

November 5, 2021 - No. 104

**People of New Brunswick Firmly Support Striking  
Public Sector Workers**

**For a Pro-Social Solution to the  
Public Services Crisis!**



March in Fredericton, November 2, 2021 as legislature opens

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New Brunswick residents are expressing strong support for striking public sector workers who are members of the Canadian Union of Public Employees (CUPE NB).



**Fredericton, November 2, 2021**

The strike is being waged by approximately 22,000 workers who are demanding wages they deem acceptable and essential to solving the retention and recruitment crisis that is decimating public services. They are also demanding the withdrawal of the government's demands for concessions with regard to their pension plans, as centralized negotiations had been set solely on the issue of wages

CUPE NB's demonstration in front of the Legislative Assembly in Fredericton on November 2, during the reopening of the Assembly drew some 6,000 people, one of the largest demonstrations ever held there. It took place at the same time as the union maintained its picket lines province-wide. Thousands of public sector workers came from all over the province, supported by many residents from various backgrounds. The media reported that the demonstration was so loud that the noise from the crowd and the speeches outside resonated throughout the building.

The demonstration began with two processions of frontline workers, accompanied by citizens, converging on the steps of the Legislature. Steve Drost, President of CUPE NB, introduced the presidents of the ten striking locals, who were loudly applauded. CUPE Maritimes Regional Director Sandy Harding invited Premier Blaine Higgs to join her at a negotiating table set up on the front lawn and read out the positions of the union and the government at the time the government walked away from negotiations.



The day before, on November 1st, striking workers had visited their MPs to explain the dispute and ask for their support.

The government's dangerous anti-social attempt to use the health emergency caused by the resurgence of the pandemic to turn the public against the striking workers has failed. CUPE NB reports that wherever striking workers are picketing across the province, people are coming out to

express their support for them on the picket line and are telling them that they know the workers are fighting for all of them. Parents, in particular, have come out to tell them that they don't accept that schools have been abruptly closed by the government and that they don't want their children to attend classes online during the strike. This has nothing to do with pandemic safety, they say, and everything to do with the labour dispute and an attempt to break the strike of frontline workers, which they oppose.



Support from other unions continues to pour in. One of the most recent endorsements has come from the New Brunswick Teachers' Federation and one of its components, the New Brunswick Teachers' Association. On its Facebook page, the association called out Education Minister Dominic Cardy with the message "Lead the system or leave the system. Your move, Minister Cardy." Teachers are among those next up to try and renew their collective agreement and they expect the same government dictate.

The New Brunswick Nurses Union has also declared its support for the CUPE strike. The National Board of Directors of the Customs and Immigration Union, part of the Public Service Alliance of Canada, has sent a message of support to CUPE NB. CUPE's Conseil Provincial du soutien scolaire, representing school support workers in Quebec, has done the same. CUPE Quebec's two most senior officers joined the demonstration in front of the Legislative Assembly as did the CUPE Ontario Secretary-Treasurer and the presidents of its School Board Council of Unions and Council of Hospital Unions.

Several small businesses have also declared their support for the strike, including by coming to the picket lines to bring food to the strikers. Some are posting discounts for striking workers who come to buy food.

Clearly, the only acceptable solution to the conflict, to the recruitment and retention crisis and the public services crisis, is a peaceful and just resolution based on the demands of those who deliver the services, one without state dictate or criminalization.

The Higgs government insists that the anti-social, anti-worker way is the only way and, through the efforts of workers and the public, must be forced to back down. When the government returned to the legislature on November 2, it was supposed to deliver a Speech from the Throne opening a new legislative session. Higgs cancelled the speech, saying openly that the procedures involved in delivering a throne speech and opening a new session would make it more difficult for him to introduce back-to-work legislation.



Higgs added that if he were to introduce such legislation, he would also decree wages for the 58,000 unionized public sector workers whose collective agreements are up for renewal, as well as for non-unionized workers. The government executive, in the service of narrow private interests, says it is prepared to create more chaos in services as well as in the province as a whole. Workers are telling

them to back off or get out.

On November 5, the union reported that on the evening of November 4, the CUPE centralized bargaining team met with government negotiators. The negotiators communicated a new government offer, to which the centralized bargaining team responded with a counter-proposal overnight. CUPE was prepared to return to work during the day if the government accepted the union's counter-proposal while the counter-proposal would be presented to the membership for discussion and vote in the coming days. The government did not respond to the counter-proposal but suggested that it was maintaining its dictate that an agreement must include changes to the pension plans of two locals. The strike continues.

It should be remembered that this government locked out the 3,000 striking education workers on October 31 and imposed a leave of absence without pay on education workers who had been designated as essential during the strike. The workers filed a complaint with the Labour Board which ruled in their favour and ordered the government to cease and desist.

The government's position is unjust and dangerous. The workers' position is just. It is this just position that must prevail in this dispute. The public interest is served by upholding workers' rights.



(Photos: CUPE NB)



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## **BC Government's Denial of Social Responsibility for Injured Workers**

# **Serious Problems with "No Fault" Workers' Compensation Historic Compromise**

A review of the case of an injured BC worker was conducted by the Office of the Ombudsperson and published in September 2021 in the report *SEVERED TRUST: Enabling WorkSafeBC to do the right thing when its mistakes hurt injured workers*.<sup>[1]</sup>

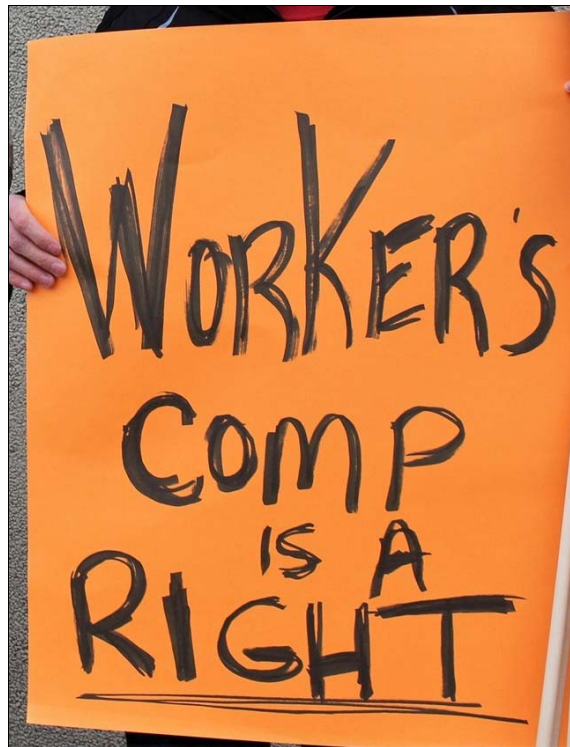
The investigation into the experience of the worker, a cabinet maker identified as Mr. Snider who was twice seriously injured at work, and the responsibility of WorkSafe BC for his second injury, reveals serious problems with the "no fault" Workers' Compensation System which exists in all

provinces. The concept of "no fault" is part of the historic compromise that brought the compensation system into being -- workers forfeit their right to sue an employer when they are injured on the job in exchange for treatment, rehabilitation and compensation guaranteed by the state from a pool of funds contributed by employers.

The aim of the system is supposed to be to take care of injured workers but over the last three decades of anti-social restructuring of the state to serve the rich, injured workers' rights and benefits have increasingly been a target of attack through cuts to benefits and denial of services, privatization of medical care and rehabilitation services and other measures.

In his introduction to the report Ombudsperson Jay Chalke raises the issue: "What happens in the rare circumstances when a public body makes a mistake and, as a result, a member of the public is grievously injured? Does the public body step up and make it right? Or, does the public body hide behind legal technicalities and a hundred-year-old 'historic trade-off?'" The report shows in detail that the latter was the case.

Mr. Snider, a worker with nearly 25 years of experience as a cabinet maker, was injured at work on January 4, 2010. While operating a table saw he suffered a partial amputation of the tips of his left index, middle, ring and little fingers. WorkSafeBC accepted his claim and provided temporary wage-loss benefits while he underwent surgery, received rehabilitation services and participated in a gradual return-to-work program. The report states that "WorkSafeBC stopped paying wage-loss benefits after incorrectly concluding that Mr. Snider was able to safely return to his pre-injury job, full-time and without restrictions."



The worker and his doctor had both made it clear that he had difficulties gripping objects and was not capable of returning to operating industrial woodworking machinery, and his surgeon told WorkSafeBC that he was permanently impaired as a result of his injury. When his benefits were cut off he appealed the decision but, faced with the choice of returning to work or having no income and becoming homeless, he returned to work.

Six days after returning to work on September 13, 2010 he wrote to WorkSafeBC expressing concern for his well-being and explaining that he did not feel safe operating the industrial machinery that he was required to use as a cabinet maker. He said in his letter that "in less than a week I lost control of a router, a jigsaw and a dolly that I was moving down a ramp" and described precisely how his injuries made it unsafe for him to do the work. He received no response to his letter.

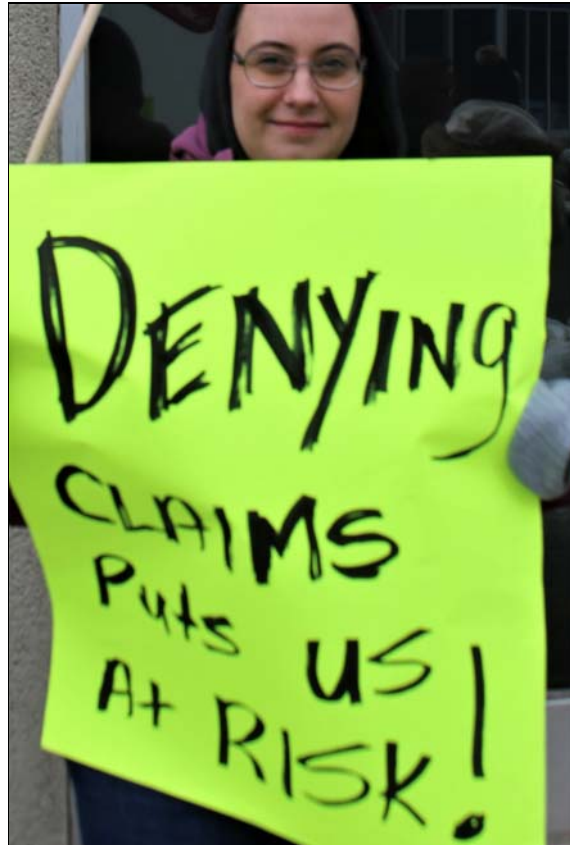
On January 26, 2011 while operating a table saw, the report states, "Mr. Snider's poor ability to grip with his left hand caused him to lose control of the item he was cutting. His left hand slipped into the blade, causing partial amputation of the previously intact thumb and index fingers, and further amputations of his already partially amputated middle and ring fingers." He spent 26 hours in

surgery and 10 days in Intensive Care.

Four months after his second injury, on May 11, 2011 the WorkSafeBC Review Division determined that the Claim Manager's decision after the first injury to cut off his temporary wage loss benefits and force him back to work was an error. Following that, the report says, "It took nearly three years of appeals through the Review Division and Workers' Compensation Appeal Tribunal (WCAT) to determine that Mr. Snider's second injury was causally related to his first injury. Despite this, it would take another two and a half years of appeals before WorkSafeBC correctly determined Mr. Snider's benefit entitlements. After a total of five years of navigating complex appeal processes to correct the series of errors made by WorkSafeBC and its Review Division (made after its most grievous error of concluding that he could return to work when he was incapable of safely doing so), Mr. Snider began receiving the benefits he was due."

What he was still refused, to this day, is compensation for WorkSafeBC's actions that forced him to return to work when it was not safe for him to do so and then to engage him "in a seemingly endless process of appeals for nearly five years to receive the benefits he was entitled to." It was not until the Ombudsperson's investigation was underway that Mr. Snider even received an apology from WorkSafeBC.

In his report the Ombudsperson makes three recommendations, one for legislative changes that would provide for WorkSafeBC to compensate workers harmed as a result of its decisions, the other two related to compensation for Mr. Snider. The Ministry of Labour has refused all three, in essence rejecting holding itself or its agencies like WorkSafeBC responsible for their actions. The Ministry actually states that the mechanisms for individual workers to appeal decisions that currently exist are sufficient. Mr. Snider's case and the experience of thousands of BC workers in navigating the appeal process to defend their right to compensation, disprove that.



The Deputy Minister of Labour argues that a legislative amendment which would allow WorkSafeBC to compensate workers harmed by its mistakes, "is contrary to foundational workers' compensation principles, erodes the historic trade-off and is inconsistent with the intent of the immunity clause in the *Workers Compensation Act*" and would "create fault-based liability for general damages... contrary to the no-fault principles that underpin the entire system."

The "no fault" system is based on the premise that the state will take care of injured workers, ensuring medical treatment, rehabilitation and compensation that allows them to live a secure and dignified life. That doesn't happen. Neo-liberal restructuring of the state institutions has resulted in massive violations of the rights of injured workers. Institutions like WorkSafeBC do not function to meet the needs and uphold the rights of injured workers. Rather than acknowledging that fact and taking action to change it the Ministry indeed "hide(s) behind legal technicalities and a hundred-year-old 'historic trade-off.'"

## Note

1. For the full report, [click here](#).

# BC Workers and Their Unions Support Just Cause of Injured Workers

BC workers, unions and the BC Federation of Labour (BCFED) are demanding change to the Workers' Compensation system and the implementation of recommendations of the report by retired labour lawyer Janet Patterson, *New Directions: Report of the Workers' Compensation Board Review, 2019*, known as the Patterson Report, the September 2021 Report of the Office of the BC Ombudsperson entitled *Severed Trust: Enabling WorkSafeBC to do the right thing when its mistakes hurt injured workers*, and the legislative and policy changes proposed in the BCFED's June 2021 Report, *Workers Deserve Better*.

In a press release issued October 29, the BC Federation of Labour denounced government inaction two years after promised reforms to the compensation system following the receipt of the Patterson Report. The Patterson Report was commissioned by the Minister of Labour and "found significant problems throughout the system, ranging from rushing injured employees back to work against the advice of medical professionals, to an often-adversarial relationship with the workers the WCB is supposed to help," failures laid bare in the Ombudsperson's Report.



The statement quotes BCFED President Laird Cronk; "Over 1,000 workers and their families came forward more than two years ago to tell very personal and difficult stories about their experiences with the compensation system....Like the *Severed Trust* report, Janet Patterson's review found evidence of workers being forced back to work against their physicians' medical advice and with the threat of benefit cut-offs.

"Among many other issues, the review exposed a system that sends workers back to work while still suffering from their injuries in order to meet arbitrary, cost-saving timelines...The problems are systemic, this is not just one-off cases. If you get injured at work tomorrow, you enter a system designed like a private insurance company, one that takes a cookie cutter approach that doesn't work for more complex injuries. Government knows what the solutions are: it's time to change a system rigged against injured workers."



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## For Your Information

# Ombudsperson's Recommendations and Ministry of Labour's Response

The report of the Office of the BC Ombudsperson *Severed Trust: Enabling WorkSafeBC to do the right thing when its mistakes hurt injured workers* includes three recommendations.  
One:

By April 1, 2022, the Minister of Labour propose amendments to the *Workers Compensation Act* to create a mechanism and a fund that will enable WorkSafeBC to, on its own initiative and at its sole discretion, provide monetary compensation to individuals who WorkSafeBC concludes are

grievously and irreparably harmed by its own mistakes.

Two:

By December 31, 2021, and while the proposed changes to the *Workers Compensation Act* are being developed, the Ministry of Labour provide Mr. Snider with an ex-gratia payment in recognition of the second accident resulting in the partial amputation of his hand, which occurred because of WorkSafeBC's mistakes in handling his initial claim. The amount of the ex-gratia payment is to be determined by a retired judge of the Supreme Court of British Columbia, applying the common law for the assessment of damages, taking into account amounts paid or payable by WorkSafeBC.

Three:

The Ministry of Labour pay the reasonable legal expenses incurred by Mr. Snider to make representations to the retired judge.

### **The Response of the Ministry of Labour**

Deputy Minister of Labour Trevor Hughes provided a four page response to the recommendations contained in the Ombudsperson's recommendations which is included in the report. While expressing concern for what Mr. Snider experienced and saying that WorkSafeBC had made changes to its policies and procedures, he said, with regard to the proposed legislative changes:

"The Ministry continues to have concerns....that the recommended legislative amendment is contrary to foundational workers' compensation principles, erodes the historic trade-off and is inconsistent with the intent of the immunity clause in the *Workers Compensation Act*. [...]

"Amending the *Workers Compensation Act* to add a mechanism for damages claims against the Board for its mistakes even where compensation is provided at the sole discretion of the Board would defeat the immunity clause which courts have recognized serves an important function in our society... the Supreme Court of Canada has recognized that statutory immunity clauses serve to preserve the independence and impartiality of decision-makers, keep decision-makers focused on their work and limit routes of collateral attack.... Many British Columbia statues contain various forms of immunity clauses that protect persons exercising statutory power from being sued for anything done in the course of the exercise or purported exercise of those statutory powers."

Similarly, on recommendations two and three the Ministry position is that to implement these recommendations "would be contrary to the foundational principles of workers' compensation and the immunity clause as described above."

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