Report on Session #3 of the Newfoundland and Labrador Dialogue on Return to Work

Introduction

This third session of the NL Dialogue on Return to Work was moderated by Desai Shan. It opened with a presentation by project consultant Anya Keefe of high-level findings from a multi-province environmental scan of policy and practice around Early and Safe Return to Work (ESRTW). The recorded presentation can be found here: https://www.mun.ca/safetynet/our-research/nl-dialogue-on-rtw/session-3/ and the related Backgrounder prepared by Anya based on parts of the environmental scan can be found here: https://www.mun.ca/safetynet/our-research/nl-dialogue-on-rtw/session-3/.

Anya's presentation was followed by a short panel discussion, in which the discussants reflected on the Backgrounder and on presenters' experiences with how ESRTW works on the ground in the province of NL including some of its strengths and challenges. The session closed with a brief open discussion.

Presentation Summary: *An Interjurisdictional Comparison of Selected Policies and Procedures for Early and Safe Return to Work*

The presentation concentrated on findings from three provinces with ESRTW legislation and policies: Ontario, BC and Newfoundland and Labrador.

The presentation was framed around answers to five questions:

1. How is early and safe RTW defined in legislation and policy?
2. What are the roles of the various parties in the RTW process? What are their obligations?
3. To whom do the legislation and policy apply? To whom do they not apply?
4. What are the penalties if the workplace parties do not comply with their obligations?
5. What happens if there is a dispute between the workplace parties?

In Newfoundland and Labrador, as in the rest of Canada, provisions governing RTW are principally found in three legal frameworks: workers' compensation, occupational health and safety and human rights. In addition to these three frameworks, there are some provisions in the laws and policies that protect temporary foreign workers that have implications for RTW; these are found at the federal level and at the provincial level in QC, ON, BC

a) **Workers' compensation:** Laws and policies made in the context of this legal framework are intended to achieve the over-arching goal of RTW – namely, to enable an injured worker to safely return to work, ideally in their pre-injury employment or suitable alternate employment at their pre-injury wages.
b) **Occupational health and safety:** Laws and policies made in the context of this legal framework are intended to achieve the principle that all workers have the right to a safe work environment. In Canada, these laws are based on the internal responsibility system (IRS), the philosophy that all workplace parties share direct responsibility for ensuring a safe and healthy worksite. Includes employers, supervisors, workers, suppliers, service providers, owners, contractors, prime contractors, self-employed persons and temporary staffing agencies.
c) **Human rights:** Laws and policies made in the context of this legal framework are intended to achieve the principle that all persons should have equal opportunity "to make for themselves

the lives that they are able and wish to have and to have their needs accommodated, consistent with their duties and obligations as members of society…". Under these laws, discrimination in employment based on disability is prohibited.

d) Temporary foreign workers: Laws and policies made in the context of this legal framework are intended to reinforce that the rights of all workers, including temporary foreign workers, are protected by law and that temporary foreign workers have the same rights and protections as Canadians and permanent residents.

While all workers' compensation authorities in Canada incorporate a "return to work" and/or "vocational rehabilitation" model into their legal framework in order to minimize the impacts of work-related injury or disease*, not all enshrine the concept of "early RTW before full recovery" or "early and safe RTW" into their legislation and policies. Of the provinces scanned for this project, the three that do are NL, ON, BC. The laws and policies of these provinces are the focus of this presentation. It is important to note, however, that BC has only recently introduced new ESRTW legislation and at the time of the environmental scan had not yet developed policies around implementation of that legislation.*

Environmental scan findings (these notes should be read in conjunction with the presentation slides/recording and/or backgrounder):

1. There is no formal definition of ESRTW in law or policy in these three provinces. In NL, there is a policy that articulates that the goal is to "safely return the worker to employment or employability that is comparable to the pre-injury level as soon as possible" and indicates that ESRTW could involve: modified work, easeback to regular work, transfer to an alternate job or trial work to assess worker's capability. *Some of these terms are defined in policy.*

2. All three jurisdictions identify in law or policy workers, employers and workers' compensations as having a role in ESRTW. NL is the only province that sets out in policy the role of the healthcare provider in the ESRTW process. All others have supplemental resources on their websites that describe their specific roles in the RTW process. *No jurisdiction explicitly addresses the role of the supervisor in the ESRTW process or in RTW more generally.*

3. What are the roles and obligations of the various parties? In all three provinces, workers have a duty to co-operate; employers have a duty to co-operate, obligation to re-employ and duty to accommodate; and workers' compensation boards have specified roles related to resolving disputes and levying penalties. There is also some divergence in the roles and obligations across the three provinces with WorkplaceNL having a designated role in facilitating rehabilitation and RTW and healthcare providers expected to provide functional abilities & medical information, identify a treatment method, ensure timely treatment & RTW discussed throughout recovery. In Ontario, the role of the WSIB includes proactively supporting workplace parties in the ESRTW process, case management, and in ensuring compliance with obligations to co-operate and re-employment. In B.C., WorkSafeBC has a specified role to play in determining compliance and in making determinations on fitness to work and suitable work where the workplace parties disagree.

4. There are similar duties and obligations for workers and employers across all three jurisdictions although, in some cases, there are subtle differences in how the provisions are worded. In NL: all employers are "obligated to co-operate in worker's early and safe return to suitable and

available employment while the worker is receiving active medical rehabilitation for a work injury". NL is the only jurisdiction to define the meaning of "co-operation" in both policy and procedure. It defines co-operation to mean, "maintaining effective communication throughout the period of the worker's recovery, working towards identifying suitable and available employment for the worker, and fulfilling reporting obligations". In Ontario, "the injury employer and worker are expected to work together to return the worker to their pre-injury job with any necessary accommodation or to another job within the worker's functional abilities". Ontario's policy sets out the length of time that the co-operation obligations apply to the workplace parties including from the date of injury until the earlier of: a) the date when the worker's loss of earnings (LOE) benefits can no longer be reviewed by the WSIB; b) the date when there is no longer an employment relationship between the workplace parties; c) the date when WSIB is satisfied that suitable work with the injury employer is not available, will likely not become available, or will not continue to exist in the reasonably foreseeable future; or, d) the date when WSIB is satisfied that the injury employer has met its co-operation obligations by offering suitable work and the worker does not return to the job following the finding that the job is suitable.

5. Employers have an obligation to co-operate and to re-employ. Looking first at the obligation to re-employ: all three jurisdictions require that an employer of a worker who has been unable to work as a result of an injury must offer to re-employ the worker – but again there are some subtle differences in how the legislation is worded and how the legislation is interpreted by policy. The duration of the obligation to re-employ is the same in NL and ON, but there are subtle differences in the new legislation in BC.
6. Turning to the duty to accommodate, the legislation in all three jurisdictions imposes a duty on employers with a re-employment obligation to accommodate the work or the workplace to the extent that the accommodation does not cause the employer undue hardship.
7. NL and ON: provide definitions of accommodation in policy. Although there are slight differences in wording, accommodation is essentially defined as a change, adaptation or modification to the terms and conditions of work (e.g., reorganization or reduction of work hours), work duties or workplace (e.g., modified duties, physical changes to the work area), or equipment required to perform the job.
8. The policies on accommodation in NL and Ontario make reference to their respective human rights statutes and/or the *Canadian Human Rights Act*. Under the provincial human rights codes, physical and/or mental disability/handicap is a prohibited basis for discrimination. Employers and other workplace parties (including employment agencies) are prohibited from discriminating on the basis of disability and prohibited actions include the refusal to employ, the refusal to continue to employ, harassment and other forms of discrimination.
9. Both NL and ON provide guidance on how to determine what constitutes undue hardship and place the onus of proof on the employer for demonstrating that undue hardship exists. NL's policy identifies ten factors to be taken into consideration in assessing undue hardship; Ontario's policy identifies three factors. NL's list includes: the health and safety of the worker or co-workers; the nature and cost of the accommodation needed; the overall financial resources of the employer making the reasonable accommodation; the number of persons employed by the employer; the effect on expenses and resources of the employer; the overall financial resources, size, number of employees, and type and location of facilities of the employer (if the facility involved in the reasonable accommodation is part of a larger entity); the type of operation of the employer, including the structure and functions of the employer's workforce; the geographic relationship between the worker's current employment and that of the proposed accommodation offered by the employer; the impact of the accommodation on the

employer's operations; and other relevant factors. In Ontario, assessment of undue hardship takes into account: the cost of accommodation; the health and safety needs of employees and/or customers; and any outside sources of funding that may be available to the injury employer. In ON, the employer is expected to provide supporting evidence to demonstrate this (e.g., a cost-benefit analysis that includes the long-term financial impact if the claimed undue hardship is financial).

10. To whom do the laws and policies apply? **While the statutory obligation to co-operate applies to all workers and all employers, the same is not true for the obligation to re-employ**. In NL, employers who regularly employ fewer than 20 workers are excluded from the obligation to re-employ, as are certain classes of employers or industries excluded by regulation. This exclusion also applies in ON and BC. Both NL and ON make explicit that these provisions apply to the construction sector. In NL and ON, the re-employment obligation applies only to workers who have been continuously employed for 1 year immediately prior to the injury date, and who are medically cleared to work. The policies in both jurisdictions clarify the meaning of continuously employed and the conditions by which seasonal workers, casual workers, and contract workers would be considered to be continuously employed. ON's policy clarifies how the obligation to re-employ is applied in other special cases, as with emergency workers, temporary employment agencies, and successor employers. ON also has a policy that says that temporary foreign workers participating in the "Commonwealth Caribbean/Mexican Seasonal Agricultural Workers Program" have WSIB coverage, which begins as soon as they reach the agreed-upon point of departure in their homeland and remains in place until they return home. This means that temporary foreign agricultural workers would be entitled to ESRTW provided other requirements of the RTW policy suite are met. *In BC, the duty to co-operate does not apply if contact between worker and employer are likely to imperil or delay the worker's recovery* and, in the case of the obligation to re-employ, workers must have been employed on a full-/part-time basis for a continuous period of at least 12 months before the injury date.
11. What are the penalties for non-compliance? In NL, penalties will be levied against a worker or employer for not co-operating when it is determined they do not have a "legitimate" reason. Neither the policy nor the procedure provides examples of "legitimate" reasons. In ON, workers and employers may be penalized for not co-operating if it is determined that they do not have a "compelling" reason. Compelling reasons for employer non-compliance include: summer or holiday shutdown, general layoff, strike or lockout, and/or corporate reorganization; and in the case of small employers, a death in the family or an unexpected illness or accident. Examples of compelling reasons for worker non-compliance include: post-accident non-work-related changes in circumstances such as an unexpected illness or injury, death in the family, or jury duty. The policy notes that for both worker and employer non-compliance, these circumstances are typically of short duration. There are some differences in how the policies or procedures are applied including: in the length of time the parties are given to demonstrate compliance after they've received written notice (1 week in NL vs. 10 calendar days for the initial penalty in ON, followed by the full penalty 14 calendar days after the start of the initial penalty); and in how the amount of the penalty is determined. In ON, the policies state that if an injury employer breaches both a co-operation and re-employment obligation during overlapping periods in the same claim, the WSIB will apply a single penalty. In these cases, the WSIB will levy the higher penalty.

12. What happens if there is a dispute? All three provinces have similar provisions under their legislation for resolving disputes and disagreements in the ESRTW process between the workplace parties. These disputes and disagreements may be in regards to the duty to co-operate or the obligation to re-employ. ON has a policy that clarifies that (a) disputes over the suitability of a job offered are not considered acts of non-cooperation; and, (b) non-cooperation is not meant to apply to workers who raise a health and safety concern under the provincial *OHS Act* or the federal *Canada Labour Code*.

Summary of Panel Presentations and Discussion

Panel participants included WorkplaceNL employees, as well as labour and employer/management representatives, a safety sector council representative, as well as a NL human rights expert.

WorkplaceNL presenters indicated they were glad to see the results of the environmental scan showed that NL's ESRTW legislation and policy framework are very comprehensive. They also emphasized that, in their view, the success of ESRTW is determined largely by how that framework is applied on the ground. NL policies are designed to support a model based on self-reliance within which workers and employers are expected to communicate and participate. At present, there is an over-reliance on WorkplaceNL and on health care providers. One problem with this is that the health care system is very busy or limited, especially in rural areas but the system relies heavily on information/documentation provided by healthcare providers. Healthcare providers often feel they are put in a gate-keeper position where they have the final say on RTW. Unfortunately, MDs often lack training in assessing functionality and are very busy and may not always have time to complete reports. They are often reliant on their client's subjective reporting and report on the worker's ability to return to pre-injury work without taking into account that, while they may not be able to do the same work, there might be alternative work they could do. As noted by Anya, one of the roles of WorkplaceNL can be dispute resolution where they will work actively to clarify issues and resolve disputes. They have RTW facilitators who can help out when disputes arise or can provide formal mediation. WorkplaceNL also levies penalties for noncooperation in the ESRTW process. However, in their experience, when workers and employers are educated about RTW before the injury happens, things will work better and there will be more trust and cooperation. Employers who have a high level of education about and understand the benefits of RTW will often have their own functional abilities form for health care providers; will often work with the health care providers rather than rely on WorkplaceNL; and will have more open communication with their workers. When workers understand the value of RTW they will offer suggestions for RTW and both workplace parties will be able to adapt quickly to changes. WorkplaceNL invests in having RTW facilitators and other resources to provide education and they are seeing fewer noncooperation claims. Under the new PRIME program, the smallest employers are required to participate in education including around RTW and this online resource is available to anyone for free.

Two labour representatives described their experience helping injured workers through the ESRTW process. One noted that in their experience as a worker advisor, they see a lot of loopholes in the ESRTW program and a lot of noncooperation with employer obligations. While they agreed that ESRTW is more effective and helps injured workers get back to work when employers have an ESRTW program in place. The problem is the PRIME program is not catching problems; it could be doing more to help injured workers through ESRTW and dispute revolution. As advisors, when things get rough they are usually advocating for mediation, and it can sometimes take some effort to get there. In addition, while

they agree with getting back to work safely and sooner they have seen some workers being pushed back to work too soon and then they are reinjured or have further injuries. In terms of penalties for noncooperation, in 20 years of helping workers, the worker advisor said they have seen one employer penalized for noncooperation but thousands of injured workers, so the scales are tipped towards the employer. WorkplaceNL will quickly jump on the worker for noncooperation but are more lenient on the employer. They have also found there is a gap for employers with 20 or less workers. It is very hard to get an injured worker back to work with these employers. They usually end up with lower wages and end up being displaced. In terms of accommodations, what they see is, because of the PRIME program, employers are quick to accommodate the worker back to work initially because it saves on claims costs. Where there are severe injuries and there is a gap in returning to the employer, however, they will get recycled to labour market reentry (LMR) and end up on the street. The PRIME program encourages claim suppression.

A union representative noted that workers' experiences with ESRTW will vary depending on their circumstances and those of their employer, but in NL as a whole ESRTW occurs when the injured worker can return to safe and feasible work as soon as it is medically possible. In that context, medical clearance is key. As we have all heard, there are 135,000 people in NL who lack a family doctor. They hear regularly from some of their workplaces about workers saying they have been hurt, for example, they threw their back out and can't see their doctor. If they go to emergency they will be waiting for hours so they decide to take time off, take a muscle relaxant and hope they will be good enough for the next shift. Those representing workers have to think about different kinds of challenges. For instance, if a physician identifies a suite of duties they think an injured worker can do in ESRTW, what you might see is the employer looks at the suite, picks one of the duties and expects them to do that all day. Workers returning to work while still injured or sick may not have the ability to do a single task for an unlimited period of time. There has to be an appreciation of this on the employer side and with the case managers at WorkplaceNL. They need to take measured approaches and avoid situations where a worker comes back and ends up worse off, and with a bad taste in their mouth. This presenter also noted that a lot of employers are using consultants that apply undue pressure on attending physicians and on workers to return to work. They think there should be severe repercussions in these situations because this kind of pressure is detrimental to relationships one hopes will remain positive and it should not happen.

A health and safety manager in a large firm in Atlantic Canada focused on three things: the lack of a clear definition of ESRTW; the roles of the various parties in ESRTW including the role of the supervisor; and the role of education in ESRTW. They indicated that, as Anya pointed out, while we have a framework for ESRTW in NL, there is no clear definition and the parameters are currently quite large. This opens up the possibility for things to be unclear or missed and needs to be addressed. In terms of the roles of the various parties in ESRTW, as Anya said, there is nothing in the regulations and policies about the role of the supervisor. Supervisors are referenced a fair bit in NL's occupational health and safety legislation. As a large company, they have a lot of supervisors across the industry and when dealing with ESRTW, it often comes down to the responsibility of the supervisor and team leaders. In terms of education, they think it is very important for ESRTW and should include ensuring the attending physician is aware that the company has an ESRTW program. They have individuals who go to the doctor and come back with a piece of paper saying X cannot work for another week. They need to sit down and talk about how this is not helping the worker or the employer who both need to know about the workers' functional abilities. Mental health is always considered around ESRTW. Some say people are

forced back too early, but the word “forced” will not come up if they have the right conversation with the workers. At their company, they have a joint union-management ESRTW committee. When a worker comes back with their form that committee discusses what modified work they can provide and the timeframe for that work. For this presenter, it is wrong for management to say, “These are the duties we want you to do.” The committee needs to hear from employees, or they need to do an audit. They should write down all of the suggestions and before they leave the committee meeting they should have come to an agreement about what the worker will be doing for X period of time, because some of the duties might not last for the full period of RTW. Their ESRTW committee doesn’t just sit with the injured worker and supervisor when the worker returns, they meet weekly to go over what is working and what isn’t. This presenter indicated that in terms of the issue of functional abilities and physicians and chiropractors, etc., the latter need educating. Their company is not getting full information on abilities and that is a huge roadblock; the committee cannot do anything without those functional abilities and the amount of work they can provide is very limited without that information. They also commented on awareness training. They don’t know what other employers do, but at their company, they find it beneficial to do ESRTW awareness training with all of their workers. They had someone from WorkplaceNL come in and work through the awareness training. At that time, they were still getting 3-4 lost time injuries every year. Since they did the awareness training, employees know that if there is an injury or incident, they have to report it as soon as possible. They know that the longer a worker is off, the harder it is to come back; they want to protect the well-being of the worker and remain in constant contact with them.

The presentation by the safety sector association representative began by providing some clarifications around how ESRTW applies to the construction sector in NL. In NL, when the ESRTW legislation came into effect in 2001, the provisions around the duty to cooperate and to re-employ did not apply to the construction sector. A year later, regulations were put in place so that these would apply to construction and NL was the first province in Canada to have legislated RTW in construction. Ontario joined NL in 2009 but the presenter thinks these are still the only two provinces in Canada where these RTW obligations include construction. They reflected that when the provisions were introduced, it is likely there were a lot of concerns in the construction sector based on the nature of construction work, within which employment on a lot of large projects is limited term and employment on smaller projects would have limited opportunities for light work. Construction also sometimes entails remote work. Remote work is not unique to the industry but it creates challenges. For instance, a Voisey’s Bay injured worker cannot recover at work because they likely will not have access to physiotherapy or medical care while on site. Also, you can’t go offshore and work for only two hours a day. In construction, 90% of employers have 20 or less employees. The obligation to re-employ does not apply in their case but the duty to cooperate is still there. With those small employers, there is less diversity in tasks on the site making it difficult to accommodate an injured worker. There are also continuity of care issues when so many access healthcare through the emergency department. This presenter noted others had talked about educating the health care providers, as well as workers and employers, and they look at that as really important in the construction industry. Small employers often look at an injured worker and say, “Well, I can’t give him John’s job or Jim’s job.” They do not look at it from the perspective that there may be things Jim and John are doing the injured worker could do. They tend to be very narrow in terms of how they view suitable and available work so educating them is very important. This education on ESRTW is part of the Certificate of Recognition® program they have had in place for many years. It is required training for large employers and with the new PRIME program, they are looking at training for small

employers. They have included ESRTW in the orientation of companies for COR® certification but there can be so much information, it can be like drinking from a fire hose. This education is very important; sometimes injured workers who are trying to recover at work can get jammed into particular jobs and that can affect their mental health. Some of these issues may be unique to the construction industry and some are not.

A representative from the NL Human Rights Commission discussed some hot takeaways from their experience dealing with injured workers and ESRTW. They noted the Commission only sees issues around ESTRW when there is a problem, so they only get negative stories. The failure to accommodate employees at work is consistently the number one issue they see at human rights commissions across the country. They have noticed that cases are the most complicated in situations where issues are due to mental health or there is a mental health overlay to the case. They have also noticed that the impact of workplace injuries and RTW is particularly significant among precariously employed, foreign and racialized workers, and among those with mental health issues. Overall, what they at human rights commissions see is that, while the vast majority of businesses have policies, procedures and resources for ESRTW, issues arise when there is a breakdown in the relationship between employers and workers. When this happens, the process can go off the rails quickly regardless of the existing policies and procedures and the effects are amplified in workplaces that were already toxic prior to the injury and where there is poor management in place.

Not a lot of work has been done on the role of the supervisor including how important that person is to the success of ESRTW. If there is an unhealthy work relationship and the RTW process starts off badly when the workplace injury happens, often the first thing you will hear from the employer is that this is a fraudulent claim. Employers will hire consultants to manage it and the process becomes more adversarial. For this presenter, what that symbolizes is that the workplace was not healthy to begin with.

In their experience, the accommodation process is generally long and cumbersome. It requires people to manage it with empathy and care and it takes time. They have had to do that for their own employees in the past. It takes a lot of time if the organization wants to invest in maintaining the relationship when it becomes fractured. Members of the HRC are employees of the NL government and they have a disability management group who are experts in the area. Without that support, they might not know what to do. So, in some cases, there is an existing toxic relationship that gets exacerbated within the ESRTW process, whereas in other cases, employers are just trying to keep the lights on; they are trying to do their best to manage the process but it doesn't all work out.

What does undue hardship mean and how would an employer know they have met that test? Speaking as a lawyer, they would say, it really depends. It is good that WorkplaceNL has a framework but it depends on the situation and it is hard for the law to give guidance. People phone them all the time asking how much more they need to do to meet the requirements for undue hardship, but they cannot give legal advice in part because they need to understand the context. In terms of medical supports, they find a lot of human rights commission complaints get bogged down in the need to have medical information to support the claim. It is an indication of a problem with breakdown in the relationship between the worker and the workplace if they feel they need to have all of the medical documentation in place to act. This can unnecessarily complicate things. Similarly, the duty to accommodate can be challenging. The presenter thinks the whole conversation around the duty to accommodate needs to

shift away from reliance on a heavy medical, bureaucratic, medicalization model to focus more on how to provide more support to people to do a good job and how to support them in their communities. When people return to work, there is often no focus on how to fix what happened and no thought directed towards how to repair the employment relationship. In some cases where RTW is successful, the worker is subsequently fired and then they come to the Human Rights Commission.

A final issue is the issue of concurrent jurisdiction. A lot of bodies are responsible for managing RTW and dealing with issues around failure to accommodate. Things might not get so tangly if there was a way to streamline this process and responsibilities.

Discussion

Anya reflected on one of the common threads across all of the panel presentations: the issues around functional abilities assessment. She noted this is a really complex area and there is a lot of information in the environmental scan. But one of the pieces she did not touch on in the presentation comparing ESRTW in NL, Ontario and BC was how functional abilities assessment is handled in the different jurisdictions. She looked at workers' compensation forms for assessing functional abilities for ESRTW in Ontario and NL. In Ontario, the form is quite detailed, and has a lot of metrics to help the healthcare provider assess where the patient is in their recovery, etc. In contrast, the NL form is a lot less detailed and there is an option for workplace parties to create one specific to their workplace. Overlaying all of this, she noted, is the issue of the capacity of the healthcare system to manage medical assessments for ESRTW. She wondered a) if there was any work underway at WorkplaceNL to reframe, expand or redevelop their functional abilities form; and b) if the WorkplaceNL employees thought this might help?

WorkplaceNL presenters noted that while the panel focused on physicians, they take information on functional abilities from the full range of health care professionals including physios, chiropractors and physicians. They won't send someone back to work whose physician says they have a fracture but they do take functional abilities information from all health care providers. They will be going out to their stakeholders to ask about improvements around their forms. It might help to have a more detailed form – it depends on the appetite of clinicians to fill out the forms fully and correctly. Lack of completion is probably the biggest issue they have around their functional ability forms, not lack of detail.

Anya added that lack of completion of the form may be linked to differences in the forms between Ontario and NL. In NL, for example, there is one question where you provide specific choices around lifting restrictions while all the rest are open-ended. In contrast, the Ontario form includes metrics with cut points. Might the open-ended questions contribute to a lack of willingness to complete the form?

WorkplaceNL presenters commented that every five years or so the provincial government does a statutory review of workers compensation in the province and some of those comments came from the recent review. They have those in the workplan for this year. They are trying to transform the healthcare department at WorkplaceNL. They recognize there are three players – the worker, employer and healthcare provider and they have just hired a senior health care provider physician whose role is to focus on the physician community. They have also secured seats to provide occupational medicine training for physicians and are in the process of modifying contracts for a lot of other healthcare providers. They noted that since the environmental scan was done, they have revised some policies. A couple of the policies cited in the scan were rescinded or have been changed and there has been a proclamation for modernization of the WorkplaceNL Act. Sections will change in September.

They commented that there had been a lot of discussion in the presentations around supervisor training. There was a recommendation in the statutory review to make that training mandatory for the province. They already have a voluntary training package for employers. It is a useful tool but one of the recommendations was to make it mandatory. It takes a while to change acts and regulations but there is an appetite to do that. Finally, on the comment about unhealthy relationships and conflict between employers and workers. The country has a national standard around psychological health and safety and they are strong supporters of that and of the related training. If you introduce that training, it can change the relationship almost instantly.

A labour representative commented that the scan and presentations also serve to illustrate the difference across jurisdictions when talking about access to health care. Ontario has access to occupational health clinics and these provide important opportunities. When properly constituted with proper coverage, occupational health clinics have on staff people who exclusively deal with injuries at work including physicians, physios, etc. Clinics in Ontario use a collaborative approach and they are also taking away strain on the public health system, so they may not have the same issues with completion of forms, lack of understanding or failure to appreciate how important this work is in Ontario. But there is a potential down-side to clinics: they have to be staffed and there is already strong competition for people with the appropriate skillsets. That said, the benefit of specialized clinics would far exceed any cost for society as a whole and for the compensation system, the injured workers and the workplaces. They would get feedback from someone who has the appropriate knowledge and training and such clinics might allow for more space for other things in the regular healthcare system.

A worker advisor added to the discussion around challenges with functional abilities assessments. They noted that access to, for example, a chiropractor and physio is tied to having an accepted claim and even if the claim is accepted, access to these services can be quickly cut off when they have limited access to physicians and in the absence of access to occupational health clinics in NL. If access to these other services is cut off, injured workers will not have the information they need to keep their claim open and for ESRTW. There was a related recommendation in the last Statutory Review related to establishing an occupational health clinic in NL. This is one of the recommendations out of the Statutory Review we have not heard about and it could solve a lot of the problems.

A representative of the NL Federation of Labour noted that the establishment of occupational health clinics was recommended in both the most recent statutory review and in the recent Health Accord report to the provincial government. The Federation would love to see some action on that. Going back to the actual legislation, they noted that it highlights the importance of cooperation between the injured worker and employer but the legislation also indicates that, should there be a problem with cooperation, mediation is available. They observed that on page 2 of the *Injured Workers Handbook* it talks about worker cooperation. It then jumps to penalties and notes that if WorkplaceNL determines they are not cooperating they will be notified. There is no mention of the fact that WorkplaceNL offers mediation services. Why is that not there?

WorkplaceNL participants noted that their RTW facilitators do facilitate in *situations where there are barriers to RTW and indicated they would review the Injured* Workers' Handbook content to make sure this is covered. The role of RTW facilitators is to educate both parties. In some cases, the problem is just miscommunication between the worker and the employer and they can remedy relationships through

conversation and education. When that does not work, they have gone down the road of formal mediation but this does not happen often.

Another union representative started his comments with the mediation process. They indicated they had been doing workers' compensation claims and representing workers for many years and had never really dealt with mediators. In their experience, when the case manager gets involved, often through a simple phone call, and there is some kind of misunderstanding, they can move forward. But in their workplace, the employer gives supervisors incentives for forcing ESRTW as part of a program to access PRIME and reduce compensation claims costs. In their view, while training for supervisors would be good, as would meeting with the director, with bonuses paid to managers for forcing workers back to work, they are at the point of claims suppression. A big thing for them is that the employer may say they have meaningful and productive work, but just watching videos does not really help the worker. The primary issue is that individual managerial personnel should not be given bonuses for getting workers back to work. The tactics can be quite aggressive as when, for example, they had an injured worker who was struck in the head by a piece of equipment and was in the emergency room when they were called several times to go back to work. A year later they are not back to work. The union is not perfect but they have experience and there is a revolving door on supervisory personnel.

Moderator Desai Shan asked about the relationship between fitness for work requirements and RTW. She used the example of maritime medical certificates explored in her presentation to an earlier session. In that session, she noted that injured maritime workers can find themselves in a situation where workers' compensation is saying they can return to work but they are not able to renew their marine medical certificate because they can't meet all of the fitness requirements. She mentioned a human rights challenge to a situation like this that indicated Transport Canada needed to take into account the need to accommodate disability to avoid discrimination.

One comment in response to Desai's question was about the need for workers in remote situations like on fishing vessels to be able to perform their duties in an emergency situation, and how their inability to do so might put others at risk. Would employers dealing with remote worksites be willing to consider easeback in that context or if they are in living in a workcamp where the employer has to provide meals and accommodations when the worker can only work for a few hours a day. From the point of view of undue hardship, the employer might say they won't be able to send them back to St. John's for medical appointments that can't be scheduled on a turn-around.

Desai noted that in the Transport Canada human rights case, Transport Canada needed to allow for watch-keeping with support as an option to allow for accommodation. The human rights expert noted that those kinds of pre-employment medical assessment forms are supposed to relate to bona fide occupational requirements but they hear from people in disability communities who have done these assessments that some of the requirements have nothing to do with the job. Any worker could be on a remote site and suffer a heart attack, that is not a reason to exclude them. They had a case, years ago around the time when marijuana was legalized, where an injured worker was struggling with medically prescribed painkillers that despite their effects on the worker, were accepted by the employer. When the worker shifted to marijuana for pain management they were fired. It is important to really think about what is being asked for in a pre-employment medical assessment; what are they trying to evaluate, and are there jobs this person could do?

A union representative for union locals representing workers in the offshore said there can be issues. They can have a worker whose physician says they have full functional ability and are ready to go back but where the employer says they need to be evaluated by a Transport Canada approved medical professional. They have done some appeals for workers but it is important for those who are handling claims to include some staff who have a detailed appreciation of the nature of the work – i.e. where an individual, for example, is lifting heavy loads on a moving and slippery platform. That is not the same as work on shore. Similarly, attending physicians may not appreciate the complexities of offshore work until an employee or injured worker asks if they have thought about a,b,c in the workplace. There is also the issue of access to health care, etc. for those working on tankers or in shipping where they can be gone for up to six weeks at a time. These workers have really complex needs and challenges that need to be appreciated in intake processes and return to work across the entire scope of the system.