

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. ¹

Justice for Injured Workers Means:

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

- Our compensation system shall 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 shall be protected. Schedule II will be eliminated and all employers will come under the collective liability system. Experience Rating shall 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 shall be administered with the understanding that its primary purpose is to compensate and support injured workers. It shall 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 injured workers. ***(The Governance of the Board is a complex issue which will benefit from further exploration and discussion.)***

¹ This original version of this document was first drafted for and adopted at the Platform for Change Conference held in Toronto April 30th and May 1st 2004. Sponsoring the conference and adopting this document generally known as *The Platform for Change*, were: Ontario Network of Injured Workers Groups; Ontario Federation of Labour; Toronto Injured Workers Advocacy Group; London Regional Advocates Group; Ontario Sheet Metal Workers' & Roofers Conference; Canadian Auto Workers; Ontario Legal Clinics Workers' Compensation Network; Victims of Chemical Valley; London Occupational Safety and Health; Ontario Public Service Employees Union; United Steelworkers of America; Communications, Energy & Paperworkers Union of Canada; United Food and Commercial Workers, Canada; Canadian Union of Public Employees, Ontario Division; and Ontario Nurses Association. This version has been recently edited by members of Injured Workers' Consultants on behalf of ONIWG in a first stage of renewing the use of the document. September 2013.

- The public shall 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 shall conduct regular and thorough research on the impacts of injury and the WCB's sufficiency in addressing them.
- All workers in Ontario shall 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 provide ensure that they are financially secure.
- Non-dependent family members of workers who have died from occupational injury or disease shall be compensated.
- There will be coverage for secondary victims of occupational exposures – including people who are harmed by substances 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) shall 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

- Both the Board and the Tribunal will operate in an enquiry system. This will minimize bureaucracy and increase access by workers.
- 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.

- Adjudicators shall 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 shall provide the injured worker with a simple but comprehensive written explanation of the system and how to navigate it. The material shall 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 shall be available in multiple languages.
- Board decisions shall be speedily rendered, with no undue delays.
- High quality initial adjudication will be provided and adjudicators shall 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. The Board shall 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
 - 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. Adjudicators will understand that their role is to seek to compensate and provide full benefits unless entitlement must be denied.
 - *(Note there has always been a lot of discussion about the role and training of adjudicators—it is an important area. Some people say that the best solution is to make the legislation clearer and give the adjudicators less discretion in their decision making. Others say that this could limit flexibility which is sometimes important. This is an area to discuss more as well.)*
 - 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. Where appeals are necessary though, the Act shall provide that workers are covered financially during the period that the WCB is rendering a decision. Initially, a worker will receive one

month of benefits after a decision to terminate benefits has been communicated to him or her. This will allow the worker some time to apply for other benefits such as EI, and to begin the appeal process. The WCB will provide advice and assistance to the worker concerning other benefits that he or she may apply for such as EI and ODSP and shall swiftly communicate necessary information between the relevant organizations to facilitate payment. In situations where the Board has not been able to issue a decision on an appeal after a period of 3 months, benefits will restart and shall continue until a decision is rendered. This will help protect injured workers from financial hardship, which often leads to distress and permanent psychological harm. This will also provide an impetus for the Board to make timely decisions.

- The Board shall include, with all its decisions, a full, multi-lingual description of the appeal system and resources for assistance.

3. Full Compensation and Dignity

The determination of the best method to compensate for permanent disability has been one of the most difficult areas of compensation law and policy. We will want to spend time to think carefully and creatively on this topic

- The compensation system shall 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.
- Wage-loss benefits shall replace the full income lost due to the worker's injury and disease.
- If there is a benefit plan with the pre-injury employer, the employer shall continue coverage for the two years of the re-employment obligation. In any case, the WCB shall 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. *(See Weiler for discussion of this.)*
- Wage loss benefits shall include payments, by the WCB, to CPP to maintain the retirement entitlement. *(This would require legislative change at CPP as well. The point is that a) CPP should not suffer the loss of contributions due to workplace injury—it should be a cost of the injury to replace that contribution, and b) the i.w. should not lose the value of the retirement benefit—which is not preserved unless and until the injured worker gets CPPD. The details might be a bit complicated, but the principle is important. This and other aspects of the inter-action of WCB and CPP which has detrimental impacts on injured workers could use discussion.)*

- If long-term and permanent payments are based on wage loss the system shall use like-comparators. for pre and post accident income. Under the current system, the wage-loss is seriously underestimated.
- The law shall establish a minimum wage-loss benefit payable regardless of the pre-injury earnings.
- The current practice of *deeming* a worker to have phantom wages shall end. The actual wage-loss should be the *minimum* basis for compensation to the worker. Projected earnings from a vocational rehabilitation plan shall not be used to deem earnings. The only circumstance where deemed wages can legitimately be used to lower compensation, is in those cases where it is clear that the worker is unco-operative. *(In any wage-loss system we would have to look carefully at the best wording to produce a reasonable determination method.)*
- The WCB will recognise the validity (reality) of part-time work and even volunteer work for permanently disabled workers and will compensate them accordingly (in a wage loss system).
- Injured workers shall receive a pension for life, based on the degree of their permanent disability. This includes the understanding that the disability does not disappear at age 65. *(The current “retirement benefit” provided by the legislation represents a drastic plunge into poverty after age 65 for many workers.) If the wage loss is greater than the pension, a supplement will be paid.*
- Severely disabled workers shall receive additional benefits and support allowances that allow them to live in dignity.
- CPP benefits shall not be deducted from workers compensation benefits.
- Benefits shall be fully indexed to the cost-of-living

4. Medicine that Heals

- Our compensation system shall restore injured workers into the hands of their treating physicians. It shall allow them the choice of their practitioners and be open to alternative treatments.
- Injured workers shall have the right to the same relationship to the healthcare system as all Canadians. Specifically they shall be treated within the public, one-tiered, system under the direction of their main treating doctor. The Canada Health Act needs to incorporate the workers’ compensation system.
- 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 shall be respect for the opinion of the worker's doctors and/or other health care providers, including their comments on functional abilities and work capacity
- During the period of recovery, the WCB will recognise the special home needs of an injured worker.
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- Principles of *Managed Care* have no place in our public, no fault system. The compensation system and its medical profession staff and advisors, including Nurse Case Managers, shall take care to avoid claims control and benefit control activities. They will not function as behind-the-scenes adjudicators.
- Workers shall have the right to heal after injury without pressure from the Board or employer to return to work .
- The employer shall not have the right to require the injured worker to undergo a medical examination.
- Maintenance physiotherapy and other long-term treatments including medications shall be recognised 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 which recognises the special difficulties they face as persons with disabilities in obtaining and maintaining employment. The system shall seek to assist injured workers with both social integration and locating suitable employment. The wording from the 1982 *Vocational Rehabilitation Division Manual* would be useful today. In part, it says:

At the Workmen's Compensation Board, our rehabilitation philosophy is predicated on the concept that we see the injured worker settled in the community and employed at a job which 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.

- The "self-reliance" concept will not be used as a return-to-work or rehabilitation tool.

- The Board shall take an active and in-depth role in facilitating return to work. This means actively working with an injured worker to ensure that the employer takes all reasonable steps to accommodate the job and workplace environment to the worker's disability. The Board shall apply the Human Rights Code in this work.
- Where work with the accident employer is not available or is not suitable, then the hands-on approach means actively assisting 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 shall recognize the power imbalance underlying worker and employer negotiations, particularly for non-union workers, and provide extra support to workers accordingly.

The Board shall 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* 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* 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 shall provide the worker with retraining to return to a new job with the accident employer.
- The Board shall 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 shall receive benefits to compensate them for their wage loss.
- When it is in the worker's best interests, the Board shall 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.

- Where there is a union, the employer and Board shall work with the union, including Joint Return to Work Committees. These Joint Committees shall be properly resourced, trained and supported by active enforcement and involvement by the Board. The Joint Committee shall have the authority to recommend modifications to the workplace as required to accommodate the injured worker.
- Experience Rating shall not be used as an incentive tool for return to work compliance for employers since it produces reverse effects. Any incentive tool shall 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.
- There shall be 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 shall be no time limit on these obligations.
- The Act shall 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 shall 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. 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. *(Or something likes this. We need something that protects the worker who returns to work—maybe managing without accommodation; maybe without a wage loss—but who in the actual “labour market” would have difficulty getting hired at least in part due to the compensable injury. This is a bigger or smaller problem depending on whether there is a wage loss system in place and whether experience rating is in the picture—however even in a non-experience rated, solid pension situation, an employed injured worker can still lose a job and find it next to impossible to get another one. This requires further exploration of ideas and discussion.))*
- Quality, public rehabilitation services shall be provided. Experience shows that for-profit, private, rehabilitation companies are more effective in generating self-income than assisting injured workers in securing theirs.
- Rehabilitation and employment shall be suitable for the worker, vocationally, socially, financially, physically, and psychologically. Workers shall have the right to design and approve their rehabilitation plan. The plan shall not be imposed by the

Board. The plan shall 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 can include support for new special arrangements which may be required such as childcare.
- English as a Second Language programs shall be made available to injured workers whose first language is not English. These programs shall 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 schools.
- 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. 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 shall recognise that injured workers face special hurdles in advancing through their careers and therefore the Board shall support retraining to the worker's full potential.
- Rehabilitation will not be considered complete without a viable job. The WCB itself will set an example by hiring injured workers. The Board shall recognize, though, that some workers are competitively unemployable. Competitively unemployable workers shall receive full benefits and social rehabilitation services.

6. Access to Justice

- At all levels of decision-making the Board and the appeal systems will operate on inquiry 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 a worker to overcome numerous barriers in obtaining it themselves.
- Time limits for workers in filing a claim and in appeals will be eliminated.
- Employer's involvement in claims is creating an adversarial system which was to be specifically avoided when the compensation system was founded. Employers will have the right to appeal 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 shall 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 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 Appeals Tribunal will not be bound by Board policy.
- A tripartite appeal panel shall be available as a matter of course.
- Appointments to the Tribunal shall be competent and qualified.
- Members of the Provincial Legislature, including their trained staff, will be among those who provide assistance, including representation at appeals. *(MPPs and their assistants used to do this work and it was a very valuable source of their understanding of the issues of injured worker.)*

7. Funded Arms Length Programmes

The legislation shall provide arms length funding for such organisations as:

- The Office of the Worker Advisor
- 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 “National 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 and provision for workers representatives to attend ceremonies.

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 to aid in producing safer workplaces.
- Experience Rating shall 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 shall not be used as evidence of safe and healthy workplaces.
- Incentive programs (merit rating), if used, shall be based on sound evidence (regular inspections) of “ways and means” of production which are substantially safer than the norm.
- Employer-based safety incentive programmes will be prohibited as they can have the effect of suppressing claims through peer pressure.
- The Ministry of Labour shall impose heavy fines and penalties on employers who violate health and safety laws, including criminal prosecutions for reckless disregard for human life.
- The Board and Ministry of Labour shall 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 shall include a required section to ensure employer compliance. A copy of the form 7 will go automatically to the worker, and where there is one, to the union.
- The Ministry of Labour shall significantly increase the number of inspectors available to enforce health and safety rules and to identify safe and unsafe workplaces.

- Ministry of Labour shall enforce mandatory entry-level workplace specific safety training