Process Policy No. AP-01.
- CPP Disability Benefits Policy No. EL-03.
- Overpayments Policy No. EL-04(B).
- Determining Suitable Employment and Earnings (EEL) Policy No. RE-15.
- Earnings Loss Benefit Calculation Policy No. EL-01.
- Additional Child Care Costs Policy No. HC-09

Introduction

Workers compensation systems are designed primarily to establish a safety net for those injured at work. There are generally three interested parties in any worker's compensation system: (1) employers who pay for it, (2) injured workers who benefit from it, and (3) governments (represented by compensation commissions) which set and enforce legislation and policy around it. By removing the legal principle of tort from an injury on the job, the prevailing thought in Canada is that workers compensation can be paid faster, and at a rate that provides long term financial security for injured workers, versus a lump-sum payment that comes after litigation or prolonged periods of settlement negotiation. As legal scholar Katherine Lippel has pointed out however, the removal of civil liability and the adversarial nature of a trial scarcely removes the concept of blame from the triangular relationship. In fact, in the eyes of the injured worker, blame often shifts from the company or employee who injured the worker, to the workers compensation regime, or the government itself.¹ The problems soon morph into those of "the system."

The relationship between the second and third stakeholders above is the focus of this investigation. Prior to his death in Mitchell's Brook on April 5, 2015, Donald Dunphy had been on and off 3 workers' compensation claims for 30 years and six months. Between 1984 and 2015, Donald Dunphy had placed a considerable amount of blame at the feet of WorkplaceNL and the Government of Newfoundland Labrador for his financial and emotional plight.

This investigation finds that Mr. Dunphy's frustration became especially apparent when he took to the Twitter social media platform. Prior to his establishing his Twitter account, Mr. Dunphy was not considered to be a particularly challenging case file for WorkplaceNL; indeed, documentation reviewed in this investigation did not show the high levels of antagonism or

¹ Katherine Lippel. "Therapeutic and Anti-Therapeutic Consequences of Workers' Compensation." *International Journal of Law and Psychiatry*. (1999) Vol. 22 No. 5-6. p. 540.

frustration commonly associated with claims in excess of 30 years. Since opening in 2002, the OCR has reviewed many other, more extreme cases of frustrated injured workers who have posed threats, made repeated demands of, or posed security risks to WorkplaceNL.

Notwithstanding Mr. Dunphy's frustration with the system, our review finds Mr. Dunphy's claims were treated in accordance with applicable legislation and policy in effect at all times material to his claims. While he clearly felt exasperated and disempowered by the workers compensation process, his frustration may have been the product of the severity of his injuries, his struggles as a single parent, the length of his relationship with WorkplaceNL, and moreover, the legislative and policy regime that exists for injured workers in Newfoundland and Labrador. No suspicion, animosity towards Mr. Dunphy, dismissiveness, policy breaches or poor client relations were detected in his case.

While we did not find a breach of s.37 of the *Citizens' Representative Act*, we did make two informal recommendations that, if implemented, may have assisted Mr. Dunphy and other injured workers.

History of Mr. Dunphy's WorkplaceNL Claims

Mr. Dunphy's injuries were sustained, and his claims were filed, in the following order:

Claim # 417529. On September 10, 1984 Mr. Dunphy was crushed between a bulldozer and a dump truck while working in the East White Hills of St. John's for Cadillac Construction. He had been working for the company for less than one week as a truck driver, having previously been employed with another company as a tractor-trailer operator. His pelvis was fractured, and he sustained an injury to his right leg that required femoral bypass surgery to improve circulation. He was admitted to hospital and stayed there for approximately one month.

His claim for benefits was immediately accepted by WorkplaceNL. In November of 1984, his attending specialist, Dr. Frank Duff, stated "from an Orthopedic point of view, he seems to be doing quite well" and was walking with the aid of crutches. By January of 1985 however, Mr. Dunphy was already starting to feel a financial pinch. At that time, Mr. Dunphy's rate of compensation had been reduced from \$283 to \$192 per week. In an appeal letter he wrote "At \$192.00 weekly rate I'm finding it very difficult to maintain my home, pay for firewood, pay a \$300.00 monthly mortgage, pay phone, heat & light, insurance and grocery bills...if payments remain the same, it could mean the loss of my home and land, because of an accident which wasn't my fault..."

Mr. Dunphy asked for a review of his compensation rate, reimbursement for travel and payment for clothing damaged during the workplace incident. The three issues were reviewed by the Claim

Review Committee who determined that the claim was handled in accordance with established policies, rules, and regulations. The Committee determined there were no grounds for a hearing.

The Claims Review Committee Memo produced by WorkplaceNL shows:

Mr. Dunphy had worked one week with the accident employer when he was injured; his net weekly earnings were \$315.26 giving him compensation rate of \$283.73; the amount paid for thirteen weeks in accordance with Section 68 of the Act. Following thirteen weeks benefits Mr. Dunphy's annual earnings were obtained and these showed a weekly rate of \$192.64. Since his annual earnings were less than minimum temporary total disability benefits currently being paid, Mr. Dunphy, following the thirteen weeks review has been compensated on the basis of his full annual earnings, again in accordance with the regulations.

The decision was communicated in writing to Mr. Dunphy on January 22, 1985, with Mr. Dunphy being given the opportunity to correct their calculations with proof of higher earnings for the year preceding the accident. No corrections were made by Mr. Dunphy.

Three weeks later, Mr. Dunphy was notified of an overpayment of \$29.20 on his cheque due to a computer error, and that the amount would be deducted from his next cheque.

In June of 1985, Mr. Dunphy's treating specialist Dr. Duff indicated that Mr. Dunphy had reached maximum medical plateau and should be assessed by WorkplaceNL as, in his opinion, he would be unable to resume work as a truck driver. Mr. Dunphy's temporary earnings loss benefits were terminated as of July 5, 1985. He was referred to the Rehabilitation Department of WorkplaceNL.

In July 1985, a Rehabilitation Counsellor met with Mr. Dunphy to discuss a rehabilitation plan. Mr. Dunphy indicated that his job sporadically required loading and unloading the truck and that he could pay someone to do this. He stated that he needed 2 weeks work to qualify for federal Unemployment Insurance benefits. He was found to be eligible for a 2 week work sponsorship program.

A sponsorship program was found, and Mr. Dunphy went on to qualify for EI benefits.

On July 22, 1985 Mr. Dunphy's MHA, Loyola Hearn, wrote on his behalf requesting further assistance in the form of retraining. In August 1985, WorkplaceNL stated that there was no mandate to provide retraining as the worker was able to return to employment.

An interdepartmental memo dated July 1985 confirms Mr. Dunphy's assertion that he was willing, in fact, to return to work:

Worker describes his job as non-physical in nature. Prior to being employed at Cadillac Construction, Mr. Dunphy worked as a tractor trailer driver, a position that sporadically requires some loading and unloading. However, worker states

that he can pay someone a nominal fee to load and unload and doesn't see the heavy lifting as a (deterrent) to employment.

Mr. Dunphy's MHA was provided with a separate printout that outlined his prior compensation rate calculations. On September 10, Mr. Dunphy retained a lawyer, who asked that his file be transferred to her for a review of "why he was not awarded a lump sum pension at a time when it was determined that medical evidence established that he had reached a plateau with regard to his medical recovery." The legal claim went nowhere.

Mr. Dunphy returned to WorkplaceNL early in 1986 with a number of complaints about the way his claim was handled, including access to rehabilitation. Writing in an inter-office memo, Dr. Graham Cook states:

...the facts that he gave to me lead me to conclude that he certainly might have a case for our added involvement in this area, however, obviously this is your final decision. I feel we would all have to conclude, at least on the basis of morality, that the evidence suggests that he needs further involvement in the area of rehabilitation. However, the Act may not allow us to take such a philosophical position.

...

Certainly, there is no question that he is back doing the job he was injured on. However, I cannot help but feel that his intention was not to remain at this level of income and I think we have enough evidence to show that he was motivated to obtain a better job in society. I think because of this that I would like our Rehab Dept. to have one final look at the claim to see if, in actual fact, under the terms set down in the act, that we might not have some further responsibility to this gentleman in the area of rehabilitation.

In February 1986, Mr. Dunphy was assessed at a permanent functional impairment rate of 10% and a lump-sum PFI award of \$4,550 was issued on April 2. He was referred back to the Rehabilitation Department and discussions began about an Occupational Therapy assessment. The Director of Medical Services reviewed Mr. Dunphy's claim and stated that in his opinion Mr. Dunphy would have difficulty with obtaining his firewood. He agreed with Mr. Dunphy's request for reimbursement of travel costs on a kilometer basis and indicated that he might benefit from occupational therapy. The Director of Medical Services stated, in part:

...As it is obvious that I am suggesting that we handle this claim to the maximum limit we can, giving the claimant benefit of the doubt, I would certainly like to be involved in a Claims Management meeting concerning this gentleman

A Medical Aid Manager reviewed and determined that Mr. Dunphy was entitled to an adjustment between the difference in the cost of mileage and public transportation. To assist with getting firewood an allowance under Personal Care was provided at \$100 per month for 5 months.

In August 1986, the Claims Management Committee reviewed Mr. Dunphy's claim and recommended an occupational therapy evaluation given the question concerning his ability to return to pre injury employment. A rehab memo dated August 13 states:

It is felt by the Committee that to expect the worker to revert to the transport truck driving employment may not be within the worker's ability and that the present unemployed status of the worker should be addressed by rehabilitation.

It is recommended that rehabilitation arrange an Occupational Therapy Evaluation to consider the worker's ability in terms of transport driver. The results of this should determine Rehabilitations next move.

In September 1986, a Rehabilitation Counsellor Memo on the file indicates that Mr. Dunphy had returned to work driving a tandem dump truck. Mr. Dunphy expressed frustration to WorkplaceNL with receiving the \$4,550 lump-sum PFI when he claimed to be aware of another person who received \$20,000 for a taxi business. It was determined that no further assistance was required as Mr. Dunphy demonstrated an ability to return to the workforce.

The next time WorkplaceNL heard from Mr. Dunphy, in 1987, he requested financial assistance with the purchase of a transport truck. In October 1987, the Manager of Counselling Services wrote Mr. Dunphy outlining that his request for financial assistance to purchase a truck was not approved as he was found to have skills and experience in a job that only required driving.

Fifteen months went by. According to clinic notes of Dr. Duff dated February 13, 1989:

I have not examined Mr. Dunphy for a number of years until he came into my office on February 13. It would appear that a settlement was received by Mr. Dunphy following his recovery and resumed work in 1984² as a truck driver. In the past number of years his work has been intermittent and he has not been able to work since December 3 1988...Even activities such as cutting some firewood is difficult home for him because of back and right groin pain...I feel it would be appropriate for this patient to obtain work which does not involve constant heavy lifting.

Claim 417529 then fell into the background, supplanted by Claim 517261 which was opened in 1989 and will be discussed beginning at page 11.

² Documents indicate Mr. Dunphy actually returned to work in 1985.

In July 2006, Mr. Dunphy was provided with a cosmetic impairment award of 3% for scarring to his right leg in the amount of \$1417.35, in connection with Claim 417529.

In October 2010 Mr. Dunphy requested “a first time PFI (Permanent Functional Impairment) on my stomach and bowels due to the prescription drugs I have been taking over the years...I am also requesting a new PFI on my back, hips and legs.” The WorkplaceNL medical officer cited no information from Mr. Dunphy’s family physician to indicate change over time and he was unable to recommend a reassessment. The medical officer cited “insufficient medical information” to support a gastrointestinal PFI but invited more information on the subject for his consideration. There are no records of this information being provided by Mr. Dunphy or his physician.

In January 2012 he requested all of the documentation connected with his 1984 injury, which were provided to him within 90 days.

In sum, this claim was processed on a timely basis and paid in accordance with legislation and applicable policy. After the opening of this claim, Mr. Dunphy returned to work sporadically as a truck driver and drew federal unemployment benefits.

Claim # 517261. On November 16, 1989 Mr. Dunphy was back at work when he slipped onto the deck of a barge from a backhoe he was operating for Fogo Transport. The incident resulted in an injury to his lower back. He received medical treatment from his family doctor, then his original specialist, Dr. Duff. The first reference in the file to paying benefits to Mr. Dunphy comes on January 9, 1990, but reference is made in the file of benefits being paid retroactively to November 17, 1989. He attended physiotherapy and occupational therapy and received temporary earnings loss benefits until July 1, 1990. His initial rate of compensation for this injury was \$460.91 per week based on his gross weekly earnings for the 13 weeks preceding the injury (as per legislation). It was subsequently reduced to \$304.56 and then \$302.11 per week based on his previous yearly earnings (as per legislation).

The claim was closed following completion of occupational therapy on July 1, 1990.

Mr. Dunphy returned to work as a Caterpillar truck operator at the Bull Arm fabrication site, for McNamara Construction. On August 7, 1991 he reported to the health clinic at the site, claiming he was having trouble with his back. The onsite physician suspected a recurrence of the previous low back injury and referred him back to Dr. Duff. Mr. Dunphy reported back to WorkplaceNL on August 20 to request a reopening of his claim. On September 10, 1991, Dr. Thomas Farrell, Medical Officer for WorkplaceNL wrote:

I have reviewed this claim and, in my opinion, Mr. Dunphy has had a genuine recurrence of his compensable back problem. He is entitled to re-instatement of (Temporary Earnings Loss) benefits.

The following day, September 11, 1991 was a tragic day in the Dunphy family when Mr. Dunphy's wife passed away suddenly from an aortic aneurism.

On or about September 16, 1991 his Temporary Earnings Loss benefits were reinstated. Mr. Dunphy at this point had decided to authorize Jim Walsh, a union representative, to act on his behalf in matters of his compensation claims. Mr. Walsh was given full disclosure by WorkplaceNL on October 17, 1991.

Mr. Dunphy was given a full work assessment by OT Peter Bowman in November of 1991. Mr. Bowman concluded "this gentleman is most certainly not able to drive on a regular basis as he is currently functioning." Dr. Duff concurred with these findings and advised WorkplaceNL that a retraining/rehabilitation program would be best for him.

In March 1992, the Rehabilitation Department offered formal retraining, upgrading or on the job training. It was noted at that time that his wife had recently passed away and he was the sole provider for his daughter. He requested assistance with child care but was advised that this was not provided for in legislation.

Mr. Dunphy was advised on March 18:

...We realize you have been placed in a difficult situation considering your sole child care responsibilities. Unfortunately, our Legislation does not allow us to provide financial assistance for this problem. It is the Commission's view point that had the injury not occurred, child care arrangements would have been your responsibility.³

Rehabilitation benefits were approved and paid from August 1991-April 17, 1992. In March 1992 WorkplaceNL determined:

Given his pre-injury earnings level of \$38,789.59, Mr. Dunphy would qualify for maximum rehabilitation services of 3 years formal training plus upgrading as required.

A job search program was approved by the end of March 1992.

An April 6, 1992 Rehab Memo sheds some light on the problems Mr. Dunphy was experiencing:

I met with Jim Walsh, Mr. Dunphy's union representative on March 30...Mr. Walsh came in to express concern for Mr. Dunphy and his situation. Mr. Dunphy has issues which may interfere with his Rehabilitation plans. He was recently widowed and now has the constant care of a 4 year old. I explained to Mr. Walsh

³ "Additional child care costs" for injured workers would later be covered by Policy HC-09, enacted in May of 1997, to supplement pre-existing provable child care costs post-injury.

how our Rehab Dept. works and tried to relieve some of the worries Mr. Walsh thinks Mr. Dunphy has. I encouraged Mr. Walsh to have Mr. Dunphy contact me.

Mr. Dunphy and I then met on April 3rd to further discuss his Rehab plans. Mr. Dunphy will attend the Job Finding Club at the “Y” beginning April 6. Travel arrangements have yet to be confirmed. He will either travel on a daily basis or stay at Southcott Hall while attending the Job Finding Club. Travel allowance will be provided as per policy...

Although Mr. Dunphy has issues non related to Rehabilitation, he displayed a positive attitude and I feel confident that he will do his best to work around his personal problems in order to get on with his Rehab plan...

These plans shortly fell by the wayside. A handwritten note at the bottom of the memo states:

April 13/92 Unable to participate. He says his daughter needs him too much at this time.

Mr. Dunphy then retained a lawyer, John Pratt, who wrote an appeal on April 16, 1992 for some assistance for Mr. Dunphy, including having his daughter reside with him in St. John's while undergoing retraining. He closes by saying:

All in all, the last several years have been extraordinarily frustrating and psychologically devastating for Mr. Dunphy. I would therefore suggest that anything which Workers' Compensation could do to help him turn his life around and get back into the work force so that he can provide for himself and his daughter and remove himself from the care of the social welfare system would be appreciated and appropriate.

Having understandably opted out of immediate rehabilitation plans, policy dictated that rehabilitation benefits had to be revoked. This precipitated a second letter from Mr. Pratt on May 6, this time proposing Mr. Dunphy re-open his family's general store with the aid of a cash settlement in lieu of training. Mr. Dunphy supplemented Mr. Pratt's letter with his own. In it, he states:

Given my physical condition, there are very few jobs which I could reasonably be expected to perform, and any job which would take me away from my home would also separate me from my daughter, which is not something that I want to have happen. I realize that what I have described is a very modest proposal, and that my income from a store of this sort might not be great. I would expect to make an income of about \$20,000 a year after my expenses were paid, and considering that I own my own home I believe this would be adequate income for the time being, and certainly preferable to living at home, doing nothing, and getting cheques in

the mail, and feeling like I have my hand out to everybody all the time. I really feel that if I work hard at this, I can build it up and improve my after costs income, and that it is the best possible way to resolve the difficulties which my daughter and I currently face.

The Rehabilitation Department advised Mr. Pratt that a self-employment grant for grocery/convenience store was under active consideration. A feasibility study was to be provided by the Federal Business Development Bank.

An Inter-Departmental Memorandum written in June, 1992 states:

The (Self-Employment) Committee wishes to assist worker with his plan however, there is concern about the income level, i.e. \$20,000 compared to around \$35,000 pre-injury and the feasibility of the business.

In June 1992, after a medical assessment, Mr. Dunphy's permanent functional impairment rating was increased to 15% and he was awarded \$6,825.

On June 30, 1992 the Federal Business Development Bank ("FBDB") issued a 13 page report on the feasibility of Mr. Dunphy's convenience store proposal. The results were not favourable to the initiative. The FBDB noted that the previous family business had operated from 1914 to 1971. Immediately following the 1971 closure another convenience store opened in Mitchell's Brook and was still operational in 1992. The assessor also pointed out there were five convenience stores in the area (3 in Mount Carmel and two in St. Catherine's), with the most direct competition to Mr. Dunphy's proposed site being approximately 2 kilometres away. It concluded:

We believe that you (Mr. Dunphy) have the necessary entrepreneurial attitude to succeed in business. However, our projections indicate that sales potential of the proposal now under consideration in the first year of operation, is insufficient to provide you with a reasonable income. In the second year, we project that your business personal expectations could be met, but only if you have by then acquired the skills necessary to successfully operate a full-menu food establishment. Notwithstanding the above, the projected operation will not support principal payments on the term debt plus your required living expenses.

In July, Mr. Dunphy was referred to the work skills evaluation program.

In October 1992, Mr. Pratt wrote on behalf of Mr. Dunphy requesting reconsideration of the decision to deny provision of an allowance for firewood. The pensions adjudicator reiterated that there was no provision under the Act for firewood.

Worthy of note here is that Mr. Dunphy had previously been granted a modest personal allowance of \$100 per month for five months for purposes of obtaining firewood in connection with the previous claim.

In November 1992, Mr. Pratt contacts WorkplaceNL with an updated medical opinion on Mr. Dunphy's injuries and asked for a review; the letter referenced that Mr. Dunphy experienced problems from 1984 onwards.

There was some delay in answering the request due to Mr. Dunphy's pensions adjudicator going off work suddenly after a car accident. In May 1993 the pensions adjudicator advised Mr. Pratt the opinion had been reviewed but there was no change in the decision regarding Mr. Dunphy's Permanent Functional Impairment Award.

The decision was based on a medical opinion obtained by a WorkplaceNL Medical Officer. During this time he was in receipt of federal Unemployment Insurance benefits.

As his Unemployment Insurance benefits were about to expire in June 1993, Mr. Dunphy requested that the Rehabilitation Department reopen his claim. In July 1993, Mr. Dunphy's claim was reopened. He was referred for upgrading and work skills through either a two year formal retraining program, or a one year on the job training program.

In July 1993, Mr. Dunphy appealed his compensation rate. He was dissatisfied with the reduction in his rate from 90% to 75% of net pre-injury earnings. The change was as a result of legislative amendments and applied to all injured workers in receipt of wage loss benefits, however there are no documents on file that this information was communicated to Mr. Dunphy by internal review.

He collected social assistance from July 17 to July 30, receiving a total of \$215.00.

In September 1993 a work skills assessment was completed and it was recommended that Mr. Dunphy continue with upgrading with a view to entering a retraining program in January 1994. The Occupational Therapist who assessed Mr. Dunphy in September, 1993 wrote:

...he strongly indicated a dissatisfaction with the W.C.C. system and some of the difficulties he has had with various issues.

A psychology report issued in September 1993 stated Mr. Dunphy had a grade 10 education.⁴ He "showed signs of having been under some stress in the past. It was difficult for him to refer to any particularly sensitive subjects, such as the recent death of his wife." The assessment put him in "the Average range of intellectual ability, with academic skills at the junior to high school level." The report indicated his academic profile appeared suitable for retraining and it was recommended that he "continue with the upgrading program in which he is presently (enrolled)."

In November 1993 Mr. Dunphy identified three desirable retraining options: (1) Appraisal Assessment for automobiles (2) Power Engineering and (3) Electrical Power Utilities. All three programs were offered by Cabot College.

⁴ Upon completion of his Grade 10 education, Mr. Dunphy had gone to the Trades College and completed a nine month welding course. He never practiced the trade.

A registered social worker at the Miller Centre who assessed Mr. Dunphy on November 30, 1993, identified him as having “vocational/financial concerns” as well as “frustration/disenfranchisement (external locus of control)⁵” and “bereavement/single parent issues.” The report stated, in part:

Mr. Dunphy reports he is “coping pretty good.” He appears to be fairly satisfied with the medical care he has received, and he accepts his current levels of limitation. In interviews he blamed Workers’ Compensation for the major stresses in his life (financial strain, physical difficulty in return to work, rejection of training and business plan requests). He exhibits an external locus of control, and suggests that his actions (even his contacts with lawyers) have made no difference. At this time he suggests he will do what he is told to do, and would most likely accept the first option which looks somewhat possible...

...

Mr. Dunphy is very committed to his child, who appears to be the one remaining bright spot in his life. At this time he consciously wishes to maximize consistency in her life, and wishes to retain her close contact with extended family network. This is the one area where Mr. Dunphy sees his own actions as impactful...

...

...At this time, although he reports he is coping fairly well, and that he accepts his current levels on limitations, he presents as very angry and frustrated. He identified external issues (W.C.C.) as controlling his situation, and suggests that his own efforts have little impact on his life. Mr. Dunphy was widowed approximately two years ago and is very close to his five and half year old daughter. He is committed to providing for her needs, and wishes to be available to her on a regular basis. Mr. Dunphy is currently involved in upgrading and is very motivated to continue.

On December 23, 1993 the results of a joint Psychology/Occupational Therapy assessment of Mr. Dunphy’s retraining choices was released. After speaking with course instructors, the results were not generally favourable. Appraisal Assessment was a two year course in St. John’s deemed “demanding from an academic as well time perspective.” The assessors stated “there does not appear to be any obvious physical demands restricting Mr. Dunphy from pursuing this avenue of employment. However the pace of the training component, both physically and academically may prove overwhelming for him.” The assessors found the 10 month Electrical Power Utilities course in Seal Cove was not a good choice due to the instructor cautioning against the training for someone with a low back injury and they concluded “...From a physical demand perspective this type of work would not be a good match for Mr. Dunphy.” Power Engineering had 120 people on

⁵ External factors beyond his control.

a wait list, and was also considered potentially difficult from a physical perspective. However, it was not found to be out of the realm of possibility if Mr. Dunphy could “upgrade his level of Math and Science (specifically physics) to an appropriate level.”

Throughout the fall of 1993 Mr. Dunphy was working toward an Adult Basic Education diploma at the Newfoundland Career Academy. Feedback provided to WorkplaceNL from his instructor in the ABE program was generally positive.

In February 1994, an internal review specialist considered a request from Mr. Dunphy to reconsider the reduction of his compensable rate from 90% to 75% of net. An interdepartmental memo dated February 8 indicates:

Mr. Dunphy is in the process of appealing the decision to reduce his rate from 90% to 75% of net.

Mr. Dunphy’s claim was suspended due to personal problems unrelated to the injury. As a result, he couldn’t participate in a rehabilitation program. The Rehabilitation Division advised Mr. Dunphy when he thought the time was right to resume his rehabilitation program, to contact the Rehabilitation Division and they will review his claim.

Mr. Dunphy decided to start a rehabilitation program in June 1993. It was determined that his claim was a reopening. As a result his rate was 75% of net.

Further to our meeting with Gwen Billard and Steve Phillips of January 21, 1994, it was decided that Mr. Dunphy’s request to reinstate his rate at 90% of net is reasonable. The Rehabilitation Division recognized Mr. Dunphy had personal problems and were willing to wait for him to sort out these problems. He was advised that his rehabilitation program would be reinstated when his problems were sorted out. Therefore, his claim was suspended as opposed to being closed.

Mr. Dunphy was paid \$2,521.83 in retroactive payments to June 14, 1993 and his compensation was set at \$446.27 per week.

Mr. Dunphy completed his adult basic education diploma on February 21, 1994.

In March 1994, Mr. Dunphy requested self-employment support for a lounge. He requested a grant of \$20,000 that he wanted to put toward the \$210,000 asking price. Mr. Dunphy wrote to WorkplaceNL and advised:

My 2nd choice would be opening a grocery store. I tried this before but it was turned down because it didn’t look (feasible). I intended to open a store built onto my house, where I would sell (groceries) and a small take out for hot dogs, hamburgers and fries...I know that with the \$20,000 grant to buy the stock for the

store, I could make a good living. I could put the (piece) onto my house at my own expense, which wouldn't cost that much because my brother and father have a saw mill where I can get the material cheap.

...

It would be cheaper for (WorkplaceNL) to go this way. For me to go get some kind of training for 2 yrs in school or on the job training it would cost 43000 just to pay me alone not counting expenses and then (there) is a possibility that I may never get a job at a new trade or my injury might worsen and have to go all through this again.

With my injury right now I have to brace myself up (and) rest once and (a)while. For me to do that while working for someone else I don't think (they're) going to keep me around (too) long. So that (is) why I think self-employment is the only option for me.

This is my final try at this I've been to the union to see what work is around and they said I might get in Bull Arm soon. Right now I have no income and have no other choice but to try driving again.

The Rehabilitation Department denied the request as it still considered Mr. Dunphy to be a suitable candidate to pursue a formal retraining program.

This decision was issued in writing and was made under Rehabilitation Policy RH-07 which considers self-employment requests "in isolated situations where injured workers are unable to take advantage of the more conventional rehabilitation programs such as academic upgrading, on-the-job-training, or formal retraining." WorkplaceNL advised Mr. Dunphy:

It is indicated in the Work Skills Report dated 93 10 05 that you are a suitable candidate to pursue a formal retraining program. It is also recommended that you participate in an upgrading program as a means for preparation for formal retraining. I understand that you successfully completed the ABE Pathfinder upgrading program on 94 02 21. The Work Skills Team also recommends that you are suitable candidate to participate in an on-the-job training program...I wish to advise that you are eligible to participate in a job search program to identify a suitable on-the-job training or formal retraining program which you would like to pursue. This program has been approved for the period covering 94 03 31 to 94 04 29. Please be advised that rehabilitation benefits are approved while you participate in the job search program and are schedule to terminate on 94 04 29.

Mr. Dunphy was paid benefits from June 14, 1993-April 29, 1994. However, he had found a job and began employment at NODECO as a truck driver in late March. In August 1994, he was

advised of the overpayment which arose when he received employment earnings and compensation benefits for the same period.

An Inter-Departmental Memorandum issued in August stated, in part:

I was finally able to contact Mr. Dunphy on 94 08 07. He advised me that he commenced work as a truck driver with NODECO Hibernia during the end of March. He explained that he received monies from Workers' Compensation Commission since his commencement of employment however, has not cashed the cheques. I advised Mr. Dunphy that a letter is needed to confirm his start date of employment so that an overpayment may be set up for reimbursements of the monies that he received since he started work. In addition I advised him that he will need to forward verification of his income in order to proceed with a review for possible entitlement to extended earnings loss benefits. Mr. Dunphy explained that he does not think he will be entitled to wage loss benefits as he is earning a substantially higher income than he received in his pre-injury employment position.

I enquired as to whether worker is experiencing any difficulties performing his job as a truck driver with NODECO. Mr. Dunphy advised that he has not missed any time from work. He explained that he did not contact me to advise of a start date of employment as he was under the understanding that his benefits would terminate early March.

In October 1994, his claim was reviewed to determine any entitlement to extended earnings loss benefits. No entitlement was found as Mr. Dunphy's worker's actual earnings were higher than his pre-injury earnings. An EEL Memo dated October 18 states:

According to correspondence from his employer, Mr. Dunphy commenced work on March 23 earning \$20.11/hour (plus 15% vacation pay), working approximately 50 hour/week. It is noted that any time worked beyond 40 hours/week is paid at double the hourly rate. This would yield an approximate gross weekly income of \$1,206.60 and a gross yearly salary of \$62,743.20.

As Mr. Dunphy has been employed as a truck driver with NODECO since March 23, 1994, it is reasonable to consider him capable of earning the associated gross yearly earnings of the position which is \$62,743.20. As the earnings he is capable of earning (sic) and greater than his 1994 indexed earnings of \$44,091.32, there is no entitlement to extended earnings-loss benefits.

Five years passed before WorkplaceNL heard from Mr. Dunphy again. During the 1999-2000 timeframe he consulted with both his family physician and Dr. Duff again, complaining of pain in his elbow, shoulders and low back. He approached WorkplaceNL and requested reopening of his

claim, and a review of his Extended Earnings Loss benefits for the period following his employment at Bull Arm. Information on file from Mr. Dunphy, sent to WorkplaceNL on April 16, 2000 indicates that he worked in Bull Arm until “1996/97;” in Toronto for Emery Restoration as a labourer (2-3 months); for Weirs Construction (5 weeks), Jayco Transportation (2 weeks); then his nephew Chris Dunphy driving a dump truck out of Argenticia for 3-4 months. When Chris Dunphy sold the dump truck, he was in receipt of EI and when that ran out, he was again in receipt of social assistance. WorkplaceNL sought medical opinions from Mr. Dunphy’s treating physicians, Dr. Paul Walsh and Dr. Michoke Krisdaphongs, as well as his specialist, Dr. Duff.

Also in 2000 he began work as a snow plow operator with the provincial Department of Works, Services and Transportation. In the summer he was going to be hired as a labourer, but because he was unable to perform duties as a result of his injuries, the Department offered the position to a person with less seniority than Mr. Dunphy.

In June 2000 Dr. Duff provided the opinion that Mr. Dunphy was unable to return to work as a truck driver where lifting was required. A note on his file dated August 8, 2000 references Dr. Duff’s report and that his claim was being reviewed to determine if the updated medical evidence warrants any change in status. According to WorkplaceNL there is no record of a decision on this aspect of the claim file. Mr. Dunphy returned to work as a snow plow operator that winter.

Documents indicate his file was requested to be sent to another lawyer in 2001. There is no evidence in the file indicating any legal action taken by the lawyer.

In 2003 WorkplaceNL terminated coverage of the prescription drug Sulfatrim as it was no longer necessary to treat his work injury. Mr. Dunphy was provided information on how to appeal the decision.

In 2004 Mr. Dunphy applied for Canada Pension Plan Disability benefits and claim information was released with consent to Human Resources Development Canada.

Claim # 738191. On March 11, 2004 Mr. Dunphy was injured after he slipped on a fuel tank while exiting heavy equipment he operated on behalf of the provincial Department of Transportation and Works. He sustained injuries to his shoulder, hip and back. He received temporary earnings loss benefits from March 16, 2004 to May 16, 2006, and then extended earnings loss benefits from May 17, 2006 until his death on April 5, 2015.

In April 2004, after a series of X-rays and family physician visits, Mr. Dunphy participated in the Workers Assessment and Diagnostic Center program at the Miller Centre. Claim notes indicate his shoulder strain was resolving, however he still had mechanical back pain “and problems with the right knee which Don refers to as ‘poor circulation.’” Recommendations included

physiotherapy and referral to a vascular surgeon. In the interim the aim was to have Mr. Dunphy fitted for a back corset or brace and “education on controlling symptoms.”

Claim notes include the following commentary:

...noted that Mr. Dunphy has a great deal of anger directed towards WHSCC on the basis of prior claims...suggested he consider some counselling for unresolved anger, but he indicated he would not be interested.

In June, 2004, following the required 13 week income review, his compensation rate was set at \$369.78. Mr. Dunphy was dissatisfied with the rate and disputed the amount in writing. In the summer of 2004 Mr. Dunphy wrote to WorkplaceNL stating:

I would like a review done on my claim 738191 and 417529 cut in benefits. I can't get disability insurance on any loans that I've taken out since by 1984 injury. That right now leaves me with \$675 a month in house and car payments, payments that are made for every other Canadian who's not an injured worker. This is a result of my accident I don't receive any pension to cover the loss and I do believe that WHSCC should do something about it. My income would be higher if I was healthy and able to do other work. I used to operate excavators and other equipment which now is too hard on my injury. I could have taken labourer work or mixed jobs which give a lot of hours at summer construction that can't be done because of my injury. So with the payments that everyone else gets made for them and the one income I have to keep a home going for me and my 16 year old daughter I would like you to please take a good look at my case. I had higher incomes while in Bull Arm with the (Teamsters) union something I cannot do now in Voisey's Bay. I was crushed into the side of a dump truck by the track of a bulldozer that tore me from the waist down to the knee so that should show that my injury is not a fake, so please take a look at my case.

An Internal Review decision dated August 9, 2004 stated that his claim “was reviewed in accordance with Section 80 of the Workplace Health Safety and Compensation Act.” The review involved employment and income records for the 12 month period preceding his injury, when he worked for the provincial Department of Transportation and Works. The written decision, communicated by mail, cited legislative requirements and upheld the original calculation of a weekly compensation rate of \$369.78:

Mr. Dunphy, from my review of your file and your circumstances, I have confirmed your income from documents received from your employer and Human Resources Development Canada. I also confirm that (Client Services Assistant's) calculations are correct. Also, based on your circumstances, I find the Commission's decision to review your compensation after the 13 week period, was made in accordance with the usual procedures established under Commission

policy and legislation. Therefore, I see no reason to change the Commission's normal practice of establishing a long-term rate of compensation in your case.

Mr. Dunphy was provided with the necessary information to appeal the matter to the WHSCRD.

The day after the decision was rendered, Mr. Dunphy underwent surgery for claudication (reduced blood flow causing pain) in the right leg. This involved a bypass of the femoral artery. He was released in stable condition after a four day hospital stay.

In September 2004 Mr. Dunphy appealed the internal review decision to the WHSCRD. A hearing was held on December 7 of that year.

On December 16 Mr. Dunphy informed WorkplaceNL that he had re-mortgaged his home.

A written decision on the issue of his benefit rate was issued by the Chief Review Commissioner in February 2005. According to the decision Mr. Dunphy's representative from NAPE presented the following arguments:

The representative indicated the employment income used (in calculations by WorkplaceNL) was \$973.00 every two weeks during the initial thirteen week period, but this was reduced to \$586.00 after thirteen weeks.

The representative reviewed Section 80(6)(7) of the Act and reasoned that the actual average annual earnings do not reflect the earnings the worker is capable of, if not for the injury in 1984. She recalled the worker being employed in the winter months as an equipment operator from October to April and then from April to November/December employed in labour work. He was unable to pursue this labour work due to the 1984 injury. The issue is therefore the difference between the EI rate and the earnings from the labour work.

...

She reasoned the worker's benefits should be based on a person in a situation of seniority and working both seasons. Under Section 80(4) a seasonal worker gets the benefit of the same work with the same employer and gets benefits, but in this worker's case it is causal work due to the inability to use bumping rights.

The Commissioner did not find in Mr. Dunphy's favour:

I find the Commission decided within the intent of the Act and Policy while establishing the long term rate of compensation on the claim.

He refused to consider the issue of the difference in earnings prior to the initial workplace injury, as compared to Mr. Dunphy's situation where only the EI amount was being received:

I find this issue and argument is outside of the thrust of the issue under review, and may not be considered at this time.

...

I further find the worker may present further reasoning and argument to the Commission relative to the alleged inadequacy of the earnings loss rate since the initial injury in 1984. The Commission will then render a further decision on the matter, which will be subject to WHSCRD review.

There are no records showing Mr. Dunphy further appealed or presented new evidence specific to the matter of his benefit calculations.

In March of 2005 Mr. Dunphy advised WorkplaceNL that he had been approved for Canada Pension Plan Disability benefits. He was advised there would be a requirement to repay WorkplaceNL "75% of the net personal amount."

In May, following unsuccessful physiotherapy, he underwent a second vascular surgery on his leg and was described as being "very low functioning." A May 2005 Claim Note indicates:

Spoke to Don...Explained there is no further entitlement to PFI at this time, no evidence that his back has worsened since rated at 10%+15% on prior (claims). Also, would not be able to rate any functional impairment for leg until 1 yr post op.

By September Mr. Dunphy was in receipt of CPP benefits and claim notes indicate "his current monthly amount is \$488.32 and the effective date was July 2004." An overpayment notice was sent to offset WorkplaceNL benefits paid during the retroactive period and the total overpayment registered was \$5017.50. Also in September 2005 Mr. Dunphy began reporting bowel problems that he linked to years of prescription medication intake.

Despite his surgeries and multiple injuries Mr. Dunphy was still interested in returning to work. He indicated in December 2005 that if he had a good chair he could resume truck driving. A claim note also indicates "he (Mr. Dunphy) noted that there has been some conflict between him and Mike (WorkplaceNL Supervisor) in the past." Mr. Dunphy was also notified of his right of appeal on the pension replacement issue (CPP versus EEL).

On or about January 10, 2006 Mr. Dunphy wrote to (then) Premier Danny Williams:

Dear Mr. Williams. I am writing you this time to ask for help as premier and a lawyer. I am on (illegible) now from an injury that happened in 1984. I was crushed between a truck and a dozer on a job in the white hills. Since then I have had my whole life screwed because of that injury when I was only 27 years old. First it ended all activities including hockey that I loved to play, then 7 years later

with my lack of ability to work or find work that I could do to make enough money my wife dies at 31 years from lack the money to buy the right food that a diabetic needs to live that you can not get in Mt. Carmel, and have to drive 1 hour to get it, all because of my crime of getting injured on the job. Then a few years later somebody decided we were getting (too) much on unemployment and cut it from 700 to 400 dollars for 2 weeks where I could not look after my daughter, which forced me into bankruptcy and welfare. Now I have bad credit to go along with the rest of the misery. And then comes now when I had to go back to that wonderful system called workers compensation and down hill further I fall. Since I had to go back on workers comp 2 years ago and had 2 operations, I have had to refinance my home with only 1 year left to pay, and go in the (hole) for another 10 years because I had to go on WHSCC. My loans could not be insured because of the 1984 injury, so when I go on disability I can not get disability coverage on my loans that every other Canadian has the right to. When I went on WHSCC this time I had \$675 in house and car payments, then when they cut my earnings one check would not cover my payments I asked them to help and of course it is not in (their) legislation to help people so I had to refinance my home with only 1 year left something everyone dreams of owning their own home. Then I got an extra \$480 CPP not what I should get of course because of lack of contributions over the injured years, and they tell me I got to give them \$360 of that money, they must need that money to retire 2 healthy commissioners like they did in 1986 and gave them \$150000 each to retire with their pensions, must be nice. I find this hard to take when I hear people who have been discriminated against or wrongfully convicted of a crime or insulted (some way) by the government or whoever and they get awarded \$80000 to \$100000 for their troubles from the courts. What is an injured worker considered to be when we are treated like we have committed a crime and we are putting everybody through so much trouble to look after us and we can not even get into the courts. Mr. Williams I think you know (*private citizen*) and I think he can confirm my injury is no fake which a lot of WHSCC claims may be, and is there something you could do to change things with this system that could make things better for the real injured workers. Thank you for your time.

Don Dunphy

Mt. Carmel

Mr. Dunphy's letter was forwarded immediately to (then) Minister responsible Paul Shelley and then to the CEO of WorkplaceNL, to draft a reply for the Premier's signature.

A letter from the Premier was drafted, however another letter was sent to Mr. Dunphy, from Minister Shelley:

Dear Mr. Dunphy:

Re: WHSCC Claim No. 738191

I am writing in reply to your letter to Premier Williams, which I received on January 10, 2006, concerning the benefits you receive from Workplace, Health Safety and Compensation Commission (WHSCC).

I referred your letter to the WHSCC and I have been advised by the Commission that your long term weekly compensation rate has been appropriately established based on your earnings during the 12 months prior to your 2004 injury. With regard to your Canada Pension Plan (CPP) disability benefits, WHSCC legislation requires the benefits be considered as income when establishing a worker's long term rate and to offset 75% of the next CPP benefit. The Commission does not, however, offset any portion of the CPP benefit that may be payable to a worker's independent children. I note that the issue of your potential entitlement to pension replacement benefits is under review with the Extended Services Unit of the Commission.

I understand that you have availed of all levels of appeal provided by the WHSCC with regard to your rate. I have been advised that on February 14, 2005, the Chief Review Commissioner ruled that your rate had been established in accordance with legislation. He also directed the Commission to review any further information you could provide related to diminished earnings after your injury in 1984. Therefore, I would certainly encourage you to provide the Commission with any additional information you believe could affect your compensation rate.

Mr. Dunphy, while I understand your frustration, I have been assured by the Commission that your benefit entitlement has been determined in accordance with the legislation and policies currently in place. I have also been assured by the Commission that your (Case Manager, phone #), is available to ensure you receive the services necessary for your recovery and safe return to work.

Thank you for bringing your issues to my attention.

Sincerely,

Paul Shelley, M.H.A

Minister

The following day, January 20, 2006 in the wake of a January 18 medical report from a specialist claiming it was unlikely he would ever return to work, Mr. Dunphy was referred for a Functional Capacity Evaluation (FCE). A Claim Note dated January 31 states:

Don said he went to see the Urologist. Advised that we could not be able to cover travel expense unless there was evidence that this was related to work injury. He asked if we cover the cost of wood, as he had heard of someone who said it was covered. Advised that this is not something we cover, and that I have not heard of any instances where this is covered.

In early February his telephone was disconnected.

The FCE determined he had a light to medium tolerance for work at less than four hours per day, with a guarded prognosis for any return to work.

WorkplaceNL attempted to work around the problem of no telephone contact by visiting him in his home in Mount Carmel to discuss the FCE.

In April 2006 Mr. Dunphy contacted WorkplaceNL to ask if he was entitled to any leave payments from his time working for the Province. Later that month he was informed there was no entitlement.

On May 17, 2006 Mr. Dunphy's conditions were set out in a claim note with the statement "...appears reasonable to consider this gentleman disabled from the wk force and entitled to EEL with CPP disability offset." After the offset was applied, he received extended earnings loss benefits totaling \$310.10 per week⁶ in accordance with policy. Mr. Dunphy was provided with a full explanation and a calculation sheet in support of the total on June 5. In July he was provided with a PFI reassessment and received a cosmetic impairment payment of \$1,413.75 for scarring on his leg connected with his original claim.

A medical memo dated July 10, 2006 contains a subjective report Mr. Dunphy gave to a WorkplaceNL Medical Officer:

Mr. Dunphy drove himself from Mt. Carmel to St. John's today. He says he couldn't get anyone to accompany him. He says he is able to sit for an hour with shifting his weight. His standing tolerances are greatly decreased because his right

⁶2007 rate: \$317.49.
2008 rate: \$330.92.
2009 rate: \$351.37
2010 rate: \$357.36
2011 rate: \$359.92
2012 rate: \$367.76
2013 rate: \$376.54
2014 rate: \$380.53

leg goes dead. He is able to walk 100' but then he says he gets severe pain in his hip and leg and he has to stop walking for five minutes. He says he is able to get up in the morning. He usually rises about 6 a.m. and immediately has marijuana to get him going in the day time. He says mornings are the worst. He feels sick all morning until around noon time. He does get himself washed and dressed although he does find getting in a shower or bath difficult. He says that his daughter cleans and cooks a little bit. His main household chore is washing dishes. He says that he is able to go out and do a little bit of mowing of a lawn but he pays for it. He visits his friends in the community and drives himself around but he says he experiences a lot of pain.

...

He says his life in the mornings is a living hell in terms of pain and feeling sick all over, and it is not until noon time that he feels any way like he is fit to be around. He denies being suicidal. He does say that yes, he thinks he is depressed but he says who wouldn't be with what he has been through.

The Medical Officer formed the opinion that Mr. Dunphy should receive an increase in his PFI and he received a cheque on or about November 10 for \$4724.51.

The claim file is unremarkable until 2009 when he requested coverage for an ambulance ride to hospital, as well as snow clearing, PFI and medication. Following a medical review, approval for the ambulance was not granted, nor were snow clearing or a new PFI rating. He received coverage for medications. During this period he visited his doctor as required and his file underwent the required reviews. A lift chair was requested and approved.

In 2010 he continued to be followed by his general practitioner. In October Mr. Dunphy again requested a PFI reassessment. The review was conducted in January 2011 by Dr. Jim Hickey and in his opinion:

...the notes from the clients family physician are (fairly) consistent showing that the client has ongoing severe pain with gait alteration, stiffness and leg length discrepancy. The Physician has not indicated that there has been any change over time. Based on this I am unable to advise a PFI reassessment. However with some extra objective data from the clients G.P. I would be happy to review further. With respect to a G.I.⁷ PFI there is insufficient medical information in that regard as well. The client would need to have medical documentation in that regard as well.

There is no evidence that Mr. Dunphy sought or obtained the additional medical documentation he would have needed to be reassessed.

⁷ Gastrointestinal

WorkplaceNL Claim Notes indicate in October 2011 Mr. Dunphy requested financial assistance as he was experiencing financial troubles “and may have to declare bankruptcy, and he said that he heard that years ago the Commission could give lump sum payments.” He was advised that there was no coverage beyond what was permitted by statute and policy and “advised him to speak to his bank for assistance.” He contacted WorkplaceNL’s (then) Client Service Office in December, 2011. Claim Notes indicate:

He was mostly concerned about needing more \$\$\$ for firewood as he is finding it hard to keep warm. (Case Manager) explained that we do not, as a rule, provide for a heat source for injured workers. He also indicated that he is finding it difficult bringing wood inside his house.

He asked about snow clearing and I discussed the criteria for this with him...explained that approval is based on whether someone cannot safely exit their house in case of emergency...it is not based on their ability to shovel, etc.

He does have a car and drives same.

(Case Manager) indicated that it may be possible to have an OT assessment to address his ability to do his own personal care, to do house work and other miscellaneous tasks...or need for medical aid items such as a bath chair or transfer bench. He was not interested in this. He used profane language and said we have never done anything for him and he had to fight for everything he has gotten.

On February 21, 2012, Claim Notes indicate Mr. Dunphy requested a call “regarding request to have PFI assessment.” The next entry in Claim Notes comes on May 22 “tried to get in touch...no answer.” If a discussion with Mr. Dunphy took place on the subject of his request for a PFI assessment it was not documented and no PFI assessment took place.

On January 24, 2013 Meghan Dunphy wrote an email to the Client Services Office requesting he be assisted with snow clearing and firewood. A case manager emailed the Client Services Office stating:

I called Donald Dunphy back today regarding snow clearing and help with firewood. He was not in agreement with the decision but was understanding and is aware he will get a letter with the right to appeal.

On February 4 2013 (referencing the January 24 email from Meghan Dunphy) Mr. Dunphy’s case manager wrote a decision indicating there was no entitlement for firewood and snow clearing⁸.

⁸ Snow removal was considered as a part of Home Care Allowance Policy Circular 83-02, a policy that was no longer in effect when Mr. Dunphy requested assistance with snow removal in 2010. The Home Care Allowance policy that originally supplied the \$500 payment for firewood appears to have been supplanted by the “Medical Aid” provisions of the *Workers Compensation Act, RSN 1990 c. W-11*.

The 2013 decision on firewood and snow clearing seemed to be more definitive than past explanations that they simply weren't covered due to lack of legislation or policy on the subject. The letter stated:

This letter is in follow up to an email to the Client Services Office dated January 24, 2013, from your daughter Meghan Dunphy. In this email, Ms. Dunphy requests that you be provided with assistance with snow clearing and assistance with obtaining wood for your wood stove.

Section 2(1)(r) of the Act states:

In this Act

(r) 'medical aid' means medical, surgical and dental aid, hospital and skilled nursing services and a prosthesis or apparatus and the repairing and replacement of them, transportation and other matters and things that the Commission may authorize or provide.

Section 84(1) of the Act states:

"The commission shall provide a worker who is entitled to compensation under this Act or who would have been entitled had he or she been disabled longer than the day of the injury with the medical aid that in the opinion of the commission may be necessary as a result of the injury."

Section 85(1) of the Act states:

"The supervision and control of medical aid and questions as to the necessity, character and sufficiency of medical aid which is provided shall be determined by the commission."

The Commission does have the authority under Section 84(1) of the Act to support the provision of medical aid that in the opinion of the Commission may be necessary as a result of an injury. As noted above, the definition of medical aid refers specifically to medical, surgical, dental aid, hospital and skilled nursing services and so on. The issue of financial support for snow clearing and home heating is not included in the definition and is not addressed in the legislation or policies.

With respect to snow clearing, this is viewed as necessary for all individual home owners. In exceptional circumstances, the Commission will consider snow clearing for an individual who is severely restricted in his ability to ambulate and unable to safely exit his home in the event of an emergency. Examples of such exceptional circumstances might be an individual who is confined to a wheelchair due to

amputation, paraplegic or quadriplegia. In reviewing your file, there is no indication of significant limitation in your ability to ambulate, and therefore, the Commission is unable to authorize snow clearing as a compensable benefit.

With respect to your request for assistance with obtaining wood for heating your home, there are no provisions under the Act or Legislation to provide an injured worker with such assistance in the form of paying an individual to supply you with firewood. Policy HC-06 deals with essential daily needs. The coverage requested by yourself is not covered. Coverage in Policy HC-06 is more related to specific personal needs of an injured worker such as feeding, bathing, toileting, grooming and laundry and does not include general property maintenance. Therefore, your request for assistance with snow clearing and assistance with obtaining wood for your stove is denied.

The case manager goes on to inform Mr. Dunphy of his right of appeal using standardized language frequently found in written WorkplaceNL decisions.

Firewood became a recurring report in the mandatory Physician's "8/10" forms filed with WorkplaceNL, especially post-2006.

There was minimal activity in relation to this claim number post-January 2013, other than administration of benefits. Annual Review Questionnaires were submitted by Mr. Dunphy for each year he was on Extended Earnings Loss post-2006.

WorkplaceNL began monitoring his social media activities in December 2014.

The relationship with Mr. Dunphy continued from a claims payment perspective up to his death in 2015, and the claim was closed thereafter.

WorkplaceNL's Corporate Security Practices and Legal Obligations to its Staff

As an employer, WorkplaceNL owes certain duties under law to its staff, primarily under Sections 4 and 5 of the *Occupational Health and Safety Act*, which place an onus on employers to limit exposure to occupational health and safety hazards and ensure the welfare of employees. As a lead organization in the promotion and consideration of occupational health and safety issues, WorkplaceNL should be a flagship organization in the development and maintenance of strident internal policy to augment its statutory obligations to limit injuries in its own workplace.

If we consider WorkplaceNL's position in the triangular relationship of employers, employees and government, it is reasonable to expect a certain amount of feedback from stakeholders on both the employer and employee side. Not all of this is positive unfortunately, and there is a track

record and history of threats and abuse by clients of WorkplaceNL. We are aware of criminal convictions registered against injured workers in this province, in addition to a significant number of borderline threats and innuendoes that require analysis in the context of WorkplaceNL employee safety. In response, WorkplaceNL has adopted a zero tolerance policy and takes all threats of violence against the executive, the employees and WorkplaceNL storefronts very seriously.

WorkplaceNL is not alone, unfortunately, in having threats leveled against it. In the last ten years there have been serious incidents at workers compensation boards in Alberta, including a hostage taking incident in Edmonton. As a result of consultation with its pan-Canadian colleagues, WorkplaceNL has adopted a series of internal security protocols, and trained all staff on violence prevention and dealing with disruptive clients.

As a direct consequence of the proliferation of social media and blogging, WorkplaceNL began to pay more attention to the internet as a source of potential threats and violence. Internet monitoring at WorkplaceNL came in earnest when it was contacted by a source indicating a resident of Newfoundland and Labrador was blogging about how to catch, kill, and cook workers' compensation case managers.

Defined corporate security policies exist on how to deal with threats and verbal abuse at WorkplaceNL. We reviewed the policy framework around workplace violence responses, building access, emergency preparedness, visitors procedures, working alone and home visitations and view all policies as reasonable and in line with what would be expected of a public body offering frontline services to the public. Out of a concern for the effectiveness of these policies the OCR will not disclose their contents.

The Evolution of Mr. Dunphy's Online Protests

Evidence varies on when Mr. Dunphy's online presence first achieved notoriety for its criticism of public bodies and elected officials (his Twitter account was taken down after his death and therefore could not be tracked back during this investigation). However, his vocal and palpable criticisms of WorkplaceNL did not begin in earnest until Mr. Dunphy signed up for the Twitter social media platform using the Twitter handle "@sculpen" where he described himself as:

My real name is Don Dunphy a crucified injured worker from NL Canada where employers treat injured like criminals.

WorkplaceNL states it opened a file within its Legal Department, at the direction of a WorkplaceNL lawyer, on or about December 11, 2014 after Mr. Dunphy Tweeted:

My fucking workers comp injured workers roof blew off last night & I'm in drained swimming pool not a house this morning, hope all Whscc Die.

Notes indicate legal counsel did not interpret the tweet as a threat to be reported to police, but an account that should be monitored.

Upon review of the Twitter feed WorkplaceNL states Mr. Dunphy had a sign in front of his house making reference to it being a “WHSCC poverty house since 1984.” WorkplaceNL stated after the review of the Twitter feed it needed to:

....understand whether there were potential implications for Mr. Stephen Philips, Manager, Client Service (now deceased) whose name was referenced frequently in the twitter feed.

The Manager, Client Services, met with counsel and agreed that “an action in defamation against Mr. Dunphy was not warranted; nor was it warranted for WorkplaceNL to take any steps to shut down Mr. Dunphy’s twitter account.”

In an email dated February 3, 2015 addressed to the Executive Director, Worker Services and the Director, Compensation Services, an Investigations Team Lead notes that the comments are general in nature, staff names are sometimes used, but there are no direct threats. He offered his opinion that police would not act on the comments made that day but notes that another commentator suggested Mr. Dunphy was being defamatory.

On or about February 23, 2015 Mr. Dunphy was under active social media monitoring by WorkplaceNL. The following tweets from February 20-23, 2015 exemplify the opinions he espoused on the subject of WorkplaceNL. Statements on Twitter include (most recent tweets first [ie] the chain must be read from the bottom up):

@MichaelBlois60 I had control freak Steve Philips as Whscc Rehab councilor in84, he manager today,wonder did his pay change in 30yrs #nlpoli

@sculpenWhy r murderers&dishonest ppl who steal\$113million& Whscc who steal \$from sick injured workers, why r they protected by Govt #nlpoli

@sculpen injured can't afford 3meals day &we r punished for life when seriously injured,& this Govt allows Whscc to steal 75% of CPP #nlpoli

@sculpen I wonder do @Reardon look at all injured workers as liars or just me Shannon,that's how Whscc look at us, liars&abusers of the systm

@sculpen wondering why no1 was helping with Whscc I sound like a liar,well I should b well up in the PC party if I am a liar

I was told 2day everything I say about Whscc in Newfoundland is lie,must b reason this Govt don't help,all injured workers r liars #nlpoli

@MichaelBlois60 @ReardonShannon Whscc do much the same,they crucify u to drive u away,I swore many times I would never go near Whscc again

@MichaelBlois60 @ReardonShannon Whscc killed my wife in 1990 after 2 months waiting for them to reopen my claim,had no\$ she was Diabetic

@ReardonShannon ask Whscc for my file u can read about it send me papers so Whscc can release by file to u,u can c for yourself

@MichaelBlois60 @daveadey @ReardonShannon Ed Maynard was CEO of Whscc here in NL & he was sued not Whscc for what he put the injured through

@MichaelBlois60 @daveadey @ReardonShannon a lawyer friend told me Whscc can make a mistake that kills & they can't be sued,but if u can prove

@ReardonShannon tell him to take 75% of \$ I get like Whscc takes

@sculpen everyone else gets to probably live on Whscc when they get payments made but ppl like me had to refinance 4 times & go bankrupt

@sculpen Steve Philips was made manager of Rehab at Whscc around 1990,I finally got my retraining started in 1993 it lasted until Philips

@sculpen I could b still working making all this good Alberta \$ if my injury had not been made worse by Steve Philips & Whscc

@sculpen but this man Philips was for some reason was a god & had power to ruin lives,my injury was made worse by this man & Whscc,I could b

@sculpen I was suppose to be retrained after 1984 accident. Dr Duff said it & even doctors working for Whscc in 1884 85 agreed with Duff but

@sculpen who else out there got crucified by this mans want to b a manager at Whscc,u get ahead at Whscc by saving \$ at any insurance

@sculpen Philips was out to b manager at Whscc & he succeeded by saving Whscc big \$ over the years he is now manager of Rehab at Whscc

@sculpen this rehab councilor even over ruled Whscc own Dr. in84,something wrong when young rehab Councillor can over rule the Head Dr Duff

February 22

Anyone else on Whscc in Newfoundland Canada was crucified by the manager of Rehab at Whscc Steve Philip's, this man was very young In 1984 but

@CarpAdvocacy @stephenkent @CARPNews I want to report Whscc for abusing injured workers,Whscc's abuse has killed injured workers & no 1 help

February 21

@InsuranceBureau @stephenkent injured workers have money stolen from them with Whscc 75%clawback,& a murderer will be given free \$ on release

@InsuranceBureau @stephenkent getting hurt on job in Newfoundland gives ppl worse punishment than murderers get,a lot worse Whscc kill us

@InsuranceBureau @stephenkent the Whscc only pay us little over 50% of last pay,&steal 75% of CPP why the punishment Steve,was it a crime

@InsuranceBureau @stephenkent the injured worker pays \$600 a month in my case some pay more,we pay \$600 when Whscc Clawback 75% of CPP,why

@InsuranceBureau @stephenkent an employer only pays \$1200 a yr to Whscc for insurance,why do injured workers pay more than the employer,the

@InsuranceBureau @stephenkent steve u r trying to prevent injury well why do u let the Whscc system make injured workers sicker with poverty

@InsuranceBureau @stephenkent u do nothing 2help cripples on Whscc with their safety so why tweet this safety shit when u only pretend 2care

@InsuranceBureau @stephenkent & Whscc even clawback or steal \$600 a month from cripples,\$ that could pay for snow & ice removal,u do nothing

@InsuranceBureau @stephenkent u mustn't know Steve that your Whscc system don't provide help with ice & snow removal for cripples,& Clawback

@scuplen & Fabian got Judy Manning a job at Whscc to give her a little extra income & lawyer experience

The Williams family &Manning family know who to abuse to give family members high paying jobs,both Williams & Manning used Whscc 2 give jobs

@scuplen how many Newfoundland injured workers died who might still b here if Whscc clawback never was,that stupid law takes food from ppl

@scuplen The great Danny boy fought injured workers in the Clawback court case & he won & it give Whscc the right to steal 75% of our CPP

@scuplen Newfoundlands top lawyer Danny Williams help NL business ppl who run Whscc in NL,Williams is reason injured workers live in poverty

@sculpen if a NL seasonal worker usually worked only 10 or 20 weeks a yr Alexander figures Whscc should only pay u 10 or 20 weeks,he wants u

Who will NL business & NL govt kill this coming week,NL ppl being killed on these garbage NL & NL ppl being killed on jobs or by Whscc

February 20

@sculpen I was sentenced to b killed by Whscc by starvation for committing the crime of getting hurt on rich mans job site

Mr. Dunphy also posted a series of photos of his home, which was in disrepair, stating things like:

Injured workers in NL Canada live in caves and shit holes like this after 30 yrs injured & dealing with Whscc

I'm injured worker who was forced onto welfare 2 times by Whscc,I should have stayed on welfare,my home would be fixed

Anybody who would decorate this for Xmas would be nuts

bath room at Whscc don't look like this,& no Whscc employee live like this in their home as highest paid govt workers

Drive by&look at Whscc building on forest rd,done like Hollywood mansion&I bet it decorated better than this for Xmas

A WorkplaceNL email states:

....This person is very general in his comments, even though he sometimes uses Whscc staff names. He is not making any direct threats, but he certainly is opinionated in his comments.

It would seem that WorkplaceNL was surprised by the vitriolic nature of the criticism. Save for some notation about him being frustrated, in one case documenting profanity, Mr. Dunphy's online presence, and the antagonism associated in it, were out of character as compared to his personal dealings with staff over the years. That is to say Mr. Dunphy was not the subject of any "flagging" or previous employee safety or client relations concerns. It was understood that Mr. Dunphy occasionally called open line radio programs as an injured worker, but he was no different from other injured workers who periodically call these programs to air their grievances.

Only select WorkplaceNL employees are permitted to monitor social media and social media use is prohibited in the workplace.

Section 37 of the *Citizens' Representative Act*

Evidence gathered in an OCR investigation is assessed against section 37 of the *Citizens' Representative Act*. It states:

37. (1) Where, after making an investigation under this Act, the Citizens' Representative is of the opinion

(a) that a decision, recommendation, act or omission that is the subject matter of the investigation appears to be

(i) contrary to law,

(ii) unreasonable,

(iii) unjust,

(iv) oppressive,

(v) improperly discriminatory,

(vi) in accordance with a practice or procedure that is or may be unreasonable, unjust, oppressive, or improperly discriminatory,

(vii) based wholly or partly on a mistake of law or fact, or

(viii) wrong;

(b) that in making a decision or recommendation, or in doing or omitting an act, a power or right has been exercised

(i) for an improper purpose,

(ii) on irrelevant grounds, or

(iii) on the taking into account of irrelevant considerations; or

(c) that reasons should have been given for a decision, recommendation, act or omission that was the subject matter of the investigation, the Citizens' Representative shall report his or her opinion and his or her reasons and may make those recommendations that he or she considers appropriate to the appropriate minister and to the department or agency of the government concerned.

(2) In making a report under subsection (1), the Citizens' Representative may recommend

- (a) that a matter should be referred to the appropriate authority for further consideration;
- (b) that an omission should be rectified;
- (c) that a decision should be cancelled or varied;
- (d) that a practice on which a decision, recommendation, act or omission was based should be altered or reviewed;
- (e) that a law on which a decision, recommendation, act or omission was based should be reconsidered;
- (f) that reasons should be given for a decision, recommendation, act or omission;
or
- (g) that other steps should be taken.

Analysis

WorkplaceNL provided the statutory and policy-based foundations for the decisions taken on the claims, including the Workers' Compensation Act in effect at all times material to Mr. Dunphy's claims. It also provided a copy of *An Act to Amend the Workers Compensation Act* from 1992 that changed the wage replacement rate from 90% to 75% for all affected injured workers.

WorkplaceNL highlighted pertinent sections relating to wage replacement, permanent functional impairment, medical aid and rehabilitation in support of the decisions taken in the claims. The policies on clothing allowance, home care allowance, travel allowance, personal care allowance, and job search allowance that were in effect (where applicable) were disclosed, as were the appeals policy, the referrals of claims to rehabilitation circular and the permanent functional impairment rating schedule.

Mr. Dunphy's dissatisfaction with WorkplaceNL grew quickly out of Claim #417529, was compounded by subsequent claims, and was never truly reconciled. Dissatisfaction by long-term claimants, and failure to reconcile, is a common theme in the academic literature reviewed in connection with this investigation.

In "Victims Twice Over"⁹ Beardwood *et al* point out that living as an injured worker with no probability of meaningful return to the workforce introduces financial, social, and emotional impacts; impacts on the activities of daily living; and living with pain. Further, the psychological

⁹ Beardwood, Kirsch & Clark. "Victims Twice Over: Perceptions and Experiences of Injured Workers." *Qualitative Health Research*. Vol. 15, No. 1, January 2005. 30-48.

state of the injured worker deteriorates through the process of becoming injured and dealing with the system as they begin to feel the effects of poverty, role disruption and stress on their mental and emotional health. Lack of control and disempowerment is a frequent complaint.

An injured worker passes very quickly from the direct employer-employee relationship and its accompanying financial stability to what Lippel describes as “a broad range of actors including friends, co-workers, employers, private detectives, compensation caseworkers, rehabilitation counsellors, attending physicians, compensation and employer medical evaluators, lawyers and administrative tribunal adjudicators.”¹⁰ According to Lippel:

It isn't necessarily the (workers compensation) as an institution that they are talking about when they speak of a “big machine,” but filing a claim with (workers compensation) leads to the intervention of a number of parties, setting in motion a series of “big machines” that seek to control the injured worker, control his future, control costs, control his body, control his appeal, control the return to work process, control his behavior at work, or at occupational therapy, or at the doctor's office....Many interviewees described an enormous imbalance between the worker's resources and those of the other players involved in the system, notably those of the employer and (workers compensation).¹¹

According to Sharon Dale Stone, a sociologist at Lakehead University:

Interview data show that injured workers who are unable to return to work are forced to re-evaluate their sense of identity. Following workplace injury, a number of changes take place: the loss of gainful employment challenges a worker's own internal sense of well-being; it is frequently cause for friends and family to regard them differently; and it leads to new people intruding into their lives. These changes...serve to reinforce the sense of having a new and less socially valued identity to get used to: the identity of injured worker.¹²

...

Tied in with feeling misunderstood is the realization that being an injured worker means being marked as someone who is not pulling his or her weight. This was especially noticeable in the smaller communities...¹³

According to Sheena Warsi, a graduate student at Athabasca University:

¹⁰ Lippel, Katherine. “Workers describe the effect of the workers' compensation process on their health: A Québec study.” *International Journal of Law and Psychiatry*. 30 (2007). p. 433.

¹¹ *Ibid.* p.435

¹² Sharon Dale Stone. “Workers Without Work: Injured Workers and Well-Being.” *Journal of Occupational Science*. (2003) Vol. 10, No. 1. p.9.

¹³ *Ibid.* p.12.

Injured workers who are unable to return to work can become caught in a rancorous cycle of diminished self-worth, anger, depression, and substance abuse, which can increase marital and financial stress (Gamborg, Elliot, & Curtis, 1992). Oftentimes this vicious cycle can become more debilitating than the actual workplace injury or illness itself (Headley, 1989; Beardwood, Kirsh, & Clark, 2004). Injured workers frequently have to prove the legitimacy of the injury, and link causation to their workplace (Lippel 1995 & 1999). Additionally, “the compensation process involves multiple medical examinations to prove the legitimacy of a condition, stigmatization, surveillance, suspicion, disputes regarding compensation, and consequent delays in decision, all of which affect the health of claimants negatively” (Beardwood et al., 2004, p. 33). This leads to an injured worker feeling like they are victims twice over.¹⁴

First and foremost, they are victims of the workplace; secondly “they are victims of a system that implies they are fraudulent and that, in their eyes, refuses them support and impedes their rehabilitation” (Beardwood et al., 2004, p. 31).

There is an important delineation to be made from the preceding paragraphs. Our review indicates Mr. Dunphy was never believed by WorkplaceNL over 30 years to be fraudulent, or a malingerer. The acute bone injuries sustained in 1984, the back injury in 1989, and the shoulder, hip and back injuries sustained in 2004 were non-controversial when viewed against, for example, certain occupational disease or soft-tissue claims. With minimal delay he was placed on claim: that is to say he never struggled to show he had compensable injuries. He was never placed under physical surveillance or investigated for fraud, even after failing to report a return to work (instead an overpayment was created). He was offered support in accordance with legislation and internal policy.

Throughout the documentation reviewed in this investigation there are frequent references by Mr. Dunphy to doing what was right for his daughter, and he investigated new avenues to get back to work. In fact, he often rebuked WorkplaceNL and returned to work driving trucks and heavy equipment: in the 1980s and 1990s after his initial crush injury, at the Hibernia fabrication site, and in Toronto, then in the 2000s with the Department of Transportation and Works. He intimated in the 1993 social work report that between his initial injury in 1984 and 1993, he had worked for 12 employers. He pursued the possibility of taking over a family retail business in his hometown, and building a convenience store and snack bar onto his home. In addition, with support from WorkplaceNL he upgraded his education in the hopes of assuming a new career. However, he was consistently drawn back to what he knew: garnering a regular paycheck from his equipment operation and driving skills.

¹⁴ Sheena Warsi. “Injured Workers and Stigma: an Interdisciplinary Analysis.” M.A. Paper (August 2014). p. 6. <http://dtpr.lib.athabasca.ca/action/download.php?filename=mais/700/SheenaWarsiProject.pdf> Accessed 16 January 2017.

In terms of formal written protests or protracted writing or email campaigns, Mr. Dunphy's file contained only a fraction of these as compared to other claims of similar duration reviewed by this Office in 15 years of investigating WorkplaceNL. However there were clearly perceptions on Mr. Dunphy's behalf that he had suffered many of the anti-therapeutic consequences of injured workers outlined in scholarly journals, and he believed firmly he was driven into poverty by being on claim. This was exemplified increasingly by his active Twitter account, which gave him a platform to denounce publicly and around the clock WorkplaceNL and certain employees of WorkplaceNL, and politicians.

Mr. Dunphy clearly felt dehumanized by a bureaucratic and a perceived adversarial process, and had formed the opinion that he, and other injured workers were powerless in a system that worked in favour of the other stakeholders in the triangular worker's compensation process outlined on page 5 of this report: employers and the government. This is somewhat puzzling again because over 30 years and three claims, the legitimacy of his injuries were never contested, there is no documentary evidence of malice on the part of WorkplaceNL, and he made only one formal appeal to WHSCRD, in 2005.

The death of his wife, the provision of care for his daughter, his fluctuating benefit levels, his inability to return to consistently making a paid living in exchange for work, and lack of access to firewood were the largest grievances he had. After being placed on full EEL and ceasing work permanently in 2006, he clearly blamed WorkplaceNL, the Government of Newfoundland Labrador and big business for all of it.

Findings

When viewing the evidence obtained, through the lens imposed on this investigation by Section 37 of the *Citizens' Representative Act*, we conclude that WorkplaceNL did not act contrary to any relevant legislation. We base this conclusion on the fact that WorkplaceNL consistently cited legislation and approved policies, and provided reasons as necessary to support its decision making.

There were no violations of the principles of fairness. For over 30 years Mr. Dunphy was consistently provided with an avenue of internal review and quasi-judicial appeal in relation to WorkplaceNL decision making. OCR did not find evidence that WorkplaceNL overburdened Mr. Dunphy with respect to access to its processes.

The decisions made in Mr. Dunphy's claims were consistent with other decisions which involve similar facts or circumstances. The only inconsistency detected was found in the initial approval of coverage for firewood under Policy Circular 81-05 (Personal Care Allowance). The circular indicates no reference to firewood or home heating as eligible criteria; therefore we can only

conclude the approval was creative in nature.¹⁵ Amendments to the *Worker's Compensation Act* incorporated new Medical Aid terminology that made subsequent denials of firewood as a possible personal care consideration virtually impossible. We have not witnessed payment for firewood in any other previous investigations of WorkplaceNL it has undertaken since 2002.

WorkplaceNL's positions on Mr. Dunphy's benefit rates, retraining, his ability to return to work, payment of medication expenses, and payment of mileage expenses were compliant with prescribed legislation and the policy framework.

We note that decisions appear to have been made in line with obvious facts and evidence. There were no departures or disconnections between what was legally eligible for payment in Mr. Dunphy's claims, and what he received.

No evidence was found showing that claims managers, claims handlers or rehabilitation staff refused to use discretion. There were multiple references in the file to concern and sympathy, and some flexibility (notably after the death of Mr. Dunphy's spouse).

There was no pattern of delay in taking any required action. Taken as a whole, it attributed proper care and attention to the claims. There were no unreasonable or purposive delays detected in processing Mr. Dunphy's injury claims, paying mileage claims, medication claims, rendering decisions or making yearly adjustments to his benefit levels. Retroactive benefit payments were full, and timely. His requests were not repetitious (citing previous requests), which tends to indicate satisfactory response times.

There was no lack of common courtesy displayed in the evidence. Communications were appropriate, void of malice and flexible in terms of mail and telephone, and moving to home visits to provide service where necessary.

This investigation did not turn out new facts which were unavailable or unknown previously which cast doubt on the correctness of the original acts, decisions and recommendations of WorkplaceNL in the handling of Mr. Dunphy's claims.

Mr. Dunphy was adversely affected by a system that pays only a percentage of pre-injury earnings, and one which captures 75% of Canada Pension Plan benefits. When pre-injury earnings like Mr. Dunphy's are comparatively low the percentage of pre-injury earnings model can put injured workers closer to and below the poverty line.

Poverty intensifies the pre-existing anti-therapeutic consequences of being on workers' compensation: when a person's focus becomes more and more on basic needs, the level of aggravation and blame against those seen to be behind the decline increases proportionally. Mr.

¹⁵ The approval was stated in an inter-departmental memo dated March 10, 1986 as follows from the Medical Aid Manager: (Re firewood request) "I have discussed this matter at some length, with Don Myron. Rather than providing specific assistance for this purpose, we are proposing approval of a Personal Care Allowance, Level I (\$100 per month) for the 5 month period, December 1984-April 1985).

Dunphy's words in his letter to the Premier eleven years ago "...and down hill further I fall" resonate.

Informal Recommendations

As our investigation did not find any breaches of section 37 of the *Citizens' Representative Act*, we will not make any formal recommendations. We did, however, notice two areas of the operations of WorkplaceNL which could be improved to benefit injured workers generally, and might have assisted Mr. Dunphy.

First, the information provided to injured workers does not include an immediate statement about the core value of the workers compensation system to them. On page 12 of a 15 page Injured Workers' Handbook, under a section entitled *Frequently Asked Questions*, there is some commentary in response to the question "can I sue my employer?" Injured workers may benefit from knowing up front that without a workers compensation system they would have to purchase individual disability insurance policies to mitigate the risks associated with workplace injuries. Those policies would be expensive and, in some industries, may not be available at all. The other alternative would be for the injured worker to sue their employer. Again, this would be costly and subject to the vicissitudes of litigation. This type of information could contextualize the real or perceived problems injured workers have in the system. We recommend that WorkplaceNL undertake to communicate with injured workers more directly about the core value of the compensation system.

Second, our investigation noted that the policies and programs offered by WorkplaceNL deal almost exclusively with the physical and vocational healing of injured workers. Our research indicated that some other jurisdictions are taking a more interdisciplinary approach to workplace injuries. Social workers and psychologists are used to help injured workers deal with all aspects of their injuries. For example, the following is an excerpt from information provided by the Workers Compensation Board of New York:

A unique service of the Workers' Compensation Board is provided by Social Workers. When a worker becomes disabled through an industrial accident or occupational diseases, the impact can be devastating for the worker and the family. The combination of stresses, permanent disability and changed social, financial or personal roles can overwhelm the claimant. When these problems occur, Social Workers are available to discuss the changes that have occurred since the accident and explore possible solutions.

Family interactions can be affected because of disability, pain or financial pressures. Social workers can work with the family to understand the changes and help members come to accept their changed roles. When short term counseling is

not indicated or the problem proves more difficult, referrals are made to appropriate, affordable agencies.

In Canada, the Workers Compensation Board of Nova Scotia has letters of agreement with individual social workers to provide appropriate services. Social workers are on staff in New Brunswick. In British Columbia, a senior psychology advisor is on staff to:

- engage in collaborative, proactive, individual case consultations;
- along with other healthcare providers, plan and monitor assessment and treatment services;
- assess injured workers to provide diagnostic, causality options, treatment and rehabilitation recommendations;
- offer educational presentations to staff to promote an understanding of psychology and the concepts and practices of case management.

In Alberta, a psychologist is on staff who has responsibility for assessing, diagnosing, treating psychological consequences of workplace injuries, including responses to stress and trauma-related issues, adjustment concerns, acute and chronic pain, as well as health and disability beliefs and behaviors.

Closer to home, the Newfoundland and Labrador Housing Corporation, since the mid-1980s, has hired social workers as Tenant Relations Officers to encourage the well-being of tenants. This is a valuable service which goes beyond the Corporation's core provision of public housing.

We note that Mr. Dunphy was assessed by social workers in 1993, as part of a rehabilitation program. This did not occur until Mr. Dunphy had 9 years of dealing with WorkplaceNL. We also note that this assessment was limited to a rehabilitation effort and was not part of WorkplaceNL's general approach to dealing with injured workers.

There is no way to know if Mr. Dunphy's perception of WorkplaceNL would have been altered by having access to social work or psychological services early in his claim history. Citizens have a right to self-determination. The exercise of that right is better undertaken with as much information and support as possible.

We recommend that WorkplaceNL provide social work/psychological services to those injured workers who are experiencing difficulty in dealing with the altered life experiences caused by a workplace injury early in the claim process. It is our hope that the provision of these services would not be just another item on a list of available resources to injured workers, but rather a system-wide genuine understanding that workplace injuries engage more than physical and vocational rehabilitation, but also family, social and psychological issues, which need to be resolved.

Conclusions

We conclude that Mr. Dunphy was treated fairly by WorkplaceNL during the history of his claims, having regard for the existing legislation and policy relevant throughout. While this finding mitigates the delivery of formal recommendations, we think that Mr. Dunphy's claim experience and history with WorkplaceNL would be enhanced if WorkplaceNL:

- provided more information early in the claim process about the core value of the workers compensation system; and
- offered social work and psychological services for injured workers who are experiencing difficulty in dealing with the altered life experience caused by a workplace injury early in the claim process.



Barry G. Fleming, Q.C.
Citizens' Representative



Date

APPENDIX 1

Condensed Chronology of Claims

1984	<ul style="list-style-type: none"> • September 10: 1st Injury and commencement of claim 417529. • November: Begins walking with crutches.
1985	<ul style="list-style-type: none"> • January: Requests review of compensation rate (found to be in order). • June: Deemed to have reached maximum medical plateau. • July: Mr. Dunphy asserts his willingness to return to work.
1986	<ul style="list-style-type: none"> • January: Contacts WorkplaceNL with complaints about how claim was handled. • February: PFI set at 10% - awarded lump sum of \$4,550. Personal allowance for firewood granted. • September: Returns to work as tandem dump truck driver.
1987	<ul style="list-style-type: none"> • October: Requests financial assistance with truck purchase. Declined due to demonstrated ability to return to workforce.
1988	<ul style="list-style-type: none"> • December: Ceases work.
1989	<ul style="list-style-type: none"> • (Date unknown): Returns to work with Fogo Island Transport. • November 16: 2nd Injury and commencement of claim 517261 (Temporary Earnings Loss benefits begin).
1990	<ul style="list-style-type: none"> • July: Completes all physiotherapy and occupational therapy. • Summer: Begins work at Bull Arm Fabrication Site.
1991	<ul style="list-style-type: none"> • August: Recurrence of low back injury at Bull Arm. Claim 517261 re-opened. • September: Mr. Dunphy's wife passes away. • December: Orthopedic Specialist agrees with OT that truck driving is not recommended and retraining/rehab is best.
1992	<ul style="list-style-type: none"> • March: Qualifies for max rehabilitation services (3 years formal training + upgrading as required). • May: Asks for assistance to open store. • June: FBDB concludes store not economically viable. • June: PFI rating increased to 15%. Mr. Dunphy paid \$6,825.00. • July: Referred to work skills evaluation program.
1993	<ul style="list-style-type: none"> • July: With no further EI benefits, requests re-opening of rehab claim. Collects social assistance. Rehab claim re-opened. Begins academic upgrading. • September: Completes work skills assessment. • November: Mr. Dunphy identifies retraining preferences.

1993	<ul style="list-style-type: none"> • December: Recommended Mr. Dunphy continue with academic upgrading.
1994	<ul style="list-style-type: none"> • January: WorkplaceNL decides to pay Mr. Dunphy 90% of net in light of personal problems interrupting his rehab. • February: Mr. Dunphy completes Adult Basic Education diploma. • March: Requests assistance with purchase of a lounge business (declined). Commences work at NODECO (Bull Arm).
1995	<ul style="list-style-type: none"> • No WorkplaceNL activity. • Mr. Dunphy works at Bull Arm.
1996	<ul style="list-style-type: none"> • No WorkplaceNL activity. • Mr. Dunphy works at Bull Arm.
1997	<ul style="list-style-type: none"> • No WorkplaceNL activity. • Mr. Dunphy works at Bull Arm.
1998	<ul style="list-style-type: none"> • No WorkplaceNL activity. • Mr. Dunphy reports working in Ontario/NL.
1999	<ul style="list-style-type: none"> • No WorkplaceNL activity. • Mr. Dunphy reports working in NL, receiving EI and social assistance.
2000	<ul style="list-style-type: none"> • Begins work as a snowplow operator with province of NL. • Requests claim reopening to have EEL reviewed. No record of a decision by WorkplaceNL. • June: Dr. Duff opines Mr. Dunphy is unable to work as a truck driver where lifting is required.
2001	<ul style="list-style-type: none"> • Asks for WorkplaceNL file to be transferred to lawyer Randell Earle.
2002	<ul style="list-style-type: none"> • No WorkplaceNL activity. • Mr. Dunphy continues to work as snowplow operator.
2003	<ul style="list-style-type: none"> • Exchange between Mr. Dunphy and WorkplaceNL regarding drug coverage. • Mr. Dunphy continues to work as snowplow operator.
2004	<ul style="list-style-type: none"> • Mr. Dunphy applies for Canada Pension Disability benefits. • March 11: 3rd Injury and commencement of claim 738191. • April: participates in Workers Assessment and Diagnostic Center program. • June: compensation rate set. Mr. Dunphy appeals rate. • August: rate decision upheld in internal review. Mr. Dunphy undergoes surgery on his leg. • September: Mr. Dunphy appeals rate to WHSCRD.
2005	<ul style="list-style-type: none"> • February: WHSCRD upholds internal review decision. • March: Mr. Dunphy receives Canada Pension Disability. Offset initiated at 75%. • May: Mr. Dunphy undergoes further surgery on his leg.

2006	<ul style="list-style-type: none"> • January: Mr. Dunphy writes to Premier Danny Williams. Mr. Dunphy's specialist deems him medically unable to return to work. Functional Capacity Evaluation ordered. • May: WorkplaceNL medical officer concurs and opines Mr. Dunphy is disabled from the workforce. • June: Full Extended Earnings Loss payments granted • July: Provided cosmetic impairment award for scarring (3%). Paid \$1413.75 in connection with Claim 417529. • November: PFI increased and Mr. Dunphy awarded lump sum of \$4724.51.
2007	<ul style="list-style-type: none"> • WorkplaceNL issues EEL payments and provides coverage for medication. • Mr. Dunphy consults regularly with his family physician.
2008	<ul style="list-style-type: none"> • WorkplaceNL issues EEL payments and provides coverage for medication. • Mr. Dunphy consults regularly with his family physician.
2009	<ul style="list-style-type: none"> • WorkplaceNL issues EEL payments and provides coverage for medication. • Mr. Dunphy requests and receives coverage for additional medications. • WorkplaceNL issues EEL payments and provides coverage for medication.
2010	<ul style="list-style-type: none"> • Mr. Dunphy continues to be followed by his family physician. • Mr. Dunphy requests PFI reassessment. Medical officer disagrees with a reassessment but will entertain new medical evidence. None provided.
2011	<ul style="list-style-type: none"> • WorkplaceNL issues EEL payments and provides coverage for medication. • Mr. Dunphy advises he is having financial difficulties and requests coverage for firewood/snow clearing. Advised no further coverage available under law or policy.
2012	<ul style="list-style-type: none"> • Mr. Dunphy opens his Twitter account. • Mr. Dunphy continues to see his family physician and receives EEL benefits / medication coverage.
2013	<ul style="list-style-type: none"> • Meghan Dunphy writes on behalf of her father for firewood and snow clearing (declined). • Mr. Dunphy continues to receive EEL benefits and medication coverage.
2014	<ul style="list-style-type: none"> • Mr. Dunphy continues to receive EEL benefits and medication coverage. • December: WorkplaceNL begins monitoring of Mr. Dunphy's Twitter account.
2015	<ul style="list-style-type: none"> • April 5: Mr. Dunphy is shot in his home.
2016	<ul style="list-style-type: none"> • September: Commission of Inquiry called and Investigation by Office of the Citizens' Representative requested.

APPENDIX 2

Income Sources by Year¹⁶

Year	Sources
1984	<ul style="list-style-type: none"> • Unemployment Insurance to July. • Cadillac Construction (\$8.00 per hour) to September 10 – 1st injury. • WorkplaceNL Temporary Disability Benefits (\$283.73 per week post injury)
1985	<ul style="list-style-type: none"> • WorkplaceNL Temporary Disability Benefits (\$192.64 per week) to June 25. • WorkplaceNL Rehabilitation Benefits (\$192.64 per week) while in workforce long enough to qualify for Unemployment Insurance. • Unemployment Insurance.
1986	<ul style="list-style-type: none"> • Unemployment Insurance. • February PFI award 10% \$4,550. • Personal allowance \$100 per month for five months. • Reimbursement for travel/mileage costs for medical and occupational therapy. • Returns to work as tandem dump truck driver (September).
1987	<ul style="list-style-type: none"> • Works as tandem dump truck driver.
1988	<ul style="list-style-type: none"> • Works as tandem dump truck driver until December 3.

¹⁶ Based on evidence gleaned from WorkplaceNL files.

1989	<ul style="list-style-type: none"> • Returns to work as backhoe operator for Fogo Transport until 2nd injury - November 11. Receives WorkplaceNL weekly compensation of \$460.91 from injury date to end of calendar year.
1990	<ul style="list-style-type: none"> • Receives WorkplaceNL weekly compensation of \$460.91 (13 week rate prior to annual income calculation per legislation). • Annual income calculation leads to adjustment down to \$304.56 per week on February 20, then \$302.11 per week on May 29 to July. • Mr. Dunphy returns to workforce at Bull Arm. • Unemployment Insurance.
1991	<ul style="list-style-type: none"> • Unemployment Insurance . • Continued work at Bull Arm. • Recurrence of 1989 injury August 7. • WorkplaceNL Temporary Earnings Loss benefits \$526.08 ([13 week rate] August to November). • November and December. Annual rate of \$467.06 per week. • Spousal death benefit \$318 per month.
1992	<ul style="list-style-type: none"> • WorkplaceNL Rehabilitation Benefits of \$466.57 per week. • June PFI Award \$6,825.00. • Unemployment Insurance benefits. • Spousal death benefit \$318 per month.

1993	<ul style="list-style-type: none"> • Unemployment Insurance benefits to June 1993. • WorkplaceNL Rehabilitation Benefits \$383.34 per week. • Mileage reimbursements for travel. • Spousal death benefit \$318 per month.
1994	<ul style="list-style-type: none"> • WorkplaceNL Rehabilitation Benefits increased from 75% to 90% of net (discretionary in light of personal circumstances). Rate of \$460.01 per week paid retroactive to June 1993 (cheque issued for \$2,521.83). • Rate established at \$446.27 per week payable to end of job search program (March). • Mileage reimbursements for travel. • Spousal death benefit \$318 per month. • Begins 50 hour work weeks at NODECO @ \$20.11 per hour + 15% vacation pay (March). • WorkplaceNL overpayment established for approx. 2 months of benefits.
1995	<ul style="list-style-type: none"> • NODECO. • Unemployment Insurance. • Spousal death benefit \$318 per month.
1996	<ul style="list-style-type: none"> • NODECO. • Unemployment Insurance. • Spousal death benefit \$318 per month.

1997	<ul style="list-style-type: none"> • NODECO. • Unemployment Insurance. • Spousal death benefit \$318 per month.
1998	<ul style="list-style-type: none"> • Reports working in Ontario/NL sporadically. • Unemployment Insurance. • Spousal death benefit \$318 per month.
1999	<ul style="list-style-type: none"> • Reports working in NL sporadically. • Unemployment Insurance. • Social Assistance. • Spousal death benefit \$318 per month.
2000	<ul style="list-style-type: none"> • Begins work full time as snowplow operator with Department of Transportation and Works (January 31 to April 30). • Unemployment Insurance. • Spousal death benefit \$318 per month.
2001	<ul style="list-style-type: none"> • Snowplow operator. • Unemployment Insurance. • Spousal death benefit \$318 per month.

2002	<ul style="list-style-type: none"> • Snowplow operator. • Unemployment Insurance. • Spousal death benefit \$318 per month.
2003	<ul style="list-style-type: none"> • Snowplow operator. • Unemployment Insurance. • Spousal death benefit \$318 per month.
2004	<ul style="list-style-type: none"> • Snowplow operator until 3rd injury – March 11. • WorkplaceNL 13 week rate of \$569.69 paid for temporary earnings loss to June 21. Reduced to \$369.78 per week based on annual income effective June 21. • Spousal death benefit \$318 per month
2005	<ul style="list-style-type: none"> • CPP disability approved for \$493.26¹⁷ per month (offset by 75% to equal approximately \$123 per month) + \$195.96 per month for benefit of Meghan Dunphy.¹⁸ Spousal death benefits are combined when federal disability or retirement benefits are approved. Mr. Dunphy received CPP disability retroactive to July 2004, triggering a WorkplaceNL overpayment of \$5017.50. • WorkplaceNL Temporary Earnings Loss \$370.48 per week. • Some private vehicle and meal reimbursements from WorkplaceNL

¹⁷ This amount appears to fluctuate between \$480.10 and \$493.26 based on documents reviewed from HRDC (Canada) documents on the WorkplaceNL file.

¹⁸ This is a single reference. Unable to confirm if this amount was paid/combined into other federal benefits.

2006	<ul style="list-style-type: none"> • Some private vehicle and meal reimbursements from WorkplaceNL • Full Extended Earnings Loss (EEL) benefits of \$310.10 per week approved and communicated June 5. • CPP disability benefits.
2007	<ul style="list-style-type: none"> • EEL \$317.49 per week. • CPP disability benefits.
2008	<ul style="list-style-type: none"> • EEL \$330.92 per week. • CPP disability benefits.
2009	<ul style="list-style-type: none"> • EEL \$351.37 per week. • CPP disability benefits.
2010	<ul style="list-style-type: none"> • EEL \$357.36 per week. • CPP disability benefits.
2011	<ul style="list-style-type: none"> • EEL \$359.92 per week. • CPP disability benefits.
2012	<ul style="list-style-type: none"> • EEL \$367.76 per week. • CPP disability benefits.
2013	<ul style="list-style-type: none"> • EEL \$376.54 per week. • CPP disability benefits.

2014	<ul style="list-style-type: none">• EEL \$380.53 per week.• CPP disability benefits.
2015	<ul style="list-style-type: none">• EEL \$380.53 per week¹⁹.• CPP disability benefits.

¹⁹ Mr. Dunphy passed away prior to annual inflationary increase (scheduled for May 17).

APPENDIX 3

Chronological History of Requests to WorkplaceNL by Mr. Dunphy

1st Workplace Injury August 10, 1984

January 1985: Asks for a review of his compensation rate, reimbursement for travel and payment for clothing damaged in his workplace accident.

Outcome: Claim Review Committee determines the three issues were handled in accordance with established law and policy.

July 1985: Asks for assistance in finding two week work sponsorship program to qualify for Unemployment Insurance benefits

Outcome: Sponsorship program found, Mr. Dunphy goes on to qualify for Unemployment Insurance

July 1985: Through his MHA, requests further assistance in the form of retraining.

Outcome: WorkplaceNL advises no mandate to provide retraining as Mr. Dunphy was able to return to employment.

September 1985: Asks that file be transferred to lawyer, Deborah Paquette.

Outcome: file transferred.

1986: February file note references Mr. Dunphy contacting WorkplaceNL with a number of complaints about the way his claim was handled, including access to rehabilitation.

Outcome: PFI assessment performed. Lump sum award of \$4550.00 granted. Personal Care allowance granted for firewood. Adjustment made to mileage benefit.

September 1986: Mr. Dunphy expresses frustration with amount of PFI award.
Outcome: no further assistance required as he had demonstrated an ability to return to the workforce.

1987: Mr. Dunphy requests financial assistance with the purchase of a transport truck.
Outcome: Not approved as Mr. Dunphy was found to have skills and experience in a job that only required driving.

Second Workplace Injury November 16, 1989

August 1991: After returning to work, requests re-opening of his 2nd injury claim for compensable back problem.
Outcome: claim re-opened.

September 1991: Mr. Dunphy asks for file transfer to Jim Walsh.
Outcome: file transferred to Mr. Walsh

March 1992: Requests assistance with child care.
Outcome: WorkplaceNL declined citing no authority to pay this cost.

April 1992: Lawyer John Pratt asks for some accommodation for Mr. Dunphy given his personal circumstances, including having his daughter reside in St. John's with him during retraining.
Outcome: Mr. Dunphy opts not to participate in rehabilitation due to personal circumstances.

- May 1992:** Mr. Pratt writes requesting a cash settlement to open a store in lieu of retraining.
- Outcome: Mr. Pratt advised a study is being performed on feasibility of same.
- October 1992:** Mr. Pratt writes requesting a reconsideration of the decision not to provide a firewood allowance.
- Outcome: Mr. Pratt advised no provisions for such coverage.
- November 1992:** Mr. Pratt asks for a review of Mr. Dunphy's file with a new medical opinion.
- Outcome: pensions adjudicator advises no change in decision regarding PFI.
- June 1993:** Mr. Dunphy requests rehabilitation department re-open his claim as Unemployment Insurance benefits are expiring.
- Outcome: Mr. Dunphy's claim reopened for benefits.
- July 1993:** Mr. Dunphy appeals reduction in his compensation rate to internal review.
- Outcome: Legislative changes responsible although no documentary evidence this information was communicated.
- February 1994:** Mr. Dunphy asks internal review to reconsider the reduction of his compensable rate from 90% to 75% of net.
- Outcome: request deemed reasonable in the circumstances and rate increased to 90%.
- March 1994:** Mr. Dunphy requests \$20,000 in self-employment support for the purchase of a \$210,000 lounge business.

Outcome: Request denied as WorkplaceNL still considered Mr. Dunphy to be a suitable candidate to pursue to a formal retraining program.

April 2000: Asks to have his claim re-opened and have a review performed of his EEL for the period following his employment at Bull Arm.

Outcome: Medical opinions sought from treating physicians. No record of any definitive decision re: this request.

2004 (summer): In an undated letter Mr. Dunphy asks for a review of claims 738191 and 417529 re: “cut in benefits.”

Outcome: August 9 WorkplaceNL reviews the request in the context of Section 80 of the Act and determines the original calculations on Mr. Dunphy’s claims are correct.

January 2006: Mr. Dunphy writes to Premier Danny Williams “to ask for help as premier and a lawyer” wondering if there is “something you could do to change things with this system that could make things better for the real injured workers.”

Outcome: A letter from the Premier is drafted, however evidence shows a truncated version is sent from the Minister citing legislation and stating his rate had been established in accordance with legislation.

April 2006: Mr. Dunphy contacts WorkplaceNL to ask if he was entitled to any leave payments from his time as a snowplow operator with the province.

Outcome: WorkplaceNL inquires with the province and relays information to Mr. Dunphy that no such entitlements exist in his case.

April 2009: With doctor’s approval, Mr. Dunphy requests a lift chair for his home.

Outcome: Lift chair approved.

2009 (undated): File notes indicate request for ambulance transport coverage, snow clearing, PFI review and medications.

Outcome: Medications approved. Snow clearing, PFI and ambulance transport not approved.

October 2010: Mr. Dunphy requests a first-time PFI on his stomach and bowels due to prescription drug intake, as well as new PFI on his back, hips and legs.

Outcome: WorkplaceNL medical officer cites no information from Mr. Dunphy's family physician to indicate change over time and is unable to recommend a reassessment. Medical officer cites "insufficient medical information" to support a gastrointestinal PFI, but invites further information. No further information supplied.

January 2012: Mr. Dunphy requests all documentation connected with his 1984 injury.

Outcome: Documentation supplied within 90 days.

February 2012: Mr. Dunphy requests a call regarding a PFI assessment.

Outcome: Claim Notes indicate Mr. Dunphy was contacted 92 days later in May but was unreachable. No record of PFI being discussed or PFI assessment conducted.

January 2013: Client Service Office contacted by Meghan Dunphy on January 24 regarding snow clearing and "denial of assistance with obtaining wood for wood stove."

Outcome: Mr. Dunphy contacted the same day but unreachable; contacted by telephone three days later to advise of inability to cover the requests. Claim notes indicate "Worker was not in agreement but understood." Mr. Dunphy was sent a letter explaining the decision in detail on February 4.