

Submission
To
Changing Workplace Review
Thunder Bay, Ontario

September 16, 2015

Presented by the
Thunder Bay & District
Injured Workers' Support Group

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Thank you for the opportunity to share with you some of our thoughts concerning your task of reviewing the Employment Standards and Labour Relations Acts.

Executive Summary

Work and workplaces are changing. We submit that your task in reviewing these changes is a real challenge as our society is moving away from valuing workers and the work they do.

Work is one of the biggest, if not *the* biggest, parts of our adult lives. It can bring economic security; the ability to provide for our families. Work can give us a purpose in life - a way to contribute to the greater good. Productive, meaningful employment can lead to healthy individuals and healthy communities. It can help us connect with others building strong social networks.

Some may say that this is only a dream; that in our global economy we must all compete. We must compete against workers in the States who work for \$8 an hour and who have no health coverage. We must compete against workers overseas who work for \$2 an hour. We must compete against our co-workers for our very jobs – as seen in the submission made last week to you by the Injured Workers' Consultants Community Legal Clinic (attached). In their example, a Toronto construction worker was fired after becoming injured at work and asking for 1 day off to heal.

This is the present environment in which you must make your recommendations. There is a significant shift in our society in support of the top 1%. Income inequality is increasing rapidly leading to a poorer quality of life for all. There is a growing trend toward precarious employment. Employment that drives down wages, drives down the workers' health status and quality of life; no job security, no benefits, part time, irregular hours of work. Precarious work that has negative impacts on families and growing children. Estimates range from 30 – 45% of our workforce now rely on precarious employment.

Successive governments have moved to supporting global corporations instead of protecting the health, safety and security of its citizens. This hasn't worked. These corporations have moved more and more to contracting out and 'employee leasing'. Smaller companies taking on these contracts are forced to cut costs to secure their contracts leaving many workers vulnerable.

We are here to say – we can do better. We can create a better future for all of us. With strong employment standards laws and with strong enforcement practices, we can build stronger local economies and communities.

One key to that better future is the ability of workers to collectively bargain. History has shown this to be the most effective means of advancing and protecting workers rights.

The Changing Workplace Review should be guided by the principle of decency, as was

the case in Harry Arthurs' review of the *Federal Labour Code*:

Labour standards should ensure that no matter how limited his or her bargaining power, no worker [...] is offered, accepts or works under conditions that Canadians would not regard as decent. No worker should therefore receive a wage that is insufficient to live on; be deprived of the payment of wages or benefits to which they are entitled; be subject to coercion, discrimination, indignity or unwarranted danger in the workplace; or be required to work so many hours that he or she is effectively denied a personal or civic life.

Recommendations - Goals of review

- Curb employer practices that evade or erode the ESA and principle of decent work.
- Support workers' right to organize individually and collectively.
- Support decent wages and work conditions that support the economy.

Universality

- All workers must be protected under the ESA, the LRA and the WSIA including agricultural workers, migrant workers, hospitality servers, etc.
- Work must bring people out of poverty – increase the minimum wage to \$15 per hour.
- Mandate paid sick days for all workers.
- Expand the Canada Pension Plan and/or support for the proposed Ontario plan.
- Proactive, coordinated investigation and enforcement of employment laws.
- Restore the rights of workers to form unions and protect them from reprisals.

Special note: While we support the increase to Ontario's minimum wage, it could have a negative impact on injured workers' benefits, which must be prevented. Thousands of workers with a serious injury or disease become unemployed every year. The WSIB estimates (deems) their earnings loss often assuming everyone can get a job making minimum wage. The increase in minimum wage would see these disabled, unemployed workers' benefits reduced – which is an unacceptable result.

About our Organization

Our group, The Thunder Bay & District Injured Workers Support Group, was founded in 1984 in response to the then pending legislation, Bill 101. The geographic area that the Thunder Bay & District Injured Workers' Support Group membership resides in is approximately one-quarter of a million square miles.

We are a group of workers (and family members) who have been injured or made sick on the job. We have first hand experience of the WCB/WSIB system and know it needs improvement

The Thunder Bay & District Injured Workers' Support Group's (TB&DIWSG) mission is to help create Dignity, Respect and Justice for Injured and Disabled Workers in the Workers' Compensation System by assisting and educating workers, injured workers, the general public, our elected representatives and WSIB staff.

The organization has four main goals:

1. Provide information and support to injured workers;
2. Provide analysis of legislation and make recommendations for improvements and reform;
3. Educate each other and the general public; and
4. Lobby government and the WCB/WSIB to establish Justice for Injured and Disabled Workers.

The TB&DIWSG is a democratically governed group with a Board of Directors elected at the annual general meeting (AGM). Our members are injured workers, family members and other individuals who support injured workers and their issues.

About the Workers Compensation System

We know you are not mandated to review the Workers Compensation and Occupational Health and Safety systems in Ontario, but they too are important parts of our lives at work. These systems have been subjected to the same pressures as Employment Standards and Labour Relations and we have seen significant deterioration in the protection workers receive.

The Workers Compensation System and the Workplace Safety and Insurance Board (WSIB) has been off loading costs from a system funded through workplace employment payroll costs unto individuals and the public purse. Over one billion dollars (\$1,000,000,000) in direct costs are being downloaded by the WSIB annually. These costs now borne by the public include Social Assistance, CPP-D, ODSP, Health care, loss of income impacting the local economy and deteriorating health status of the disabled workers.

The indirect costs of disallowing thousands of disability claims each year is upwards of \$3 billion annually. And the costs to workers and their families – Ontario citizens and voters – is staggering. Almost 50 of workers with a long term injury become so depressed – beaten down by the system – that they are no longer productive. They may lose their jobs, their families, their homes and their self respect.

And to add insult to injury, workers are often discouraged – or coerced – to not even report injuries. This has serious consequences for workplace health and safety. If injuries aren't reported, they aren't investigated – so risks are not identified and eliminated.

This has resulted in a 30% increase in the fatality rate over three years – from 2009 to 2012. According to the WSIB document - *2012 - 2016 Strategic Plan: Measuring results Q4 2012 report* - on page 12 - the chart with the five year trend *WSIB - Allowed Traumatic Fatalities* show 49 in 2009, 58 in 2010, 59 in 2011 and 65 in 2012. So, the increase from 2009 to 2012 is 30.6 %.

Do we really want to see more fatalities in the workplace? Do we really want to have more injured and disabled workers facing depression, loss and suffering in our communities?

This cost shifting increases the stress on the provincial budget at a time when the provincial government is predicting major cutbacks in public services. This cost shifting must stop and the Workers Compensation system must return to its founding principles – *compensation for as long as the disability lasts*.

Disabled and injured workers have been falling behind for the last 17 years – a reduction of 25% in their benefits – but the current administration has decided that's not enough.

Some facts from the WSIB quarterly and annual reports include:

- From 2009 to 2010, the WSIB had increased its denial of new claims from 7.9 to 11.3% ;
- By September 2011 there was a \$631 million reduction in benefits costs compared to 2010;
- There has been a 74% reduction in the length of vocational rehabilitation plans compared to the year before;
- Average annual benefit paid to a permanently disabled, unemployed worker is reduced to \$15,106 a year compared to the average of \$21,144 prior to 2010
- There has been a 31.3% reduction in permanent impairment awards compared to 2010.

As our oldest social programs in Canada, the WCB/WSIB is a worthy case study for understanding our public services. We believe it is changing from an historic social compromise struck back in 1913 to a more private, corporate model. Presently the CEO of the Ontario WSIB is a retired banking executive with no workers compensation experience, making over \$400,000 per year plus bonuses with a mandate to cut costs.

The result over the last ten years has been a shifting of wealth from disabled workers and their families, many of whom can no longer find work, to the top 1% - to the tune of \$1,000,000,000 per year. Plus, the workplace funded system is transferring additional costs to our public social services and health care system in the hundreds of millions of dollars each year.

The end result for thousands of Ontario families is a story of crisis, despair and destruction, in part brought about by the stigma injured workers face. This stigma can be a daily challenge to the worker's integrity and self respect that can eventually wear a person down until they want to give up. In fact, our totally volunteer group had eight people on suicide watch until we were no longer able to provide that level of service.

In September of 2010, the Minister of Labour and WSIB appointed Professor Harry Arthurs to conduct an independent review of funding of the WSIB and related matters including the issue of benefit indexation for injured workers on partial benefits. Injured workers on partial benefits have seen the value of the benefits they must rely on eroded by inflation since 1995. Professor Arthurs concluded that fairness clearly involves restoration of full indexation and abandonment of the present ad hoc system of annual adjustments by regulation.

Professor Arthurs found that steps could be taken to restore full indexation for injured workers on partial benefits and restore some of the erosion of the value of those benefits at the same time as reducing the Unfunded Liability (UFL).

1) We recommend that the Ontario Government implement in the upcoming budget Professor Arthurs' recommendations:

- restore full indexation for injured workers on partial benefits ;
- to allow for the restoration the value of the eroded benefits of injured workers; and
- to disallow the current practice of *ad hoc* indexing.

Professor Arthurs also made many recommendations for both the Government and the WSIB to take to ensure that that workers are protected and the experience rating programs are consistent with the requirements of the WSIA. Professor Arthurs wrote on page 81 of his report *Funding Fairness*:

In my view, the WSIB is confronting something of a moral crisis. It maintains an experience rating system under which some employers have almost certainly been suppressing claims; it has been warned – not only by workers but by consultants and researchers – that abuses are likely occurring. But, despite these warnings, the WSIB has failed to take adequate action to forestall or punish illegal claims suppression practices. Unless the WSIB ... is able to vouch for the integrity and efficacy of its experience rating programs, it should not continue to operate them.

To date the Government and the WSIB have failed to implement Professor Arthurs' recommendations.

2) We recommend that both the Government and the WSIB immediately and fully implement Professor Arthurs' recommendation – section 6.1 of his report.

Many workers and employers remain unprotected by Ontario's workers' compensation system. Professor Arthurs described the coverage issue as so critical for the future of Ontario's workplace insurance system that it deserves early and extensive study .

3) We recommend that the Ministry of Labour immediately commission a study on coverage with a view towards increasing coverage and addressing potential problems in implementation.

We have heard serious concerns about benefit reductions to vulnerable injured workers under the present WSIB administration.

4) We recommend that wage loss benefits be based on actual wage loss and not the deeming currently practiced at the WSIB –as was proposed by Minister Peters and passed in the provincial budget in 2007.

We hope that any positive recommendations you make will be better received by this government than those made by Harry Arthurs in his review of Workers Compensation.

Initial Thoughts on the WCB/WSIB as a Public Service

In 1997-98, the Mike Harris government passed the Workplace Safety and Insurance Act – attempting to transform the Workers Compensation Board to a private insurance model. As a result, overall, we have seen the Workers' Compensation system become more complex and more adversarial, often to the disadvantage of workers injured or made sick by their work.

This complexity along with the expansion of experience rating – a common private insurance feature - have resulted in the growth of employer representatives or consultants who offer their services to employers. They often suggest they can save the employer money dealing with this big, complex system. Unfortunately, the employer consultants do not usually share the same goals as the employers they work for and certainly not for the system as a whole. They are out for a quick buck, and if the injured worker suffers, no problem. Far too often the employer also suffers with low worker morale and disrupted labour relations. The system itself suffers thru revenue leakage – over \$2,000,000,000 over ten years from experience rating rebates and increasing adversarial relationships with its key stakeholder groups.

As the system becomes more adversarial, it faces a challenge of reduced credibility and greater criticism. As confidence in the system wanes, stakeholders more regularly question if its being managed effectively and efficiently. And no one likes to pay into a system they think is out of control . Add to this that successive governments have treated the WSIB/WCB as a political football, in recent time reducing (and keeping low as the unfunded liability rose) employer assessments to the tune of \$800,000,000 per year.

We feel that the Workers' Compensation system has gone out of balance and is now creating undue hardship on workers with a permanent disability/impairment. Big business

and the top 1 % are profiting by approximately \$1 billion per year. But what about the lives of the people the system was created to serve, injured and disabled workers?

It looks like the government has chosen to accommodate employers' desire to have lower premium rates. Injured workers want to go back to work, but accommodation for them is discretionary. And if employment is not sustainable, then it's the injured workers' fault. And both the Government and the WSIB have resisted keeping track of employment numbers for permanently injured workers.

For over twenty years we have asked the Ministry of Labour and the management of the WSIB – and previously the WCB – to track the outcomes of the people they serve, particularly those injured workers who end up with a permanent, life long disability. We have submitted a proposal to the Minister of Labour to amend the Memorandum of Understanding between the MOL and WSIB to require tracking outcomes (employment, wage loss and health status) of workers with a permanent disability.

No action is being taken. We feel like we are invisible. A recent study (2006) done by Street Health in Toronto on Homelessness found the 57% of the homeless people interviewed were hurt at work.

No one bothers to keep track of our loss and suffering and people believe injured workers get cash for life . This may be a common understanding but not reflected in our experience. We are attaching a survey we did of workers with a permanent disability in Thunder Bay. A few of the findings:

- 71% are living under the poverty line
- 42% are receiving welfare (OW or ODSP)
- 18% are receiving WSIB benefits
- 15% are working
- 63% are depressed
- 15% contemplated suicide

We regularly receive emails such as this:

I have been injured since 1997 with two back surgeries , lower. I am going bankrupt soon. severe depression and stress. All related to my back pain. Injury has moved up to my upper back and neck. I can barely do normal everyday activities. I have been in treatment for self medicating my self. ie alcohol and drugs. i have two children five and 7 months old that suffer for me. me and my wife are at each others throat. I would love to tell my whole story to you. please please contact me i don't know what to do. cant take the stress no more

We also believe that the failures of the workers' compensation system end up negatively affecting the bottom line of our provincial and local governments. They are being billed to assist Ontario citizens who become hurt or are made ill at work and end up unemployed, living in poverty and causing pain and suffering in their families and our communities. Examples of this cost shifting from employers to the public purse include;

- to Canada Pension Disability benefits;
- to Ontario Disability Support Program;
- to E.I. sick pay;
- to Indian Affairs for aboriginal workers;
- to OHIP – public health care;
- to injured workers and their families;
- to child and family social services.

Why are we being ignored?

Our Experiences as Injured and Disabled Workers

It is common for people to understand the world through their own experiences. We as injured and disabled workers have a particular experience to share.

We have seen costs to employers for Workers Compensation reduced by about 30% in the last fifteen years. Ninety percent of these savings have gone to large employers making up only 10% of all employers in the province. That means a savings to these largest employers of over \$600,000,000 a year. While at the same time, workers who become injured and disabled are falling further into poverty. Injured Workers have seen their benefits cut by Bill 162 in 1990, by Bill 165 in 1995 and by Bill 99 in 1998.

While benefits for injured and disabled workers were cut, wages for top management at the WCB/WSIB more than doubled so the CEO now makes more than \$400,000 per year and the number of staff earning over \$100,000 is growing rapidly.

It is believed that by knowing one's history, we, as a society, can learn from our achievements and mistakes. We encourage you to understand our collective history with the Workers' Compensation Act and the agency that delivers it to Ontario's Injured Workers.

The Workers' Compensation System was created in Canada in 1914-15 following an Ontario Royal Commission led by Chief Justice William Meredith. He called it a Historic Compromise and laid out the following principles:

- Employers: would not get sued leading to social stability that would be the result;
- Workers: no fault system=no delays; non-adversarial, no harassment; an impartial, independent public board;
- Inquiry system: help the worker, give them the benefit of the doubt;
- Employers to pay (as they are protected from lawsuits): the burden was not to fall on the injured worker, their family, or society in general.
- Payment was to occur for as long as the disability lasts;
- Payment was to be based on the concept of lost wages.

To limit the period during which compensation is to be paid regardless of the duration of the disability . . . is in my

opinion, not only inconsistent with the principle upon which a true compensation law is based, but (also) unjust to the injured workman for . . . he will be left without earning power at a time when his need of an income will presumably be greater than (before) he was injured.

Meredith, 1915

. . . it would be the gravest mistake if questions as to the scope of the proposed legislation was to be determined, not by consideration of what is just to the working man, but of what he can be least put off with or if the legislature were to be deterred from passing a law designed to do full justice, owing to groundless fears that disaster to the industries of the province would follow from the enactment of it.

Meredith, Final Report, 1915

In Conclusion

As our focus for the last 30+ years has been on Workers Compensation and Occupational Health and Safety, we are attaching our *Platform for Change* that we released earlier this year. While it doesn't strictly fall in your mandate, it is a significant part of our working lives and the principles contained in the document are transferable to your work at hand.

Related Issues

Support to community groups

The Ontario Poverty Reduction Strategy lays out in its principles that people living in poverty need to be involved and consulted; and that the strategy must recognize the heightened risk among such groups as immigrants, single mothers, people with disabilities, aboriginal peoples and racialized groups.

In order to accomplish this, democratic organizations controlled by these target groups that bring them together to discuss their issues and concerns and represent them in dealings with the government are vitally important. That's if the government wants real involvement and consultation. And as it has been pointed out in numerous studies, government must support such community groups financially so that they have a viable voice.

In our case, the Harris Tories cancelled the funding for our local group and our provincial umbrella organization, the Ontario Network of Injured Workers' Groups, because we wouldn't keep quiet. Obviously they were not interested in truly involving us in the process.

We are attaching the following appendices for further information.

- A. Platform for Change
- B. Short Summary of research findings on Workers Compensation and Return to Work (RTW) in Ontario
- C. The Changing Workplaces Review
Deputation of Injured Workers' Consultants Community Legal Clinic
- D. Websites for more information:
 - www.consequencesofworkinjury.ca
 - www.injuredworkersonline.org
 - www.thunderbayinjuredworkers.com



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PLATFORM FOR CHANGE (2004)

As amended by the Thunder Bay & District
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 1st as "Injured Workers Day."

- There will be official recognition of April 28th 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.

Short Summary of research findings on Workers Compensation and Return to Work (RTW) in Ontario

2013

1. 1981 – WCB Survey of Pensioners
Survey of injured workers in Ontario collecting partial permanent disability benefits found 40% unemployed and another 5% underemployed.
2. 1988-90 – Survey of 11- 12,000 injured workers in Ontario collecting partial permanent disability benefits. Done in preparation of the changes from a pension system to a wage loss system (Bill 162 in 1990). Looked at employment experience following disability and a separate survey concerning rates of diminished loss of quality of life experienced by workers with various impairments.
 - Returns to Work by Ontario Workers With Permanent Partial Disabilities (1993) Johnson & Baldwin
Examined factors that influence RTW. Found 71% employed three years post injury.
 - Managing Work Disability: Why First Return to Work is not a Measure of Success (1995) Bulter, Johnson & Baldwin
Analyzed data further – found over 50% unemployment 5 years post injury. (note: when reading the full study, it may be unemployment might be over 60%)
 - Quality of life research done by John Burton and Sandra Sinclair – points out that the AMA guides (and the pre -1990 WCB meat chart) undervalue the extent of the impact of most impairments – particularly back injuries, chronic pain, heart disease and respiratory disease. Was to be used to develop a new meat chart for NEL ratings. Thrown out because it was too expensive.
3. WCB Future Economic Loss (FEL) Study 1994 Found 78% unemployed at first review (R1) 3 years post injury.
4. Vocational Rehabilitation and Re-employment from the Injured Worker's Perspective (1995) Canadian Injured Workers Alliance
This report compiles the results of a research study. In this study, it was found that 74.3% of workers with a permanent disability are chronically unemployed, that 60 are re-injured upon their return to work, and more.
5. Participatory Research by Injured Workers: From Reflection to Action on Compensation and Return-to-Work Issues (2001)
Involved over 300 injured workers. Found that the compensation system and RTW process is perceived as problematic and unsatisfactory by a large

proportion of IW in Southern Ont. Lots more detail as well.

6. Pre 1990 Claims Unit study – Peri Ballantyne (2001)

40 IW were interviewed – all pre 1990 – on average 17 years post injury. Most workers had chronic employment instability following injury – 60% unemployment at time of interview.

Injury and Return to Work

Prior to their injuries, the workers in this study had stable employment histories, were committed to their work, recognized the difficulties, and in some cases, the danger and risks involved in their work, and they described the benefits of their work, related to income and financial security, and a favourable standard of living.

Many said their injury was not immediately recognized. In some workplaces, regular heavy and painful work prevented them from realizing a significant injury had occurred. Some injuries occurred during a traumatic event and were indisputable, while others occurred over time. Others were the result of a discrete event that was sometimes misinterpreted by a worker or challenged by an employer. The workplaces had a range of informal and formal procedures for reporting an injury.

After being injured, most found it difficult to retain employment. Those who had a secure job prior to their injury were more likely to be employed. The definition of secure employment for this study means a job in a larger-sized firm or company, or one in a unionized environment. Less than half of the injured workers interviewed were in jobs of this nature at the time of their injuries. However, even those having a secure position did not necessarily retain their pre-injury level of employment. As well, union membership didn't ensure protection of a worker's position. Workers in less secure workplaces or occupations often had limited opportunities for work after they were injured and they were more likely to become unemployed or take jobs that under-used their skills/education. Many retired well before the normal retirement age—only two did so voluntarily.

Some workers in the study described successful rehabilitation, retraining and return-to-work experiences. However, many workers who returned to work after injury discussed the risks of their disabilities getting worse, and of re-injury. Many felt their workplaces did not fully protect them, and in some cases, they felt the work they did made their injuries or disabilities worse.

Quality of Life Issues

The progress of an injury and recovery was central to how workers' felt about their quality of life after an injury. Most people had a reoccurrence or worsening of their injury, while many others experienced new injuries. Several developed other illnesses which made their original disability worse and which limited their chances for successful

return-to-work. Many workers spoke of living with chronic pain and several were concerned their long-term use of medications to control pain.

Many workers struggled over losses related to the inability to support their families and several described family breakdown. The financial consequences of the loss of employment following injury were of great concern for injured workers. They described greatly reduced incomes, as well as the loss of benefits such as extended health, life insurance, retirement pension contributions, etc.

7. Return to Work in Small Workplaces: Sociological Perspective on Workplace Experience with Ontario's 'Early and Safe' Strategy

Joan M. Eakin, Judy Clarke, Ellen MacEachen (2002)

Results: When delegated to the workplace, the implementation of Early and Safe Return to Work (ESRTW) is superimposed on and becomes part of the everyday social organization, interactions and customs of the workplace ('how things are done around here'). The requirements of ESRTW are filtered through the logic of the workplace and 'adapted' to the needs and standpoints of the parties involved. For employers, ESRTW is a business problem, with significant administrative and managerial challenges, that can draw them, often involuntarily, into the disciplinary and medical management of RTW. Compliance with ESRTW and compensation regulations can impose an administrative burden, conflict with workplace norms, undermine their managerial authority, and damage relationships with the injured worker and with other employees. For workers, ESRTW can be a struggle to protect their personal credibility and integrity, and to reconstruct their physical and working lives within the ambiguous and contested terms of 'co-operation'. Workers suffer under what we call the 'discourse of abuse' – persistent, pervasive imputations of fraudulence and 'overuse' of rights. Surveillance and its effects can extend into the injured workers' homes and family life. During the vulnerable and fragile stage of bodily injury and recovery, workers confront a range of social difficulties in determining when they should return to work, in managing issues of loyalty and commitment to the firm and employers, and in engaging in modified work that can be meaningless or socially threatening. For both employers and injured workers, damaged moral relationships and trust can trigger snowballing of social strains, induce attitudinal 'hardening' and resistance, and impede the achievement of mutually acceptable solutions to the problems of injury and return to work.

Conclusions: *The study has produced some important concepts and insight into the process of return to work in small workplaces which can be used to reflect on current policy and practice and to inform other research. Findings bring into question some the assumptions and principles of ESRTW, suggesting that the strategy might be transferring costs to workers and their families, and to employers, and that the notion of 'safe' needs to include social as well as physical security. The study also points to some paradoxical perversities in the strategy of self-reliance in small workplace settings, and cautions against a one-size-fits-all approach to RTW. Some issues – such as the disturbing implications of the discourse of abuse for the experience and disability of injured workers – transcend the matter of size and deserve consideration with respect to all*

workplaces and the system as a whole.

8. WORKERS WITHOUT WORK: INJURED WORKERS AND WELL-BEING

Sharon Dale Stone (2002)

Injured Workers and Worker Identity

Although the question of identity was not the primary focus of the research, interview data show that injured workers who are unable to return to work are forced to re-evaluate their sense of identity. Following workplace injury, a number of changes take place: the loss of gainful employment challenges a worker's own internal sense of well being; it is frequently cause for friends and family to regard them differently; and it leads to new people intruding into their lives. These changes, along with the necessity of dealing with health professionals and claims adjudicators, serve to reinforce the sense of having a new and less socially valued identity to get used to — the identity of injured worker.

The strength of the worker identity, and the way it is tied to a sense of well being, is apparent as focus group participants talked about what it meant to them to no longer be able to go to work. For several participants, being unable to work made their experience of workplace injury one of the most devastating of their lives. One man, for example, did not like to dwell on the implications of his injury, and became overwrought after talking about the issue in the focus group. He reflected:

- *You know, I haven't cried a whole lot in my life, I've cried a few times, I cried when I couldn't go to work, you know, I cried when my boy got hit last year by a car, almost killed, and I cried today. (man, former construction worker)*

9. Value for Money Audit on LMR – Deloitte – 2003

55.7% unemployment following LMR.

10. RAACWI Health Survey – preliminary findings – 2010

At approx. two years post injury, workers with a first time injury who had received a NEL award – only 55% were currently employed.

The Changing Workplaces Review
Deputation of Injured Workers' Consultants Community Legal Clinic
September 11, 2015

Injured Workers' Consultants is a community legal clinic that has been serving injured workers free of charge since 1969. We are here today to ask that the experience and perspective of injured workers be taken into account when reforming the employment standards regime.

With only 10 minutes to speak, I will focus on the story of a single injured worker that was reported in the Toronto Star earlier this year (on May 18th). The part of the article I want to talk about today is this:

Toronto resident Gordon Butler asked his employer, a small construction company in Markham, for one day off work after he sliced his thumb open on the job. He says his boss told him not to come back.

“I didn't believe him,” says Butler, 44, who has an 8-month-old child. “I tried to plead with him, and he said ‘No, too bad.’”

This is but one devastating example of the law failing to protect a worker in the most basic way. In fact, it appears (even on the limited facts we know) that Mr. Butler fell through the cracks of at least three pieces of employment-related legislation intended to protect him.

We appreciate that your terms of reference focus on the *Employment Standards Act* and *Labour Relations Act*, but they do include broader issues affecting the workplace and access to the protection of labour and employment laws. In addition to commenting on the ESA, we would like to explain how other important employment laws such as the *Workplace Safety and Insurance Act* (or WSIA) are also losing their potential to protect workers in the changing economy and workplaces, and should be considered in the context of this review.

Coverage of the workforce in Ontario is very poor because industries required to have workers' compensation coverage are listed in Schedules to the Act, which have not been updated for decades. Many modern forms of work such as call centres and technology industries were unheard of at the time of the last review. A 2003 WSIB report on coverage by Brock Smith recommends that virtually all employers and workers in Ontario be required to have workers compensation coverage, and yet no action has been taken on that report. Now, in the context of your review, is a good time for the government to implement the 2003 Final Report on WSIB Coverage.

We want to encourage you to consider the WSIA as another important employment law that is an integral part of the basic rights that we are trying to protect with our employment standards legislation.

Returning to the story of Gordon Butler, who was fired after slicing his thumb at work and requesting some time to recover... First of all, the *Employment Standards Act* didn't ensure that Mr. Butler had a job-protected sick day, since he worked for a "small company", and companies under 50 employees are exempt. Even had the ESA guaranteed him a day to recover his health, thus helping to prevent further injury to himself and his co-workers, he would have suffered financially, since the current ESA only provides unpaid leave. Furthermore, the ESA did not protect Mr. Butler from being fired unfairly, since it does not contain any protection against unjust dismissal. In other words, as long as Mr. Butler was given his minimal entitlement to termination pay (which is perhaps a generous assumption in this case), what happened to him was not contrary to the ESA.

While acknowledging the shortcomings of the ESA, the employer's actions were in fact contrary to the *Workplace Safety and Insurance Act*. Mr. Butler should not have had to take a sick day under the ESA, even had he been entitled to one, since he sliced his thumb open on the job. The WSIA requires that workers be paid loss of earnings benefits by the compensation system for any time lost due to a workplace injury. In this case, not only should the employer have reported the workplace accident to the Board, but it was an offense under the WSIA not to do so. Another possible violation of the WSIA is the employer's failure to re-employ a worker after taking time off for a workplace injury.

Mr. Butler's employer also violated the *Human Rights Code*, which prohibits discrimination of employees on the basis of disability. This includes terminating an employee on account of a workplace injury.

Now, you might wonder what motivated Mr. Butler's employer to disregard several important employment laws, as well as basic standards of human dignity. Some people may believe this particular construction company is just a "bad apple", and that Mr. Butler's story is not indicative of any wider, systemic issues. But we think this overlooks an important opportunity to dig deeper and learn what is ailing what we already acknowledge is a broken system. That's why we're here today – to review and reform a system that doesn't work.

Based on our legal clinic's decades of experience with injured workers and their employers, let me tell you what we think really motivated Mr. Butler's employer to behave so reprehensibly. Money. Financial incentives set up (shockingly) by the WSIB itself through its "experience rating" program. Experience rating refers to the WSIB's practice of tying employer premiums to the cost of worker's compensation claims attributable to that individual employer. This means that, every time an employer hides a claim or fires an injured worker, they save money. This was recently studied by Harry Arthurs, former Dean of Osgoode Hall Law School, who found the system of financial incentives to constitute a "moral crisis" for Ontario's worker's compensation system.

The Board is proposing a new rate framework which it claims abolishes experience rating, however in reality, it continues to adjust employer premiums based on claims cost and history. No matter how the program or metric is structured, any system that ties employer costs to claims costs leads to claims suppression, termination of vulnerable workers, and pushing people back to work before they are healed.

Knowing what we do about experience rating, it is easier to see what might have been motivating Mr. Butler's employer. If Mr. Butler is fired before he loses any time, then it doesn't show up on the employer's claims record, and the company's premiums won't go up.

The Special Advisers may also be interested to know that experience rating fuels the incidence of precarious work, as it leads to increased use of temporary workers. Studies have shown that employers tend to hire temporary workers to perform more dangerous work, since any injuries to those workers will not show up on that employer's claims record, but rather that of the temporary agency. Because workers new to a worksite are statistically more likely to get injured, experience rating in fact contributes to promoting unsafe workplaces.

In short, we believe that the abolishment of any "experience rating" metric at the WSIB would have the biggest single impact on improving employment standards for injured workers, and also help improve the plight of temporary and disabled workers.

In summary, several pieces of legislation should have protected Mr. Butler, yet he fell through the cracks and ended up injured and unemployed. What is truly needed is the coordination and harmonization of all employment-related legislation. In other words, the *Employment Standards Act*, the *Workplace Safety and Insurance Act*, the *Human Rights Code*, the *Occupational Health and Safety Act*, the *Employment Insurance Act*, and other relevant legislation, should all work together to create respectful, healthy, and productive workplaces.

An important piece of this puzzle is also the coordination of investigation and enforcement. The fact that the experience of Mr. Butler was only uncovered through a journalist, points to the ineffectiveness of the current system. The regulation and enforcement of employment standards should be strengthened through coordinated, proactive, and expanded investigations, with more powerful tools for enforcement. At the very least, enforcement officers should receive adequate training of the various overlapping regimes so that they can take a holistic approach, and workers should be better educated of their rights under various pieces of legislation and how to enforce them. To that end, further funding could be provided to support workers in reporting and managing violations and workplace injuries.

Our hope is that this review takes a holistic approach to assessing workplace issues, and ultimately recommends better harmonization of all employment-related legislation. This harmonization should not happen by reducing the standards to that of the lowest common denominator, but rather the entire scheme should be equalized in a way that

reinforces the fullest extent of each worker's rights. In particular, workers should be entitled to:

- Universal coverage under the ESA and WSIA;
 - including paid sick days for all workers;
- Broader protection against unjust dismissal;
 - Specifically, placing a reverse onus on employers to prove that termination of someone with a disability (including a workplace injury) is not as a result of that disability or injury;
- Harmonization of employment-related legislation so that programs or provisions don't create gaps or incentivize negative outcomes;
 - In particular, recommending the abolishment of experience rating; and finally
- Proactive, coordinated, and expanded investigations, with power to effectively enforce the rules.

Injured Workers' Consultants will provide more detailed written submissions that include further recommendations for reform; however we wanted to take this opportunity to highlight the story of one injured worker, and to explain how the experience rating program and lack of harmonization in particular are creating unhealthy and unsafe workplaces, especially for injured workers. We sincerely hope that the Special Advisers will keep this in mind when making their recommendations, so that Gordon Butler and thousands like him don't continue to fall through the cracks.