

PETER BIRD

LAWYER

31 Prince Arthur Avenue
Toronto, Ontario, M5R 1B2
Telephone (416) 929-9408 Fax (416) 960-5456
Email: peterbird@on.aibn.com

March 14, 2014

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

Dear Premier Wynne:

Re: WSIB Draft Benefits Policies

We are writing to you concerning draft Benefits Policies recently released by the Workplace Safety and Insurance Board (WSIB), and in particular, the draft policy dealing with Pre-existing Conditions. We write as four lawyers who have practised workers' compensation law for a collective 134 years.

We are writing to you directly, because we feel that the WSIB is intent on implementing the draft policies without modification. In fact, the WSIB has been adjudicating the claims of injured workers largely as described by the policies "illegally" for the past 4 years, contrary to the law as set out in the legislation, existing operational policies, and a long history of decision making at both the WSIB, and the Workplace Safety and Insurance Appeals Tribunal (WSIAT).

We would consider describing these draft policies as regressive, but that word would be inaccurate, as no workers' compensation policies have ever been such an explicit attack on the rights of injured workers in all of the years since the Meredith principles and the workers' compensation system were established 100 years ago.

The draft policies would codify this massive cutback to injured workers' benefits, tantamount to a re-writing of the legislation. Your government is responsible for ensuring that the WSIB administration which has written these draft policies withdraw them immediately, or be replaced by a different administration that will withdraw them.

In May 2013, Jim Thomas released his final report after conducting a review of WSIB Benefits Policies. Mr. Thomas recommended that a Pre-existing Condition policy be drafted, but essentially recommended that it be drafted along the lines of existing WSIAT decision-making, and longstanding WSIB practice, that is, the "significant contributing factor" test and the "Thin Skull Doctrine" would continue to be respected.

The WSIB draft policy for Pre-existing Conditions eliminates both the significant contributing factor test, and the Thin Skull Doctrine. The WSIB asserts that the mere presence of even an asymptomatic pre-existing condition is evidence that an injury is not work-related. 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 with respect to the Ontario "Workmen's Compensation Act" properly concluded that asymptomatic pre-existing conditions should have no impact on benefits.

Injured workers and their representatives have seen how the WSIB has been adjudicating claims in practice. Once the usual healing time has been reached, it is assumed that any ongoing impairment is related to the asymptomatic pre-existing condition. Benefits are terminated. The usual healing time is used as the maximum healing time.

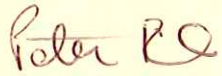

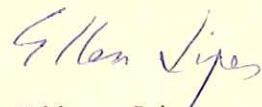
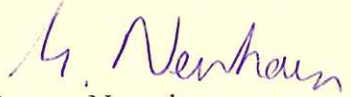
Current WSIB policy, still in force, but "illegally" not being used, states that asymptomatic pre-existing **conditions** do not impact benefits, whereas, symptomatic (i.e. causing pain, requiring health care, disrupting employment) pre-existing **impairments** do impact benefits.

The draft policy explicitly states that benefits can be terminated even if the injured worker continues to suffer from a work-related injury / disease causing functional impairment.

We therefore join with the Ontario Network of Injured Workers Groups (ONIWG), the Ontario Federation of Labour, and the many unions, organizations and individuals, who call for the draft policies to be abandoned.

We would be pleased to meet with you, or your Minister of Labour, to discuss this matter in greater detail. Thank you.

Yours sincerely,

   
Peter Bird Michael Green Ellen Lipes Gary Newhouse

cc Yasir Nasqvi, Minister of Labour
 Andrea Horwath, Leader Ontario NDP
 Tim Hudak, Leader Ontario PC
 Taras Natyshak, NDP Labour Critic
 Monte McNaughton, PC Labour Critic
 Elizabeth Witmer, Chair WSIB
 Sid Ryan, President OFL
 Patrick Dillon, Business Manager and Secretary General,
 Building & Construction Trades Council of Ontario
 Michele McSweeney, President ONIWG