

## **Summary**

# **Legislative Review of Workers' Compensation**

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**New Brunswick Common Front for Social  
Justice Inc.**

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## **Introduction**

The New Brunswick Minister of Post-Secondary Education, Training and Labour is consulting citizens about workers' compensation, equitable treatment of injured workers by the Commission, and appeal mechanisms.

The Common Front for Social Justice (CFSJ) has been active in New Brunswick since 1988 and represents one of the most important provincial and bilingual organizations fighting against poverty. The CFSJ has around 75 000 members and wishes to participate in this exercise because its mission is to inform, debate, and find solutions to eliminate poverty in this province.

The questions asked through this consultation process are of the utmost importance to us because they will have an impact on the future of workers in New Brunswick, particularly those earning less.

## **Consultation method**

First, let us say that the CFSJ questions the consultation method chosen by the Minister.

The CFSJ prefers a process involving public consultation rather than private consultation because such a process not only encourages the participation of citizens and the sharing of knowledge, but it helps to better understand the issues. Moreover, public consultations encourage discussion and contribute to building collective understanding and social cohesion around a project, in this case, a legislative reform. They also enable us to find out the opinions of other concerned parties as well as the arguments they present to influence the legislative process in their favour.

The CFSJ believes transparency is necessary in the interest of democracy. That is why we are opposed to private consultations. Private consultations nurture the policy of secret. Private consultations favour, in the very short term, those with more means and are conducted to the detriment of the poorest and of their advocacy organism.

Despite the lack of time and means, the CFSJ wants to participate in order to ensure **the respect of four fundamental principles:**

1- First, the reform must not create poverty nor perpetuate it. The government implemented a process aimed at reducing poverty but it cannot, at the same time, create more poverty by introducing this reform of workers' compensation. Too often, workers' compensation benefits lead to poverty and exclusion. We believe any action from the government must promote security, fundamental justice, dignity, equality and inclusion, as established in the *Charter of rights and freedoms*. We must be highly suspicious of false premises which have workers carry an unwarranted load, for example the belief according to which offering compensation benefits demotivates injured workers to return to work, and that medical treatments only open the door to chronicity. Such a belief can be a pretext for some type of harassment of the injured worker and for having him or her return to work too early.

2- The CFSJ must mention that the compensation system results from an historical compromise in which workers relinquished their right to sue their employer in exchange for compensation benefits in the event of a work injury. The system must ensure compensation for all losses incurred by the injured worker, and the reform must prevent any reduction of those benefits through stratagems equivalent to transferring the cost of work injuries to the injured workers and their families.

3- Thirdly, the compensation system must be financed by the employers who must be accountable to the public. The law must clearly formulate that the system is financed by the employers and must guarantee that the financing will not be transferred to the injured workers or to the taxpayers. We must offer resistance to the arguments presented by those who claim the system is too generous or too costly for the employers. The collective compensation system is advantageous for employers because it makes them immune to lawsuits. It is also in the interest of the whole society to adequately compensate injured workers and give them the necessary care to enable them to return to the job they had before the accident. The cost of work injuries must not be transferred to taxpayers (healthcare, income assistance, etc.). That would be equivalent to indirectly subsidizing the employers.

4- Finally, the CFSJ must emphasize that the system be administered fairly and equitably. Injured workers must be treated with dignity and their rights must be respected, particularly the right to be heard, the right to be informed about the evidence they must provide, the right to reply, and the right to be judged

impartially. Those principles of natural justice must be at the centre of the appeal procedures. Moreover, the appeal procedures must be flexible, accessible and informal in order for the parties to present their arguments and elements of proof.

### **Revision of section 38.11(9)**

Regarding the first specific question asked by the Minister, le CFSJ supports clarifying section 38.11(9) of the *Workers Compensation Act* in order to ensure that retirement benefits are no longer deducted from compensation benefits and respect, finally, the NB Appeal Court's decision in the case Douthwright.

### **An appeal tribunal independent from WorkSafeNB**

In principle, the CFSJ is not opposed to eventually having a revision or mediation mechanism within WorkSafeNB, but wants to ensure the mechanism will not limit or delay the right to appeal. We insist on a complete right to appeal and on an appeal carried out by an independent, tripartite and impartial tribunal. The tribunal must be representative of the society in general and of the workplace. Legal expertise is only one dimension of the necessary expertise. The perspective of those who experience special life and work conditions is also essential. A tripartite tribunal encourages impartiality and must take precedence over a judge or arbitrator who decides alone.

### **Assistance fund for injured workers**

Finally, despite the fact that this issue was not among the questions asked by the Minister, the CFSJ recommends the creation of an assistance fund for an organisation regrouping injured workers and for independent research focusing on issues which are of interest to those workers. The fund would be financed by WorkSafeNB and would be aimed at creating more balance between the forces in a system where employers and injured workers do not have the same means to call attention to their opinions. Contrary to what exists in most other provinces, injured workers are not part of an association in New Brunswick. Support for such an organisation is a question of equity.