

THE LONG ROAD TO JUSTICE

Ontario's Injured Workers & Injured Workers' Day

By Kristin Schwartz



JUNE 1, 1983 WAS A MOMENTOUS DAY for Ontario workers, a high point in years of organizing for fair compensation for those injured on the job. On that day over 3,000 injured workers and supporters turned out for a meeting of the committee that was rewriting Ontario's workers' compensation system. Forced to accommodate this audience, the committee convened on the front steps of Queen's Park — an unprecedented response by a legislative committee. And the voices of injured workers were heard. When new legislation was passed a year later, pensions for people disabled because of workplace injury were protected. A year later, those pensions were indexed to inflation. Since 1983, workers across Ontario have recognized June 1st as Injured Workers' Day.

Twenty-six years later, Injured Workers' Day is more relevant than ever. Historic victories have been undercut, leaving many injured workers unemployed and destitute. According to Steve Mantis, secretary of the Ontario Network of Injured Workers Groups (ONIWG), research shows that between 50 per cent and 80 per cent of people who have a permanent disability because of a workplace injury are chronically unemployed. "The vast majority of people want to keep working. But our economy is not structured in that way, to accommodate people with disabilities," he says. "Employers think, 'If you're disabled, we don't want you. We have enough surplus workers who are healthy, we don't need to bother with all those people who are disabled.'"

Despite the evidence of high chronic unemployment among those with a permanent disability, Ontario's Workplace Safety and Insurance Board only provides long-term financial awards to about one-sixth of the 14,000 people who are permanently

disabled in the workplace annually, says Mantis. ONIWG is conducting a province-wide survey on poverty and injured workers. Initial findings among permanently disabled injured workers in Thunder Bay suggest that over 70 per cent are living below the low-income cutoff that is widely recognized as Canada's poverty line. Over 40 per cent survive on social assistance (Ontario Works) or the Ontario Disability Support Program. A recent survey by Street Health, a non-profit agency that provides physical and mental health programs to homeless individuals in downtown Toronto, found that 57 per cent of homeless people who had once been employed had suffered a workplace injury.

And now, the economic recession has many advocates worried. "At the best of times, injured workers aren't on the radar," says Rolly Marentette, a vice-president of ONIWG and chair of its political action committee. "And, with this economic crisis, there's a feeling out there that everyone's got to take a cut. There's a whole feeding frenzy on workers' issues that's going on." Marentette fears that the stigma attached to workplace injury is an obstacle to building solidarity with injured workers. "Even co-workers have this belief that somehow you have some responsibility for causing the injury, or that you're faking it just to get the easy ride," he says. "This just benefits the employers."

HISTORIC COMPROMISE

Canada's compensation system for workplace injuries was born out of a compromise in the early 1900s. Workers gave up the right to sue over injuries on the job in return for long-term support in the event of a disability. Since then employers have paid into compensation boards, sharing costs and liability. These boards focus not on finding fault but

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LEFT: On June 1, 1983, 3,000 injured workers and their supporters converged at Queens Park, Ontario's legislature, for a meeting of the committee rewriting the province's workers' compensation laws.

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RIGHT: Tony Mauro (centre with cap), a longstanding activist in the injured workers' movement, attended Injured Workers' Day events in Toronto on June 1, 2007.

PHOTOGRAPH: ROBERT STOREY



on compensating workers who were hurt. In the 1960s, struggles led by construction workers won improved benefits.

The system worked for Steve Mantis when he lost his arm in a construction accident 31 years ago. "I was granted a lifetime pension and that has given me financial security. I'm not going to end up homeless," he says. "We'll never drive a new car, but we won't starve. So, that is ultimately what we are after: a system that treats workers with respect and dignity and compensates them for the loss they actually experience."

In Ontario, that system has been eroded through legislative changes in the late 1980s and 1990s. In 1990, pensions were replaced with "wage loss payments" until age 65. Without a retirement plan, most recipients will then be thrust into poverty. Under the Mike Harris regime protection deteriorated further. In 1998 the Workers' Compensation Board was renamed the Workplace Safety and Insurance Board (WSIB). The WSIB began to "deem" injured workers to be back in the workforce in "suitable" employment, earning wages, whether or not they were actually able to find and keep a job. These "wages" are then deducted from benefits. Injured workers also complain about excessive reporting requirements and being under constant scrutiny. The historic compromise is being undercut, according to Mantis. "Employers are still protected from lawsuits and liability, but workers are no longer guaranteed benefits."

"Most workers think that the system is a wonderful thing, until they get wrapped up in it," says Marentette. "And then, when it blows up in their faces, they ask, 'What happened?' And they think that it's only them."

The psychological impact can be severe.

Marentette regularly counsels people by phone. "I hear people crying. I had one guy sitting with a shotgun in his lap, threatening to go and shoot someone at WSIB. His wife was pleading in the background. It tears your heart out. A lot of times I end up crying too."

UNDER-REPORTING

Another bone of contention between workers, employers and the WSIB is the Experience Rating program. Under this program, employers who report less-than-expected "loss time" (time off work) due to workplace injuries may receive rebates on their WSIB premiums. Workers are finding that instead of rewarding improvements in safety, the Experience Rating program encourages companies to cover up injuries, and to push people back to work before they are ready, or into demeaning make-work tasks.

"What that means on the front-line is people are encouraged not to report," says Mantis. "There's all kinds of pressure on workers to just suck it up. With the way our economy is changing — less union jobs, more insecure, part-time, contract and temporary employment — people are reluctant to rock the boat. If you do report an accident, and a layoff comes, you may be one of those people who are out of a job."

Immigrant workers face even greater challenges, he says. "They are, by-and-large, in the riskiest occupations, are less likely to report injuries or diseases, and, if they do report them, they are less likely to get any benefits at all."

The *Toronto Star* newspaper investigated workplace injuries, death and illnesses in 2008, in a series of articles called "Working Wounded." Over a seven-year period they found reports of 11,000 injuries which resulted in not even one day off work,

according to the employer. These included 3,000 very serious injuries including fractures, dislocations, amputations, and bad burns.

Mantis recalls the story of a mother who came to him for advice. Her son had broken his leg, working on the railroad. "The employer never reported it, but they bring him to work in a taxi and he punches his time card and goes home again. She asks me: 'Is that legal?'"

The Ontario Network of Injured Workers Groups calculates that the Experience Rating rebates, coupled with falling premiums, have put one billion dollars a year back into the pockets of employers over the past decade. Meanwhile, benefits to workers have been cut and fewer injured workers are receiving the compensation they deserve. This puts additional strain on public services.

"A lot of people don't understand that the deadbeats are actually the employers, who are discouraging the filing of claims, or confusing the claims," says Marentette. "Because, if the employers aren't paying the full cost of somebody's injuries, it comes back to the taxpayer in the form of social assistance, food banks, CPP benefits, and health care."

PREVENTING WORKPLACE INJURIES

Steve Mantis worries that employers are losing the financial incentive to keep their workplaces safe. Terri Aversa, a health and safety officer with the Ontario Public Service Employees' Union (OPSEU), agrees. "Compensation and prevention are two pieces of the same puzzle," she says. "The compen-

sation system manages claims rather than meeting with the actual needs of people. And prevention in this province is all about managing the worker rather than dealing with the hazards."

OPSEU members are subject to a whole range of hazards, including muscular-skeletal injuries and workplace violence, particularly in the fields of health and long-term care. "Over 40 per cent of claims in Ontario relate to muscular-skeletal injuries, but there is no specific guidance in law for employers, no regulation," Aversa says. The general duty clause of the Occupational Health and Safety Act requires that employers take "reasonable precautions" to protect their workers, and regulations on sectors like mining, health care and toxins like asbestos get more specific. Aversa wants to see the introduction of new regulations that deal with today's workplace hazards.

Furthermore, she advocates that the whole framework of the Occupational Health and Safety Act be revised in line with the recommendations of Justice Archie Campbell. He chaired the commission studying the 2003 outbreak of Severe Acute Respiratory Syndrome (SARS) in Toronto, which infected 375 people — 45 per cent of whom were health care workers — and killed 44, including two nurses and one physician. "Perhaps the most important lesson of SARS is the importance of the precautionary principle," Campbell wrote in his final report. "SARS demonstrated over and over the importance of the principle that we cannot wait for scientific certainty before we take reasonable steps

FIX EI NOW!

STATISTICS CANADA CONFIRMS that less than one-third of unemployed people in Ontario are getting unemployment insurance. Earlier in the month, the majority of MP's in Parliament voted for a New Democratic Party motion that called on the Harper government to eliminate the waiting period, reduce the number of work hours needed to qualify and raise the rate of benefits. But the Conservatives continue to ignore the will of Parliament.

To send a message to your MP, go to www.labourcouncil.ca/MPs.html.





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Nick DeCarlo, National Representative, Canadian Auto Workers' Health, Safety and Environment Department

These injured workers meet regularly at Injured Workers' Consultants (IWC) in Toronto to discuss issues particular to their experience.

PHOTOGRAPH: ROBERT STOREY

to reduce risk. This principle should be adopted as a guiding principle throughout Ontario's health, public health and worker safety systems."

In one case, OPSEU members working in a government office complained of a persistent smell of vinegar. Research turned up an Australian study showing that microfiche files, like those stored in their workspace, disintegrate unless stored at low temperatures. As microfiche degrades it releases acetic acid, which is classified as a hazard under Ontario law. The employer tested the air, found levels were below the threshold considered dangerous and refused to move the files. "But the Ontario standards don't consider that there are multiple exposures to different things, that it goes on every day, that some days it's worse than others, and so on," says Aversa. Eight months later, the employer moved the microfiche files — to protect them from further degradation. "This is a perfect example of how the precautionary principle is not at work at this government ministry," says Aversa.

OPSEU supports and publicizes Injured Workers' Day and its theme: "Injury Should Not Equal Poverty." "We must work towards change," says Aversa, "for our children and grandchildren. We don't want to leave them the legacy of going to work and getting injured and being afraid to speak up because they might lose their job. They might lose their life! People do."

GOING NATIONAL

In May 2008, at its tri-annual convention, the Canadian Labour Congress adopted a resolution to declare June 1 "a Canada-wide day of action to intensify the struggle for justice for all injured workers." Bill Chedore, National Director Special Projects (Acting) at the CLC, has a long history of work in health and safety issues. "Since 2001, we have been involved at the federal level in developing regulations on hazard prevention in the workplace, violence prevention, and workplace ergonomics," he says. "These regulations are considered some of the

best that currently exists on the issues." Chedore welcomes the opportunity to build awareness about Injured Workers' Day. "Far too many workers are being injured or suffer from workplace exposures and they are being ignored, neglected or refused support by workers' compensation boards across the country," he says. "The injustice occurring to so many workers in Canada is a disgrace and a sad testament to how workers are treated in Canada."

The Canadian Auto Workers is building awareness around June 1 at regional conferences in Moncton, Winnipeg, Ontario and Vancouver. Nick DeCarlo is a national representative in the CAW's health, safety and environment department. "One of the things that is becoming clear to us," he says, "is that the problems of compensation are similar across the country, although they are governed by provincial legislation."

For DeCarlo, expanding awareness and solidarity around the issues of injured workers means rethinking the relationship between current and former members. "We've traditionally recognized the importance of political action with our active membership. I think the time has come for us to find ways to organize our members who are no longer active," he says. "We want to build a greater connection with those who are injured, and also those who are out of work because they are laid off."

Today, DeCarlo's work takes him from teach-ins about the Ontario Disability Support Program to initiatives for green jobs and a green economy. "In these times we are all under attack, in the workplace and outside the workplace," he says. "We can't fight back by keeping issues separate."

Kristin Schwartz is a tenant organizer at the Federation of Metro Tenants' Associations in Toronto, a member of the Canadian Union of Public Employees Local 1281, and an independent writer and radio journalist.

For more information about the Ontario Network of Injured Workers Groups visit www.injuredworkersonline.org.