

Eugene Lefrancois
President

Catherine Fenech
Secretary

Janet Paterson
Executive
Vice President



HEAD OFFICE

R.R. #1 Kaministiquia, ON
P0T 1X0
(807)767-7827

E-mail - munso@tbaytel.net

www.injuredworkersonline.org

April 4, 2014

An Open Letter to:

Kathleen Wynne, Premier
Legislative Assembly
Queen's Park,
Toronto, Ontario
M7A 1A1

Re: Stopping the WSIB Benefit Policies Scandal

Dear Premier Wynne:

The Ontario Network of Injured Workers' Groups (ONIWG) calls on you to stop the Workplace Safety and Insurance Board (WSIB) from changing the law governing workers' compensation in Ontario by way of internal policy change. Changing the law should be done by the Ontario Legislature and our elected representatives, not the institution charged with following the law, the WSIB. The usurpation of power undertaken by the WSIB is a "scandal" that your government should be aware of and stop before it adversely affects this province.

The proposed Benefit Policy review changes the foundation of the Act that has been in place since Sir William Meredith created the modern workers compensation system 100 years ago. It is a massive and illegal attack on the rights of the injured workers of Ontario. Instead of a fair Ontario, which you promised, we are witnessing a virtual "coup", happening under your watch, where an arms-length agency is attempting to change the law under the guise of "updating" internal policies.

Ontario elected your government to make the laws of our province. Unelected bureaucrats, like Mr. I. David Marshall, President and CEO of the WSIB, should follow the law, instead of changing the law, as if the WSIB were the government of Ontario.

We have asked the WSIB under a Freedom of Information Request (FOI) for the cost analysis of these policies and what is the revenue stream. Under the Framework for Policy Development, this costing is demanded by the WSIB themselves. What are the costs on our social programs of

workers who are denied benefits by WSIB? What is the human cost of workers, who through no fault of their own, have a work injury or illness and become under-employed or unemployed? As of yet, we have not received a response from the WSIB to our FOI request and the time for written submissions is April 30, 2014. These policies will have a direct impact on costs. Either the WSIB did the cost analysis or they did not. If they did, it should have been made public when these draft policies were released.

We refer you to the letter you received from four prominent, private bar workers compensation lawyers, dated March 14, 2014. Peter Bird, Michael Green, Ellen Lipes and Gary Newhouse made it very clear that the proposed policies disregard the Jim Thomas report and years of legal jurisprudence adopted by the independent Workplace Safety and Insurance Appeals Tribunal (WSIAT). They point out that “people familiar with motor vehicle accident insurance, which deals with similar causation issues, are shocked by the WSIB practice with respect to asymptomatic pre-existing conditions. The 1950 Roach report...properly concluded that asymptomatic pre-existing conditions should have no impact on benefits” (page 2).

As these lawyers and others have indicated, these changes are already in place and, once illegally codified into WSIB policy, the Appeals Tribunal will be bound by them. This will result in injured workers being denied justice and becoming more reliant on social assistance, food banks, OHIP and so on. This is in direct contravention of your government concern about poverty reduction and the historic compromise, in which workers gave up their right to sue in return for fair and just compensation for as long as the disability lasts.

The Benefit Policies will also introduce a massive intrusion into the private life of injured workers. The new focus will be on what happened before, not after, the injury. This will produce a massive intrusion into private medical records. Even before the policy change, we are already seeing workers who seek compensation for psychiatric conditions, being routinely asked to release all medical records for five years before the injury. This is in line with the most intrusive and socially backward legislation in states such as Alabama, Texas and Arizona. It is as though Tim Hudak were in charge of the WSIB, with his sympathy for the social policies of the regressive “right to work” US states.

We want to alert you, Premier Wynne, that what is happening is not only a legal scandal, it is also a moral scandal. Under the leadership of Dalton McGuinty, the Government hired Mr. David Marshall with an explicit bonus attached to his “success” in reducing the WSIB’s unfunded liability. We do not know of any other previous President of the WSIB, with an incentive directly connected to benefit reductions to injured workers. Injured workers are offended by this bonus. The WSIB should be fair, and should be seen to be fair. Instead, the bonus structure of its President compromises the Board and the Government that hired him.

Premier Wynne, we are in favour of a fair workers compensation system in Ontario. We are facing an unprecedented legal and moral crisis in workers compensation with these WSIB proposed Benefit Policies. We cannot trust the WSIB to listen to us particularly when the President and CEO has a financial incentive to enact these policies. This is a clear conflict of interest with respect to injured workers. Please help stop this Benefit Policy process and stop its

application in practice, which is already occurring. The time for intervention is very limited, but Ontario needs your leadership in this crisis.

We would be pleased to meet with you to discuss this important matter further.

Sincerely,

Eugene Lefrancois
ONIWG

Cc Kevin Flynn, Minister of Labour
Andrea Horwath, NDP Leader
Taras Natyshak, NDP Labour Critic
Sid Ryan, President OFL