



WORKERS DESERVE BETTER

HOW WE CAN BUILD THE WORKERS' COMPENSATION SYSTEM THAT INJURED WORKERS NEED

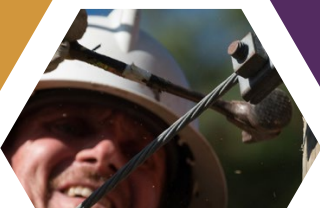
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WORKERS DESERVE BETTER HOW WE CAN BUILD THE WORKERS' COMPENSATION SYSTEM THAT INJURED WORKERS NEED

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The goals of the BCFED are best exemplified by the slogan: "*What we desire for ourselves, we wish for all.*"

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PART 1

Where We Are

BACKGROUND TO THE WORKERS' COMPENSATION SYSTEM

A strong workers' compensation system is critical to keep workers safe and to provide financial security when workers are injured on the job. The backbone of the system is the "historic compromise," which dates back over 100 years. Under the historic compromise, injured workers lost the right to sue employers for workplace injuries. But injured workers gained access to medical care and benefits through the Workers' Compensation Board (the "WCB") without having to prove their employer was at fault for the injury. WCB benefits are literally the only option for many injured workers.

In 2002, the government made big changes to the WCB system. And most of these changes were bad for workers. These changes reduced benefits and made the system much harder to navigate. The WCB — which is publicly known as "WorkSafeBC" — now seems to be run more like a private insurance company than an agency dedicated to helping injured workers.

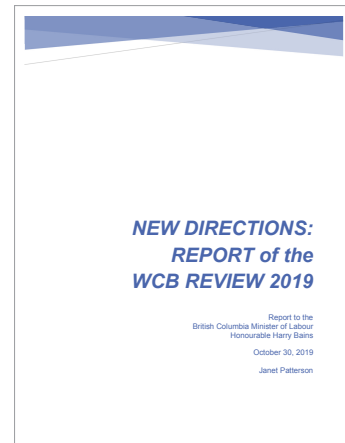
For nearly two decades, workers, unions and advocates have been struggling to have their voices heard. This resulted in a large number of complaints every year about WCB decisions and process. In 2019, the government responded and called for a review of the WCB system.

Under the "historic compromise," injured workers lost the right to sue employers for workplace injuries. But injured workers gained access to medical care and benefits through the Workers' Compensation Board without having to prove their employer was at fault for the injury. WCB benefits are literally the only option for many injured workers.

WHAT IS THE PATTERSON REPORT?

In March of 2019, the government hired Janet Patterson, a respected lawyer and workers' compensation expert, to review the workers' compensation system. The government wanted to know how to change the law, practice and culture at the WCB to ensure that the needs of injured workers are put front and centre. The government asked Ms. Patterson to review how the WCB deals with injured workers' claims and what the WCB is doing to help injured workers get back to work. The government also asked Ms. Patterson to identify any urgent changes that are needed to improve stakeholder confidence in the workers' compensation system.

Ms. Patterson held public hearings throughout the province in the spring and summer of 2019. She consulted with thousands of injured workers, employers, unions, WCB staff, health care providers and other stakeholders as part of her review. She considered how the workers' compensation system may be leaving certain disadvantaged and vulnerable workers behind. The review also included consultation with Indigenous workers and communities. Ms. Patterson sent her report to the government in October of 2019, and it was finally made public in August of 2020.



The 517-page report included over 100 recommendations.



IMPORTANT TERMS

To understand the Patterson Report, it is important to understand a few key terms and ideas:

- **Biopsychosocial model of disability:** A biopsychosocial model of disability considers not only the worker's individual impairments and limitations, but also barriers in the workplace and society that get in the worker's way. Barriers prevent people from participating fully and equally at work and in society. It could be a physical barrier, an inflexible work policy or even other people's negative attitudes and stereotypes. An impairment, for example, paraplegia, becomes disabling when the worker encounters a barrier like a set of stairs without an access ramp. The goal is to lessen an injured worker's disability, both through treatment and by reducing barriers.
- **Duty to accommodate:** It is important to recognize that treating everyone exactly the same can actually create discrimination instead of fixing it. When a worker has unique needs because of a personal characteristic, like a disability, employers must adjust their workplaces and work conditions to meet the unique needs of that worker and to remove barriers the worker may face. These unique modifications are often called "accommodations." The duty on employers to provide accommodations is called the "duty to accommodate." The law says that employers must provide accommodations unless doing so would impose undue (very serious) hardship on the employer.
- **GBA+:** GBA+ stands for "Gender-Based Analysis Plus." GBA+ is a process for looking at how policies impact certain disadvantaged groups of people differently from the perspective of equality and diversity. As one example, the Patterson Report notes that men had their claims for activity-related, soft tissue disorders accepted 60% of the time while women had their claims accepted just 35% of the time. The "plus" is important because it recognizes that gender is not the only relevant factor. Other factors like race, ethnicity, age, religion and disability (among many others) can interact together and contribute to how people experience programs and policies.
- **Merits and justice of the case:** Most of the time, having clear rules that are applied consistently leads to fair decisions. But the WCB makes thousands of decisions every year. There are bound to be exceptional cases where following the usual rules will lead to an unfair result. Focusing on the "merits and justice" of the worker's case means applying the rules flexibly to make sure that a worker who rightly deserves compensation doesn't lose out. This focus supports good decision-making practices and ensures that all available evidence about the worker's claim is considered.
- **Patient-centred medical care:** Patient-centred medical care means that the needs of injured workers, with input and support from their health care providers, are the foundation of all health care decisions. In this approach, the injured worker is an active participant in decisions about their recovery and the focus is on treating the worker as a whole person.
- **Worker-centred approach:** A worker-centred approach puts the recovery and safety of injured workers at the forefront of the compensation system. A worker-centred approach takes the worker's individual circumstances into account when applying policy and making decisions. It recognizes that all workers have unique needs, so a "one size fits all" approach will rarely work and can even be harmful.

THE RULES AND WHO IS RESPONSIBLE FOR MAKING THEM

When pushing to implement the recommendations in the Patterson Report, it is important to know what type of law or rule is the source of the problem and who is responsible for changing it. Even within the WCB itself there are different players that have different roles and responsibilities in the system. For example, the WCB Board of Directors (the “Board of Directors”) is responsible for formally approving policy. The WCB’s senior management team then creates various practice directives and other internal procedures to implement the Board of Directors’ policies.

Type of Law or Rule	Example	Who Can Make Change?
Legislation or statutes	Workers Compensation Act	BC Legislature
Regulation	Occupational Health and Safety Regulation	Usually the Board of Directors Sometimes the Minister of Labour
Policy	Rehabilitation Services and Claims Manual Prevention Manual	Board of Directors
Practice directives and guidelines	Compensation Practice and Quality Service Practice Directives OHS Standards and Guidelines	WCB
Internal, unpublished guidelines	Claims Management System guidelines setting out predicted recovery times	WCB
Review and appeal practices and procedures	Workers Compensation Appeal Tribunal (“WCAT”) Manual of Rules of Practice and Procedure Review Division Practices and Procedures	WCAT Chair Chief Review Officer



CHANGES THAT HAVE ALREADY BEEN MADE - BILL 23

The government has started making changes to fix the system. These include:

- Ensuring that benefits for permanently disabled workers better reflect the worker's actual lost earning capacity;
- Giving WCAT the power to protect workers' rights by applying the *Human Rights Code* and the *Canadian Charter of Rights and Freedoms*;
- Allowing the WCB to delay making a final decision about a worker's projected retirement date (when disability benefits end) with better information when the worker turns 63;
- Allowing the WCB to provide some medical treatment and benefits to injured workers before a claim is even accepted if delay could mean the worker's condition gets worse; and
- Giving the WCB more power to change bad decisions without forcing the worker into the review and appeal system.

Although there is still a lot of work to do, these changes are an important first step forward.

PART 2

Changes that still need to happen

THE RECOMMENDATIONS IN THE PATTERSON REPORT can be grouped into several key themes for improving the system:

1. Confirm that the system must be worker-centred.
2. Make the WCB more accountable to injured workers and other stakeholders.
3. Treat each injured worker fairly and as an individual.
4. Support patient-centred medical care.
5. Improve communication with workers and employers, including creating more resources to help people navigate the system.
6. Provide more and better assistance to get workers back to safe and meaningful work.
7. Make it easier to correct unfair decisions.
8. Review the system more frequently using better data and information.
9. Give the WCB and WCAT more power to deal with discrimination against injured workers.
10. Eliminate the unfair and arbitrary rules that limit compensation for workers with certain conditions.

1. CONFIRM THAT THE SYSTEM MUST BE WORKER-CENTRED

THE PROBLEM: The WCB is the only option for many workers who get injured on the job. Workers must, therefore, be at the centre of the system. The system should not be run like a private insurance company.

Change needed from the BC government:

- Change the *Workers Compensation Act* to include an overview statement confirming the key purposes and values of the system, such as preventing injuries, promoting recovery, and providing adequate compensation to injured workers.

Change needed from the WCB:

- Stop using the speed at which a worker returns to work as a key measure of success. The goal is to provide proper assistance and compensation based on the worker's needs and circumstances. The goal is not to force workers out of the system as quickly as possible to save money.

2. MAKE THE WCB MORE ACCOUNTABLE TO INJURED WORKERS AND OTHER STAKEHOLDERS

THE PROBLEM: The system is not accountable enough to stakeholders like workers, employers, and unions. There are thousands of complaints a year made to the WCB, but individual workers have little recourse or remedy if they are treated badly.

Change needed from the BC government:

- Create a Fair Practices Commission that is independent of the WCB to deal with complaints about fairness in the workers' compensation system. This would be similar to what the Ombudsperson does, but just for complaints about the workers' compensation system. The Fair Practices Commission would also provide oversight of certain key service providers in the system. The provincial Ombudsperson would review the new Fair Practices Office after five years.
- Change the structure of the Board of Directors to better reflect the system's key stakeholders. Right now, the Board of Directors only has one worker and one employer representative. The Patterson Report recommends that the Board of Directors have three worker representatives, three employer representatives, three public interest representatives with specific skills, and a neutral chair. The president of the WCB and the directors of the Workers and Employers Advisors Offices should be non-voting members.
- Pay interest when the WCB wrongly denies a worker benefits and the worker must endure a lengthy delay to correct the situation.
- Ensure the BC Supreme Court can step in if policy adopted by the Board of Directors violates the *Workers Compensation Act*.

3. TREAT EACH INJURED WORKER FAIRLY AND AS AN INDIVIDUAL

THE PROBLEM: The workers' compensation system relies too much on rigid rules and cookie cutter approaches rather than considering the worker's unique needs and circumstances. The system also relies too much on the review and appeal system to fix unfair decisions instead of just making fair decisions in the first place.

Change needed from the BC government:

- Change the *Workers Compensation Act* to make the merits and justice of the worker's case the most important consideration. Right now, the law says that policy passed by the Board of Directors must be applied in all cases. Although policy is important to ensure consistent decision making, it should not be applied automatically if doing so would lead to an unfair result given the merits and justice of the worker's case.
- Change the *Workers Compensation Act* to allow the WCB to consider exceptional circumstances impacting any worker's pre-injury earnings.

Change needed from the Board of Directors:

- Change policy to ensure the WCB does not strictly apply a cookie cutter approach to every worker's recovery path. The WCB currently relies on a computer system to decide when a particular injury should heal and when the worker should be expected to go back to work. But every worker's path to recovery will be different. When a worker's recovery is not going as expected, the WCB needs to provide personalized attention and assessment instead of pressuring the worker to go back to work before the worker is ready.
- Change policy to ensure that return to work plans consider the worker's whole disability and a GBA+ assessment of the workplace. It is important to assess how different workers may experience different barriers depending on the nature of their disability and personal characteristics.
- Change policy to make it easier to adjust vocational rehabilitation plans on the fly. When a worker's circumstances change, the vocational rehabilitation plan may need to change too.
- Change policy to ensure that the WCB can step in if a worker is misclassified as an "independent operator." Some employers try to avoid their responsibilities by labelling certain workers "independent operators" when those workers are really employees. The WCB needs a broad power to reassess whether the worker is really an employee.

Change needed from the WCB:

- Give workers a chance to respond to information provided by the employer. Workers deserve a chance to respond and clarify before any decision is made to deny their claim based on negative information from the employer.

- Require that employers send a copy of the first aid report to the WCB. This is a key piece of evidence to help get decisions right, yet it often remains in the hands of the employer when the worker files a claim.

4. SUPPORT PATIENT-CENTRED MEDICAL CARE

THE PROBLEM: The WCB makes many medical decisions based on policy and computer-generated predictions, without properly assessing the worker or the views of their health care providers. Many workers feel like the medical services and treatment they receive put the WCB's needs ahead of their own and are unjust, given their actual medical condition and vocational needs. Medical disputes are difficult and time-consuming and can hurt the worker's recovery. Many decisions are based largely on opinions from medical advisors who work for the WCB and who have often had no meaningful contact with the worker.

Change needed from the BC government:

- Create a medical services office to address medical disputes in a way that is independent and collaborative.

Change needed from the Board of Directors:

- Change policy to ensure workers control their own health care in consultation with their health care providers. The WCB should provide general oversight only and not intervene unless a particular treatment is going to hurt the worker's recovery.
- Change policy to ensure the WCB considers all treatment options before deciding that a worker has reached the fullest possible recovery.

Change needed from the WCB:

- Change the role of WCB Medical Advisors to ensure that they are not directly involved in making claims decisions. WCB Medical Advisors should provide WCB staff with general medical explanations only. They should be providing only general assistance and support to the worker's health care providers and should not interfere directly in the worker's health care.
- Create more services to help workers connect with health care providers in the community.
- Investigate the possibility of creating occupational health clinics. Some provinces like Ontario fund independent health clinics in the community to help injured workers. Although beyond the scope of this review, the Patterson Report recommends that the WCB at least investigate the possibility of creating similar clinics.

5. IMPROVE COMMUNICATION WITH WORKERS AND EMPLOYERS, INCLUDING CREATING MORE RESOURCES TO HELP PEOPLE NAVIGATE THE SYSTEM

THE PROBLEM: It is too hard for workers to get information and understand what is going on with their claim. Some workers also have unique needs that make it harder to navigate the complicated workers' compensation system. These workers need special care, attention and resources to avoid getting lost in the maze.

Change needed from the BC government:

- Require that the WCB create a code of conduct for staff to ensure clear and respectful communication with all stakeholders.

Change needed from the Board of Directors:

- Change policy to require clear decisions in all cases. The Patterson Report notes a particular problem with decisions about when a worker's condition is considered to have fully recovered or stabilized. These important decisions need to be made and communicated clearly in all cases.

Change needed from the WCB:

- Improve communication with workers by:
 - a. Using email to cut down on problems trying to connect by phone;
 - b. Using plain English that most people can understand instead of technical legal jargon;
 - c. Keeping the same person in charge of the worker's claim whenever possible; and
 - d. Creating a stakeholder education office to better engage with stakeholders and to provide ongoing information and education, particularly for those helping workers.
- Create specific resources to help workers who face barriers or have unique needs. This includes:
 - a. Creating a support team to help workers with cognitive impairments;
 - b. Giving case managers and vocational rehabilitation consultants better training on how to work with Indigenous communities;
 - c. Using Punjabi and Spanish speaking case managers to help farmworkers and ensuring case managers are familiar with the systemic barriers these workers face;
 - d. Collaborating with WorkBC — an agency set up by the BC government to help people find work — to create simple information packages that are available in various languages for workers who cannot communicate well in English; and

- e. Creating better supports for workers who have been sexually assaulted, including a crisis line, counselling, support services and an investigation of the workplace.
- Create navigators, both within the WCB and in the community. These navigators would provide accessible information and help connect workers who need more help with legal advocates, WCB resources, and other services. To start, the Patterson Report recommends that the WCB:
 - a. Create a “navigator desk” to help connect callers with appropriate resources;
 - b. Hire and train specialized navigators within the WCB and in the community to assist workers and employers in Indigenous communities; and
 - c. Hire and train specialized community navigators and advocates to help farmworkers.
- Continue training specialized staff to deal with claims involving psychological injuries.

6. PROVIDE MORE AND BETTER HELP TO GET WORKERS BACK TO SAFE AND MEANINGFUL WORK

THE PROBLEM: Vocational rehabilitation plans often do not investigate or consider the real-world challenges and barriers that many workers face when returning to work. Also, many workers feel like employers and the WCB force them back to work too fast just to get them off benefits.

Change needed from the BC government:

- Change the *Workers Compensation Act* to confirm the employer’s duty to accommodate injured workers.
- Give the WCB a stronger mandate to provide meaningful vocational rehabilitation. The sections of the *Workers Compensation Act* covering vocational rehabilitation are vague and do not provide much in the way of concrete guidance. The *Workers Compensation Act* should be changed to confirm that the WCB has an actual obligation to provide vocational rehabilitation and to set out the key principles and goals of vocational rehabilitation.
- Change the *Workers Compensation Act* to ensure workers have a right to be actively involved in the vocational rehabilitation process.
- Change the *Workers Compensation Act* to allow the WCB to provide return to work specialists who can make temporary decisions about work the employer is asking the worker to do while a claim is still pending. This change is needed because employers sometimes ask workers to return to work—or to just keep working—while their claim is still being processed, so the WCB is not yet formally involved.

Change needed from the Board of Directors:

- Change policy to ensure the WCB considers the barriers faced by disabled and vulnerable workers. Many workers face unique barriers returning to work that go beyond the impacts of their disability, such as a lack of language skills or formal education. The WCB needs to provide meaningful assistance to eliminate and overcome these barriers. This includes a GBA+ assessment of the workplace to look at potential barriers considering the worker's personal characteristics.
- Adopt recognized best practices for return to work. A lot of good work has already been done to identify best practices for return to work, for example, by the Workplace Safety and Insurance Board in Ontario and the International Social Security Organization, which can provide a model for BC.
- Require that all light duty arrangements be put in writing with a time frame for review. If the light duties are a substantial change to the worker's normal job duties, the plan should be called a temporary work assignment to let everyone know that this is just a temporary arrangement for one stage of the worker's recovery.
- Adopt clear standards for assessing if and when a worker can return to work before their condition has fully healed or stabilized.

Change needed from the WCB:

- Create resources to empower all the key players in the return-to-work process, including supervisors and coworkers.
- Create specialized vocational rehabilitation plans and resources for workers who may face unique challenges in returning to work. This includes:
 - a. Ensuring that vocational rehabilitation plans consider the worker's unique circumstances and vulnerabilities when assessing what work the worker can do;
 - b. Ensuring that vocational rehabilitation plans consider the real-world challenges that disabled workers face when returning to work; and
 - c. Creating specialized vocational rehabilitation guidelines, programs and resources for recent immigrants, Indigenous workers, older workers and younger workers.
- Provide support to help employers develop good disability management programs.

7. MAKE IT EASIER TO CORRECT UNFAIR DECISIONS

THE PROBLEM: The WCB needs to do more to make fair decisions in the first place, but there will always be some unfair decisions that need to be fixed with a review or appeal. Workers need a more accessible review and appeal system that makes it easier to get unfair decisions corrected.

Change needed from the BC government:

- Let workers appeal vocational rehabilitation decisions to WCAT.
- Make time limits more flexible. The time limit to appeal to WCAT should be 90 days instead of the current 30 days. WCAT and the Review Division should also have more flexibility to grant extensions of time.
- Let WCAT fix serious mistakes in its decisions internally without forcing the worker to apply for judicial review in the BC Supreme Court.

8. REVIEW THE SYSTEM MORE FREQUENTLY USING BETTER DATA AND INFORMATION

THE PROBLEM: There needs to be more frequent and better reviews of key parts of the system. But to be effective, the reviews need access to better data and information about how the system is performing.

Change needed from the BC government:

- Mandate a review of the system at least every five years. Depending on how things are going, the review can be a systemic review (a sweeping review of the whole system) or a more targeted review of certain problem areas.
- Create an occupational disease advisory committee to monitor how the WCB is dealing with occupational diseases. Importantly, the committee needs the ability to get opinions from experts outside the WCB.

Change needed from the Board of Directors:

- Review all policy through a GBA+ lens. It is important that this analysis be embedded in all future policy reviews to identify how some workers may be getting left behind.

Change needed from the WCB:

- Review practice directives on an ongoing basis.
- Conduct ongoing reviews of the outside service providers with whom the WCB contracts to provide treatment programs. This should include feedback from workers.

- Use appeal decisions as quality control to show problems with the WCB's decision-making.
- Collect data on return-to-work outcomes. The WCB should collect data on what permanently disabled workers are actually able to earn two, five and ten years after the return-to-work process ends to help determine if the WCB's return to work efforts are effective.
- Track injuries in return-to-work programs. Workers get hurt when the WCB pushes them back to work too fast. Collecting data on injuries in return-to-work programs will help evaluate whether the WCB is being too aggressive with its return-to-work efforts.
- Monitor more closely how the system is working for workers in federally regulated industries (like airlines and railroads) as these industries often do not get the same attention from the WCB.

9. THE WCB AND WCAT NEED MORE POWER TO DEAL WITH DISCRIMINATION AGAINST INJURED WORKERS

THE PROBLEM: The WCB has very little power to deal with employers who discriminate against injured workers or who retaliate against workers for filing a claim.

Change needed from the BC government:

- Allow WCAT vice-chairs and members of the Human Rights Tribunal to sit together on a panel when the appeal concerns the worker's human rights.
- Create stronger protections for workers who face retaliation for filing a workers' compensation claim. Right now, workers can file a complaint and get a remedy if they are retaliated against for raising health and safety problems, but not if they are retaliated against for filing a claim.

Change needed from the Board of Directors:

- Change policy to recognize that some workers are more vulnerable to bullying and harassment because of their personal characteristics. Personal characteristics like race, religion, gender identity, disability or sexual orientation (to name just a few) may make certain workers more vulnerable to bullying, harassment and psychological injury due to stressors in the workplace.
- Change policy to ensure that workers get additional vocational rehabilitation if the employer removes accommodations.

Change needed from the WCB:

- Give WCB staff better training about human rights.
- Give the WCB's Chief Mental Health Officer a mandate to promote psychologically safe workplaces.

- Publish prohibited action (formally discriminatory action) decisions made by WCB. Workers can file a prohibited action complaint if their employer or union retaliates against them for exercising their health and safety rights. These decisions should be published to encourage transparency and consistency in how the WCB makes these decisions.

10. ELIMINATE THE UNFAIR AND ARBITRARY RULES THAT MAKE IT HARDER FOR SOME WORKERS TO GET COMPENSATION

THE PROBLEM: Some injuries and conditions have specific rules that limit compensation or make it harder to get a claim accepted.

Change needed from the BC government:

- Eliminate the unfair and discriminatory barriers to compensation for mental disorders by:
 - a. Replacing the term “mental disorder” with “psychological injury” to capture the full range of potential injuries;
 - b. Eliminating the higher standard workers must meet to show that their physiological injury was caused by work;
 - c. Narrowing the exclusion for mental disorders caused by an employer’s decision. Right now, workers cannot get compensation for a mental disorder if it is caused by a decision made by the employer about their employment. For example, if a worker becomes depressed after being laid-off, the worker cannot get benefits. But this exclusion has slowly expanded to cover things like forcing a worker to work excessive overtime or even decisions to not deal with bullying. The law needs to change to ensure this exclusion applies only to direct reactions to legitimate employment related decisions; and
 - d. Giving all workers who experience a traumatic event in the workplace, and later develop a mental disorder, the benefit of a presumption that their condition is work-related. Experiencing trauma can harm any worker, so the worker’s job title should not determine how the system will treat them.
- Change the *Workers Compensation Act* to treat gradual onset musculoskeletal injuries as injuries instead of occupational diseases.
- Ensure the occupational disease presumptions cover conditions that develop slowly over time. The *Workers Compensation Act* presumes that some occupational diseases are caused by work in certain situations. As one example, if a worker is exposed to red cedar dust in the workplace and then develops asthma, the law just presumes that the cedar dust caused the worker’s asthma without a need for any other proof. But the law says that to get the benefit of this presumption, the worker must be working in that industry at the time the worker

becomes disabled. This makes little sense for diseases that may develop slowly over time long after the worker is exposed.

- Make survivor benefits the same pre- and post-2002. In 2003, the government improved benefits for the family members of workers who died on the job. But these improvements only apply to claims made after June 30, 2002.
- Change the *Workers' Compensation Act* to stop deducting CPP disability from the workers' benefits.

Change needed from the Board of Directors:

- Eliminate the extremely low and arbitrary caps on compensation for chronic pain.

CONCLUSION: WHAT NEEDS TO HAPPEN NOW

The Patterson Report has clearly laid out what needs to be done to fix the WCB system and make it truly worker-centred. It is time for action. Everyone involved in managing the system — the government, the WCB and the Board of Directors — must commit to implementing the recommendations in the Patterson Report. As part of the consultations leading to the Patterson Report, workers came forward to tell very personal and very difficult stories. These voices must be honoured with action to improve the system for all workers in British Columbia.



