

**Submission to the CRPD Consultation for a General Comment on Article 27 of
the CRPD (the right to work and employment)**

By the Ontario Network of Injured Workers Groups, March 2021

The Ontario Network of Injured Workers Groups (ONIWG) is a volunteer organization of workers with work-acquired disabilities, their families and allies established in 1991 in Ontario, Canada. This submission builds on our submission to the 22nd Session of the UN Committee on the Rights of Persons with Disabilities held 26 August to 20 September 2019 in Geneva, Switzerland - ***Deeming laws and practices as violations of the rights of people with work-acquired disabilities in Canada.***

While our submission has a focus on and is informed by the experiences of workers with work-acquired disabilities, we face many of the barriers faced by workers who have acquired their disabilities outside the workplace. Collectively, we make up 22% of the working aged population in Canada.

Overall, workers with a disability face unemployment at a rate approx. double that of the overall work force. And the situation for workers with work-acquired disabilities follows a similar pattern. While most injured workers with a permanent disability return to work following illness or injury, almost half of them end up chronically unemployed five years post injury.

The public institutions that have been created to assist and compensate workers following injury or illness, the workers compensation boards, have consistently refused to track the long-term outcomes of the people they were meant to serve. ONIWG has been involved for close to thirty years to study this issue and have worked with a number of our universities to document these outcomes. We have found high rates of unemployment, poverty, poor mental health and family disillusion following a work-acquired disability.

And as we review the submissions already posted on website of the Office of the High Commissioner, we would like to share our support for the submissions from other organizations including:

- Center for the Human Rights of Users and Survivors of Psychiatry

- Equal Rights for Every Person with a Disability - Belgium
- Foundation Activation

ONIWG submits the following comments for your consideration in preparing a revision of the draft general comment. We reference the respective section number

ix. Interpretation of article 27(g) Employment of persons with disabilities in the public sector

Countries may establish targets for the employment of persons with disabilities and request annual reporting by all relevant public authorities that inform how they are complying with these targets and the measures they have taken or are planning to take.

The Federal Government of Canada has historically established targets in the federally regulated sector – banking, transportation & communications, etc. (approx. 10% of the work force). Targets were not met, and we saw some decreases over time. More recently, they established targets in the federal civic service. The Public Service Commission of Canada just released a report that included:

- *persons with disabilities experienced the largest drop in representation of any of the employment equity groups, with decreases in representation at the assessment and appointment stages*

The vast majority of the work force is under provincial jurisdictions where targets are not common. In terms of workers with work-acquired disabilities, they are usually under the auspices of the provincial workers compensation boards. We have been asking that our provincial board report on an annual basis on the employment status of workers with work-acquired disabilities for about 30 years with little or no success.

A recent report from the Institute for Work & Health found a 30.4% unemployment rate 18 months post injury.

We therefore request that the new general comment advise all governments to ensure that employment injury compensation systems adopt follow-up reporting on the employment outcomes of work injury compensation claimants with long-term work-acquired disabilities.

xi. Interpretation of article 27 (k) Return-to-work programmes

Persons with disabilities may have acquired their disability while being in employment. In these contexts, States parties should have programmes in place that would ensure that persons with disabilities could retain their employment or return to work after having undergone the required health-related rehabilitation.

...

In its considerations, the Committee recalled that article 27 (1) of the Convention required States parties to recognize the right of persons with disabilities to retain their employment, on an equal basis with others; to take all appropriate steps, including through legislation, to prohibit discrimination on the basis of disability with regard to the continuance of employment; and to ensure that reasonable accommodation was provided to persons who acquired a disability during the course of employment.

In Ontario Canada, workers with work-acquired disabilities usually turn to our public workers compensation board, now called the Workplace Safety and Insurance Board (WSIB). The WSIB does offer return to work programs if seen as necessary.

Overall, there are key contraventions of this section of the CRPD.

- 1) We hear of many instances where the required health-related rehabilitation is cut short. The treating health care professionals are prescribing time to heal and the WSIB disregards that advice and without any contradictory medical information, forces workers back to work before they have healed. The WSIB promotes the practice of "Better at Work", with the discourse the sooner a worker returns to work the better. If the worker chooses to follow their doctor's advice and stay off work to*

heal, they are often cut off their income support from the WSIB. And if the worker returns to work prematurely, they have a high risk of re-injury and further disability. (Another study at the Institute of Work and Health found a 45% re-injury rate). And if that worker with a disability then goes back to the WSIB, they are far too often denied any further support, eventually leading to that road on poverty and unemployment.

ONIWG requests that the text of the General Comment requests that all governments ensure humane and dignified treatment of people with work-acquired disabilities in the employment injury benefit system.

3. States parties' obligations

b) Immediate obligations

I - Non-discrimination, particularly on the basis of disability or multiple grounds

Pertinent legislation should prevent any intentional or unintentional discrimination based on disability.

Legislation should protect persons with disabilities from discriminatory dismissal on the basis of disability, in particular in situations where people acquire an impairment while at work. In these situations, there should be an obligation, including as a form of reasonable accommodation, on the employer to retain the worker and offer them the necessary support to keep their position or, if this is not possible, alternative work should be offered.

While there are some limited provisions from discriminatory dismissal on the basis of disability under the WSIB in Ontario, the fact that almost 50% of workers with a work acquired disability end up chronically unemployed speaks to the ineffectiveness of these provisions. The recent report from the Institute for Work & Health cited previously found only 60% of the workers were still employed by the accident employer 18 months post injury.

A similar number was found for workers who only had a temporary disability who had lost some time from work. This speaks clearly to discrimination because of injury and disability by many employers in Ontario. And not only are employers not held accountable, but they have also seen the premiums they pay to the WSIB for coverage reduced by 50% in the last ten years.

Another result of this discrimination is the suppression of claims for work related injury or disease. Research has shown an alarming number of workers (between 30 – 60%) never report their injury or disease because of fear of losing their job.

At the same time, we are seeing a negative impact on Occupational Health & Safety systems which rely on reporting accidents or diseases in order to put in place preventative measures.

ONIWG requests that the text of the General Comment asks all governments to ensure protection against discrimination for people with work-acquired disabilities in the employment injury benefit system. Disabled workers should not be discriminated against for filing a claim for income security and should not have to fear termination of employment or the pressure to end their medical treatment from employers who are concerned about maintaining a low experience rating.

4. Relationship with other provisions of the CRPD

The interrelatedness of the right to work and employment with other rights enshrined in the CRPD should not come at the expense of persons with disabilities. As an example, disability benefits which are delivered in light of ensuring an adequate standard of living to persons with disabilities, are compatible with article 28 of the CRPD. However, disability benefits that are not compatible with employment create a situation where persons with disabilities have to opt between accessing a benefit and accessing employment.

This issue is exactly what many workers with a disability face.

Our submission in 2019- Deeming laws and practices as violations of the rights of people with work-acquired disabilities in Canada - highlights this practice by the WSIB in Ontario. Specifically, when the employer is unwilling or unable to take their worker back, that worker is assessed by the WSIB to determine what other employment is suitable. The worker is normally asked to choose among three options for their new career goal. If the disabled worker chooses a career option that could replace their pre-accident earnings, they are deemed (often without their knowledge) to have those earnings even if they have not been employed in that career or any other work and within 3 - 6 months their income support benefits are terminated.

When these workers aren't able to secure employment in the environment where people with disabilities aren't valued by many employers, they may turn to public social assistance for support. Provincial disability payments are quite low – only bringing the individual within 50% of the poverty line. And when that worker is able to earn additional income, he/she will have most of it clawed back by the system. And the process of reporting this new income often creates overpayments of social assistance that are deducted the following month perhaps leaving the individual unable to cover their rent resulting in homelessness.

Instead of reducing barriers for people with a disability, the public systems in Ontario have created barriers to an adequate standard of living for many. These practices are clearly in contravention of the CRPD.

ONIWG requests that the new General Comment state that income security for people with work-acquired disabilities is a fundamental human right, and that income security must be sufficient so that people are able to live a dignified human life.

Summary

We appreciate the opportunity to share these comments with the CRDP Committee and look forward to working with the OHCHR, the Committee and our

respective state parties and public institutions to address the barriers to create inclusive workplaces and communities.

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