

Submission : Independent review into the management of complex workers' compensation claims by Worksafe agents

24 August 2020

Peter Rozen QC

1. Background of injury

- a. Multi level neck fusion (ACDF) following motor vehicle accident which occurred whilst passenger whilst at work to re-stabilize spine.
- b. Resultant loss of ability to safely perform pre-injury job and household duties and recreation to pre-injury level.
- c. Remains resilient to perform tasks to maximum safe capacity.
- d. Worksafe agent 130 week termination of weekly payments letter received.
- e. Transport Accident Commission common law settlement with pecuniary loss component several months later.

2. What we saw missing in complex claims management

- a. trust
- b. law
- c. professionalism
- d. rightful punitive measures
- e. informed decision making

f. safe complaints process

3. What we saw present in complex claims management

a. greed

b. power

c. detriment

d. wrongful punitive measures

e. uninformed decision making

f. unsafe complaints process

g. false documents

4. First-hand experiences, observations, or opinions of the Worksafe model for your review

a. All IME/allied health professionals in occupational rehabilitation provider role complaints should be made to their relevant professional oversight bodies and not to Worksafe since they are registered professionals.

b. The worker's treating (neuro)surgeon and NOT the occupational rehabilitation provider should make the post-operative return to work decision to ensure worker safety. In this case, worker returned to work on a RTW plan before the Xray to determine stability of fusion was ordered or undertaken. Neurosurgeon stated to worker and wife two days later at appointment that worker should never have been put in that position and that even he did not know that the fusion was stable as he ordered the Xray.

c. The ACCS conciliation officer (CO) should conciliate what has actually been requested by a worker or not at all. The CO should not be able to decide what to conciliate, or what part. The threshold for the CO's determination of what is a genuine dispute is too low. The threshold for the CO's determination of what constitutes the reasonable effort of a worker to satisfy the pre-court requirement recorded on the ACCS outcome certificate is too high and should not be allowed to be required/exist. In this case, the ACCS outcome certificate said to the effect that the worker needed to go to court to have the AMOUNT of firewood to be provided by the agent determined and not the NEED determined.

d. The Worksafe agent should never be able to refuse to approve an occupational therapist driving assessment requested by the worker's GP after a driving difficulty has been reported to the GP because that is unsafe.

e. The Worksafe agent should never have been or be able to expect or decide what the "reasonable contribution of family members" is or should be when there is no lawful entitlement to do so, no family member capacity assessment is ever made, no agreement is ever given, no dispute mechanism or recourse is ever available to the "reasonable contributor", and all for the purpose of a reason to deny household help to the injured worker because a family member is so-called reasonably contributing. This dangerous behaviour resulted in a novice chainsaw/logsplitter/tractor operator jamming her hand in the logsplitter with significant injury resulting. And yes, Worksafe were notified of this in a begging tone and still refused to act on their agent's decision.

f. Surveillance filmer should never be seen in shed by house 100 metres inside private property fenced boundary. The filming and following of family members must be disallowed/made unlawful. Surveillance people either ensure they are seen or do not have the capacity to do their job. Surveillance times became predictable after a request to an agent or at certain times in the claims process.

"If you agree, the surveillance will all stop. If you feel unsafe, ring the police." Barrister.

g. Worker should never be left waiting for agent approved taxi from home to work on a RTW plan at commencement of Week 4 that never arrives and then get no response from employer/Worksafe agent/occupational rehab provider when they are notified which remains true to this day.

"That never happens" Permanent impairment assessor.

Well it did.

5. First-hand experiences, observations, or opinions of the Transport Accident Commission

a. The Transport Accident Commission did not honour their promise in the deed of release.

b. The Transport Accident Commission did not complete the legally required notification of settlement form but paid an amount to settle anyway as discovered through a freedom of information request.

c. The Transport Accident Commission dispute resolution protocols are unsafe for their claimant to participate in because of lawyer behaviour.

We submit this information in good faith.

Glen Bilham

Robyn Dawes