

Disability Adjustment  
And The Co - Relationship of  
Workers Compensation Induced  
Psychiatric Injury

Accumulative Stress,  
Complex PTSD and Claimant Suicide

*'Thin Skull or Unreasonable  
Expectations'*

*As Submitted to the  
Standing Senate Committee Social Affairs,  
Science and Technology - On Mental Health*

*Written and Submitted By Darrell C. Powell*

The Honorable Senator Michael Kirby  
Chair  
Standing Senate Committee,  
Social Affairs, Science and Technology

Members of the Senate Committee on Mental Health

RE: Mental health - Claim induced Complex PTSD, and SUICIDE

April 12, 2006

Dear Senator Michael Kirby,

Recently I forwarded on to your office a story of yet another suicide directly/indirectly related to Workers Compensation in the province of B.C. . Because this tragic story ties in directly to my submissions and testimony, I felt that it was important to establish for the record the serious nature of climate, circumstances that create the psychological stressors and foundation for this to occur. Future consequences of ever widening, but narrowly viewed, exploitive, determinants in mental health diagnosis and care, policy trends and lack of accountability and increasing indifference to the claimant and society in general by the WCBs of Canada are going to be contentious and raise serious conflicts in health care and the law. This is a nation wide dilemma, as exemplified in my case, and at minimum represents a serious challenge. Could you please add this paper to my submissions for the record.

What has happened to me in my experience is common and all WCB suicides bear these hallmarks. The only difference with me is that I am still alive, with these same effects manifested physically, causing extreme illness and suffering, which I may never recuperate from. There are plenty of injured and disabled workers who do not commit suicide, but never the less become gravely ill, with the course of their life seriously diverted, and unnecessarily denied of the right to mental and physical well-being, a fundamental humanitarian principle defined in our Charter. I feel the damage daily and it is permanent. It could be fatal due to the stress effects on my heart, so life threatening not by suicide in my case but rather by severe illness and irreversible harm.

I wish to impart what I have personal experience at and have knowledge of , knowing that you and the members of this committee have the knowledge , wisdom and empathy to understand what I am about to describe. I greatly respect you sir, and the other committee members, and value very much what you have done to bring about proper and urgently necessary Mental and Physical health reforms.

I personally have been sickened and incensed by this recent suicide. I feel deeply saddened for the surviving family, as I have with the suffering my own family and loved ones have experienced witnessing my own deterioration over the years.

There are certain consistent background elements to claimant suicide which are collectively experienced, Canada wide, and meet the requirement of “serious” enough to engage Section 7 and 15(1) of the Charter:

1. Climate (political direction and policy)
2. Circumstances
3. Time endured (x years)
4. Denied reality
5. Marginalization
6. Dehumanization
7. Ineffective medical / legal intervention and advocacy.
8. Isolation
9. Psychiatric injury, which includes the above elements, and persists as:
  10. Complex PTSD (claim induced, accumulative stress)
  11. The essential affects of Terror
  12. Engineered Stigma, Stigma, which are Discrimination –viewed as acceptable

As these issues are inter-related I will refer to these issues below together as such, with predominantly references exemplified from my case, to which some background has been previously provided to the Senate Committee.

### Preamble

What is truly astounding is how acceptable this kind of unnecessary destruction to a person’s life is. Furthermore, the WCBs manage to always escape any criticism and injured workers are viewed as some sort of separate species, born injured workers, or mentally defective, undeserving of the fundamental humanitarian rights considerations as others. These negative views are encouraged by the WCBs.

I have heard many a dismissive response over these issues of psych injury and suicide as; “oh... that...yeah it happens all the time”, or ... “some people just suffer more than others going through the process”. The latter of course never reflecting the abuse of process always encountered by long term claimants. The 3-5% (PPD, TPD) who will bring a higher claim cost, are harangued the most, and bear the brunt of policy, to the point of manifested illness, exacerbated injury/disability, or total mental exhaustion.

This is a difficult subject and in fact I have observed a lot of avoidance to talk and especially to act to accept and advocate for the mental health of

disabled workers. Over the years I have witnessed and experienced avoidance, denial, ambivalence, indifference and acceptance of blaming the victim.

I also believe, from my experience with trying to raise awareness and initiate some kind of proactive measures that some people will 'run for cover', even though survivors are encouraged to meet people in government and health care, to raise awareness about mental health. Truth is that most NGOs, and people in positions who could effect change do not want to deal with disabled workers mental health issues, or even physical health problems for that matter, especially now with the lack of prevalence of duty of care, and trend of 'patient selection. Suicide is especially taboo, if you are trying to change policies to help prevent it.

I cannot effect change on my own without support, but I will continue to try, as much as I can to remove the disparities, double disconnect and discrimination in care, assistance and advocacy for all claimants or to rephrase; people requiring assistance as members of Canadian Society. I would really like to work with others to bring about inclusive and effective change in the way of best practice mental health in for *all Canadians* as described in the proposed Mental Health Commission, although barring disability, on an active Subcommittee to bring about affirmative action against all forms of discrimination in mental health.

The advent of increasing private care will actually benefit and improve standards due to reading up of section (7) of the Charter, and quality assurance being more consumers driven, with the law as Ombuds. One thing is for certain is that disabled workers need to be accepted as **persons** first and foremost, and accepted as equals to other disabled persons, whether physically or mentally, within the prescribed group or class of persons, if they become temporary or permanently disabled.

Instead of *complex patients*, the medical community needs to address patients as *persons with complex medical problems*. Discrimination is very subtle and my experience language is extremely important to affirmatively alter prejudicial behaviors and treatment of the individual. This example is a simple but effective change in purview. Prejudicial behaviors even inferred by officers of the WCB have far reaching, long lasting effect in the medical community and elsewhere, and should not be acceptable.

## The Story – Circumstance, Commonality and Status-Quo

Mr. Bupindar Sing Kang is not here after eight years with the WCB of BC. Before that he was a functioning, contributing member of society, namely a truck driver I believe, just as I was an extremely active and successful ship builder. What his story has in common with others of suicide is the *psychiatric injury* caused by interaction with the WCB that precedes the event, subsequent to occupational injury and disability. That is also what is in common with my story. I will attempt to explain other circumstances further in this letter. This is based on my interactions with WCB, a disabled worker myself with sixteen plus years of experience, and have witnessed many other claimants and persons involved with the same issues over the years, and can substantiate the claimant abuse that occurs.

It took eight years for the WCB to consider a revocational referral and plan, and pension LOE, which under the new regulations, for the most part does not exist in application. That said, his claim, as in mine is before the legislative transition date of June 2002. The common factor in all suicides is a lack of timely and appropriate care, medically, and decision on the claim, acknowledgement of barriers, proper evaluation of the disability and realistically project degenerative effects on functioning. The fact is that these major claim decisions are held in abeyance, stonewalled along with major mental /health considerations for as long as possible.

Revocational/ avocational referral and intervention used to be poorly done with the claimant /claim marginalized to a detrimental affect to rehab plans in the past and now all but eliminated so the inclination is to deny. The WCB undermined their own rehab efforts by regressive and redundant application of policies and conflicting regressive agendas. As the article states, the delay in referral to Vocational Rehabilitation, Disability Awards et., are not within acceptable standards, meanwhile the claimant loses all direction in his life, or ability to overcome the effects of disability.

The WCBs spend a large amount of time and resources to stonewall the claim and not compensate as an approach to claim handling. To the WCB it is dollars and cents, but to the worker there is a time lost to fighting the WCB and a human cost to self and family.

The ideology of claim reduction as a route to occupational injury reduction is the circular logic that is loosely strung justification for marginalizing a claimant and subsequent claim. It has been the method and outcome for a great many years which is why the stories and figures never change, no matter what the policy; because the application is built off prejudicial reasoning and discrimination, with the duty to compensate void as a fundamental principal.

The discretion to act that is deliberately fettered by WCB, is repeated subsequently in the various depts. of the WCB, such as Vocational Rehab, Pension Dept., Medical Services, and Claims. This process is described very well in a movie called "The Rainmaker", a John Grisham novel. In that movie, disconnect is shown between internal departments at "Great Benefit" as being convenient and deliberately strategic and has been discussed and quoted by various people on both sides of the table of insurance and Tort Law. For the individual it is fighting an octopus.

With the new legislation brought to BC from the USA has gutted Revocational / Avocational funds, essentially eliminating the fundamentals basis of Section 16 of the act, which speaks to the basic principals of Workers Compensation, which is return to life functioning, whether back to employment or not. This section 16 has never been fulfilled in my case as well.

Funds have been reduced down to approximately two million for rehab, and a whopping approximate rise to two million for psych assessments alone. In fact it is likely higher. They are profiling, and prejudicially fishing as described in previous submissions in an effort to eliminate claims.

#### Future Trends, Agendas, Research and Policy Creation

In Canada, as opposed to the USA, WCB has an act of Parliament, to write law, handle all areas of law while nullifying the application and protection of the Constitution, Charter, and human Rights redress. That is expressly what is being exploited clearly for the benefit of Corporations and employers.

Our accident fund is rebated, and generally lavishly misspent. It is spent on lavish administration staff incomes, benefits and a fantastic staff compensation system, while withholding funds from injured workers and virtually eliminating workers stress and mental health coverage. The research grants are rich, by any other standards and that process exploited to simply provide the appearance of academic and expert foundation for policy which has been predestined. Further exclusions to the law, and our prime laws applied in mental / physical health, Government, and Public accountability are continually sought.

There is convergence with WCB and research community as I have shown last year involving SFU, Queens Universities and even involved Ipsos Reid to contrive an omnibus poll for the WCB/BC and AWCBC. This also formed part of earlier submissions.

The director of Corporate Planning, along with the CEO of the WCB of BC, is bringing the same unconstitutional policies and American consultant to the AWCBC Public Forum which was a public relations event, which I exposed last year. They now call it a "congress" and have eliminated any possible input from workers, or the public at all. Also the WCB of BC has removed their own

research ethics dept., and redesigned their web site to remove any history, and extremely limit what a member of the public can acquire from their site. This is the same consultant that brought about CPP claw-back to BC as well as serious claim and diagnosis limitations to mental health that undermine mental health reform, and spirit of the Charter.

The highest officers at the WCB of BC deliberately have used “mental Health” predatorily in a negative context to save face over the inappropriate abuse of position and policy causing the mental, subsequently physical injuries/disorders that they apologized to me for causing. This approach to mental health is deplorable, as, along with other claimants showing signs of claim induced stress, are simply pursued by the WCB in an attempt to defray *board* responsibility and involvements. If that fails, they rely on sections of the *act* that bar any action, and claim immunity. These comments made about me were to display to the board of Governors, Internal auditors and general staff to scapegoat me, and explain the second in the history “presidential Intervention”, due to gross misconduct of claim handling, and gross expenditures of time and funds associated with my claim. My current afflictions, even though accepted to the claim, with no pre-morbid connection, were never the less conveyed as a character flaw, or personality disorder. It has spread to the medical community, the Workers Advisors and others of support that have indeed affected my health (and care) to this day. This kind of defamation is so serious that in Tort Law described as a “slander- per- se”. I cannot perceive the benefit to society, disabled people that justify this behavior towards mental health, or any claimant.

Considering that for every injured/disabled worker there is the reality of other family affected by WCBs activities, who are severely impacted, I would suggest that the time has arrived to take a serious look at how WCBs are allowed to function with regards to an individuals Charter Rights, especially with the recent application of Section (7) in health care.

*Workers Compensation, CPP, Social Welfare, and Disability are a health issue, and especially a mental health issue. In order to understand claimant psychiatric injury and suicide one must understand the complexities of the benefit provider environment, climate and circumstances the claimant faces, when they are pathologically pursued. Any disability adjustment disorder becomes exacerbated, mental and physical well-being become at risk.*

The tonality of the WCBs, which is emanating out of B.C., is increasingly void of any language of entitlement , worker mention , and absent in thematic and ideology of the *duty to compensate*, which is the other part of the “*social agreement*” as described within the context of the “*historical compromise*”.

Even the need for jurisdictional control over WCB is becoming semantically as what is being suggested by the WCB/ BC by intending to unify WCB right across

the country, cannot justify the need for regional control originally based on economics and labor market needs.

The historical compromise has to do more than be a weapon of defense against claims for compensation and there to hold a persons Charter and Human rights in abeyance. A persons rights to care , especially in mental health are in process of being defined now , the Quebec ruling on timely and appropriate care is a good example and will no doubt bring an intersection of equal Canadian rights and corporate demands.

As with other aspects of Workers Compensation which have been reinterpreted from the original incept of Compensation due to evolving circumstances of employment as compared with 1913, so should the rights perspectives be put to formal test with regards to constitutionality since it never has come into view specifically since the construction of the Canadian Charter of Rights and Freedoms.

If the WCBs in Canada are working towards or weighted so as to in effect act as insurance agent for employers, and simply from that perspective than our proper rights need to be reinstated in full as equals and the power to write law and legislation , and the blanket immunity of the WCB need to be seriously challenged. A person's right in mental health and human rights protection are at ever increasing threat of severance for disabled workers. Like in my case, as in others an ill, broke, injured and disabled worker or CPP applicant hardly has the funds, legal support or mental/physical health to defend against human rights, or Charter violations.

#### Abuse of Mental Health Issues ,Isolation, Further foundation for Injury

Being that, *only* three to five percent of all claims are; PPD, LTD, TPD, and considering the grueling experience of ascertaining those benefits, it is really only the disabled due to occupational injury that experience the total onslaught and brunt of WCB process, policy, abuse of policy, claim mismanagement for many years which is mostly left to wide and capricious interpretation with disregard to effects on the claimant, and his family and friends , which culminates more often than not, into a psychiatric injury, isolation in society which in turn can, and has, led to suicidal ideation, attempts, and fatal outcome. Family breakdowns as well as many other forms of collateral damage are extensive.

In fact it is the above listed classification of disabled person who is at the greatest risk of psychiatric injury by activities of the *Board*, and are under constant attacks with assertions of "eggshell personality" as a preexisting factor. The more stressed, more ill they get, the more they are attacked.

In studying Law of Torts I once read in a Supreme Court decision that 'continually having to describe, define and defend why you are entitled to compensation is not compensation'.

If a claimant complains of stress, from redundant assessments, inaccurate assessments or other applications of policy the first course of action, present day is to do a psych assessment.

As I mentioned in my previous submissions exploitation of current suffering of the claimant, with an attempt to superimpose it back over a persons previous life is nothing more than prejudicial fishing, to avoid claim costs, and dose not assist the claimant what-so-ever in the mental health crisis that the claimant may circumstantially be in, and generates very counter-productive, prejudicial erroneous claim decisions. If a person is good enough to function at a job, then they should be good enough to benefit from Workers Compensation if injured.

In general, if the WCB dose not accepts a mental health issue, disorder, or factor the trend is to act in denial that it exists at all. A bulk of determinants and diagnosis's in mental health are 'sawed off', (complex PTSD for example is sawed off from the greater diagnosis of PTSD and narrowed to one analysis. The WCB then refers to the latter as "claim induced stress", therefore not acceptable, hence not acknowledged).

What is extremely exacerbating to the individual is how the medical community, are so willing to accept the WCBs narrow views more often out of simple convenience to their practice. This creates an adversarial Doctor patient relationship void of any duty of care, unreflective of standard of care as describe in law. Actually it is even a violation of Compensation law to refuse an injured worker, yet it is being encouraged by the WCB's duplicitous positions and policies. Even unlawful interference with medical care occurs, as did in my case, that violated my right to informed consent prior to a surgery, and would have put my very life at risk.

The isolation to the individual that is a result of all these circumstances leaves the claimant with inappropriate and ill-informed consideration and care. This leaves a long term injured/disabled worker in a very destructive, affected life with no where to go, in essence a 'denied reality'. Patients need to taken *as they present* at whatever entry point they take for care, and that means with mental health issues from wherever they are derived, and their circumstances of WCB, CPP, Social Welfare for example, considered.

Mental Health intervention/advocacy is virtually non existent for injured/disabled workers due to the fact that they are not considered as with others in the "group or class of persons" as with others disabilities, at the same time considerations and needs specific to injured/disabled workers are left to definition by the WCBs, therefore not considered.

In the sixteen years I have been an injured/disabled worker have I ever experienced acceptance or even consideration of the circumstances I faced as such, and generally turned away at the door from all NGOs and other advocacy groups by virtue of being a WCB claimant. What is disturbing is that a lot of these organizations receive federal funding *to* advocate and assist with mental and

physical health issues and problems. Workers are also being denied appropriate and timely care, fired as patients, and outright denied care, or their claim sabotaged by physicians, specialist, clinicians, and others who are at pressure to fulfill WCBs will. They are indoctrinated to do so or have a vested interest, conflict of interest. This is also the case with researchers achieving a livelihood from the WCBs, AWCBC and the alarming rise in new disability management companies.

Fact is, that WCB claimants in particular, are not treated as *persons*, or *disabled persons* under the *Charter*, first and foremost, which in turn disconnects their rights, hence, negatively affects other aspects, or enjoyment of the benefits, and equal participation in Canadian society, that others enjoy, along with the rights protections, as described in the *Charter* and *Human Rights Law*.

There is a need for a greater application of Charter, Human Rights, Civil, Consumer law and especially Canadian Tort laws within health care and social policy. I also foresee a necessity for the Supreme Court and Tort Law as fulfilling the role of Ombudsman in these matters and until the 'climate' is defined to be inclusive of WCB claimants under the umbrella of protection, in parody, with others in Society, the disconnected and discriminatory attitudes will prevail.

Never in the history of Workers Compensation has there been such blatant abuse of a person's past as now with the quest to establish pre-existing conditions as an eliminating factor to rightful compensation due to injury derived in the course of employment. I wish to strongly emphasize mental health considerations.

If you were employed and sustained an injury or disabled, whether you were with a psychological problem, disorder or illness would be irrelevant except only in extremely obviate cases, to the claim at hand, otherwise most people would not qualify.

*Workers are entitled to compensation if they are injured first day on the job, or the last day of their work life.*

The WCBs dazzle society with their circular logic to justify non compensation policy; on the pretense of for the Social Good. Preexisting conditions are actually irrelevant, by reasonable analysis. They are actually in the majority of circumstances just convoluted strategic legal arguments, and pushed to 'marginalize the claim' with the affect of this process on the disabled person deliberately dehumanizing to the extent of 'marginalizing the disabled person'.

*The effect of being pathologically pursued is terrorizing.*

Another example, one which concerns which is very descriptive, is the effects of WCB policy trends on refugees who are victims of torture, victims of terror. We accept them into society in Canada, but if they are ever injured on the job,

especially a secondary psych injury, whether claim induced or disability/injury adjustment derived, WCBs with their current trends and direction in Mental Health will exploit their pre-existing psychological conditions, which was given due consideration for entry in the first place, frustrate the claim, limit or outright deny the claim.

When I was on my marathon trip last fall to raise awareness and discussion on the issues of mental health of injured/disabled workers, I met with the *Canadian Centre for Victims of Torture* to discuss what are the circumstances and impacts of Workers Compensation mental health policy, the pre-morbid question as well, were on clients or reported to the center. The discovery was to look at that part of the spectrum of experiences.

It was my impression that special advocacy would be required to adequately address the problems which need specific consideration. My impression is that there is rampant abuse within employment and people are reticent to apply for WCB over the very fears I have mentioned, those who do experience difficulty. Also I felt from my discussions people are reluctant to come forward, and a public probe or inquiry would be required to actually see individual basis for claim denial on preexisting factors to see how entrenched the exploitations are.

To summarize, I would like to finally see outcome of suicide due to psychiatric injury acquired from being a disabled worker/claimant stopped. I would also like to see brought out of the denied reality that blankets this very disturbing circumstance, the climate of acceptability, and irresponsibility by WCBs and its officers to be corrected.

I would also like to see Mental Health / Health NGOs to become knowledgeable of the special circumstances of the injured/disabled workers and play a much larger role in intervention, and advocacy for injured workers suffering mental health problems with special attention to those of Complex PTSD acquired from the WCB process itself.

Also I feel that the "psych assessment" process needs strict recommendations for application, by the Colleges and associations for use in order to eliminate the abuse of the process as a profiling tool.

Persons who are injured and disabled due to occupation are in urgent need of initiatives in mental health, patient/worker advocacy. There is urgent need for a national program under the umbrella, of the Ministry of Health, with a foundation in the Canada Health Act, and the Charter to serve as a prophylaxis for psych injury / suicide directly/indirectly associated with WCB. This initiative would also serve other claimants apply for CPP and other social programs.

The implementation of such a program could be administered by the NGOs in Mental Health that already have the infrastructure to advocate in mental health for individuals, supported by other organizations involved with health delivery, disability management, assisted and supported by both organized and

non-organized labor groups. A special registry could be designed possibly to act as a prophylaxis to many of the rights violations that occur. As well provide a resource for the individual if they are starting to experience psychological problems, or are being required to participate in a psych assessment, so they know their rights and aware of the implications. This would be part of early intervention for the prevention of suicide, one number collaborative assistance.

Considering that improved standards in health care and a new emphasis on mental health care are on the horizon my concern is that WCBs will again own the issues for injured workers and best practice will be sawed off and only applied within their own terms, based on their bottom line agenda which is increasingly corporate and employer driven. As mentioned there should be great concern to improved rights in law will only be for 'other than claimant'.

I have written the Canadian Bar Association to describe the health need for legal intervention and advocacy. They have initiated a Charter challenge to establish the Constitutional right to Legal Aid. The stakes are too high for a worker and his family. The arguments are too complex and litigious for the average advocate. I asked them to take into account injured/disabled workers, mental health as case in point.

Also I have been speaking with care providers about the need for the medical community and the legal community to properly assess and liaison when it is acknowledged that a persons mental and physical well being is threatened so as people are taken and triaged as *they present*, as their circumstances may require a collaborative care approach that very well may have to address a remedial requirement inclusive of all pending circumstances, legal as well, to assist people in crisis.

This would also be a better outcome of expenditures for social programs , WCB CPP pension benefits as well as a more effective result of the large amount of funding already given to NGOs and advocacy / health organizations.

I am sure the Committee has seen the effect of isolation in silos and disabled workers are "doubly removed", from status and help within the health community.

Inevitably, I think the WCBs will have to reflect the decisions of the Supreme Court of Canada and the private law exemptions that are privileged by the WCBs will have to be 'read down' or eliminated so that mental health initiatives are followed and the prime laws of Canada are respected with regards to a person disabled due to occupation.

I wish to thank you and the Committee for taking the issues I have exemplified into consideration, and taking the time to consider the very serious subject of this letter.

*Darrell C Powell*      *Vancouver BC*