



The Politics of Workers' Compensation

"There's something happening here. What it is ain't exactly clear."

- Buffalo Springfield, "For What It's Worth"

Is Something happening here?

The lines above begin a song that was popular in the heady days of late 1960s social and political protest. These lines could well be applied to recent developments regarding workers' compensation in Ontario

First, there was the annual report of the Auditor General that, with respect to workers' compensation, focused on the unfunded liability and the high importance of devising a plan to quickly eliminate it.

Next came the appointment of a new President and Chief Executive Office, Mr. David Marshall, a man with a background in international banking and a mandate to bring the unfunded liability under control.

These events were followed by an auditor's report that discussed the failures of the Labour Market Re-Entry Program (LMR) to deliver educational and retraining programs of real benefit to injured workers. While injured workers agree that the LMR has fallen far short of its goals, they strongly disagree with the report's claim that cuts to their "generous" benefits are needed to get them back to work.

Finally, there is the growing discussion of a WSIB commissioned study, made public in the Auditor General's Report. The study blames rising workers' compensation costs on steadily increasing numbers of injured workers whose Loss of Earnings (LOE) benefits have been locked in at 100%, a tendency of injured workers to stay off work for longer periods, and a heightened use of narcotic medications prescribed to injured workers by their family doctors.

So, what is happening here?

If we put these studies and reports together, it is difficult not to conclude that they add up to a renewed assault on injured workers. Renewed assault because injured workers have seen this movie before – the movie in which they are blamed for the economic troubles of the workers' compensation system.

Δ In the 1960s a rise in accidents and injuries, especially back injuries, prompted the calling of a Royal Commission where Ontario employers lined up to question the validity of work-based back injury compensation claims.

Δ In the 1970s and early 1980s, employers and Workers' Compensation Board (WCB) officials blamed a rise in costs on injured workers being "over-compensated." Harvard University Professor Paul Weiler recommended replacing lifetime pensions with a dual award system – a

system that would save money in large part by eliminating this supposed "over-compensation."

Δ In the 1990s, there appeared the idea, again put forward by Ontario employers and enthusiastically picked up by the Conservative Party under Mike Harris, that the costs of the workers' compensation system were escalating out of control. Why? Because the system had become too "social" by giving compensation for injuries and diseases that did not "arise in or out of the course of employment."

All of this leads to the question: Why is it that injured workers, the most vulnerable group in the workers' compensation system, are the ones who are made to pay for the periodic economic crises so characteristic of capitalist societies?



What is workers' compensation?

In Ontario, and just about everywhere else, worker's compensation systems were born out of rising accident rates that were causing industrial and political conflicts between workers, their employers and governments. The solution – no fault systems wherein workers gave up their right to sue their employers in return for some form of guaranteed compensation – was a political compromise put in the form of a legal statute. While it was justly saluted as a victory for injured workers, it was also highly beneficial to employers. Why? First, because it was a predictable and cheap form of insurance. Second, with no effective health and safety prevention clauses in the Act, it left employers free to produce as they saw fit. Third, it transferred the conflict over workplace accidents and injury to the new WCB whose primary task was to manage injured workers.

Managing injured workers involves the WCB interpreting and administering the Workmen's Compensation Act (WCA). In framing the new law of 1915, Sir William Meredith was aware that this would not be an easy job.

One significant problem was how to ensure the political independence of the WCB. Meredith, himself a past leader of the Ontario Conservative Party, was aware that absolute political independence would be next to impossible. During Meredith's Royal Commission, Frank Wegenast, the spokesman for the Canadian

Manufacturer's Association (CMA) desired a "state, non-political insurance system." Meredith replied: "You will have to find some kind of uninhabited country to find that." Still, Meredith held out hope that a publicly administered workers' compensation system could effectively resist the long arm of party and private political pressure. What was key, he stated, was that the "Commissioners be of a blameless character."

Political Independence?

Whether or not of blameless character, studying the history of the relationship between formal and private politics and the WCB demonstrates that WCB Commissioners *have* reacted to formal and informal political pressures. In the 1930s, for example, large business interests lobbied the government of the day to implement a form of experience rating. Though no law was passed, the WCB did adopt such a plan in 1937. The plan was short-lived. It was squashed one year later when internal WCB evaluations showed that it was not effective in decreasing accidents.

Injured workers have also been able to secure some changes through political mobilization. During the 1970s and 1980s meetings with members of political parties and the staging of countless demonstrations resulted in opening up the adjudication process, the establishment of an independent appeals tribunal, and the introduction of an annual cost of living adjustment. In 2003, injured workers won a Supreme Court victory that has made it virtually impossible for the WCB to implement legislative changes designed to abolish compensation for chronic pain.



Looking at these examples, some would argue that even though Meredith's hopes for a politically immune workers' compensation system have not materialized, the WCB is not in the back pocket of any particular political party or private interest.

One does not have to deny that injured workers have managed to have some of their demands for justice realized to argue that employers are a great deal more likely to have their demands and grievances heard and acted on. This is particularly true when it comes to *fundamental* legislative change. Before Bill 99 there was the Premier's Labour Management Advisory Committee (PLMAC). Established by the New Democratic Party (NDP) government of Bob Rae, PLMAC's mandate was to examine the workers' compensation system and make recommendations for change. As time went on and it became increasingly clear that the NDP was unlikely to win the next election, the business members of the PLMAC withdrew from the Committee and published their own report.

The PLMAC Business Caucus Report recommended cutting benefit levels to 85% of net income, applying an indexing formula of 75% on all claims, reducing the cost of Future Economic Loss awards by 15% to 40%, and modifying temporary compensation for strains and sprains after 26 weeks to two-thirds of a worker's take home pay.

As is turned out, Bill 99 contained some version of each of these Business Caucus recommendations. In addition, there was Early and Safe Return to Work (ESRTW), LMR, and an end to automatic, annual cost of living adjustments to pensions. There was also an increased emphasis on experience rating – another plank in the Business Caucus Proposals, and, by all accounts, the practice of deeming, used somewhat sparingly since the early 1990s, took off.

Another component of the Bill 99 "reform" package was the institution of a 24/7 WCB fraud line put in place to receive calls from anonymous individuals who wished to inform the Board of the activities of injured workers whom the callers believed were ripping off the workers' compensation system. In this way, the government and the WCB were promoting a view of injured workers as cheaters, frauds, even criminals.

Paradigm Shift?

When the Liberal Party came to power in 2003 efforts to paint injured workers as malingerers and frauds died down and cost of living adjustments were re-instituted for a three year period. However, the economic crisis, when combined with a number of political scandals such as the mismanagement of multi-million dollar contracts by e-Health Ontario, seems to have prompted the Liberal Government to think about how they are going to make themselves fiscally more appealing as the next election approaches.

As we have seen, when it comes to workers' compensation the time-honoured approach has been to blame injured workers for any economic woes. This is clearly the view of Ontario employers and as the political developments associated with Bill 99 demonstrate, *employers have greater resources and far more political influence than injured workers.*

Once upon a time the logo of the WCB was "to promote justice, humanely and speedily rendered." But somewhere along the line this motto disappeared. In its place we have a system in which the moral bases of workers' compensation are being replaced with a market fundamentalism that is concerned solely with the bottom line.

Sir William Meredith went to great lengths to formulate a fair workers' compensation act. Over the decades employers, governments and WCBs have chipped away at the economic, social and moral foundations of Meredith's ideas and law. Now they seem to reject them altogether. That leaves injured workers as Meredith's sole standard bearers. They are the moral conscience of the workers' compensation system.



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