



**“My compensation will end on my 65th birthday
when my brain injury goes away.”**

**Final Report of the
Revived Sir William Meredith Royal Commission**

To: Members of the Organizing Committee, "No Half Measures": Workers' Compensation 100 Years After Sir William Meredith"

Adopting the words of Sir William Meredith, we have the honour to report that we have concluded the inquiries which we were asked to conduct to mark the 100th anniversary of the October 31, 1913, publication of Sir William Meredith's "Final Report on Laws relating to the liability of employers to make compensation to their employees for injuries received in the course of their employment which are in force in other countries, and as to how far such laws are found to work satisfactorily." It is has been some time since were presented our "Interim Report" at the conference, "No Half Measures: Workers' Compensation 100 Years After Sir William Meredith," and, for that delay, we wish to express our regrets. We could point out that it took Sir William Meredith over three years to carry through his Royal Commission and to present his "Final Report," and we are doing so in less than two years, but we know that would amount to only faint praise when compared to the obvious fact that Sir William also had the duties of Chief Justice of the Supreme Court of Ontario to administer to while we are only lowly academics. We are also very aware that in this period he fashioned a draft workmen's compensation act that underwent a good number of amendments and revisions prior to his submitting his "Final Report" on October 31, 1913.

To stay with this theme, since the conference and the presentation of our "Interim Report," along with everyone in the injured worker community we are greatly disappointed to know that little or nothing has changed in the ways and means of the workers' compensation system in Ontario that would lead to improvements in the lives of the injured workers to whom we listened. Indeed, what changes have been made, such as the introduction of new benefits policies, especially those relating to pre-existing injuries, are regressive and contrary to the basic assumptions of workers' compensation. If we read reports on the condition of workers' compensation systems from other parts of Canada and the United States, we discover the same or highly similar situations. Everywhere injured workers and the workers' compensation systems they rely upon are under attack, and, piece by piece, are being dismantled. We entitled our Interim Report with a bitter and ironic phrase taken from our discussions with an injured worker, Mike Golder: "My compensation will end on my 65th birthday when my brain injury goes away." We used this phrase as a way to try and capture the seemingly unbridgeable distance that stands between Sir William Meredith's vision of a fair and just workers' compensation system and what we have now. Getting on to two years later, we see no reason to change it.

As we will relate in somewhat more detail in our discussion of the process of the "Revived Meredith Commission," listening to over 100 injured workers talk about their lives and their struggles and conflicts with the Ontario workers' compensation system took an emotional toll on each of us. Similar to what Wally Majesky and Maria Minna outlined in their 1988 Ontario task force on rehabilitation, as we listened to the testimonies of injured workers we, too,

became a bit traumatized. In fact, as our “Sittings” continued, we found it progressively more difficult to remove ourselves from the stories of the injured workers we listened too. It became less and less easy to debrief and move on. Further, in attempting to record verbatim the words of injured workers and their supporters, Carolann Elston began to experience intense pain in her fingers, hands, arms and shoulders – pain that was a primary factor in bringing the Sittings to a close.

Sitting down to write this report has been stressful for other reasons. As we have thought about what injured workers believe needs to be done to fix a system that they believe is almost completely broken, we see that they do not really know how to proceed. To be sure, almost every injured worker to whom we listened had a set of recommendations that could have prevented and/or fixed the issues and problems they themselves confronted in their struggles with the workers’ compensation system. And, they were recommendations that, if implemented, would have benefited not only these individual workers but injured workers more generally. But, there is so much wrong with this system - it is so huge and so bureaucratic and so adversarial - that, ultimately, injured workers are left with a sorrowful and frustrated outrage that coalesces in the phrase “hold them accountable.”

As with all people, groups and classes who stand in subordinate and, increasingly vulnerable, social, economic and political positions in capitalist societies such as ours, for injured workers “holding them accountable” means collective action. That is how the Ontario workers’ compensation system was born and that is how it has been improved over its 100 year time span. In this light, we think that the time has come for the injured worker community, particularly those who have been entrusted with leadership roles, to seriously rethink their strategies for change. Over the past decade or so the injured worker community has embraced “research” as the principle means of uncovering and bringing to light the difficult conditions under which injured workers and their families are being forced to live. While much of this research has vividly and convincingly illustrated – in words and numbers – the despair and mounting poverty of injured workers, the hard fact remains that successive governments and workers’ compensation presidents and board chairmen and senior executives continue to reshape the workers’ compensation system in ways that would be entirely foreign to Sir William Meredith.

We are not decrying “research” here. After all, we are, both of us, researchers. The “Revived Meredith Commission” which we humbly carried out is a form of research. What we are saying is that it appears to us that the time has come to listen to and act upon what injured workers are saying – not what the research reports are saying. For example, should an injured worker be ‘allowed’ to sit in a room, by herself, while five resource management personnel berate her for her injuries, her pain, and her steadfast refusal to go back to a job that injured her in the first place. Shouldn’t her representative have refused such a meeting

unless and until this very vulnerable injured worker was fully and physically represented? We do not think that we need more “research” to know what needed to be done in such an instance. What is needed, we believe, is for members of the injured worker’s movement, again especially those entrusted with leadership roles, **to work with injured workers** to find the ways and means that will, once again, result in injured workers becoming the prominent voices and actors in their own movement.

In closing, we would like to thank the members of the conference organizing committee for the honour of entrusting us with carrying out the “Revived Meredith Commission.” It was a difficult, humbling and everlasting experience. To that end, we would particularly like to thank the many injured workers who spoke to us, who offered us a glimpse into lives that changed forever as a result of a workplace injury. No “report,” no matter how long, could ever hope to do justice to these women and men who, in such a courageous fashion, bared their broken lives and their damaged souls to complete strangers. Yes, many, if not all, told their stories in the hopes that they would finally be listened to and their problems addressed. There was that individual interest. Given their circumstances, how could it be otherwise? But, they also offered their testimonies because they hoped that others, injured workers, and, importantly, uninjured workers, could learn from what had happened to them. That the problems they confronted would be solved so that others coming after them would not have to suffer the indignities and the obstacles that had confronted them. For injured workers, an injury to one is an injury to all.

All of which is respectfully submitted.

Robert Storey and Carolann Elston

Co-Commissioners

Dated in Hamilton, Ontario,
the 1st day of June, 2015.

Injured Worker Summary

In this section, we offer what we are calling an “Injured Worker Summary.” This is a retitling of the usual “Executive Summary.” We adopt this alternative title to demonstrate how we are trying to think differently in this Report. In all aspects of this Report, we are trying to be faithful to the words, sentiments and beliefs and opinions of the injured workers who spoke to us during the course of our Revived Meredith Commission. The issue is that these words, sentiments and beliefs and opinions do not come together in any neat and tidy “Executive Summary.” Since their injuries and their daily, monthly, yearly struggles with the workers’ compensation system, their lives have become fractured. This is the case despite their personal efforts and the assistance of their families and friends efforts to keep their lives together. In far too many cases the loss of the ability to work is the loss of an anchor to one’s personal identity and to the larger social, economic and political worlds. In past demonstrations injured workers have carried picket signs asking “Can You See Us Now? Such a phrase speaks to the real sense of isolation and alienation felt by injured workers. There is little that is “Executive” about their lives. Rather, these are people whose lives have been subject to too many government and workers’ compensation board “Executive Summaries.”

Major Observations

If we had held a “Revived Meredith Commission” two decades ago, we would have heard mainly from male factory workers, a disproportionate number of Italian, male construction workers, from miners and forestry workers, also male. For, while our economy was on the precipice of tumultuous change, it was still very much an industrial economy, and, workers’ compensation statistics, as wary of them as we are and everyone needs to be, inform us that the overwhelming majority of accepted claims were submitted by these groups of male workers.

The injured workers who came to speak to us in 2013 were quite different from this hypothetical grouping. This should not be surprising: our worlds of work (labour processes, work organization, labour markets) have now been altered – some beyond recognition. While we did hear from male factory workers and male construction workers, the great majority of our speakers came from very diverse occupational as well as ethnic/racialized and gendered backgrounds. We heard from racialized women (e.g. Italian, Portuguese, Caribbean, Chinese, Hispanic), who worked and were injured in jobs involving personal care, as a filing clerk in a major hospital, a letter carrier, machine operators, a grocery clerk, etc.. We heard from ethnic/racialized men who also worked in a wide range of jobs – a slaughter house worker, truck drivers, a pulp and paper worker, prison security workers, and construction workers.

The injuries we heard about happened as personal care workers attempted to lift patients from beds to toilets or baths without the proper and required assisting

equipment. Or, the injury was a snapping of a truck driver's shoulder as he threw a strap across his transport trailer – a task, a bodily movement, he had performed thousands of times over the course of nearly 39 years. Or, it happened when a woman began suffering severe pain in her hands, arms and shoulders after her foreman intensified her workload by making her responsible for output on two drilling machines instead of one. Or, incredulously, the injury struck when a Sudbury young woman began experiencing debilitating back pain after her job required her to lean over at the waist for a large proportion of her day repairing broken machinery.

Different workers, similar injuries. That is, these injuries are similar to those recorded by the workers' compensation board two decades ago as the leading injury. They are "strains and sprains." By the sounds of it, there is nothing much to worry or be concerned about. "Strains and sprains" - how bad can they be? Yet, we know from the testimonies of the injured workers who spoke to us, and from copious amounts of research, that the chronic and long-lasting pains associated with "strains and sprains" can and have changed the lives of countless injured workers. A significant number of injured workers with chronic pain are unable to work. Others with these injuries can no longer work in their injury jobs – they are forced to search for other, usually less remunerative and less secure forms of work. And, as all of this is taking place, as their work worlds dissolve in various ways, so, too, do their family and social worlds. Many, too many, of the injured workers who spoke to us told of tensions in families between spouses and children as the money stopped and relations had to change. Family breakdown among injured workers is alarmingly higher than the average.

Different workers, similar causes. That is, similar to 1995 the great majority of these injuries were caused by "overexertion." Then and now, this seemingly benign classification belies one of the causal realities of these injuries; namely, that even though the injured workers who spoke to us did not see themselves as especially vulnerable, or would have placed themselves in the category of "precarious" workers, their testimonies nevertheless revealed a stark lack of options when it came to dealing with the health and safety hazards associated with their respective workplaces. That is, what is termed "overexertion" is understood by the worker as part of what their bosses told them their bodies needed to do to get their jobs done. In short, "overexertion" is built into their jobs. It is not a choice they freely and willingly make. It is the hidden, the buried, yet increasingly integral component of 'post-industrial' job classification schemas. If it is true, as Karl Marx wrote, that "moments are the element of profit," then these intensified moments are not only sources of increased profit, they are one of the principle causes of workplace injuries, claimed, and, in many ways more importantly, unclaimed.

So, there would be both similarities and differences between injured workers who would have testified in 1995 and those who testified in 2013. We believe, however, that there would have been one major difference: the injured workers

we spoke with believe that the Ontario workers' compensation system is all but broken. That was not the reality in 1995, although with the election of the Mike Harris Conservative Government in that year the process of fracturing was about to begin. His government's legacy, and that of successive governments, is a workers' compensation system that, according to injured workers, does not treat them with respect. It summarily denies their claims and appeals. It is a system that has changed from one that promised "justice speedily and humanely rendered" to one that "starts from no." It does not allow injured workers their dignity. It treats them like "cheaters," "frauds" and "criminals."

To be sure, ours was undoubtedly not the most representative sample in that the injured workers who spoke to us were not those whose injuries and claims were dealt with to their satisfaction. Rather, we were hearing from that section of the injured worker population that over time has come to be at odds with most aspects of the system. Critically, they did not start out feeling hostile to adjudicators, nurse case managers, doctors, return to work educators and trainers, even their injury employers. Rather, what began as taken-for-granted assumptions that if they were injured the "system" would take care of them, gradually evolved into bewilderment that this was not the case to, finally, bitterness, frustration and anger at being contested and belittled at almost every turn.

It is important to add that these were not blanket condemnations. For each of the major groups of players – employers, board officials, and doctors – injured workers identified individuals who stood out because of their sympathetic and helpful treatment. In the offices and the hands of these individuals, injured workers reported that they were treated with respect, allowed their dignity, and felt no visible or implicit suspicions about their characters or the validity, the legitimacy, of their claims. That said, it is likewise important to emphasize that these salutary individuals were far from the norm. For whatever reasons – power, money, class bias, racism, sexism, superiors' orders, organizational/financial/political mandates – the great majority of individuals in decision-making positions treat injured workers in what they feel are arrogant and dismissive ways.

To summarize, with respect to the WSIB, injured workers felt that they were more-or-less at the mercy of a system, really of a management team, whose mandate was to turn the workers' compensation system into a high efficiency, low cost insurance system. These are not their words; rather, they are our effort to summarize their sense that they were confronting a system that was pushing an austerity agenda the priority of which was the bottom line rather than the welfare of injured workers.

Recommendations

To this point we have not referred to the Workplace Safety and Insurance Board (WSIB). We have, instead, used the phrase workers' compensation

system. In making this distinction we are reflecting a strongly and widely-held sentiment among injured workers that the workers' compensation system began to go fundamentally off the rails when the neo-liberal, Conservative Government of Mike Harris came to power in 1995 and proceeded to make fundamental changes to the Workers' Compensation Act, including, of course, to the name. For injured workers, the elimination of temporary benefits, the implementation of poorly-conceived and fundamentally faulty return to work programs, when placed alongside the lowering of employer assessment rates and the greater use of deeming and experience rating, altered the Meredith-based workers' compensation system beyond recognition. One of the comments we heard repeatedly from injured workers was for these measures to be reformed or rescinded altogether and for the return of the name, the Workers' Compensation Board. This is our first recommendation.

Also to this point, readers will have noted that we have not used the term "accident." Rather, we use "injury." For a number of reasons, including the fact that injured workers refer first and foremost to their injuries and not their accidents, we have come to greatly prefer "injury" over and against "accident." Beginning with the late 19th/early 20th century discussions leading up to the establishment of the first modern workers' compensations systems, the concept/term "accident" has carried with it some misleading conceptual baggage. In this context, Australian occupational health and safety and workers' compensation researcher, Philip Bohle, writes that the "use of the term 'accident' to refer to occurrences of injury in the workplace carries the unfortunate implication that injuries are avoidable, random events."¹ Like Theo Nichols, a British occupational health and safety researcher, we think that industrial injuries are not a matter "misfortune or bad luck." Rather, we agree "that industrial injuries vary in accord with determinate conditions and that they are not random events." Thus, like Nichols, we hold "that, as far as injuries at work are concerned, the term 'accident' obscures that 'luck' is a class issue. Such luck is itself a matter of socially structured regularity. It is not simply a matter of specific, individual, events. On a case by case basis, an industrial injury may well be regarded as bad luck and be unforeseen, but where you stand in the class structure (more precisely in the occupational structure) systematically affects your chances of getting injured."² Replacing "accident" with "injury" in our discussions about workers' compensation is our second recommendation.

Beyond these two general points, we have a short list of recommendation which we are certain will come as no surprise to anyone in the injured workers' community.

¹ Philip Bohle, "Work Psychology and the management of occupational health and safety: an overview." In, Michael Quinlan, ed., *Work and Health: The Origins, Management and Regulation of Occupational Illness*, Melbourne, 1993: 92-115.

² Theo Nichols, *The Sociology of Industrial Injury*, London, 1997: 3.

3. Benefits payments be made for as long as an injured worker's disabilities last.
4. That the practice of deeming be discontinued.
5. That economic incentives, particularly experience rating, be terminated.
6. That the diagnoses and treatment plans of the injured workers' family/treating physicians be determinate in decision-making processes relating to the nature of the injury and/or illness and the treatment of the injury and/or illness.

As we stated above, we are keenly aware that many others have made these and other recommendations in the days, weeks, months and years gone by. We are aware, for example, of the 2004 document, *Platform For Change* (recently amended by the Thunder Bay & District Injured Workers' Support Group),³ which discusses and analyzes these issues and problems in a very comprehensive and incisive manner. We know of the time and effort that went into preparing this notable document. Nevertheless, we find ourselves repeating some of the recommendations made then because they speak directly to the most salient issues and problems raised by injured workers during our "Revived Meredith Commission." Our recommendations are, thus, a sorry, and, at times a tragic, testament to complaints about systemic faults and limitations that have not been satisfactorily addressed over a very long period of time.

Conclusions

During our "Sittings" injured workers wondered aloud why their complaints about the workers' compensation system were going largely unheeded? Why was deeming being used at what seems an ever-expanding rate when it leads inexorably to poverty? Why were economic incentives being offered to employers when there is no evidence that they actually lead to improvements in employer health and safety practices? Why were their doctors being systematically ignored in favour of diagnoses and treatment plans offered by medical professionals who themselves had not examined them? As one injured worker sadly stated: "I just want someone to touch me." All of these questions lead to the ultimate one: Why are the Workplace Safety and Insurance Board and the government not adhering to "Meredith's Principles?"

This is a mighty question. As many who are reading this document know, there is some disagreement over what constitutes "Meredith's Principles." Governments, workers' compensation boards and employers have their list of his Principles that differ in some very important respects from those drawn up by the

³ Ontario Network of Injured Workers, *Workers' Compensation: Platform For Change*, Toronto 2004.

injured workers' communities. For example, the Ontario Workplace Safety and Insurance Board lists no-fault compensation, collective liability, security of payment, exclusive jurisdiction and independent board as Meredith's Principles. The WSIB's counterpart in Prince Edward Island is in agreement. Alberta's Workers' Compensation Board, however, adds "fairness", "leveraging prevention", "balance between collective liability and individual accountability", and "full funding." Injured worker groups and many unions have a somewhat different set of Meredith's Principles. In agreement with no fault, collective liability, independent board, they also list "non-adversarial," "employer pays" and "compensation for as long as disability lasts."

This is no mere battle of semantics or meanings of words and phrases. What is included and/or excluded has real and lasting importance for injured workers. One has only to note the inclusion/exclusion of "compensation for as long as disability lasts" to understand what is at stake. Our study of Meredith's Royal Commission leads us to understand that, above all else, Meredith wanted a "fair" system of workers' compensation. As he stated numerous times during his "Sittings," legislation such as workers' compensation was "social" legislation. In this case, it was social legislation designed to keep injured workers and their families from falling into poverty. How do you achieve that end? Meredith was very clear that injured workers should be paid compensation for as long as their disabilities lasted. In a lively and somewhat caustic debate on this very point with Frank Wegenast, the representative of the Canadian Manufacturer's Association, Meredith forcefully turned away the argument that a worker might have been hurt elsewhere or would have retired before he or she died and thus should not receive compensation for their lives. Their interchange is worth quoting.

Mr. Wegenast: Take a man who has been earning two dollars a day. You pay him if he is incapacitated, we will say, one dollar a day. Now, he gets that till he is sixty-five, seventy-five or eighty years old. In the natural course of things he would not have earned two dollars a day for all that time. He might have been killed or otherwise injured. He might have been injured outside of the employment altogether. What the "employer would be asked to do under a non-contributory scheme would be to insure that man not only against the result of occupational injury but also against non-employment for the rest of his days, against accident from any other reason, against old age, and against Invalidity.

The Commissioner: You have injured the man, why should all these problematical things enter into it that he might possibly have been injured in some other way if he had not been injured in that way? The man was all right until he got hurt in your establishment.⁴

In our view, paying compensation for as long as the disability lasted was

⁴ Sir William Meredith, *Royal Commission, Minutes of Evidence, Volume 1, August 6, 1912, Toronto, 1913: 75*

Meredith's foundational ethical/moral/social assumption upon which a legal/economic/political workers' compensation system/structure could be constructed. For Meredith, such a principle went some way to ensuring that the overall system was "fair." The employer was to pay because the worker was going to pay with the wage and social and humane diminshments that accompanied the injury. It was therefore "fair" that employers paid and workers did not. "Collective liability" was "fair" to small business because individual indemnity opened the gates to possible economic ruin. No-fault was "fair" to employers because the ever-rising injury and fatality rates associated with the industrial age that was upon them were far beyond the capacity of workers to control, thereby opening up the spectre of injured worker victories in the courts.

In the eyes of injured workers, we do not have a "fair" workers' compensation system in Ontario. We have a system that has moved decisively away from "the guiding principles" to be found in an early 1960s Workmen's Compensation Board booklet – guiding principles which state "The "prime object is to provide justice to the working man and this justice, in Sir William's words, is to be 'humanely and speedily' rendered." We think that Sir William Meredith is rolling over in his grave.

Getting Sir William back into a restful sleep is fraught with formidable challenges. We are fully aware that our recommendations to end deeming, terminate experience rating, give family doctors the determinate position in medical matters, and, of course, paying benefits for as long as disabilities last, take us into the political/legislative realm. We are not comfortable in the abstract political realm. This is not because of any supposed neutrality that academic researchers are supposed to hold dearly. Rather, it is because we were never under any illusions that our "Revived Meredith Commission" had much, if any, reach beyond the injured workers' community. We did not hear from government or workers' compensation board officials. We did not hear from employers. This did not surprise or disappoint us. Indeed, while we would not have turned these folks away, our focus was on listening to injured workers.

So, we make these recommendations, not because we believe that they will have an impact on policy makers but because injured workers told us these changes are required if fairness is to return to the workers' compensation system. We also make these recommendations because they lay bare injured workers' understandings of the increasingly close connections between successive government's neo-liberal austerity ideologies and agendas and the consequent policies and practices of the Ontario workers' compensation board - – connections which, not surprisingly, they found deeply disturbing. Indeed, those injured workers familiar with Meredith's Principles pointed to his support for a public workers' compensation system, both because it seemed to him to be the most efficient in terms of administration and the greatest percentage of employer assessments actually getting to injured workers, but also because he thought this was the way to ensure the political independence of the system itself.

“History” has proved Sir William to be terribly wrong. Over the decades, but particularly since the 1980s, successive governments have had few, if any, qualms about appointing workers’ compensation board presidents and chairs of the board whose political ideologies are in congruence with those of the government. From the perspectives of the injured workers who spoke to us, this pattern has become most visible over the past five years with the appointments of a former banker and a past Conservative Minister of Labour to take the respective positions of President and Chief Executive Officer and Chair of the Workplace Safety and Insurance Board. For injured workers, the message that these two appointments sent to the business and labour and injured workers ‘communities was crystal clear: the Ontario workers’ compensation system was going to operate like a private insurance company with close attention being paid to cutting costs with the firm goal of eliminating the unfunded liability.

These appointments created deep concerns within injured workers’ communities as they feared that the efficiencies that would be found, and the costs that would be cut, would come at their expense. In their view, the current situation validates those fears: they see their benefits being cut and/or terminated when they are deemed able to work; their claims being denied and/or systematically challenged; “pre-existing” injuries and illnesses being “discovered” and used as a means to deny claims or used as a means of paying less benefits’ and laying in the weeds, the impending termination of the 72 month lock-in – a change that will mean that injured workers will be subject to review and surveillance from the date of their injury to the day that they die. All of this activity is taking place even as employer assessments have remained essentially the same or in some cases decreased.

There are, then, many challenges that confront injured workers. They believe that they can be met through collective organization. The last paragraph of Sir William Meredith’s *Final Report* begins with the words: “In these days of social and industrial unrest...” He made his recommendations for a modern workers’ compensation system on the basis of his reading of this social and industrial unrest. During his Royal Commission he read what there was to read. He travelled to England and a few European countries, including Germany, and saw first hand their workers’ compensation systems.

As importantly, though, he witnessed the brewing political radicalism of workers and unions. When he returned to Toronto and looked out his office window at Osgoode Hall on Queen Street in Toronto, he would have seen men and women and children living in poverty in that city’s “Ward” district. Meredith was, it seems, genuinely concerned with this scene of poverty, and, to the issue at hand, with injured workers slipping into it. But, as a wizened Conservative politician and affluent citizen, he was equally concerned with what he evidently perceived as the political dangers of not addressing the economic and social needs of injured workers and workers more generally. How else are we to

interpret him when he follows the above words with: "... in my judgment, of the gravest importance to the community that every proved injustice to any section or class resulting from bad or unfair laws should be promptly removed by the enactment of remedial legislation and I do not doubt that the country whose Legislature is quick to discern and prompt to remove injustice will enjoy, and that deservedly, the blessing of industrial peace and freedom from social unrest."

When injured workers learn their history they learn that many of the progressive changes to workmen's compensations laws have come as a result of their collective social and industrial unrest. But, they also see, and the injured workers who appeared before us were keenly aware of this fact, that recent organized appeals to government and the workers' compensation board to stop their dismantling of the system have fallen on deaf ears. This has been result despite now having "research" - carried out in the tried and true methods that hold up to the scrutiny of academic peer review - that demonstrates the perilous impacts on injured workers and their families of these changes.

So, in the somewhat distant past there was collective action and positive results. And, more recently, there is collective action and no, even negative, results. Are there any differences? In the 1970s and 1980s, a time of more general social and industrial unrest, the injured workers' movement and its organizational arm, the Union of Injured Workers, were forever organizing protests in front the Ministry of Labour or the offices of the Workers' Compensation Board. We will never know, but we think that these women and men would not have allowed a highly vulnerable injured worker to deal alone with a hostile group of five human resource personnel in a major Toronto hospital. We think that Emilio Scardigno, a one-time president of the Union of Injured Workers, would have insisted that he and others be present with her or no meeting would take place.

This is a time when all progressive social movements, including the labour movement, are reviewing their histories, their structures and their processes in order to understand what is needed to meet these times of economic, social and political confusion and turmoil – when all that was solid has seemingly melted into air. We think that the injured workers' movement would benefit from a similar conversation both within itself and with other social movements. The "research turn" that it took a number of years ago, while resulting in some positive developments such the revelations concerning stigma and the extent of poverty among injured workers, and, particularly the establishment of the injured workers' Speakers' School, has ultimately served to move the authoritative "voice" of the injured workers' movement away from injured workers and into the hands of researchers who do not have any ongoing relationship with them or the injured workers' movement. As we listened to the injured workers who bravely came to speak to us, we heard not only of real hardship but also determination to fight for themselves, other injured workers and for those coming after them. They understand their worlds the best. As in the past, as they listen to each other they

will understand what is needed to change those worlds. For injured workers, holding the government and the workers' compensation system "accountable," means justice, speedily and humanely rendered.

The “Sittings”

The “Revived Meredith Commission” came into being in association with the conference “No Half Measures: Workers’ Compensation 100 Years After Meredith.” The conference was planned to commemorate the 100th anniversary of the publication of Sir William Meredith’s “Final Report on Laws relating to the liability of employers to make compensation to their employees for injuries received in the course of their employment which are in force in other countries, and as to how far such laws are found to work satisfactorily.” During the planning of this conference the idea was raised that it would be both interesting and valuable if we could have a contemporary version of Meredith’s Royal Commission that could be integrated into the conference proceedings. The “Revived Meredith Commission” was staffed by Robert Storey and Carolann Elston, two people with background knowledge of Sir William’s Royal Commission and the two people on the organizing committee who had some time to spend on such an project.

As it evolved, the Revived Meredith Commission worked with individuals and groups in a number of cities to organize the “Sittings” where injured workers would come and tell their stories. These gathering with injured worker were called “Sittings” as this is what Sir William termed his meetings with the individuals who came before his Royal Commission. In the end, the “Revived Meredith Commission visited eight cities: St. Catharines, Toronto (where we held four Sittings), Hamilton, Little Current on Manitoulin Island, Barrie, North Bay, Thunder Bay and London.

We understood from the outset that ours was a limited and very modest endeavour. First, and foremost, we were not a real Royal Commission. We did not have the authority or the presence that a bona fide government-proclaimed Royal Commission would have had – that Sir Williams’ Royal Commission did indeed have. We had no substantive powers to call “witnesses” or to compel people/organizations to attend. We were also aware that any recommendations we might make at the end of our commission would be of concern primarily, if not solely, to the injured workers’ community. We were under no illusions that our two person, shoe-string travelling show would garner the attention of government or executives with the current workers’ compensation board. What we hoped for was that our travels to different centres within Ontario would attract the interest and attention of injured workers, their organizations and the labour movement.

With some qualifications, were correct on both counts. That is, while our Sittings did not, at least to our knowledge, peak the interest and/or the presence of employers, government or workers’ compensation board officials, they were embraced by injured workers and their supporters with a great deal of enthusiasm, warmth, hope, and courage. We did not, however, hear from the labour movement to the extent that we had hoped. We see this an important gap

in our understandings of what is currently taking place with injured workers and the workers' compensation system. In the early 20th century the labour movement, largely at that point a white, male-dominated crafts-based movement, was the prime mover in demanding a modern workers' compensation system. Indeed, their representative, Mr. Fred Bancroft, then Vice President of the Trades and Labour Congress, was a signal figure in Meredith's Royal Commission. In fact, next to Frank Wegenast, the representative of the Canadian Manufacturers Association, Bancroft's voice was the one most-often heard by Meredith. Some of the injured workers who came to speak to us were from union backgrounds. The overwhelming majority were not. Of those who did come from unionized workplaces, a number were quite critical of the representation they received. Given the commitment many, many union members have towards representing their injured sisters and brothers, we wish that we, and the injured workers in the various audiences, could have heard more about that work and that commitment.

Overall, we heard from over 100 injured workers and their families, friends and representatives. In virtually every category, they were a diverse group of people. That is to say, they came from a wide range of ethnic/racialized backgrounds: Anglo-Saxon and Anglo Celtic, Aboriginal, the Middle East, Greek, Italian, South-East Asian, Chinese, Caribbean, Latin American. Nationally, many, especially those who spoke to us in one of our four Toronto Sitzings, were immigrants who had come to Canada both recently and in decades past. Importantly, there were more women "witnesses" than there were men. We write "importantly" because the women who came to tell us their stories were talking of injuries that came from jobs that are simultaneously among the fastest growing and the most dangerous: jobs in health care in public and private services. In many cases, these jobs were staffed by racialized women, again especially in Toronto.

As we came to learn, these women and men were injured in jobs and in ways that were quite representative of broader occupational injuries and injury rates. By this we mean if one examines the statistical reports of the Ontario Workplace Safety and Insurance Board (WSIB), it is clear that the health care and service and transportation workers who told us of their injuries are highly representative of workers in these sectors more generally, i.e., they are being injured at very high rates with their injuries falling largely in the "sprains and strains" category with "overexertion" being the overwhelming cause of the injuries. We also heard from workers who were injured in another high rate category: falls – either on the same level as when a construction worker fell when a roof he was working on collapsed, or, on different levels, as when a window washer fell 20 stories crushing his feet and lower legs when his supports failed.

We discuss such injuries in more depth in the next section of this Report. For the present, it is crucial to make a few additional points about the dynamics of the Sitzings themselves.

First, and further to our relationship to Sir William's Royal Commission, we note that he heard from only one injured worker, Mr. E.C. Hunt, from Cookstown, Ontario. As Mr. Hunt told Sir William: "Last year I lost my right arm in a sawmill in Cookstown, and I received no compensation whatever for my loss. My wages stopped as soon as my arm was cut off, and I had to make what provision I could to enable me to get better. Since getting better and getting an artificial arm I have had great trouble in getting employment of any description. It is very hard for a man with one arm to get a job when very often there is an over plus on the market of men with two arms."

As Sir William's Royal Commission proceeded, it became more and more evident that Mr. Hunt's plight went to the root of the problems with the current workers' compensation system – really, as Meredith termed it, an employers' liability system. That is, no one was taking responsibility for Mr. Hunt's injury resulting in his receiving no money and having no job. For Meredith, this was a sure path to poverty for Mr. Hunt and his family which, for Meredith, was the major purpose of his Royal Commission: to fashion a law which would be "fair" to all the major parties while ensuring that injured workers did not fall into poverty.

So, despite hearing from only one injured worker, Meredith did understand the need for a law that would guarantee workers compensation should they get injured at work.

That said, we differed from Meredith in hearing from over 100 injured workers and their families and supporters. Because of this, we think, we became much more troubled by what we were hearing than did Sir William. By listening to trade unionists (who were not injured), lawyers, large and small businessmen and insurance company officials, Meredith was largely cut off from the injury stories (with the exception of Frank Wegenast's drilling of a hole through his finger) and thus cut off from the personal and familial and occupational impacts of these injuries. This is no small difference. Like Wally Majesky and Maria Minna who headed the 1980s task force into workers' compensation and rehabilitation, we too were mildly traumatized by the stories we listened to. As they wrote in their letter to the Minister of Labour: "The process has been a difficult one. In addition to a multitude of points and issues to consider, we have had to deal with the emotional impact of the public hearing testimony from injured workers and other constituencies. At times we have found it hard to imagine that such a situation of neglect and mistreatment can exist within our Province."

We, too, had "to deal with the emotional impact of the public hearing testimony from injured workers and their constituencies." To be sure, both of us had a clear understanding of the current situation of injured workers. We had, as well, a clear understanding of the difficulties injured workers were confronting in their dealings with the workers' compensation system. One of us had interviewed approximately 80 injured workers over the course of a decade on the issues and

problems we were interested in discussing with injured workers during our Sittings.

But, like Majesky and Minna, we were decidedly ill-prepared for the impact of listening to injured workers' stories so intensely over the course of full days – from mornings into the evening. This is not a complaint or an effort to elicit sympathy. We were honoured to be asked to conduct the “Revived Meredith Commission” and we remain so honoured. We share this part of the process with readers of this Report as a way of relaying three points.

First, the impact on us was such that we think that we came as close as people who are not in such situations can come to understanding the impact of workplace injury on workers and those who they care for and who care for them. At times we could not find words to ask questions. At times we could not collect our thoughts enough to move ahead with the stories. It took us a very long time after presenting our *Interim Report* to return to these stories and begin to ‘hear’ them again and write about them. We also understand that at the end of this process, we are not injured and we do not have to confront the day-to-day, month-to-month and year-to-year emotional and physical hardships that injured workers must confront.

Second, we are certain that the telling of these stories was beneficial to both the injured workers and those who listened to them. Complaining and venting and bitching is fairly commonplace within the injured worker’s community. This takes place for many reasons but an important one is that injured workers do not have people who they can talk to and who will listen to them. Family members and friends sometimes run out of patience and understanding. So, when injured workers find an audience, they take the opportunity to tell their stories – sometimes over and again. This happened during our Sittings. There were occasions when voices from the audience interrupted the person who was then telling their story – these women and men wanted to talk; they wanted their stories to be told. In each instance, they were listened to patiently. Listened to until they felt that they had had their say.

Third, in some locations our Sittings proved to be the impetus for the establishment of more organized forms of support and advocacy. To be forthright, this was one of our – and the organizing committee’s – main goals. We hoped that by visiting certain communities the Sittings would serve as a stimulus to injured worker organization – either for the first time or to reignite organizations that had gone quiet over the years. To the extent that this goal has been achieved we can call the “Revived Meredith Commission process a success.

Injured Workers' Stories

We begin this section with Emily's story. She is a woman of Chinese descent whose first language is not English but who went to great lengths to tell us her story in English. We will tell her story in an edited fashion because we very much want to preserve her dignity – something, we could instantly tell, was extremely important to her.

Emily: Hi. My name is Emily. I have been working at Sick Kids for more than 11 and one half years. I got injured in 2011. In 2009 I first experienced pain in my fingers, my right hand because of my job. I'm lifting all day so it's swelling from here and it won't work anymore.

Robert: So you're doing preparations. What kind of preparations?

Emily: The patient's file. When I'm lifting my left elbow gets swollen.

Robert: So there is a big bump on the inside of your elbow.

Emily: Yes, you see right now it's better than before. Before it was much bigger. In 2010 I [asked] my supervisor could you accommodate me and she switched me to do another job for two days and after that she said you need a doctor's note. I went in and he wrote a note for me. He said please modify the job and then I brought the paper to my supervisor and she said this is worse. If you sick you stay home. If you come to work you have to finish your job... I went back to work and I saw [that] the doctor's note said she would make an appointment to talk with the head case manager. I called her April 7, 2011, and she told me your department is not accommodating you and if your hand gets painful use another one. I told her when I flip and use this finger I get pain too. In October 2011, my hand right got really painful and my left elbow too. I went to see my doctor and he wrote a paper to send to the WSIB and then after that I call them and they don't answer the phone... And then I called case manager in 2011, December, because I was on and off... Because my hand got so painful I didn't come to work. We had the meeting with WSIB and with my employer and they said no modified job for you and then after that they moved me to another department

Robert: They moved you where?

Emily: Another department. Research department and that job is not repetitive because my hand is repetitive right?

Robert: Right.

Emily: I worked there from December until April when the case manager, she told me I had to get back to my department filing.

Robert: You have to go back to the department where you got injured?

Emily: Yeah. And I said to them that job I cannot do because I did it before... Then I tried to call WSIB case manager and he didn't answer the phone. So, I went to see my doctor, and he wrote many doctor's notes to say this job is no good for me. At the end of May I call case manager and she told me I will send someone to look at your workplace. On June 28 they sent a lady to look at my workplace and she said this job is unsuitable. I waited until the end of June, July and I called his case manager and I spoke with her and I told her before you told me if someone came to look at my place, if the job is unsuitable, they will accommodate me and she said yes we will do it for you. And I asked her if they don't have a job, if they don't want to modify me? She said if your employer doesn't have a job for you we will pay you loss of earnings...

Robert: Are you on your own at this point? Are you representing yourself the whole time?

Emily: By myself ... And you know ... it's hard for myself. This is not a good life.

Robert: No, you don't have a union.

Emily: But ... I need help. I didn't know anything until until we have the meeting and my employer said we don't have modified job for her and they said we have to send you home. They talked about training for me, to go back to school and my employer objected. I got a letter [from the WSIB] and they said they closed my file. At the end of November my employer called me and said you have to return back to work without restriction and I told them no ...because my hand is worse. I cannot do that job. I asked them you can accommodate me and they said no you have to return back to work without restriction.

Robert: This is a hospital

Emily: Yes, and you know they don't want to modify me. I know this job. I explain to them eight times and they know. They send a letter December 17. It said if you don't come back to work December 18 you will get fired.

Robert: And this is the WSIB case manager saying this?

Emily: From my employer

Robert: Your employer, okay

Emily: Yes. I came back December 19 ... and she said if you don't work today I have to send you to human rights HR Partner... I show her the doctor's note and she said okay let me talk to them. They came to my workplace and you know the photo shelf is very tight right and they pull some of them it gets loose right but when they come they don't didn't go to my workplace they go to first the nice shelf and when they pull a case for them and they pull they say it's okay and we came back to the meeting right and they ask me they said I think it is suitable for her and I told them I am not agree.

Robert: So so are you back at work are you working now?

Emily: No I'm not working

Robert: So ever since that time you've not worked

Emily: No I came back to work because I had no choice... Because they sent for me two letters if I don't come to work they will fire me

Robert: Right. The 18th so you went back to work

Emily: I came back December 19 and then December 20 because I was waiting for the administrator came to look. We have the meeting and they ask me would you like to come to work, yes or no. And you know it was very scary to me because, you know, I was shaking right because I was only by myself and my five people. Five employers. And they sit around you right

Robert: So there's five people around a table.

Emily: Yeah.

Robert: And then there's you.

Emily: And they look at you like will you come to work, yes or no. And I asked them can I talk to my representative and they said no. If you want to you can call after meeting. And, you know, my hands still shaking and I was nervous. And then I told them no because I explain to them and I told them that I would like come to work but this job is not suitable. I try before and it's not possible and she asked me did you try today and I said no and then after that they left. Only two of my employers were left and one is the HR partner. Then they wrote me the paper and it said if I don't come to work I will get fired. So I have no choice. So I came back to work at the end of December right until January 8th when my hand it got so swollen and painful

Robert: So right now are you working or not

Emily: No I'm not working.

We begin with Emily's story because the issues she is dealing with common within the injured workers' community. As with Emily, what happened at work, the injuries, changed their lives forever. Just as her life got divided into multiple pieces, so to did the lives of the other injured workers. In the process, everyone close to them – family and friends - were captured, became engulfed, by the workers' compensation system.

But, we also begin with Emily because we remember, like it was yesterday, how we felt as we listened to this Chinese woman talk in an emotional but very controlled voice about her life. We were shaken. We were incredulous that a stranger would talk to us about such personal and tragic moments in her life. We felt helpless as she talked to us in a way that seemed to say that we were the people who could help her with her claim and with her employer. We were just as shocked by an injured worker who finished her story with the question: Do I get my job back now?

The stories tell us that injured workers feel that the worker's compensation system is broken with the breaks beginning at the point of production – whether that be a factory, a hospital, an office, a coffee shop. If we look at the causes of the injuries of the injured workers who told us their stories, then we find “overexertion” heading the list, (which we have come to see in this group of injured workers as being linked closely to repetitive motions), followed by what the Workplace Safety and Insurance Board would term “fall on same level,” and then “moving objects.” “Violence” and “explosions” were also among the causes or the source of the injury. Interestingly, this pattern follows closely the pattern to be found in, *By The Numbers: 2013 WSIB Statistical Report*, at least for the first three. In listening to the injured workers, however, it became apparent that numbers on a page do not come close to describing these events. Under our category of “slips and falls, for example, is Wes Montgomery, a window cleaner who fell twenty stories, the impact forcing his ankles into his knees. Or Mingxiu Xie, a personal service worker, who slipped and fell on snow that her client had not shoveled and hit her head and injured her back. Or, Hong Zhang, who fell down a flight of stairs on her first day of work at Coffee Time because of the darkness and injured her neck and back and has since has surgery on her right shoulder. She has appealed and won the claims for her neck and back injury but now suffers from depression because the injury, and the claims and appeals processes have put her into a state of depression – which the WSIB is denying is related to her injury, saying, rather, that it is due to her husband moving back to China and her son moving to the United States. Or, Elena, a postal worker who slipped on ice and incurred a spinal injury, and, who six months later, in her words, was forced back to work only to reinjure herself.

And, what of “the leading injury event” - overexertion? Many of the women injured workers we heard from – mainly Personal Support Workers, told us of

spraining or straining (“the leading nature of injury”) their backs (“the leading part of body injured” followed by “legs” and the “multiple body parts”) in situations where they had to, by themselves, lift very heavy patients without the aid of lifting devices. These workers told of feeling sudden, sharp pains that stopped them in their tracks. In some of these cases the pain subsided and they continued to work until the end of their shifts. The next day, or the next day, or a week later, however, the pain came back when they tried, and failed, to get out of bed.

This is “overexertion” and this is “sprains and strains.” They can come on suddenly and they can come on suddenly from overexertion over time. In 2009, Tim Steinke, a transport truck driver, felt a “pop” in his bicep when he was throwing a restraining strap over his truck – a motion, a task he had completed countless times over his 39 years as a trucker. He can no longer be a trucker. He lost a part time job when he had a heart attack. “I can’t do anything, anymore,” he told us. He liked hunting and fishing. He cannot do them anymore.

Nor can Jerry DeSantis do many of the things he enjoyed. Also a truck driver, Jerry routinely worked alone watering public parks and landscapes. Doing this job entailed carrying watering hoses over and across long stretches of land. One day, in 2007, Jerry felt an intense pain in his right shoulder. Unable to do this work, his employer gave him modified work involving strapping and taping trees. One day the pain was so much that he collapsed in the cab of his vehicle. When he was able, he drove the truck back, took his tools and went on sick leave. Later, Jerry filed a compensation claim that was “denied,” he said, “because the company gave me modified work.”

Here the plot thickens. His claim was denied by the WSIB because the adjudicators, or whoever, did not believe that his work could have caused his shoulder injury. The WSIB report stated that this man “has a casual relationship with a hose.” The “hoses” with which Jerry was working, was pulling, weighed 80 pounds each and he would sometimes pull three or four at the same time. In a state of some desperation, Mr. DeSantis took photos of these hoses to the WSIB for his adjudicator to understand that they were not garden hoses. When he spoke with us his case was still before the WSIB.

In the case of Sylvia Clarke, “Struck by objects or equipment,” the second “leading injury event,” meant having a wheelchair crush her foot while she was working at Sunnybrook Hospital. For Darby Sanderston, a railway worker in Thunder Bay, it meant being knocked down by a moving train in 1977. All these years later he is still fighting for his claim. For Charmaine Flink, also of Thunder Bay, it meant getting hit in the head by a planter while she was working in a flower and garden shop almost ten years ago. When she went back to work her manager put her in a cashier’s position that “was a disaster because he left her compensation file open on a desk and the other employees read it.” She was humiliated. She feels that her children have suffered. “I was a strong mom,” she

told us. "I was a good mom." Her brain injury, caused by the planter falling on her head, changed all of that for her.

Words, then, can express a great deal. They can also obscure what is truly involved. In the case of WSIB statistics relating to causes of accidents and sources of injury, there is much that is hidden. Words like "overexertion" and "falls on one level" and "sprains and strains" do not reveal the pain, the disappointments, the broken dreams, the anger, the frustrations that we heard as we listened to injured workers speak of their injuries.

So, the point of production – the workplace - is the source of the first of the breaks in the consensus Meredith wrote about in 1912. Indeed, in talking about their injuries and ensuing events, a number of injured workers told us that their employers and the WSIB were sending the message that it was all their fault. While we will discuss this a bit more in-depth later in this report, for the moment it is important to highlight the similarities between this message and the theories of "accident causation" that were dominant in the last part of the 19th and early part of the 20th century that held worker carelessness to be the prime cause of the great majority of accidents. Indeed, Frank Wegenast, the lawyer who represented the Canadian Manufacturer's Association before Meredith, went to great lengths in his testimony to express this point to buttress their argument that workers should contribute financially to the new system: if they were at fault, and statistics said they were, then they should contribute. Wegenast even went on to say that some workers deliberately injured themselves so that they could take time off and get compensation. Labour leaders, like Fred Bancroft, then Vice President of the Trades and Labour Congress, was quick to dismiss this argument as pure folly while adding that the real causes of workplace accidents were dangerous machinery and the ever-increasing pace of work. This is an argument to which Meredith was greatly sympathetic.

It is also an argument to which we are sympathetic. The injured workers who spoke to us were from the aging industrial and old/newer physical service sectors of our economy. They came from tried and true jobs but jobs that are under siege from competitive pressures both real and exaggerated. Before their injuries, these workers saw how these pressures were manifesting themselves in their workplaces - understaffing in hospitals being particularly noticeable. This is work intensification – the very aspect of work that so troubled labour leader Fred Bancroft at the time of the Meredith Royal Commission. It also troubled the injured workers who spoke to us. In fact, what we heard was more troubling still. That is, when injured workers returned to their jobs their employers turned up the pace of the animal slaughtering line, or they gave returning personal support workers more problematic patients, or upon returning to his machine operating job Mark Wong was told to increase his daily production from 600 to 700 units. So, too, he was informed that he was to work day instead of afternoon shifts which he preferred because the medication he was taking made it difficult for him to drive in mornings. Each of the injured workers who experienced these

pressures understood them as attempts by their employers to get them to quit their jobs.

Much of what we have just outlined above encompassed injured workers' ever-intersecting relationships with the workers' compensation system. But, this developing exchange should not blind us to the obvious: injuries must happen before workers file claims. This is not the space to discuss the relationship between workplace health and safety and workers' compensation. For now, it is enough to say that like so many of the injured workers who participated in this "Revived Meredith Commission," Mark Wong's injury did not have much to do with his working patterns, his work ethic, his family, or anything in his realm of social reproduction. Rather, it had everything to do with the oil that was leaking from his machine that he ultimately slipped on. A leak, that on a number of occasions, he had mentioned to his supervisors.

When we enter, more formally, the realm of workers' compensation as related to us by injured workers, it is well worth remembering what Meredith said should happen at the outset of this process. He wondered aloud on a number of occasions about the problems tied in with the clause in the English workmen's compensation act – "arising out of and in the course of employment." "[T]here will be all sorts of trouble," he stated at one point during his 10th Sitting, "even under this law in determining where an accident arose, or an occupational disease occurs in the course of and arising out of the employment." In a later discussion of this same issue Meredith used an example of a sailor who is found drowned. "He may have gone to the edge of the ship to relieve himself," Meredith outlined, "and fallen overboard, and therefore it would not be under the law. More probably the thing referred to happened while he was doing his duty on the boat; but they held it was conjecture, and they could not recover." Meredith's remedy to such problems was to "make both cases prima facie in favour of the workmen; if it happens during his employment the onus is upon the employer to show that it did not arise in the course of his employment, and if it arises out of the employment to have a similar presumption that it arose during the course of employment ... Now, if there were such a presumption as I suggest then the burden of proof would be shifted, and the employer would have to show that it did not arise out of the course of his employment?"

As we have outlined, there is no consensus on this presumption today. To be sure, employers are contesting claims on the basis of did the injuries and illnesses "arise in or out of the course of employment?" But, our witnesses also talked about their employers 'encouraging' – in some cases threatening – them not to file claims, about being in incessant contact with them about returning to work, it would seem, almost before they are injured. They are offering them spaces in lunchrooms to read. They are offering 'modified' jobs. However, as we have alluded to above, modified work can turn into intensified work and/or it does not last very long. A lunchroom broom in the hands of an injured worker rather

quickly turns into an employer request that the injured employee try her or his hand at some form of productive labour, including their injury job.

The employer would also seem to have a hand in another aspect of this modified job process. Injured worker after injured worker related stories of often time cruel forms of harassment by their co-workers. Whether or not it should have, it surprised us. We were surprised to hear that formerly friendly and supportive co-workers laughed and made fun of them. In the case of Mark Wong, we learned of formerly supportive co-workers who turned on him after his injury. He believes that they may be supportive but they are afraid to show it as they may lose their jobs. For other co-workers, though, it was very different. "I have another co-worker," he told us. "Before he was my lead hand he speak to me. He said, why don't you use the rope to hang up to die. He said why don't you use a rope to hang you up to die." In another example, Michelle McSweeny, a letter carrier stated:

When I went back to work, or actually before I went back to work, my coworkers were told that I was a bad injured worker, that I was out for their jobs and that I'm a lazy injured worker and that all I want to do was collect a cheque. None of this is true. So my coworkers were very upset... It's not because of their ignorance. It's mostly because they're uneducated. They don't know what ... it's like to be an injured worker. They have no idea of what it's like to get through the work day with an injury. So because I needed assistance, devices to help me do the job, they provided a mail carrying thing for me to put on my sorting case which was fine. I was able to do four hours a day and I was able to sit and stand and sit and stand because of my arm, because it causes problems because it gets heavy after a while. Well because the workers are not educated enough to understand or were properly told what it's like for me, ... they thought everything was special. The fact that I was being treated special. They thought that I was getting favours. None of this is true. I'm only trying to get through the workday. So because I would sit in this chair ... I would get coworkers walking by saying 'Hey you're the princess, why don't you wave for us?... That's pretty demeaning.

For Maria Machado-Keglevic, a health care aid in a senior's residence, co-worker harassment reached the level where her doctor stated that one of her return-to-work restrictions was that the company put an end to it. One can surmise, given other testimony of direct employer harassment, that employers did not take steps to prevent co-worker abuse as it fit in with their desires for the injured employee to quit. However we are to understand co-worker harassment, i.e., resentment that injured workers are doing lighter and less work for the same pay, or concerns for their continued employment in these times of economic uncertainty, the silence of employers was revealed to be a significant source of discomfort for injured workers.

So, employers seem to be present in virtually every step of the claims and appeals processes – arguably more so now than ever. According to Greg Snider, an Ontario Public Service Employees’ Union representative, what is profoundly troubling about the triadic relationship – injured workers, employers and the WSIB – is that “everything the worker says is a lie and everything the employer says is the truth.” This is beyond frustrating, beyond belief for injured workers. We write beyond belief because it is not at all clear to them what it is they must say to the WSIB to get them to believe them. There is the feeling among injured workers that if they tell their stories the same way each time, they will be accused of memorizing it – which means it cannot be true. On the other hand, if their stories deviate in some way from one time to the next, they are accused of being unclear about how the injury happened, the real source of their illness, the extent of their impairment, the intensity of their pain. Which means that what they are saying cannot be true.

At the risk of contradicting ourselves, it is also the case that employers seem to vanish in the claims and appeals processes. That is to say at different points employers vanish and injured workers are left to deal solely with the WSIB. To the extent that this is what takes place, its significance should not be understated. That is, if the WSIB, in the form of its employees and their handling of claims and appeals, becomes the focus for the frustrations and anger of injured workers, then the connection between work-employers-workers’ compensation is weakened. Like it or not; true or not, the WSIB becomes the bad guy in a dual, not a triadic, relationship.

Again, this is not the moment to add our observations about this problematic relationship between injured workers and the various levels of WSIB decision makers. We will come back to this issue later in this report. To continue, the relationships that develop, or do not develop, between injured workers and WSIB decision-makers is a fundamental source of frustration and anger for injured workers. It is this relationship that leads injured workers into highly volatile interchanges with their adjudicators and case managers – interchanges they know are detrimental to the success of their claims and appeals. It is the reason why, two injured workers informed us, that they ended up in anger management courses - which, as we found out, was a course of action that was surprising even to veteran injured worker advocates.

As we learned from injured workers and injured workers’ advocates, this relationship is also why injured workers are walking away from their claims. They are walking away from the “Start from No” approach they see being the modus operandi of the WSIB – a start which places the onus squarely on the shoulders of injured workers to marshal the evidence – itself a mystery to injured workers – necessary to take on a bureaucratic institution whose present mandate seems to be to save money principally through cutting benefits.

In the end, only a few of the injured workers we listened to walked away from their claims and their appeals. Instead, largely because they had no other viable options, they stayed and struggled with a system that they did not understand, with a revolving doors of adjudicators, none of whom they ever saw but, who, at times, would insult and belittle them on the telephone. One of those struggles involved back to work retraining. Except for a few people who got access to college or university programs – social work is a popular one for the WSIB – the experiences of these workers with Labour Market Re-Entry programs, particularly in the case of immigrant workers whose second language is English, was little short of a disaster in that they found the courses too compressed, too hard, too irrelevant to their interests, skills and talents. To them, they were programs set up for failure.

And, many did, in fact, 'fail.' They could not do the three, four and five years of secondary schooling in six months. They could not do it because they did not have the intellectual and mental preparation for it – that base was missing. They 'failed' as well because they could not function well in the pressurized environments in which they found themselves: the pressure to attend classes regardless of how they were feeling; the pressures associated with getting to the classrooms, sometimes over great distances when public transit was haphazard both with regard to schedules and how close to the retraining sites the buses would take them; the pressures to concentrate when they were in pain and under strong medication.

Another, if not the most controversial topic that took up copious amounts of injured workers' time and energy was that of the role and place of doctors. Where it was once the case that the family doctors of injured workers would send in reports and there was a fair chance that they would be considered by adjudicators and Board doctors, what is crystal clear – *there just might be no clearer finding* – is that is not what is happening today. The reports of injured workers' family doctors are being summarily rejected, if not actually ignored. We heard, as well, that there is a sense in the injured workers' community that it is adjudicators who are making decisions on medical issues which, if true, is greatly disturbing to injured workers because, simply, they are not qualified to do so regardless of the number of files they have overseen. Injured workers see this practice as part of the unstated "starting from no" practice mentioned earlier. It is also, in some indeterminate degree, why some doctors are starting to bale, or in the words, Janet Patterson, a Thunder Bay, home care worker, "fire" their injured worker patients. "Nothing is as straightforward as you think it's going to be," she stated. "It took me eleven years to get entitlement for a neck injury. Through the course of that time, that was through the Tribunal, and in that time I had a family doctor who fired me. He told me that when I went to go make an appointment he said that he was no longer my doctor. I do believe that this happened after I won my Tribunal but the Tribunal was trying to get medical reports from him. He didn't want to do it himself. He says you can come in, go through the files, take out whatever you want. And they sent him something like at least half a dozen letters

requesting medical information and finally the last letter was 'you either provide us with this information or we're going to fine you.' And it was significant. It was like, I can't remember, ten or twenty thousand dollars. It was going to be a significant fine. They did get the medical information and I didn't have a family doctor anymore."

To state the obvious, this is a devastating situation for injured workers. They are told by the WSIB to get doctor/specialist reports. They are then told to get more doctor/specialist reports. They travel, at times, long distances to get to medical appointments only to find the reports summarily cast aside. For injured workers what is mind-numbing about these processes and the "No's" that are their seemingly inevitable end point, is that all the decisions are made in the absence of personal examinations by WSIB doctors. This is completely mystifying to injured workers. In the words of a nurse in North Bay who was injured in two separate attacks by hospital patients and who is still struggling with getting her post traumatic stress claim recognized, desperately stated: "I don't know what they are looking for."

They seem to want precision. They seem to want to know exactly where the pain is, exactly the degree, extent and/or percentage of impairment. So, injured workers and their supportive organizations enter this process because they have no choice but to enter it. One can see this taking place in forms developed by Occupational Health Clinics for Ontario Workers (OHCOW) to assist their ergonomists in assessing musculoskeletal claims. With regard to shoulder injuries, the form asks the ergonomist to assess the "Reach" of the patient in terms of "Horizontal (forward), vertical (height); frequency and duration of reaches; reaches that have a holding time." And, with regard to "Posture," the form prompts assessments to determine "Work distribution between left and right sides; workstation layout; weight of materials, equipment, tools held in the hand; and, hand forces."

As we wrote just above, we believe that this is happening because injured workers and their supportive organizations have no choice. But, it should not be happening because it is a process that injured workers cannot win. It seems to us that by forcing injured workers and their supportive organizations into these indeterminable medical exercises they are bound to lose because it opens the door to WSIB efforts to date stamp the earliest instance of an injured workers' medical history that allows them to deny the injury or illness is work-related.

We can gain little from Sir William on this topic. During his Royal Commission Meredith was almost completely silent on the medical aspects of the new law he was in the process of fashioning. Ultimately, he did include a provision in his Draft Act for the appointment of a medical referee who would "certify to the Board as to the condition of the workman and his fitness for employment, specifying where necessary the kind of employment and his certificate shall be conclusive as to the matters certified." But, that was but a small bow in the direction of what

during his Commission he opined was no doubt going to be a difficult area. In his 3rd Sitting Meredith presciently noted that “there are so many injuries that a man might sustain that are not easily located. It is difficult perhaps in these spinal troubles to tell whether a man is really suffering as he thinks he is, or whether it is something else. That is a class of case where it is difficult to get at the extent of the injury.” During the same Sitting, Meredith, in discussions about payment for permanent disabilities, signaled, again somewhat presciently, that this would be the “difficult ground, the fighting ground.” In the end, we might excuse Meredith for such adumbrated thoughts on the medical issues relating to workers’ compensation. After all, he was preoccupied with ousting the lawyers.

Clearly, then, Meredith did not foresee that doctors would become the decision makers in his workers compensation system in some part, we think, because “spinal injuries” and “payment for permanent disabilities” did indeed become the “difficult ground, the fighting ground.” Nor do workers who enter the worker’s compensation system today foresee how their lives will become circumscribed by a medico-legal discourse that Terence Ison identified years ago as leading only to negative physical and psychological outcomes for injured workers.⁵ In his response to Paul Weiler’s report, *Reshaping Worker’s Compensation For Ontario*,⁶ Ison also spoke of the “perpetual probation” injured workers would be under should the government adopt Weiler’s recommendation to eliminate permanent pensions and in their place insert a wage loss award along with the practice of deeming. Thirty-three years after Ison penned these words of warning, he finds support for them in the experiences of an ever-increasing number of injured workers. As Holly Holden, a personal support worker who was injured while transferring a patient in what was supposed to be a two person operation but became a one person transfer, said about her self-terminated relationship with the WSIB: “It goes way beyond the money. It’s about human control.”

We will come back to this picture of control. For the moment, it leads us into our next finding: the takeover of the lives of injured workers by the WSIB and her or his employer. We use the word takeover because there is really no other word for it. It has two meanings. First, it means from the moment a workers initiates a compensation claim, if, in fact, they have the courage, the resources (family support, doctor’s support, representation), to do it, they become engulfed in a world for which they have no preparation. It is a poker game where the house holds all the cards. Where Dracula is guarding the blood bank. Where, if their frustration levels boil over, and they get angry at their adjudicators, their nurse case managers, their retraining instructors, they are likely to receive a letter cutting off their benefits. So, as we mentioned, they go to anger management classes because the stakes are so high in this poker game.

⁵ Terence Ison, “The Therapeutic Significance of Compensation Structures,” *The Canadian Bar Review*, Vol. 64, No. 4 (1986): 605-637.

⁶ Paul Weiler, *Reshaping Workers’ Compensation for Ontario*, Toronto 1980.

The second meaning of takeover is exactly this: like the corporate restructuring epidemic of the 1970s and 1980s that had as one of its principle manifestations the buying of one company by another with the sole purpose of milking it dry of all of its assets and then leaving it to rust, the workers' compensation system is increasingly, and ever more noticeably, ending their relationships with injured workers in ways that leave them floundering. It is leaving them in poverty – a condition, it is crucial to recall, Meredith was most concerned with when he was conducting his Royal Commission and which he noted strongly in his *Final Report*. There are now good studies that show that injured workers are living in poverty and that they are, in their own eyes, a burden on their families, their friends, and their communities. They know as their injuries and their illnesses go unattended, or as they bounce back and forth between different medical specialists, and, as those around them, including family members and their close friends lose patience and faith with them, that their struggles are not only long ones, they are lonely ones. Lisa Lowe, an injured worker we listened to in London, spoke of this slowly evolving sense of isolation, how in the face of family and friends slowly dropping away, she (and others who told us their stories) holds onto other forms of social contacts. In her case it was her massages. "They took my massages away from me," she told us. "I feel so lonely."

Moreover, as injured workers have talked about for decades, injured workers spoke to us of being treated like criminals and thieves, like frauds. They face a societal stigma that, to use the word again, bewilders them. It does so because they do not see themselves as different from other workers. They went to work each day and worked hard, just like their co-workers. "I was a hard worker." "I was a good worker." These are two phrases that we heard repeatedly. Two of the injured workers we listened to, Mark Wong and Bismark, the latter an immigrant from El Salvadore, were both considered model workers by their employers. Mark Wong was producing 600 units a day when he was placed in the company magazine. Bismark, a welder by trade, found himself working on the slaughtering line of a meat packing company because he could not get a job as a welder. A self-confessed hard worker and single father of three children, he, too, was featured on the company magazine as an example of a good employee. He was such a good worker, he told us, that the company refused to move him to another job both before and after he injured his shoulder, back and wrists from "boning out" animals on the line – a process that involved up to 20 motions/cuts per minute.

These are proud women and men. Men like Tony Mauro whose odyssey with the workers' compensation began in the 1970s and who today still feels the indignities of a system that cuts his meager workers' compensation pension every time his disability pension is marginally increased. He did not come to Canada, he told us, to live on welfare. Just like other Italian men and women who arrived here in the 1950s and 1960s, Tony Mauro came to Canada to work and make a new life for himself and his family. As we mentioned above, they want to

be able to return to work. To return to a time when their lives were so different than they are now. They desire to return to that moment before the 20 story fall, before the slip and fall on the oil or the ice, before throwing the restraining strap over the transport trailer, before being attacked by an aggressive patient, before being exposed to toxic fumes, before pulling files at Sick Kids Hospital resulted in repetitive strain injury, before the planter pot fell off the shelf and hit Charmaine Flick on her head, causing a brain injury and where now, in her words: "My brain has to regroup every day," to before the injury that has led to the moment when one injured worker said "I do not blame my wife for not liking me anymore." Only one of 103 injured workers asked to tell her story to us alone, with her husband. She did this because she could not want to reveal the humiliation she was feeling – humiliation she should not have been feeling because she was the victim of an assault by a patient where no one – including the subcontracted security guard – came to her aid, where, in her words: "My employer made me feel like it was my fault" and quickly pressured her to return to work.

We finish this section with Mike Golder's story.

Mike Golder: My name is Mike Golder... I had my own business and in December of 2002 I was a volunteer fire fighter, in Little Current. And then the night of December 19th there was a fire call and it was freezing rain I ended up having a fall and suffering a brain and neck injury. And then uh

Robert: How did the fall happen?

Mike: Just slipped. Ice. There was ice everywhere. Like I said it was freezing rain all night so. Anyway uh, um, I don't remember the accident or the day before. I wake up in the hospital but I was already awake. It's like being unconscious but you're walking around talking so all of a sudden I just became aware of where I was... Uh it was a serious brain injury I suppose. Um anyway, I was told to go home just relax and take the day off and you'll be alright. So I believe it was a Friday morning when I went into the hospital. So I took the weekend off and I had my own business like I said I went back to work Monday and I was having terrible headaches and uh trouble just staying awake... I had a body shop and an auto blast shop it was a one man operation myself... I was, you know, paying the mortgage and had a family, my youngest boy was born three weeks before the accident.

So got three boys at home... I continued having problems. Back to the hospital a few times and sent for MRIs and stuff and I just had these ongoing troubles and poor memory, dizziness and they seemed to go on for a couple of months. I was struggling to work and I just wasn't, it just wasn't happening. So WSIB got involved and right from the beginning it was very adversarial... They finally agreed to send a doctor over to assess me. He determined there was a serious brain injury and his thoughts at the time were... What they know about brains?... It's pretty limited so even back then it was, even now I don't know a whole lot, back then was

even worse. But his theory on it was the faster you get into rehabilitation the better likely your recovery. The further you're going to recover. So he assigned a couple of homeworkers to come and they worked on my memory and relaxation and small little skills to kinda get back, kind of retrain the brain to do things again.

And then compensation decided that that was pretty expensive so they cut him off. So I lost. You want to go see this doctor? And I seen, I don't know, umpteen doctors. I can't remember all their names or all the dates. I mean it's just phenomenal. They sent me to, they were trying to find any excuse for what's going on rather than a brain injury. It seemed like it's what they were looking for something to blame it on.

So I seen an endocrinologist. I seen just all kinds of doctors... They sent me to Toronto rehab institute for an assessment. Six weeks down there. I got out of there and they continued on ... They sent me to other doctors looking for stuff. A year or so went by, back to the Toronto rehab institute, and another reassessment and they sent me to a doctor in Sudbury who decided that medication was the answer. So I was on five different pills. Enough to put a horse down. So I ended up just kinda doin' nothing' all day but laying around.

And I spent a couple years like that when I got just fed up and I threw the pills away and moved to Sudbury, joined the Y, got working with the March of Dimes. Kinda had to take care of it myself and they were like I said, when it comes to rehabilitation they were no help at all.

And then just the fight back and forth. Being on compensation. And they sent me to see another doctor for an assessment. They were going to send me back to school but they wanted to know what I was capable of doing. So it was a couple days in Sudbury, asked like a thousand questions and the psychiatrist was never in the room. In fact it was a conference call on the computer. We had a recommendation of five different things all of them driving a cab or driving a truck or something like that. At the time the Family Responsibility Office was involved because my wife and I split up during all this.

I've never met a single person from WSIB personally. I couldn't tell you what any of them look like. Never in my life. They went through the Toronto rehab institute where I'd seen probably eight doctors altogether for different things. At the end they bring you into a room to talk about the assessment. Of course they talk about it like you're not there amongst themselves.

Robert: Why do you think the board, adjudicators and others officials that you come into contact with, why do they treat you in a way that you're almost like you're their enemy or something?

Mike: I have no idea. I don't know what kind of training they go through or what is said to them. It just it just seems that way. I got lucky one adjudicator ... who really, I don't know, bent over backwards... I guess he had a friend with a brain injury so he kind of understood... Four years ago he was removed from the file and I was assigned another woman who I had one conversation with and she was just yelling at me on the phone... She called me one afternoon and started yellin' at me and she said I don't know what you and [your other adjudicator] have been up to but it's over, you've been cut off... She said she'd been given the file six months before and I said oh, you're just calling me now that's pretty quick eh? And then that just really put her over the top she yelled... She's got about 150 cases to look after and blah blah blah. Well okay. So it sounds like you've got your mind made up I'll and I'll go see my lawyer...

Robert: They never did cut?

Mike: Oh no. I fully expected to be but it just went on and that's when this push for schooling stuff suddenly became priority.

Robert: So you're still getting benefits?

Mike: 'til age 65 when my brain injury goes away on my birthday.

How are we to understand what we found?

If we were to ask injured workers this question their responses would boil down to one word: Money - meaning the WSIB trying to save money. And, in our view, they would not be wrong. The WSIB is publicly upfront about its goal of paying down its unfunded liability or their debt that is said to be the difference between its current assets and its committed expenditures. Indeed, when the current president and chief executive officer, I. David Marshall, was hired by the reigning Liberal Government, his contract contained a substantial bonus which would come his way if he managed to bring down costs. (He has since received this bonus.) As this process has evolved, Marshall's WSIB is taking some pride in decreased costs, stemming as they point out, from more efficient administrative and policy practices resulting in decreases in the length of claims – especially loss time claims as well as those claims involving some form of permanent impairment.

The reduction of benefits – the contests over benefits – was one of the residing themes in the stories of injured workers. Hence, their focus on money as the underlying cause of their struggles with the WSIB. Unfortunately, in reporting this we are not adding a new and different chapter to the history of injured workers in Ontario. From the time the first Workmen's Compensation Act became law in 1915, through the decades to the 1960s and 1970s, the issue for injured workers has been money.

Benefits were not sufficient.

Pensions were not enough.

Rehabilitation funds were inadequate.

Clothing allowances, if they got them, were out of sync with real costs.

Sir William Meredith, of course, was keenly aware that money was, and was going to be, a controversial issue. He understood that labour leaders were upset that injured workers were not going to receive their full wages. He was aware as well that they were not going to get any medical coverage if their injuries lasted less than seven days. And, Sir William was made very aware of money by Frank Wegenast, both with respect to the level of short and long term benefits for injured workers, and, as critically for the Canadian Manufacturers Association, whether or not annual assessments were to cover only yearly costs or yearly costs plus the total costs payable to injured workers for their injuries and illnesses.

In the end, Meredith displeased both camps. Labour leaders were not happy about the 55% Meredith set as the percentage injured workers would receive of their wages while they were off work. Nor were they pleased with the waiting

period. Their argument had been that workers paid enough through their injuries and the losses, both personal and occupational associated with workplace injuries. With regard to benefit levels, Meredith countered CMA demands for flat and terminal benefits with the statement that the former would be unfair to all but the lowest wage earners. Regarding the second – terminal benefits – he retorted that injured workers should receive benefits for as long as their disabilities lasted and that employers should pay these costs because, after all, they were injured at work. As to the “current cost” versus the “capitalized” plan as each of the assessment plans were known, Meredith ended up trying to draw a line down the middle: annual assessments would be need to be at levels that matched the total annual costs plus sufficient for a reserve.

So, debates and disgruntlements about money are not new. What is new, however, is the rapidity with which decisions to reduce benefits, or to cut injured workers off benefits, are being made. In story after story we heard injured workers tell us about WSIB officials informing them that they believed that they were ready to return to work. This would mean one of two things: first, that they would be returning to their old job or a modified job with their injury employer; and second, it would mean deeming or the practice of WSIB officials choosing jobs they believe injured workers can do and then adjusting their benefits according to the wages they would be receiving in those jobs – whether or not injured workers actually had these jobs or even if these jobs actually existed.

This is, of course, “deeming” which we have recommended be ended. It is a word that, like wild fire, is spreading through the injured workers’ community. It is percolating rapidly through injured workers because it is a word that they have to fully grasp if they are to deal with it – much like injured workers have been forced to learn about medical terms and medical technologies, in a sense becoming their own doctors, so that they can deal with the mountains of medical reports, on the one hand, and so they can learn what is necessary to ‘self-accommodate’, on the other hand.

What is being learned by injured workers is that deeming is about saving money even as it is dressed up as dealing with the problem of ‘moral hazard’ whereby injured workers are said to be taking advantage of a generous benefits system by exaggerating their injuries and illnesses, their pain, by malingering, by inventing emotional and psychological issues – all in order to either increase their benefits or to stay on workers’ compensation or both.

Moral hazard is yet another word that has entered the lexicon of injured workers out of a necessity to understand the discourse around it. It has a long history, dating back into the 17th century and widely used by English insurance companies in the late 19th century. While this needs more research and thought, we think that the term forcefully enters workers’ compensation in Ontario during Meredith’s Royal Commission in the person of Frank Wegenast. For example, in his claiming that upwards to 75% of workplace accidents were caused by

workers and by stating that workers should therefore contribute financially to funding the new workers' compensation system, we think that Wegenast and the Canadian Manufacturer's Association were situating their arguments and their recommendations within a moral hazard framework. In the CMA submission to Meredith, Wegenast (he wrote it) makes these remarks about the benefits of one form of workers' contribution – the waiting period.

“A much more equitable and at the same time more salutary method of contribution is through a ‘waiting period’ immediately following the occurrence of the injury, during which period no compensation is paid. One purpose of a waiting period is the prevention of simulation and malingering. These evils doubtless exist in every system of workmen’s compensation, and one of the great problems is to reduce them to a minimum. The elimination of simulation is important, not only in the interest of the economy but because of the demoralizing effect produced upon the working class and the stigma thrown upon the whole system by successful imposition.”

While we need to pursue this theme more systematically, we think Meredith's insertion of the word/concept “social” in the testimony of his Royal Commission and in his *Final Report*, can be understood as his rejection or at the very least his blurring of the lines between the ‘private’ and the ‘public’ that Wegenast and the self-styled captains of industry he was representing wanted very much to preserve. In other words, Meredith did not believe that the moral hazard argument should have had a central purchase on the workers' compensation system he was constructing in his mind and on paper.

That said, the battle lines once enjoined, faded but did not go away. The contest over “in or out of the course of employment,” noted in an earlier section of this report, resurfaced in two later Royal Commissions, the first headed by Justice Wilfred Roach in 1950, the second by Justice George McGillivray in 1966. Indeed, the McGillivray Royal Commission was called by the Ontario Government largely to deal with the complaints of Ontario manufacturers about the precipitous rise in claims and costs associated with back injuries. During this Commission Ontario's steel and automobile manufacturers wondered aloud and often about Monday morning back pains among their workforces. Couldn't these workers have been injured on the weekend playing hockey, they asked? How was it possible for a person moving very light objects to suddenly become debilitated to the extent that they had to have time off work?

These employers made it clear that they believed that they were paying for “social” injuries – those with origins outside their workplaces. It is a message that is picked up again in a 1978 report to the government penned by the Wyatt Company of Toronto, a private accounting/consulting firm. Almost 500 pages in length, the *Wyatt Report* observed that while the workman's compensation system in Ontario was in sound financial shape, costs were rising and there were indications that they would continue to do so. In light of this incipient danger, the

Report called on the government to consider introducing widespread changes in the payment and benefit structures of the WCB, particularly those that supported the notion that injured workers have a “right to a post-accident standard of living fully equivalent to the pre-accident standard of living.” Such a result was unacceptable, the authors opined, as it took away the incentive of injured workers to return to work – any type of work. The danger of malingering, they wrote, always present in systems like workmen’s compensation and unemployment insurance, was being enhanced in the current climate where injured workers were securing higher pensions and being able to access other social security benefits like Canada Pension disability payments. Taken together, the *Wyatt Report* stated: “The present benefits provide total disposable income after disability which is higher in many instances than disposable income before disability. The benefits are grossly excessive by any reasonable standard.”

The main findings and recommendations of the Wyatt Report found sympathetic ears within both the government and the Workers’ Compensation Board. Indeed, in relatively short order the WCB issued its own “*Current Concerns In Workers’ Compensation*.” Dubbed the “Grey Paper,” the author, Ken Harding, the secretary of the WCB, lost no time getting to the “basic concerns.”

The basic concerns fall into three general areas: There are concerns for those who are, or could be, injured – that they receive adequate benefits. – There are concerns for industry – that the costs of compensation for which they initially pay do not prejudice their ability to compete in the marketplace. – There are also concerns for the tax-paying consumers – that their living costs are not unduly increased by compensation costs and that the system should not be capable of providing greater rewards for incapacity to work than are available to those who, through employment, sustain the economy on which Ontario’s society depends.⁷

The “Grey Paper” represented a marked departure in the public stance of the WCB. First, in reiterating the themes of the Wyatt Report regarding the perils of overcompensation and rising costs to employers, they gave voice to employer’s concerns that had heretofore been private and somewhat muted. “Industry... has expressed grave concern over the years,” Harding continued on the same page, “that, while most increases in overhead costs are in fact passed on to the consumer, the costs are nevertheless real and have a serious impact on the prices charged for its goods and services.” This view was contrasted directly to that of “organized labour” and other “groups representing injured workers and those who identify with them, [who] tend to focus on the range of benefits now available in Ontario and urge that they be increased or improved in variety of ways. Cost to society is generally not a factor in such proposals, nor is there a concern for the overlapping or stacking of various benefits.”

⁷ Ken Harding, *Current Concerns in Workers’ Compensation*, Toronto 1978: 1.

Second, and as critically, the “Grey Paper” brought “society” directly into the debate. Referred to interchangeably as “taxpaying consumers” and “Ontario’s society,” the “Grey Paper” placed “society” between and beyond the conflicting interests of labour and industry.

Consumers tend to have conflicting concerns. On the one hand, they have concerns that injured workers be adequately compensated and tend to support arguments for higher benefits and a more universal coverage. On the other hand, they are concerned about the prices of Ontario-produced goods and may look for lower priced alternatives from other countries where overheads, including workers’ compensation costs, are lower. Consumers are also concerned about rising unemployment which may in part be attributable to the impact of higher production costs in Ontario on the prices of Ontario goods. Some also express concerns that the benefits for the unemployed are too high and are a disincentive to employment, without being aware that compensation benefit levels are approximately double those for unemployment insurance.⁸

Next in line was Harvard law professor, Paul Weiler, who in his 1980 report entitled, *Reshaping Workers’ Compensation in Ontario*, recommended the substitution of life-time pensions with a dual award system that would attend non-economic losses such as pain and suffering while at the same time paying injured workers benefits that matched more closely than ever their lost wages. Moreover, he wrote, such a dual award system would address the sticky and costly problem of over and under compensation.

From the *Wyatt Report* to the *Grey Paper* to Weiler’s *Reshaping*, the message gets clearer and clearer: Beware of moral hazard. In discussing this concept and its meaning a bit further, we turn to Martha McCluskey who argues that the wave of workers’ compensation ‘reform’ that swept through American states in the 1970s and 1980s was based on the manufactured and managed perception that “benefits expansions increased coverage of claims for which the cause or severity of the disability appear[ed] uncertain – occupational diseases, gradually developing strains, or psychological stress... [which] produce[d] incentives for workers (and their advocates) to exploit this uncertainty in their favor by filing more claims, and by filing claims for greater losses.” What neoliberal reformers found wrong here, McCluskey argues, is that these expansions violated the historical bargain as they understood it, i.e., the sacrifice workers made in terms of giving up their civil rights in tort action in exchange for compensation was meant to be a reciprocal exchange and not a redistributive transfer. In other words, the newer and higher benefits being secured by injured workers were

⁸ Harding, *Current Concerns*: 2.

coming at the expense of the efficiency and competitiveness – and profitability - of private companies.⁹

The moral hazards said to be associated with workers and workers' compensation stand behind these complaints and assertions. But what stands between them is the "public." Meredith warned Fred Bancroft that the "generous" benefits he was asking for would "shock the public." The *Grey Paper* brought the "public" and its concerns about competitiveness front and centre into the discussion. This view took hold among the business side members of Premier Bob Rae's Premier's Labour Management Advisory Council (PLMAC) which had been charged with examining the workers' compensation system and advancing recommendations for change. As it became increasingly clear that Rae's New Democratic Party was not going to win the upcoming election, the business members of the PLMAC bolted the discussions and issued their own report. As it happened, many, if not most, of their recommendations found their way into Bill 99 which among other things, changed the name from the Workers' Compensation Board to the Workplace Safety and Insurance Board, introduced Early and Safety Return to Work programs that injured workers we listend to claimed were early but anything but safe, insituted a 24/7 fraud line, and sent out the message that injured workers must be "self reliant."

Once again, we believe that McCluskey's analysis around similar themes in the United States are pertinent to the situation in Ontario. "As a result of some recent state reforms," she writes:

"... workers owe even more for their workers' compensation benefits: they must contribute not just tort immunity but also (for instance) good physical and mental health not hampered by nonwork demands, pre-existing weaknesses, or age; and they must contribute skills, attitudes, occupational choices, and labor market value sufficient to prevent most permanent injuries from resulting in substantial income loss."¹⁰

This is the self-accomodation we mentioned above. At a deeper level, however, it is large scale economic, political and cultural reinforcement of the artifical but central from an employer's standpoint, separation of the realms of production and reproduction, the private and, in terms of work, crucial areas of the public.

So, why have we heard the things we have from injured workers? Because the vision of workers' compensation system we associate with Meredith is not the one that is operating in Ontario today. From the late 1970s forward, with some important blips along the way, succeeding governments have bent to the neoliberal winds of deregulation and privatization and seemingly whatever else business interests desire.

⁹ Martha McCluskey, "Efficiency and Social Citizenship: Challenging the Neoliberal Attack on the Welfare State," *Workers' Compensation Law Review*, 78 (2003): 492.

¹⁰ McCluskey, "Efficiency and Social Citizenship: 496.

Conclusions

What we found was a strong belief among injured workers that the Ontario workers' compensation system is broken. The legislative changes and the policies and regulations that have put in place particularly over the last 20 years have all but eliminated the positive reforms of the of the 1970s and 1980s. It is a system, they believe, that has lost its moral compass. For them it is a mean-spirited system. To injured workers, the WSIB is acting like a schoolyard bully, picking on workers when they are most vulnerable. It is a system where they can plead their cases all they want but the people who make the policy and make the decisions on their lives will not listen. It is a system that seems captured by business interests and politicians and public officials who bow down to those interests. It is a system that summarily dismisses injured workers into poverty.

It is, therefore, not the system Sir William Meredith envisioned would grow from his founding principles. He believed that a public workers' compensation system would be a system characterized by its independence and a mission that promised that justice would be speedily and humanely rendered. He believed that governments would appoint men (sic) of integrity who would stand steadfast against those who would seek undue or nefarious influence over workers' compensation boards. For Meredith, business interests, not even large business interests, had any basis on which to claim to have their views and opinions prioritized and adopted over and against the views and opinions of any other group, including labour and injured workers. For Meredith, workers' compensation legislation was "social" legislation aimed at preventing injured workers and their families from falling into poverty.

Following from these observations/conclusions, injured workers were rightfully concerned with how this situation could be changed. They wanted the workers' compensation system to be held "accountable" but, when they were asked for concrete suggestions, they were not fully confident that they had a grasp of what actually should be done. To be sure, they wanted the government to fire I. David Marshall from his twin posts of President and Chief Executive Officer. They wanted an end to deeming and experience rating. They wanted their family doctors to have the determinate say in their diagnoses and treatment. In the end, they wanted whatever changes were needed to transform their adjudicators and other workers' compensation officials from adversaries to guides – to individuals whose task it is to actively assist them in their claims and appeals.

If there was some confusion on what is needed to fix the workers' compensation system, there was equal hesitation on how this can be achieved. If we look back into the history of injured workers, we see that past gains and achievements flowed out of collective action. From the late 1960s into the 1990s the injured workers' movement stood ready to challenge regressive legislation

and restrictive WCB policies and regulations. During those years injured workers were easily found: they were picketing in front of the Legislature or the WCB. We understand that there is much that is controversial about this period in the history of the injured workers' movement, including the role played by various officers in its principle organization, the Union of Injured Workers. Indeed, some the issues behind these controversies lead to its unfortunate demise. However, it remains clear to us, as it did to injured workers then, that the gains made during these years were a direct result of their collective organization, of their willingness to walk the streets, to enter the Legislature, to pressure their elected representatives. To be sure, along the way there were countless meetings to discuss and draft written responses to proposed legislative and policy changes. But, importantly, these meetings were in preparation of, not a substitute for, collective action.

While this is certainly open to debate, we think that same link between thoughtful work and activism is not as evident today. Over the past decade the injured workers' movement has taken a "research turn." That is, it has placed a good deal of its energy and its hopes in academic research aimed at bringing to light the many issues and problems that plague injured workers – the issues and problems that we heard about as we travelled to the various centres and cities. A good deal of this research has been extremely useful to the injured workers' community. For us, its most important impact has not been on policy makers (we can see precious little of this), but on injured workers themselves as they learn that their aches and pains and their frustrations with claims recognition, appeals, return to work, stigma and surveillance are shared by many others. In our minds, the injured worker speakers schools, conceived and put in place during this "research turn," period stand as its most significant accomplishment. We say this because it has been through the speakers schools that injured workers have learned about their history and it is through the speakers' schools that injured workers learn how to put this research into motion. In short, to our minds, the injured worker speakers schools make the necessary links between thoughtful work and activism that was crucial to building and maintaining the injured workers' movement in previous times.

Our major hope is that the processes associated with the "No Half Measures" conference and the Revived Meredith Commission have lead to a greater interest in, and concern about, the overall conditions of injured workers – by injured workers and by workers who are not injured, perhaps especially workers who are not injured. We hope as well that injured workers know that they are not alone; that their frustrations and anger is justified and shared; that others are very aware that the workers' compensation system is not a good system, not a fair system. We hope that in what has been a fruitful process of interpreting the worlds of injured workers, the time has come for all injured workers to come together to change them.