Submission
To
Australian Senate Standing Committee
On Environment, Communications and The Arts

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"For The Sake of the Nation"

A Comparative Analysis of Contemporary Worker Compensation Schemes;
Incept, System Design, Outcomes.

Societal Implications, Trajectories and Impact.
The Structural Social Determinants of Health Bearing on Australian and Canadian Health & Welfare

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From Darrell Powell -Vancouver, B.C. Canada

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Honourable Senators and Members of the Australian - Senate Standing Committee on Environment, Communications, and the Arts,

I am truly honored to take part in this Committee. I will attach a document, a paper entitled; "Through the Cracks" which should suffice as an introduction to me. In short, I am a national Advocate, disabled, and have been advocating on issues in relation to outcomes faced following occupational acquired disability. The above 'paper' is only one piece flowing form - in person testimony last year. I have been an invited Witness twice to separate Senate Committees; one on Mental Health and the other on Poverty, social issues in Canadian Cities.

I wish this Committee great success and applaud the civil participation, in this dialogue to improve health and social outcomes for workers and families in Australia.

Forward & Submission Brief

Australia is a unique and beautiful country offering healthy environment and stable society for its people; a leader for industrialized and western nations. A proud country and people, diverse in it's culture , historically socially advanced and progressive in care for it's vulnerable members of society with social supports, programs , mental physical health systems, enveloped in respected Human Rights , Constitution and Law, meant to work to benefit the people, communities, and Nation as a whole.

Canada, although very different in some geographical ways, has a very similar society comparatively speaking, with similar diversities in population, similar in Constitution, following the same conventions in Human rights, Parliamentary Process, democracy, and Common Law.

Historically, exchanges in expertise, programs, policies and precedents in law, have been enjoyed, collectively by both countries.
Notwithstanding our approaches to social safety nets, Health & welfare, Disability, Labour and Worker Compensation have differed, the later being the exception.
In the present day context of globalization, and a shift in priorities of Governments in the past ten years, both countries are faced with a crisis with diminishing standards of health , wealth –equity and equality for people in society, no more demonstrated than in the outcomes, and disparities created by our "Structural" Determinants of Health.
Because of the shift in priorities, wealth distribution, tax burdens, there has been ambitious reforms with Worker Compensation Schemes in both countries, which have occurred in the past ten years, as a result of business , corporate interests favoring, over and above the interests of workers in both countries, creating a very similar paradigm, and experience.
Having been experienced and an advocate for many years, occupationally disabled personally, it is with good faith I forward this submission for the benefit of the Committee addressing what will no doubt extend in precedent across all the compensation systems and with hope of improving outcomes for Australian workers, and improving standards for Australians.-

I can only encourage that Canada continue to pay attention, thereby benefiting from discovery , of very similar systems, circumstances and dynamics of disparities and subsequent barriers to mental ,physical well-being of workers ,and working families, by way of shared experience in the poor health and social outcomes demonstrated, in significance to bring about this Senate Committee review in Australia.

Although this brief will not be comprehensive, I trust it will at least assist with pointing to the areas in need of study, discovery and evidence.
I have had the benefit of visiting your country many times over the years since 1979, and with the understanding and knowledge I have of current practices , policies and laws in worker compensation, I can state without hesitation the similarities exist for both countries, with the current worker compensation and insurance sector system designs, priority and focus being asserted and promoted in Canada, and indeed globally to industrialized countries, by business, corporate sector , insurance corporations taking priority.

Canada, to be specific the BC Workers Compensation Board [WorkSafe BC], have been complicit and a driver of a shift the focus and benefits away from workers in a National, and global ambition to install identical schemes around the world. Terry Boygo –Corporate Planning was engaged, in Australia to import/export the insurance sector model for WCB here, and there. To what degree, of collaboration or convergence is questionable; along with a Business faculty professor originally from Australia, now in BC, both involved in highly questionable, constructed research called "benchmark" as the imposed building blocks for the new compensation scheme in 2006, the basis of the social marketing to push the political justification for the Australia styled system design, and implementation.

The agenda, justification, implementation and subsequent developments coincide chronologically with Australia and Canada.
A crisis in underway in Canada with Workers Compensation , and indeed all the social systems , including health / mental health care systems are seriously negatively impacted by WCB and insurance sector off-loading to

these other systems; and offsetting their costs by taking our prime benefit and supports in Canada, know as Can. Pension Plan-Disability [CPP-D}. The circumstances and incidents as described in the Australian Post scenario are indicative of the present failure of the Canadian experience, in striking detail of circumstances worker experience.

This paradigm shift in worker compensation systems are increasingly evidenced at being fundamentally flawed, and producing the same results, as cited in this case, in Australia and it is on that basis I hope this brief , comparative study is of value for the purposes of this review.

I have studied the situation of Australia Post and the submissions thus far. I am also aware of the indicative nature of this, and the other state and federal schemes, along with a chronology of the structures of worker compensation.

I have advised Ministers of Parliament, Senators, and introduced to a Committee here of your senate inquiry underway, formally, as in Canada , Government WCB schemes, are being model off Australian models, and principles including our new Mental Health Commission of Canada.

The academic, research, entrepreneurs, third party care providers have all descended on ERTW as a panacea, desirable by the institutions , therefore a boon to those deriving their income from disability issues and management, … like a new species of fish to harvest for income. But, the principles of vocational rehabilitation and avocational rehab, with the medical science, and legal duties of the compensation schemes of returning a person to 'best possible recovery and function, regardless if they can work again' has been dumped.

The cornerstone philosophy contained in these schemes, is heavily flawed in medical science, reliant on 'taking the injury out of context of the rest of the body, using unsound, dehumanizing principles built on abuse of the AMA Impairment Guides, healing timetables removing "differentials" between people, which impugns fundamental principles of medicine, and human rights.

There are constitutions; being similar in both countries are impugned implications at risk in both Canada, and Australia.

The problems, as seen in the Aust. Post., scenario are played out here in many ways to the same extent , or worse in some instances for which I will use the identified system in Ontario, as more constructive identification is visible, largely due to exposure through investigations and audits. I will provide some examples.

System Design - focus and priority shift

- *ERTW is a facet of system design; the application of prime objective to reduce claim costs. Ontario has the process titled: Labour Market Re-entry [LMR], and has had disastrous results and motivates;*
- *Interference with recovery, false criteria and circumstances for workers to return, in order to advantage incentive rebates, reduced rates. Many instances of rebates obtained on ERTW compliance, regardless of fatalities in the employer's domain. [Fines for fatality, unsafe workplaces and negligence lower than incentives /monetary rebates.*
- *Under, and non-reporting of injury incidences by employers*
- *Non-reporting of injuries by workers, especially those with language barriers, immigrant and refugees*
- *Conflicts of interest with ambitious self interests from with research, academic, physicians, third party care provider communities, and entrepreneurs involved with 'disability management'.*
- *Worker loss of 'integrity of self 'constitutional protects and human rights protections. Disparities with prime law applications compared with citizens who are not disabled due to occupation, and ;*
- *Thereby undermining autonomy with workers own health and health care; impugning informed consent*
- *Medical evidence becoming a shell game*
- *Destruction to mental health of worker and/or family*
- *Mental Health criteria moral, not scientific, sweeping and generalized such as… "It is better for self esteem to work and thereby early return to work" is erroneous, as is not always the case. Early intervention serves purpose of marginalizing mental/physical effect of injury, and subsequent disability base don level of disability being marginalized commensurate with early intervention.*

Further Comments recognizable in both Australia and Canada by insurance sector model, whether Government application, State, Provincial, Federal or; Private Insurance Sector

These relatively new worker compensation schemes in design are "Machiavellian" in design with the shift of focus to prevention and safety. They play off platitudes of moral variety and at the core create a justification for scorn and admonition of workers who sustain an injury via occupation. The social marketing campaigns are disingenuous in motive and create unreasonable unattainable goals such as "zero tolerance" or "road to zero", which really in purpose are to incite blame.

The real prize is "zero claims", "zero tolerance of claims". Workers will get injured and some permanently disabled and killed. Enforcement of OHS, Labour Code, and WCB Act, and Regulations is lacking in these systems due to the …"carrot – no stick", employer self regulation by "incentive programs", which are setting the stage for under-reporting, exploitation of workers and runaway fraud to gain the rebate. In Ontario, Canada it is called "performance rating". In Canada where the Provinces have adopted similar system design, methods, and applications have shown a marked increase in injury, disability, morbidity, mortality and poverty or workers and families.

The Corporate, employer sector fraud is in the multi-millions, while workers are faced with increasingly un-inspected, unsafe work environments and practices.

Statistics, evidence and research has become a shell game, constructed to support a policy, manipulative to support this new stylized worker compensation. I t has led to unethical research on human subjects, with a bait and switch mentality. Statistics are selective in application, and can be quite erroneous, incomplete and not trustable. There is a need to go to many sources, and moreover to the community, the vulnerable groups themselves, the workers – labour and non-labour, to capture the true experiences, information and outcomes.

Medical evidence is a shell game as well, with dangerous implications in minimizing, or falsely misrepresenting injury, disorders, disease, disability and can lead , or has lead is more the point, to under-estimating impact of injury. WCB schemes throw a case into litigation with a medical argument of no relevance, or medical merit, quite often abusing "pre-existing conditions", which I have presented on in length at Senate Committees in Canada.

Definitions and determinants of diagnosis are dramatically different, than in the medical community. This has lead to continual constitution challenges, and worst case, missed conditions causing oversight and subsequent morbidity and even mortality.

In example; a strict clinical evidence based requirement is contra-indicated in Cardiology, where stress effects on the heart or damage to the heart would require to …"having the accident to prove the risk". In cardiology, risk stratification, must take into account 'circumstantial evidence', as well as strict clinical findings. The first cardio event, or cerebral vascular accident, may be your last. The first fibrillate event, sudden cardiac death, or arrest, and/or stroke - maybe your last.

Injuries are violations to the body and mind, can bring on dangerous conditions, short term and long, physically and mentally; important to consider with mental stress claims.

Evidence based, policies laws, and medical practices, and 'best practices' are very illusive and ambiguous only benefit 'claims management'. In all, dangerous to apply across the threshold of all workers conditions generally. Assessments and the pugilistic evidence chasing game is not medical treatment, or care.

Physicians and specialists for the WCB schemes, or employers are co-opted, along with professional bodies, far from independent, or in the best interests of the worker, or family implicated by an injury or death and any other argument is based on 'plausible deniability".

These schemes and ERTW are based off removing "differentials" of individuals. This premises is not sustainable in human rights conventions, is dehumanizing. Individuals deserve individual consideration. It is a fundamental principle of medicine as well, in diagnosis and treatment. Along with this, are abusive applications of healing timetables, AMA impairment Guides, and pre-existing conditions, which all are insurance sector tactics, with a strong will to be banned in Insurance Sector reform in the USA. All these applications or tools are perversely discriminatory and inhumane.

Physicians and specialist's independent treating the worker are harangued, and penalized, their diagnosis and treatment recommendations thwarted; evidence neutralized.
In many instances Canada is in a greater crisis, because of the attempt to institutionalize the new system design, mirrored in Australia, of compensation, which has destroyed many of the elements contained in the "social agreement" with

Canadians. Infiltration into other areas of governance became necessary, and undermined and/or co-opted medical professional regulatory bodies. Public complaint bodies have been disempowered in effectiveness, and fundamentally changed in their mandates to support new WCB directions.

Ombudsman, Privacy, Human Rights Commissions have all been affected negatively to in effect 'remove the complaint bodies for claimants to defend and define their injury/disability, right to entitlement …or claim.

The Judiciary and process have been affected severely with the Tribunal process being so tailored as to seriously depart from original purpose – to bring justice down to the people. The Tribunal system for WCB schemes is so distorted in purpose; decisions can be over-ridden by the Worker compensation schemes Board of Directors [or Governors].

Canada has also an aversion to civil actions and Tort. With that we lose remedies that are effective, and can be of many types; which we are missing out on in these times. Also, we lose the natural Ombudsman of the people. Common Law is not applied. Canada Administrative Law seriously departed.

Supreme Court decisions are not applied, or the precedent twisted. The "Provincial Immunity" the WC schemes enjoy is a serious determent to a great sector of the population and should not exist. In Australia, there is a mix of systems and possible legal remedies and awards attainable. Common Law applies, but what is troubling is the Private insurance Sector role and influence on Govt., allowing greater corporate and business sector influence as well.

This is spoken to in the World Health Organization Commission on the Social Determinants of Health [WHO-CSDH] and in their final report I highly recommend consulting in several areas. Insurance sector influence on Govt. and the aforementioned is spoken to for all industrialized countries.

WCB schemes Government or Private Insurance, the Mental/Physical Health care systems, Political agenda Government policies create the greatest disparities for injured and disabled workers and those with families, and provide the greatest barriers to obtaining , maintaining and restoring – mental and physical health, and social stratification, and welfare. This is cited as the same for all modern, industrialized societies; as with Australia and Canada.

I will attempt to make some recommendations and most could apply equally to both countries.

Recommendations

1) *I have included some PDF attachments for your perusal. Some will evidence Ontario WCB Schemes, as I am opinioned that Ontario makes 'a best comparison 'demonstrating the same outcomes or results from same system models of design in place and under review by your Committee at this time. The same schemes, employing the same principles and objectives, like ERTW, have produced the same results; therefore I encourage the Committee and their research team to review the comparative results further. Same methods – same results.*
2) *I would also recommend a "rights based" remedy be the basis to protect citizens right to best possible recovery, with appropriate and timely care.*
3) *Tighten Private Sector control and influence on Government and;*
4) *Incorporate health into other areas of Governance.*
5) *Ban abuse of Pre-existing conditions outright. And legislate Insurance sector reforms, and tighten regulation In keeping with recommendation #4, integrated mental health, so as to create a whole person approach. Alternately if a strict mental health /stress claim, consider the physical manifestations.*
6) *Create Health and disability measurement standards based on environmental circumstances inclusion. Notwithstanding , be very careful of the introduction of the Int. Classification of Function, as in both countries there are ambitious persons and groups who are advocating 'blending' into current practices. Therefore until under 'human Rights' and the Constitution preserve the necessary of identification of "Disable Person(s)" as a vulnerable group or class of person, historically discriminated. The ICF has been implemented in EU where the protection via identification is not in specific mention. There are many, who have perverted ICF to their own design. Remain in control in creating this important possible solution, as it does hold the best promise, otherwise.*
7) *Remove the negative "Structural Social Determinants of Health' for everyone, but in emphasis, Disabled Workers and Families affected.*
8) *Injunctive relief immediately all employer, and WCB schemes, including Private Sector Insurance from taking over Primary Care.*
9) *Restore "equity and equality" for Workers and subsequently spouses , family, Women, and Children in health and social policy, and,*
10) *Restore the consideration of "differential 'from a medical and legal rights perspective.*
11) *Stop any offsetting of costs by WC Schemes, and Private sector insurance with ant other benefit social safety nets, as pensions, benefit supports if it is in occurrence and ;*

12) *Create an immediate minimum, needs based continuity of income when injury/ disability first appear. System pools of contributory fund paid into by these Schemes*
13) *Change focus to "Return to Function" from ERTW as a national standard, with universal mandatory compliance.*
14) *Investigate by way of Senate Committee the WCB's as a driver of poverty.*
15) *Consider possibly expanding this committee with a view to population health.*
16) *Continue to include the vulnerable group, and community affected, in future changes to WC systems.*

I conclusion, I hope this brief covers some dynamics, circumstances you will recognize, because the first question should be, …Can this happen, could these outcomes be so poor, and such a dichotomy exist due to systemic and endemic consequences in contemporary system designs and applications.

I felt that maybe I could be a benefit to the Committees understanding and work. Also a contribution intended to benefit Australian Society and workers there, and families to promote a healthy society.

Australia always has represented to me a will in this area and I commend Australians for their strong moral fiber and conviction, and sense of Community.

I, as an independent National Advocate for many years here see absolutely no reason to disbelieve what the CEPU is illuminating or the description of experiences from individuals.

I apologize for the late entry, as I have had many flow-through issues to attend to following release of a Senate Committee report here to which I was a Witness, and due to other advocacy work. I also have a serious heart condition and losing my ability to write, and compose documents at same time, and I have had no help.

I only hope that Canada learns from what your Committee is doing and follows such affirmative action to improve standards for your working citizens.

I am available for any questions, and further involvement if required, and I am sure there are other more effective methods to participate if required or the Committee expands.

With Great respect,

Darrell Powell
National Advocate-
Mental Health & Disability
Canada

Attached: PDF documents Note: PDF of award winning investigations by D. Bruiser /Toronto Star Newspaper are not for republication without permission directly from the paper, which could easily be obtained by your Committee.

Most other documents were submitted as evidence, and I have Parliamentary Privilege in Canada, from two separate Senate Committees.