

April 5, 2007

Honourable Steve Peters
Minster of Labour
400 University Avenue
14th Floor,
Toronto, Ontario
M7A 1T7

Dear Minster Peters:

As you know our Board Chair, Mr. Peter Bird, sent you a letter outlining our concern that the minimum wage increases contained in the budget do not negatively impact injured workers currently deemed at minimum wage jobs. As advocates very familiar with the workings of Board policy and workers' compensation law, we believe this is a real danger and cannot but think it is an unintended result of a budget designed to help, rather than hinder injured workers.

Since Mr. Bird's letter, we have now had the opportunity to study Bill 187 in more detail and want to offer our comments, and ask you some questions. We hope that our comments will help to clarify and strengthen the proposed amendments. Our office has been working with injured workers since 1969 and our experience with legislative change may be of benefit to you as you endeavour to make changes on behalf of injured workers.

Cost of Living

The three 2.5% increases announced in the budget are a welcome step, but do not have a sound theory behind them. They seem figures pulled out of a hat without rationale. As you know, they still leave injured workers considerably behind the losses they have suffered since 1995 (using your figures, by approximately 20%). After January 2009, injured workers will still be in a "cap in hand situation", the phrase coined by your predecessor Bill Wrye in 1985 when he passed yearly automatic indexation at 100% of the CPI. We are enclosing Mr. Wrye speech at that time, as well as Professor Paul Weiler's excellent rationale for full and automatic indexing of injured worker benefits.

Our questions with respect to this provision are:

- 1) What was the rationale of the 2.5% increase in the 3 steps included in Bill 187?
- 2) In reference to the estimated 155,000 injured workers that will receive increases, is this all the injured workers who were covered by the amended Friedland formula?

- 3) Why was retroactivity not addressed, not even beginning when your Government was elected?
- 4) Why was full yearly indexation to the CPI index not used as the most efficient and reasonable way to deal with inflation in the future?

Deeming:

We welcome the desire to address the issue of “deeming” to stop injured workers suffering reduced or cut-off compensation based on “deemed jobs” they do not have. As time goes on, as you know, injured workers with no jobs are further cut as the Board deems them to have had “wage increases due to career progression”! When then Labour Minister Gregory Sorbara introduced the new system under Bill 162, he predicted there would be no “deeming” as the word “available” was inserted in the legislation. It was his stated intention that the new wage-loss system would be based on the “real life experience” of the worker. However, in practice the word “available” work has not prevented “deeming” and “deemed” wage increases **before** Bill 99 removed this word. We are therefore of the opinion the amendment alone would not change significantly or at all the practice of deeming. We ask and suggest the following amendments or corrections:

- 5) Would you consider language that compares pre-injury and post injury **actual** earnings?
- 6) Would you consider, additionally, that the “personal characteristics” of the worker be considered, which was language contained in the Act in Bill 162 and eliminated by Bill 165?

Matters Not Addressed in Bill 187

While Bill 187 is not meant to address all worker compensation matters, there are issues that we would like included through the amendment process that would be of immediate help to injured workers. It is not up to us to say, but we suspect some of these would be welcomed by employers as well:

- 7) **Time Limits on Appeals.** Your predecessor, the Hon. Chris Bentley, indicated on several occasions his inclination to get rid of “time limits”, which were a significant administrative burden on workers, employers, the Board and Tribunal. Would you be favourable to eliminating appeal time limits now?
- 8) **Temporary Benefits.** Bill 99 eliminated temporary benefits, which protected injured workers during the acute phase post-injury (the “temporary total benefit stage” particularly.) Many of the current “early and safe return to work problems” stem from this legislative change. A common concern is that injured workers are forced to return to work too soon and suffer a re-injury. Would you consider the re-introduction of the temporary total/partial stage of compensation after injury

now?

- 9) **Universal Coverage**. Unlike other Provinces, not all employers and workers are part of our compensation system, as you are aware. Would you consider universal coverage now?

- 10) **Experience Rating**. The experience rating system has caused much disharmony between workers and employers and is costing the Board and injured workers a lot of money. The system promised better health and safety, but, instead, has delivered “claims management” at the expense of many injured workers. Would you consider legislation to eliminate experience rating now?

Hon. Peters, we wish to thank you for having taken steps to address some of the issues injured workers have raised with you. On behalf of the injured workers we work with, we ask that you give consideration to the thoughts and reflections we have made as a result of Bill 187.

Sincerely,
Injured Workers' Consultants

Orlando Buonastella

Cc. Steve Mahoney, Andrea Horwath, Gerry Martinuk, Peter Page (ONIWG)

Excerpts from Hansard

1985: All Party Support for Full Cost of Living Protection for Injured Workers

Most current Members of Provincial Parliament were elected after 1985 when all the three parties approved Bill 81, the Act that introduced full indexing of WCB benefits to the Consumer price index. We summarize below the debate that took place at that time. These speeches show the consensus and good will that there was a favour of full indexation of WCB benefits.

The Liberal Position

The rationale for the Bill was presented by then Labour Minister Bill Wrye (Lib.) on December 17, 1985:

Hon. Mr. Wrye: On the occasion of the last increase in workers compensation benefits in July 1985, I indicated that it was the intention of this government to undertake an examination of the implications of permanently indexing workers' compensation benefits and, as part of that examination, to consult with the various interested constituencies.

Later today I will be introducing for first reading a bill that is the result of those endeavours. It reflects the commitment of this government to injured workers. The bill enshrines permanent indexation and implements and immediate increase in benefits levels as a transitional measure. In addition, it will grant a substantial increase in survivors' benefits for claims that originated prior to April 1, 1985.

...

The measures being proposed by the present government will ensure that injured workers will no longer have to worry about whether and to what extent their benefits will be adjusted. In future, all claimants will be assured, as a matter of statutory right, of an annual adjustment which takes into account the effects of inflation.

The pain, the loss, the disruption and the disorientation caused to a worker and his or her family by a disabling injury is suffering enough. We should never add to this suffering the indignity of having to come cap in hand to the steps of the Legislature angrily demanding merely the protection of compensation benefits from the annual rate of inflation. From this day, injured workers will never again be in that humiliating position.

The first reading of the Bill took place on December 19, 1985. Here is then Minister of Labour again:

Hon. Mr. Wrye: I do not want to speak at length, but I do want to put this on the record, lest even today, as 1985 draws to a close, there be those who oppose the concept of indexation and do not recognize the propriety of this action. Let me first put on the record that Ontario is not unique. Today there are six jurisdictions-British Columbia, New Brunswick, Nova Scotia, Quebec, Saskatchewan and the Yukon-that have formal indexation of workers' compensation payments in respect of permanent disability. All but New Brunswick use the consumer price index; New Brunswick uses the average industrial wage. Four of those six jurisdictions-British Columbia, New Brunswick, Quebec and the Yukon-also index temporary disability benefits on a similar basis, as Ontario will.

It is important that we are not unique, we are not the first. It is certainly an appropriate matter, we believe, that Ontario should join what is now a clear majority of the provinces that believe this matter is long overdue.

...

In speaking on the theory of indexation and why we ought to go to protection for injured workers against the ravages of inflation, Professor Weiler said, and he was speaking about the pension: "In the final analysis, the point of this pension," the injured worker's pension, "was to establish the disabled worker's rights to share in the real goods and services generated by the Canadian economy. Inflation causes a general increase to occur in the money price of that same real basket of goods and services."

This is crucial.

"If the government or citizenry of Ontario is not prepared to justify an explicit reduction in the real entitlement of workers' compensation pensioner, to take such as step as a conscious policy, they must not tacitly permit the same result to come about by allowing supposedly impersonal economic forces to take their course. This is why I deliberately speak of an adjustment to, rather than an increase in, pension benefits to take account of intervening inflation. We must keep clearly in mind that no real improvements to benefits are at issue here."

Finally, he added, "We do no more than avoid an erosion in real income levels we earlier awarded workers' compensation pensions." Surely, as I wind up my remarks on second reading, that is what we have done.

It is a change that is long overdue, it is a change that is appropriate and it is a change that will be applauded by injured workers all over the province as indicating that this Legislature has finally shown some real sensitivity and some real understanding of their problems.

The Minister spoke again on December 20, just before Bill 81 received the unanimous support from all the three parties:

Hon. Mr. Wrye: Let me wind up my remarks by indicating that in the remarks of my friend the member for Port Arthur (Mr. Foulds), he touched on an important work, "dignity". This is an important symbolic change. This legislation speaks to the overall issue that the government believes in, that we should be moving to bring dignity to injured workers.

As the government moves forward in the next months and years to address the other very difficult issues-issues of rehiring of injured workers of rehabilitation of injured workers, of how we deal with the permanent disability rating-the government is committed to moving forward in a new spirit, a spirit which all but guarantees that in our changes we will attempt to bring real dignity as well as real justice to injured workers in Ontario.

Motion agreed to.

Third reading also to on motion.

The Progressive Conservative Position

The P.C. position on Bill 81 was put forward by Phil Gillies, then Member for Brantford:

Mr. Gillies: As members of the assembly, we all have to share a very deep concern about the people in this province who labour day after day in dangerous occupations and who put their lives on the line, in some cases, when they go to their place of work every day.

I believe Ontario has recognized for many years the need for income protection, for benefits and for pensions for people who are placed in such situations...(December 19, 1985)

Mr. Gillies: After due consideration, I am very pleased to be able to inform the House our party will be supporting Bill 81 and we believe the time has now arrived for annual increases, however determined, to be granted the clients of the Workers' Compensation Board, not as a matter of annual legislative review but as a matter of right and as a result of automatic

increases. I believe this decision finds a great deal of support among members of the Legislature and indeed has the support of our caucus...

We urge the Minister to continue his efforts to make life better in every way we can for some of society's weaker citizens, some of the people who do not have the loudest voices; to reform the operations of the board to make judgments and justice under the WCB speedier and more accessible, and to continue a pattern of reform which started with Bill 101 and which, with the support of the incumbent government and every member of this House, can continue as we reform workers' compensation into the future. (December 20, 1985).

The New Democratic Party Position

The NDP had the most speakers in this debate. MPP Bob Rae had this to say at the time:

Mr. Rae: I wanted to participate in this debate because of my own personal feelings about the questions of workers' compensation and reforms to the act. I think I have mentioned in this House on other occasions that 11 years ago, in 1974, I was carted from the front of the Legislature by one of the members of the local police constabulary because I was involved in organizing and participating in a march and demonstration of the Union of Injured Workers.

If my memory serves me correctly, it was in the winter, in November and December, 1974, that we began systematic demonstrations at Queen's Park and across the province to get reform of the legislation.

...

I take pride that the government has finally come around to our point of view. I take pride, as I have had occasion to do many times this week, that finally the government is moving in areas in which we have been urging it to move for many years.

I cannot help but observe that this is not the first time this amendment has been voted for by the New Democratic Party. Indeed, we have moved this amendment. We moved it the Christmas before. We have moved it literally dozens of times since the early 1970's.

I am delighted the members of the other parties have finally seen the light, and that literally 10 or 15 years after the New Democratic Party began moving this amendment to the Workers' Compensation Act we finally have the change. We finally have other parties coming on side, indicating that

they, too, support the principle that inflation should not eat away at the pensions of injured workers.

I take great pride in that achievement. I want to end by paying tribute to my colleagues in the party who fought for so long. With those of my friends who are here today and know how important this move is symbolically for the injured workers movement in Ontario, I say that the minister knows this is just the beginning of a reform and of a fight we have yet to win, but are still determined to win.

MPP Floyd Laughren said the following on December 20, 1985:

Mr. Laughren: I am not sure I thought I would ever see the day when we would be indexing injured workers' benefits. I am certain of one thing, that we would never have seen the day if the government had not changed.

The Conservatives had an unbelievably paternalistic attitude towards injured workers. If workers wanted an increase, they could come before the Legislature with a tin cup and plead for it once a year. There is no question about that; history speaks for itself. I am very pleased we are able to be here today debating this very bill.

I do believe some credit should be given to the injured workers' groups, the Association of Injured Workers' Groups, the union of Injured Workers and all the other organizations, the legal aid clinics, etc., that made a tremendous effort. They never gave up over the years in fighting for this to happen.

It is not the kind of thing that is going to bankrupt the private sector. The injured workers were getting an increase every year anyway. The only difference was they had to plead for it; so why not index it so they do not have to do that?

There has never been a question in my mind, if I could paraphrase what the member for High Park-Swansea (Mr. Shymko) said, that the way one judges the civility of a society is how it treats its people who are not so young and not so swift. Injured workers are a good example of that. We simply must provide for them the standard of living to which they are entitled. I have always felt it was hypocritical of society to say to workers: "You are engaging in something we consider to be good, namely, the work ethic. But if as a result of engaging in that work you are injured, society is going to penalize you for having believed in the work ethic so strongly." That is why I am very pleased about this change.

...

As a long-time member and present chairman of the standing committee on resources development, I have heard the argument about the unfunded liability; and while I do believe it is a problem, I think it will be addressed most appropriately when employers in Ontario collectively manage to reduce the accident rate to more civilized levels.

I am pleased to be able to engage briefly in this debate and to commend the minister for having brought this bill through his caucus.

MPP Bob Mackenzie, on the same day, said:

Mr. Mackenzie: With regard to the Bill itself: while I am pleased to see it, what we have really done here today is to answer a commitment I have heard members of all parties make to injured workers for far too long, a commitment based on just a little bit more fairness, a commitment that should have been fulfilled a long time ago. However, I am extremely glad to see it put in place here today and I do support Bill 81."

MPP Ross McClellan also heartily supported full indexation. During the same debate he said:

Mr. McClellan: For many of us, this is a red-letter day, to see an act in this Legislature that brings in an automatic cost-of-living increase after so many battles and struggles going back so many years. It is a very special moment for me and many of my colleagues.

I got interested in politics and ran and worked in the riding I represent prior to 1975 largely because of the workers' compensation issue. A number of us who are still in this House were involved in the early struggles of injured workers to organize against the injustices and racist discrimination of the WCB in the early 1970's particularly against Italian construction workers. Fortunately, those days have gone forever and are nothing except a bitter memory row.

The question of an automatic cost-of-living increase became a symbolic focus for all the injustices the compensation system inflicted on workers in this province. Efforts to organize and fight for the rights of injured workers focused on the issue of an automatic cost-of-living increase. There are still many issues that need to be resolved and many reforms that have yet to be introduced, but it is a major victory for injured workers to have a bill passed in this Legislature which establishes that injured workers have a legal right to an automatic cost-of-living increase and do not have to go cap in hand to the government of the day to beg for what is rightfully theirs.

Overview:

- 1) With respect to indexation, Bill 81 reflected a three party consensus that recognized, belatedly, the years of injustice and struggle by one of the weaker groups in society.
- 2) Full indexation was based on a long-term study of the problems of workers' compensation by Professor Paul Weiler, who began his work in 1979. In other words, full indexation was based on years of public debate on its merits.
- 3) Full indexation was based on a solid rationale. It was accepted that it was not a matter of increasing, but rather of adjusting benefits for the effects of inflation. It was understood as a means of injured workers keeping up with the cost of living. Conversely, it was also understood that to do otherwise meant to penalize injured workers and that this would be most unfair.
- 4) The rationale for full indexation is very solid and constitutes a principle that does not change with the passage of time. Then Labour Minister Wrye spoke of a permanent indexation of benefits.
- 5) The 1985 debate reflected, among all the parties, a high degree of respect and support for injured workers as human beings with dignity who have made an important contribution and how are now in a weak social and economic position. Do the three parties still believe in what they stood for?

Reshaping Workers' Compensation for Ontario

Paul C. Weiler

*A report submitted to Robert G. Elgie, M.D.
Minister of Labour, November, 1980*

Page 69:

"In addressing this issue as a matter of principle, there should be no question about the entitlement of workers' compensation claimants and pensioners to inflation adjustments as a matter of *right*."

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"... But we have been told again and again that Ontario business and the Ontario economy simply cannot afford the cost. This fear is unjustified. The explanation is implicit in the very notion of inflation, which consists of changes in money values, not real values.

Once we decide as a community what the appropriate level of compensation for injured workers is to be – in light of all the considerations and complexities I have already set out in this chapter – and once we award an individual disabled worker a certain share of the real economic pie, our refusal to keep the monetary amount of his pension in line with the changing rate of inflation must mean that someone else in the economy will receive a net increase in his share of real goods and services. In effect, someone will reap a windfall profit from inflation at the expense of the disabled worker. In the case of workers' compensation benefits, the immediate beneficiary of such inaction would be business."