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Yasir Naqvi  
Attorney-General for Ontario  
Legislative Building  
Queen's Park  
Toronto, Ontario  
M7A 7A1

Kevin Flynn  
Minister of Labour  
Legislative Building  
Queen's Park  
Toronto, Ontario  
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Dear Ministers Naqvi and Flynn:

**Re: Appeal Time Limits- Workplace Safety and Insurance Act**

We are writing to ask that the current appeals time limit regime in the WSIA be simplified and made less restrictive. This is an issue of access to justice for the disenfranchised and will require legislative change. We are therefore writing to both of you. We are four lawyers representing injured workers with a collective 142 years of experience.

From 1915 to 1997, there were no time limits to appeal decisions in workers' compensation matters, unlike in civil matters. The legislature recognized that the workers' compensation system offered less compensation than was possible to obtain in a lawsuit based on fault. Accordingly the system was accessible to workers without need for legal representation.

The 1998 law changed that and instituted a system of appeal time limits **more** complex than one finds in civil litigation. Each decision of the WSIB (and there are many in each claim) comes with its own time limit depending on the day of the decision and the nature

of the decision. The relationship between any particular decision and the longer-term benefit that may be payable to the worker, is often unclear.

It is a challenge for experienced representatives to ensure that all time limits are met. For the average worker, it is an unreasonable burden. Workers covered by the workers' compensation scheme disproportionately have more modest education and are more likely to speak English as a second language than the average Ontarian. The system does not cover most professionals and managerial personnel.

It is striking to compare the time limit rules for a typical WSIB claim with the rules for a typical personal injury lawsuit. The WSIB claim may have 10 or more time limits beginning with a return to work decision time limit 6 weeks after the accident and ending with a final review decision time limit 78 months after the accident. The personal injury lawsuit involves one time limit two years after the day of accident in a context where almost all litigants are represented.

The 1998 law also created a special time limit of 30 days for decisions concerning return to work and labour market re-entry (now called Work Transition by the WSIB). The short time limit was intended to ensure that appeals from these decisions would be heard before the return to work or Work Transition process was completed.

Notwithstanding the short time limit for appeal, appeals are routinely not heard until the return to work/Work Transition process is complete because of delays in the appeals system. This has been true since 1998 and there is no reasonable prospect of appeal time frames that would allow the purpose to be served. Instead, the appeal time limit acts as a form of benefit control for injured workers who do not appeal in time from a decision about a Work Transition program because they do not realize that the decision may adversely affect them in the future if a program does not work out as hoped for. The adverse benefit effects are felt if the worker does not ultimately return to full-time work in the objective described in the Work Transition Plan.

Injured worker organizations call for the removal of all time limits in the system. We agree that this is a worthy goal. At a minimum, the system should be reformed so there is normally a single time limit in each claim and it should be of long duration. In the ordinary course, the last major decision in a claim file is the final review of loss of earnings six years after the worker's accident date. Two years after that date (i.e. eight years after the accident date) is a reasonable time for appeals from any decision made on or before the final review date

We would be pleased to meet with you to discuss this issue.

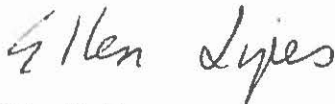
Yours truly,



Michael S. Green  
Barrister and Solicitor



Gary Newhouse  
Barrister and Solicitor



Ellen R. Lipes  
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Peter Bird  
Barrister and Solicitor

MSG/vr