

**Submission to 2013 Ontario Poverty Reduction**

**Strategy Consultations**

Injured Workers' Consultants  
815 Danforth Ave., Suite 411  
Toronto, ON M4J 1L2  
Tel: 416-461-2411

## **Submission to 2013 Ontario Poverty Reduction Strategy Consultations**

In 2009, Injured Workers' Consultants was pleased to support Bill 152 and the Ontario government's Poverty Reduction Strategy. We made a submission to ensure that the provincial government's understanding and analysis of poverty reduction in Ontario included the poverty faced by injured workers who encountered a workers' compensation system that, rather than treating them with dignity and helping them cope with the many hardships that arise out of a workplace injury, instead relegated them to impoverished lives and caused them further physical and mental harm.

It was our hope that in bringing forward the issue of injured worker poverty, concrete steps might have been taken to address this problem as one component of a comprehensive poverty reduction strategy in Ontario. Unfortunately, in the four years since the last round of poverty reduction consultations, the situation has only grown worse for injured workers.

Over this time, the Workplace Safety & Insurance Board (WSIB) has aggressively implemented a rigid austerity agenda that is focused on cutting costs rather than compensating and supporting workers who are hurt and made sick on the job. In effect, the WSIB has taken a private insurance approach to its treatment of injured workers, which starkly contradicts the original founding principles of the workers' compensation system.

### **The founding principles**

Our workers' compensation system was founded in 1915 by Sir William Meredith. It was a system based on the principles of remedial justice, meant to help workers and their families faced with the harm and costs of work-related injuries. It was established to provide injured workers with prompt and secure benefits that compensated them for as long as their disability lasts. Workers' compensation was to be no fault and non-adversarial, with employers collectively paying the costs of workplace injuries, in return for workers abandoning their right to sue employers in case of injury. One of the main purposes of the system was that injured workers should not become a burden upon their families, friends, or communities. In the word of Justice Meredith, it was to be a system of "full justice, not half measures."

### **The current reality**

With the current austerity trend, the WSIB has strayed very far from these principles. Here are some figures that demonstrate the WSIB's austerity cuts and the significant impact they have on increasing injured worker poverty:

### Increased denial of new claims

- From 2009 to 2010, there was a **43% increase in denied claims**, with the rate of denial of new claims jumping from 7.9% to 11.3%.
- In denying these claims, the WSIB often disregards the opinions of injured workers' treating doctors, as well as medical evidence that supports their claim for workers' compensation. Instead, it blames "pre-existing conditions," even if the worker never felt any symptoms from these conditions prior to their workplace injuries.
- While the WSIB boasts that it is making faster decisions and has fewer abandoned claims, the **reality is that it is simply denying more claims at an earlier stage**.
- As a result of these early denials, **injured workers are increasingly forced onto taxpayer-funded social assistance programs** such as Ontario Works and ODSP

### Benefits cuts

- By September 2011, there was a **\$631 million reduction in benefits costs** compared to the year before. The WSIB Third Quarter 2011 Report to Stakeholders refers to this as one of its "positive trends in our benefits costs."
- Similarly, between September 2011 and September 2012, the WSIB **cut \$58 million from Loss of Earnings benefits**. There was also a 30% decrease in the number of injured workers who received any Loss of Earnings benefits at all between 2008 and 2011.
- There was a **31.3% drop in the number of permanent impairment awards** granted to injured workers in the first 6 months of 2011 compared to the same period the year before.
- **Healthcare costs were reduced by 4.5% in 2011, and another 5.3% in 2012**. This is in large part due to the WSIB's new practice of refusing to cover maintenance therapy, and its increasingly restrictive drug coverage.

### Unjust "return to work" practices

- Over the past several years, there has been a **74% cut to work retraining programs**, with 5 months being the average length of a work retraining program in September 2011, compared to 19 months in 2009.
- The WSIB ignores the real difficulties that injured workers have in finding work – particularly after only 5 months of training – and **uses its practice of deeming to cut injured workers' benefits according to a phantom job** that they do not actually have.

- **Many workers are forced back to work too soon**, before they are medically fit to return, and/or to an unsafe and unsustainable job. They can be forced back even if their treating doctors do not feel they are ready to do so. If injured workers comply with the WSIB's demands for early return to work, they may risk exacerbating their injuries. However, if they raise questions or concerns about the work transition plan, they risk being cut off for "non-cooperation."

#### Employer incentives to fight claims

- The WSIB's experience rating program serves as an incentive system that encourages employers to contest, manage, and appeal injured workers' entitlement to compensation. Under this system, **employers have gained \$2.7 billion in net rebates**.
- In his recent *Funding Fairness* report, Professor Harry Arthurs stated that "the WSIB is confronting something of a moral crisis. It maintains an experience rating system under which some employers have almost certainly been suppressing claims; it has been warned...that abuses are likely occurring. But, despite these warnings, the WSIB has failed to take adequate steps to forestall or punish illegal claims suppression practices."

#### Injured worker poverty

All of these cuts run directly counter to the promise that MPP Leanna Pendergast made to injured workers on December 6<sup>th</sup>, 2010, when she stated in the Legislature that full WSIB funding "would not be achieved on the backs of injured workers." Injured workers have indeed borne the burden of these cuts, which have forced them into a cycle of poverty and uncertainty.

Due to the WSIB's refusal to allow full cost of living adjustments (COLA), injured workers are trying to survive on nearly 20% less than they received in 1996. In effect, the WSIB has ignored Professor Arthurs recommendation to implement full COLA.

According to a 2010 survey conducted by the Ontario Network of Injured Workers' Groups (ONIWG):

- Nearly 30% of injured workers were forced to use food banks after their injury, compared with only 2% before.
- The number of workers who were low-income earners increased by 52% after a workplace accident.
- Almost 90% had full time jobs when they were injured, but only 9% still did after their injury.

- 20% had to sell their homes to either move to a cheaper house, or to start renting again. 25% had to move in with friends or family at some point after their injury, and many others were only able to stay in their homes with the help of friends or family, or by using savings meant for retirement.
- Over 50% were unable to afford the prescriptions they needed in the past year, and over 66% were unable to get all the health services they needed.

### **Moving forward**

With the increasing number of injured workers living in poverty, it is clear that the current system falls short of its founding objective to support injured workers and insulate them against poverty. The austerity agenda in workers' compensation only serves to exacerbate the harm inflicted upon injured workers, just as austerity programs more broadly effectively send working people deeper into poverty and widen socioeconomic inequalities.

At the same time, however, it is also important to recognize that Ontario already possesses the essential foundations upon which to build an effective strategy to end injured worker poverty. Indeed, the founding principles of the workers' compensation system – no fault, non-adversarial, collective liability, employer funded, publicly administered, compensation for as long as the disability lasts – remain the keys to establishing a just compensation system that fully compensates and supports those who have suffered a workplace injury or illness, assists these workers in returning to employment with dignity, and aids in protecting all workers from injury or illness at work.

Within this context, keeping injured workers out of poverty means providing compensation that:

- Covers all workers
- Reflects full income loss into retirement
- Reflects loss to quality of life
- Is adjusted fully for cost of living
- Is based on real-life wage loss, not deemed earnings
- Maintains employee benefit coverage and CPP contributions
- Includes comprehensive health care and consultative vocational and social rehabilitation

In essence, poverty reduction for injured workers means embracing a system that treats them with dignity and respect, and that truly seeks to support them through their workplace injuries or illnesses. Moving forward along this path, would not only address poverty for injured workers themselves, but would also free up resources in health care and social assistance that can be used towards a broader poverty reduction goal. Injured workers are hopeful that under new leadership and the promise of a fair Ontario, meaningful steps will be taken to include them in the provincial poverty reduction strategy.