



## **Thunder Bay & District Injured Workers' Support Group**

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# **PLATFORM FOR CHANGE (2004)**

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Injured Workers' Support Group

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## **JUSTICE FOR INJURED WORKERS**

Injured workers need a rehabilitation system that recognizes the special difficulties they face as persons with disabilities in obtaining and maintaining employment. In Ontario this rehabilitation system will seek to assist injured workers with both social integration and the attaining of suitable employment. It will be a system that fully compensates and supports those workers who have suffered a workplace injury or illness; assists such workers in returning to employment with dignity; and which aids in protecting all workers from injury or illness at work. To that end the following document outlines how this result can be achieved.

## JUSTICE FOR INJURED WORKERS

In Ontario, we need a workers' compensations system that fully compensates and supports those who have suffered a workplace injury or illness; assists such workers in returning to employment with dignity; and which aids in protecting all workers from injury or illness at work.

### Justice for Injured Workers Means:

#### 1. A Public, Responsive System Based on Collective Liability and Comprehensive Coverage

- Our compensation system will be publicly administered and delivered. Studies show that the privatised insurance company model is much more costly and much less effective than a public system.
- Collective liability is an important founding principle of the system, which will be protected. Schedule II will be eliminated and all employers will come under the collective liability system. Experience Rating will be eliminated as it undermines the principle of collective liability and produces incentives for employers to hide claims and to harass injured workers.
- Our compensation system will be administered with the understanding that its primary purpose is to compensate and support injured workers. It will seek to do this. Perhaps under the old motto: *Justice, Humanely and Speedily Rendered*. In this context the name will revert to *The Workers' Compensation Board*. Furthermore WCB policy will function as a guideline for interpretation and implementation of legislation (not as rules). Entitlement outside of policy will be granted on the merits and justice of the case.
- The Board of Directors will have strong representation from Labour and the Ontario Network of Injured Workers' Groups (ONIWG)
- The public will be provided with regular opportunity to have input on the legislation, the policy, and the practice of the Board. This will happen in various ways including an annual review by a legislative committee; a special review of the Act every four years (as exists in other provinces); and an open door policy to encourage those who develop and approve policy to have regular interaction with Labour and injured worker groups to ensure that the decision makers have a clear understanding of their needs and the impacts of policy.
- The Board will conduct and support regular and thorough research on the impacts of short and long term injuries and diseases including tracking long term outcomes for workers with a permanent disability and the WSIB/WCB's sufficiency in addressing them.
- All workers in Ontario will be covered by workers' compensation legislation.

- All work-related disabilities will be covered, including occupational disease, repetitive strain injuries, workplace stress, and pain conditions resulting from workplace injury. The Board will be pro-active in identifying compensable conditions, especially in newly emerging industries and conditions of work.
- Survivors of workers who are killed by occupational injury or illness will be provided with support and benefits, which ensure that they are financially secure.
- Non-dependent immediate family members of workers who have died from occupational injury or disease will be compensated.
- There will be coverage for secondary victims of occupational exposures – including people who are harmed by substances inadvertently brought home from the workplace by a worker.
- Workers who must be re-assigned or quarantined or temporarily removed from work due to exposure to an occupational hazard (e.g., SARS exposure, hazards to expectant or nursing women) will be financially protected. *(Will have their wages protected with re-assignment. Will receive full workers compensation benefits if they need to be quarantined or there is no alternate suitable work.)*

## 2. Quality Adjudication

- The WCB/WSIB administration and the WIA Tribunal will operate in an enquiry system.
- Adjudicators will proactively seek and request the medical information necessary to adjudicate a claim. Adjudicators will automatically consider psychological or chronic pain entitlement where there is insufficient evidence to allow a claim on an organic basis.
- Ontario Human Rights Codes will apply in all cases.
- Adjudicators will not request continuous medical reports in established claims.
- Workers should be able to navigate the system on their own; legal representation should not be needed. At the beginning of all claims, the Board will provide the injured worker with a simple but comprehensive written explanation of the system and how to navigate it. The material will emphasize that the Board is there to help and to provide information on how to get assistance both inside and outside of the system. The material will be available in multiple languages.
- Board decisions will be speedily rendered, with no undue delays.
- High quality initial adjudication will be provided and adjudicators will be well paid in recognition of the importance of their work. The Board will endeavour to employ adjudicators who can directly communicate with member of newer immigrant communities, in their language and with an understanding of their culture.

- High quality adjudication will be achieved through (1) quality training of adjudicators and (2) more attentive service:
  - Adjudicators will receive training in legal and medical matters, including mental health issues. As half of permanently injured workers experience mental health effects of injury and disease, the Board will train adjudicators to recognize and respond appropriately to any signs of psychological problems.
  - Adjudicators will be taught empathy and respect. This may be achieved by including sessions with injured workers and their family members on a regular basis and having an advisory body permanently in place.
  - Training will provide adjudicators with the understanding that the purpose of the system is to provide compensation and support to workers in lieu of their right to sue employers as stated in its founding principles put forward by Sir William Meredith. Adjudicators will understand that their role is to seek to compensate and provide full benefits based on the merits and justice of the case.
  - Adjudicators must ultimately follow the Act.
  - More attentive service will be achieved by reducing caseloads for claims adjudicators, maintaining the same adjudicator throughout a claim (to the extent possible), and improved communications between injured workers and adjudicators. Communication will be improved in part by increasing opportunities for face to face meetings.
- Higher quality adjudication will reduce the number of appeals.
- The Act will provide that workers are covered financially during the period that the WCB is rendering a decision up to the final level of appeal.
- Adjudicators will respect the opinion of the treating physician/health care provider. If it conflicts with the WSIB, the treating health care provider will refer the injured workers to another health care provider.
- The Board will include, with all its decisions, a full, multi-lingual description of the appeal system and resources for assistance.

### **3. Full Compensation and Dignity**

- The compensation system will fully compensate a worker for the impact of the injury or illness on his or her life within a system, which seeks to be simple, straightforward, and accessible, and which seeks to provide security and dignity to the person as long as the disability lasts.

- Wage-loss benefits will replace the full income lost due to the worker's injury and disease until it is determined if the injury or disease is permanent.
- A permanent pension based on level of physical and/or psychological impairment will be paid for life. If the wage loss is greater than the pension, a supplement will be paid.
- If there is a benefit plan with the pre-injury employer, the employer will continue coverage for the two years of the re-employment obligation. In any case, the WCB will provide such a plan to a worker and his or her family, where there is a permanent disability except where they have employment, which provides better coverage.
- Compensation benefits will include payments, by the WCB, to CPP to maintain the retirement entitlement.
- The Act will establish a minimum wage-loss benefit payable regardless of the pre-injury earnings.
- The current practice of *deeming/determining* a worker to have phantom wages will end and wage loss benefits will be based on the injured workers' actual wage loss.
- Severely disabled workers will receive additional benefits and support allowances that allow them to live in dignity.
- CPP disability benefits will not be deducted from workers compensation benefits.
- Benefits will be fully indexed to the cost-of-living.

#### **4. Medicine that Heals**

- Our compensation system will restore injured workers into the hands of their treating healthcare practitioners. It will allow them the choice of their practitioners and be open to alternative treatments.
- Injured workers will have the right to the same relationship to the healthcare system as all Canadians. Specifically they will be treated within the public, one-tiered, system under the direction of their main treating doctor. The Canada Health Act needs to remove the exclusion for injured workers.
- The Board will work with Ontario health care providers and their organisations to improve education and awareness of workplace based injuries and illnesses.
- The Act will confirm that the worker has the right to choose his/her initial and subsequent health care providers. The guiding principle of the system will be to accept the opinion of the worker's doctors and/or other health care providers, including the medical diagnosis, all aspects of the treatment plan and work capacity.

- During the period of recovery, the WCB will recognise and accommodate the special needs of an injured worker in their home environment.
- Principles of *Managed Care* have no place in our public, no fault system. The compensation system and its medical professional staff and advisors, including Nurse Case Managers, will take care to avoid claims control and benefit control activities. They will not function as behind-the-scenes adjudicators.
- Workers will have the right to heal after injury without pressure from the Board or employer to return to work prematurely.
- The employer will not have the right to require the injured worker to undergo a medical examination.
- Maintenance physiotherapy and other long-term treatments including medications will be recognised and allowed as necessary ongoing components in many cases of permanent disability even where the worker has reached “maximum medical recovery”. Such ongoing treatment can both help to prevent a worsening of the condition and can help an injured worker cope with their disability.

## **5. Comprehensive Vocational and Social Rehabilitation**

- Injured workers need a rehabilitation system that recognises the special difficulties they face as persons with disabilities in obtaining and maintaining employment. The system will seek to assist injured workers with both social integration and obtaining suitable employment.
- The 1982 WCB Vocational Rehabilitation Division Manual describes the process as follows: The Workmen’s Compensation Board rehabilitation philosophy will be predicated on the concept that we see the injured worker settled in the community and employed at a job that is entirely suitable. Our goal is the job for the person. It is basic that we consider the whole person that we examine what the disabled person can do rather than what he/she cannot do. This type of evaluation enables the disabled person to ascend the social scale and prevent automatic assignment to a lower status and economic plane. Our belief is that rehabilitation is not complete without employment in a useful job for which the person is suited.
- Rehabilitation will not be considered complete without a viable job. The WCB itself will set an example by hiring injured workers. The Board will recognize, though, that some workers are competitively unemployable. Competitively unemployable workers will receive full benefits and social rehabilitation services.
- The Board will take an active and in-depth role in facilitating return to work in co-operation with the treating physician. This means actively working with an injured worker to ensure that their employer takes all reasonable steps to accommodate the job and workplace environment to the worker’s disability. The Human Rights Code will apply.

- Where work with the accident employer is not available or is not suitable, then the WCB/WSIB, in conjunction with the treating physician, will actively assist the injured worker in locating and settling in to work with a different employer, usually after an individually designed training program.
- In facilitating return to work, the Board will recognize the power imbalance underlying worker and employer negotiations and provide extra support to workers accordingly.
- The Board will employ a holistic approach in facilitating return to work. This means going beyond the narrow approach of looking at whether the essential elements of a job are suitable. A holistic approach to suitable work looks at whether the work environment is safe, including whether it is free from co-worker or manager harassment or hostility. A holistic approach to suitable work also looks at whether the work is sustainable (i.e., that the worker will be able to continue in that position on a longer term basis) and meaningful (i.e., that the work makes a substantive contribution to the employer's business)
- A holistic approach also looks at the worker as a whole person in developing a sustainable and suitable plan for return to work. This includes consideration of the workers personal characteristics. This includes considering mental health issues, and recognizing that pain may be a real barrier to return to work.
- Plans for accommodated work must be developed in close consultation with the worker. Any ergonomic assessment will be done with the worker present and involved.
- When it is in the worker's best interests, the Board will provide the worker with retraining to return to a new job with the accident employer.
- The Board will recognize that some workers will only be capable of returning to work on a part time basis due to the nature of their disabilities. Workers who return to part time work will receive benefits to compensate them for their wage loss.
- When it is in the worker's best interests, the Board will assist either the worker or employer in providing accommodations that lead to a sustainable and meaningful job. For example, the Board might provide a worker with a specialized computer that would enable him to return to his pre-injury job. The computer would move with the worker, should he change jobs.
- Special care will be taken not to have the worker placed in a job, which could cause a worsening of the condition or re-injury.
- Experience rating will not be used as an incentive tool for return to work compliance for employers since it produces reverse effects. Any incentive tool will be carefully developed to ensure that its' result is to achieve truly suitable work which is in a physically and socially acceptable environment and which is clearly long-term. The best incentive tool will be one controlled by the injured worker.

- Where there is a union, the employer and Board will work with the union, including Joint Return to Work Committees. These Joint Committees will be properly resourced, trained and supported by active enforcement and involvement by the Board. The Joint Committee will have the authority to recommend modifications to the workplace as required to accommodate the injured worker.
- There will be progressive discipline process and strong penalties for larger employers who refuse to re-employ injured workers and for those who withdraw employment offers; provide unsafe, unhealthy, or phoney return-to-work arrangements; harass injured workers; or terminate their employment later. There will be no time limit on these obligations.
- The Act will include provisions to recognize that injured workers, as persons with disabilities, face lifelong disadvantage in obtaining and sustaining employment. All injured workers with a permanent disability will have a lifelong entitlement to return to work and rehabilitation services, including restoration of benefits in situations where finding work is not realistically possible, or for periods in which they are having difficulty finding new work and require support.
- Workers in accommodated jobs or with a permanent impairment rating of 10% or more will automatically be restored to full compensation and entitled to further rehabilitation services if they lose their employment for any reason except criminal offenses. This will recognize the fact that injured workers often face barriers to finding employment, even if they were able to return to regular work after their injury.
- Quality public rehabilitation services will be provided. Rehabilitation and employment will be suitable for the worker, vocationally, socially, financially, physically, and psychologically. Workers will have the right to design and approve their rehabilitation plan. The Board will not impose the plan. The plan will be flexible to take into account the worker's circumstances and changes in those circumstances. A new plan can be developed if necessary.
- A rehabilitation plan when required will include support for new special circumstances.
- English as a Second Language programs will be made available to injured workers whose first language is not English. These programs will be high quality and of sufficient length to allow these workers to become proficient in English.
- Where rehabilitation includes attending school, injured workers will be part of the process to choose the appropriate school and except in special circumstances, the schools will be public institutions.
- The Board will recognize volunteer work as a valid form of vocational or social rehabilitation for those who remain unemployed or as part of a vocational rehabilitation plan and will not be penalized by volunteering. For vocational rehabilitation, volunteer work can make a valuable contribution to training and allow a worker to gain job experience. Volunteer work can also have a social rehabilitation

function for workers who are competitively unemployable or otherwise unable to return to paid employment.

- Many workers would have been able to return to school or otherwise improve their circumstances had it not been for the compensable injury or illness. The system will recognise that injured workers face special hurdles in advancing through their careers and therefore the Board will support retraining to the worker's full potential.

## **6. Access to Justice**

- At all levels of decision-making the Board and the appeal systems will operate on an enquiry basis. This is in contrast to an adversarial basis. Decision makers will be trained to seek and obtain relevant information to help the workers establish their claim recognising that it is often difficult for workers to overcome numerous barriers in obtaining it themselves.
- Time limits for workers in filing a claim and in appeals will be eliminated.
- Employers will have the right to appeal only on issues where they have direct involvement: initial entitlement and return to work with the accident employer.
- There will be full disclosure to the injured worker of all documents and information relating to their claim; including general correspondence between the employer and the Board.
- Employers will have restricted access to information about a worker. Information on a workers claim will be provided only in active appeals on initial entitlement or return to work with that employer. Medical information will not be disclosed to the employer except that which is specific to a contested issue on which the employer has appeal rights.
- There will be full recognition and communication by the Board of the worker's right to free advice and representation, from their union if they have one, legal clinics, the OWA and from Legal Aid Ontario certificates.
- Injured workers or their survivors, who have scarce resources, will not need to use the services of fee-for-service consultants. There will be sufficient funding for all of the representation programmes from appropriate funding sources such as the Ministry of Labour and Legal Aid Ontario.
- Injured workers will have the right to an independent appeal of Board decisions. The Workers' Compensation Appeals Tribunal will not be bound by WCB/WSIB policy.
- A tripartite appeal panel will be available as a matter of course.
- Appointments to the Tribunal will be competent and qualified in WC law and policy.

- Members of the Provincial Legislature, including their trained staff, will be among those who provide assistance, including representation at appeals.

## **7. Funded Arms Length Programmes**

The legislation will ensure that sufficient funding will be provided to such arms length organisations as:

- The Office of the Worker Advisor (sufficient means the OWA has the ability to handle all injured workers' claims regardless of union affiliation.)
- The Ontario Network of Injured Workers Groups
- Support systems such as the Occupational Health Clinics of Ontario, the Workers Health and Safety Centre, and the Occupational Disability Response Team.
- Community Legal Clinics and Legal Aid Certificates.
- An Occupational Disease Standards Panel
- The Institute for Work and Health and other research initiatives.
- A Database agency which would, for example, maintain a disease/cancer database (including parental and occupational information for childhood cancers and birth defects) along with a tracking system for workers with hazardous exposures (along the lines of the mining master file.)

## **8. Proclamation of Special Days**

- There will be official recognition of June 1<sup>st</sup> as "Injured Workers Day."
- There will be official recognition of April 28<sup>th</sup> as the "International Day of Mourning for Persons Killed or Injured in the Workplace." (under Bill C-223). There will be an official two minutes of silence and stop work in the workplace and provision will be made for workers' representatives to attend ceremonies.
- There will be official recognition of February 28/29 as Repetitive Strain Injury Awareness Day.

## **9. Improving Workplace Health and Safety**

*(Since this document is attempting to focus on compensation, we have not attempted to be comprehensive in this section. For the purposes of this document we want to focus on H&S points which overlap with the compensation system)*

- The workers' compensation system will find an effective way of working with the Ministry of Labour, organized labour and injured workers' groups to aid in producing safer workplaces.

- Experience Rating will not be used as a tool for Health and Safety due to its serious, negative impact on injured workers. As long as experience rating exists, accident numbers and claims duration statistics will not be used as evidence of safe and healthy workplaces.
- Incentive programs such as merit rating, if used, will be based safety audit inspections.
- Employer-based behavioural safety incentive programmes will be prohibited.
- The Ministry of Labour will impose and collect heavy fines and penalties on employers who violate health and safety laws, including criminal prosecutions for reckless disregard for human life. The 25% surcharge on fines will be made available to victims of workplace injury or disease.
- The Board and Ministry of Labour will ensure prompt investigation of the cause of all injuries and illnesses and then verify that the employer has fixed the hazard that caused them. The Form 7 will include a required section to ensure employer compliance by removing the hazard. A copy of the form 7 will go automatically to the worker, the joint health & safety committee and where there is one, to the union.
- The Ministry of Labour will significantly increase the number of inspectors available to enforce health and safety rules and to identify safe and unsafe workplaces.
- Ministry of Labour will enforce mandatory entry-level and on-going workplace specific safety training.