

# Injured Workers' Consultants

*Representing injured workers free of charge since 1969*

July 18, 2013

Yasir Naqvi  
Minister of Labour  
400 University Avenue  
Toronto, Ontario  
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COPY

Dear Minister:

## **“Not On the Backs of Injured Workers”?**

I want to acknowledge, first of all, that you have been listening attentively to injured workers in the meetings you have had with them since becoming Minister of Labour. As you know, we have spoken to your predecessors many times and are still hopeful that listening will result in positive change.

When Bill 135 was debated, Toronto Danforth MPP Peter Tabuns asked then Government spokesperson Leeanna Pendergast whether the government would commit to not punishing injured workers for the WSIB's financial issues. The answer was clear: the WSIB financial problems would not be resolved on the backs of injured workers. This promise seems more and more distant and forgotten in light of the WSIB recent announcement freezing employer rates for 2014.

## **WSIB Rushes to Reward Employers – Ignoring Arthurs Recommendation for Full Cost of Living Adjustments to Injured Workers**

We were shocked to see the July 12 press release from the WSIB announcing “no employer premium rate increases for 2014”. In the same release, the WSIB is boasting that it has reduced its benefits to injured workers “from \$3.2 Billion in 2009 to \$2.7 Billion in 2012 - a cost saving of more than \$500 million a year”.

The WSIB's bias is evident. As they are reducing the benefit amount going to injured workers, they are rushing to reward employers by freezing the premiums they pay into the system. Let us recall that employers fund the system in exchange for the protection against lawsuits from injured workers. As Professor Arthurs noted from information provided by the WSIB itself, current employer rates are considerably lower than they were in 1996. But for these reductions under the Harris Government, there would have been no significant “unfunded liability”.

Imagine our response to the recent WSIB press release! Any thought about redressing the situation for injured workers was glaringly absent in the rush to please, once again, the employer community.

One would have thought that a “better financial picture” would have caused a reflection about injured workers and the losses they have had due to inflation and the lack of inflation adjustments. It’s well known to the WSIB and to your Ministry that Professor Arthurs recommended that injured workers should receive **full** cost of living adjustments **in the budget year following release of the report**. This timeline has expired and the recommendation has been shelved.

Mr. Minister, if you were in our shoes, you would feel that injured workers are being sacrificed on the altar of a financial crisis they were not responsible for. Your government is causing a real (if not arithmetic) loss of benefits due to inflation. Yet, as the WSIB reports reduced expenditures, rather than addressing this problem, it is rushing to reward employers by freezing rates for 2014. Any semblance of fairness has disappeared. We would like to ask the following:

- 1) Has the WSIB exercised its statutory discretion to recommend that this recommendation from Professor Arthurs be implemented?
- 2) Regardless of any WSIB recommendation, are **you** recommending it to Cabinet for (belated) implementation?

### Questioning the “Spin”

Public relations are characterized by media “spin”. The WSIB press release is no exception and rather reminds us of “propaganda” more than spin. The only hard facts are that benefits going to workers have been reduced and that no premium increases to employers will happen in 2014.

The boast that injured workers are faring better is based on much “softer” ground and leads to incredulity. For example:

- “92% of injured workers were back at work with no wage loss within 12 months”. Let us ask: How many are still working today? Did they report a re-injury? Has the rate of denial of recurrences increased?
- “For the first 2 years of the work transition, 69% of injured workers obtained employment with new employers”... Is a 31% unemployment rate something to boast about? Let us ask: How many of the workers re-employed are still keeping those jobs? Why are the 31% of unemployed injured workers getting their benefits reduced because they are “deemed” to have jobs they do not have?
- “The number of workers requiring 100% wage loss support has dropped significantly”. Let us ask: What are the figures? Is this workers who “do not require 100% wage loss support” or simply the WSIB **artificially**

**raising the bar for being “unemployable” and declaring** them capable of working when they are not working or cannot work? Is the WSIB following the treating worker advice on these cases?

- “Quicker referrals to high quality health care providers resulted in fewer workers experiencing permanent impairments, down from 12.7% in 2009 to 8.9% in 2012.” It’s nice to hear about the greater “healing power” of the WSIB, but how many of these referrals are to WSIB-paid-doctors who declare the worker “cured” contrary to his or her treating doctors? Are injured workers healing better under the current cost-obsessed administration, or are they simply **declared** to have been healed?
- “By the end of 2012, better management has decreased health care costs by 10.5%”. What was this “better management”? Was it aimed at better care or reducing costs? How many injured workers are receiving treatment like physiotherapy paid by the WSIB compared to 5 years ago?
- “The WSIB administration expenses continue to be tightly controlled, with improved efficiency and modernisation”. We find that staff reductions have led to less efficiencies and a demoralized staff. The appeals “modernisation” has led to less human contact with decision makers and an illegal threat of a “downside risk” if workers proceed to an appeal. How is this “improved efficiency”? For whom?

Thank you for your action and/or reflections on this matter.

Sincerely,  
Injured Workers’ Consultants Community Legal Clinic



Orlando Buonastella

cc. ONIWG, OFL, Andrea Horwath, Tim Hudak, Peter Tabuns



July 12, 2013 12:12 PM - General - Economic News, Trends & Analysis

## No premium rate increases for 2014

TORONTO, July 12, 2013 /CNW/ - Ontario's Workplace Safety and Insurance Board (WSIB) today announced that premium rates will be maintained at current levels for all employers in 2014. This decision by the WSIB Board of Directors provides stability for employers as the WSIB, in consultation with stakeholders, reviews its methods for setting premium rates.

"Continuing improvements in recovery and return-to-work outcomes for Ontario's injured workers - along with the WSIB's improved financial picture - mean we are well-positioned to offer stability for employers," said WSIB Chair Elizabeth Wilmer. "Results for the first quarter of 2013 show the system is progressing well towards its financial targets, including meeting funding requirements set under government regulation last year."

These improvements in recovery and return to work (see backgrounder) have been accomplished while maintaining benefit levels for injured workers.

"Premium rate increases, along with growth in insurable earnings, brought an additional \$2.4 billion into the system from 2010 and 2013," said Wilmer. "At the same time, Lost Time Injuries have decreased, and better outcomes for injured workers have reduced benefit costs, saving the system more than \$500 million a year."

The WSIB's recently released financial and operational reports on the first quarter of 2013, show continued operational and financial improvements, which are helping the WSIB to reduce its unfunded liability.

"We know we can meet the challenges ahead as we continue to introduce enhanced programs and new technology to deliver even better value and service to workers and employers" concludes Wilmer. "Although we have more work ahead of us, we are on-track to create a modern, sustainable system that supports economic growth and productivity and provides a financially stable system for future generations."

### BACKGROUNDER

#### 2014 Premium Rate - Supporting Results

#### Recovery and Return to Work

The WSIB has realized significant improvements. In 2012

- 92% of all injured workers with lost time injuries were back to work with no wage loss within 12 months of their injury.
- For injured workers unable to return to their pre-injury employers, for the first two years of the Work Transition program, 69% of injured workers obtained employment after completing their programs - an increase from 36% success under the old, outsourced Labour Market Re-entry model.
- The length of time on claim and the number of workers requiring 100% wage loss support has dropped significantly.
- Quicker referrals to high-quality health care providers resulted in fewer workers experiencing permanent impairments - down from 12.7% in 2009 to 8.9% in 2012.
- In the decade leading up to 2009, health care costs were escalating. By the end of 2012, better management has decreased health care costs by 10.5% while increasing the amount spent per worker.

#### Service Excellence

- Faster decision making has resulted in 92% of eligibility decisions now being made within two weeks of the claim being received. More than half of these are made within 24 hours.
- Employers have embraced eService offerings. In 2012, 94% of clearance certificates were issued online, use of ePremiums increased to 47%, and use of eRegistration increased to 66%.
- During operating hours, callers to our Employer Service Centre can now count on getting a live answer, not voicemail.

#### Finance and Administration

- The WSIB has reduced annual benefit costs paid from \$3.2 billion in 2009 to \$2.7 billion by the end of 2012 - a cost saving of more than \$500 million a year.
- In 2012, employer premiums fully covered our operating costs, meaning approximately \$1.3 billion of investment earnings could be applied against the unfunded liability.
- The WSIB's administration expenses continue to be tightly controlled, with improved efficiency and modernization.

SOURCE: Workplace Safety & Insurance Board

For further information  
Christine Arnott,  
WSIB Media Relations

### ORGANIZATION PROFILE

Workplace Safety & Insurance Board

[April 28th isn't just an ordinary day - it's a Day of Mourning](#)

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Act of Canada. Under the proposed paragraph 21 of subsection 20(5) of schedule 20 of the bill, section 11 of the bill would come into force on proclamation.

**The Chair (Mr. Pat Hoy):** Any other comment? Hearing none, all in favour? Carried.

Shall schedule 20, section 20, as amended, carry? Carried.

Shall schedule 20, as amended, carry? Carried.

Now we have a notice of vote on page 36. Do you want to put that, Mr. Tabuns?

**Mr. Peter Tabuns:** I do indeed. The NDP recommends voting against section 1 of schedule 21.

We were very surprised when we read this bill and saw these very large-scale changes to the Workplace Safety and Insurance Act. There have not been public hearings on this. As you are all well aware, another Mr. Arthurs was appointed to a panel to review the WSIA and there was a general expectation in the community, both by unions, injured workers and by companies, that it was within the context of that panel that the problems related to funding of the plan, related to the payments to injured workers, would be dealt with. Frankly, given the consequence of the act for the lives of many, that would have been a far more proper channel.

What is astounding to an awful lot of people is that the Arthurs panel has, in effect, been prejudged by this legislation. What has been brought forward changes the way the WSIB functions. So one has to ask, what is the rationale for proceeding with these changes without either waiting for the Arthurs panel to report or, in the alternative, having full hearings? This is a Monday afternoon, just before Christmas, with a bill that is time-allocated. Very few people really know about it, so I think that the proper thing for this committee to do is to reject this whole schedule, starting with this particular section. But I would ask the government, why would anyone treat Mr. Arthurs and his panel as credible, given this legislation you've brought forward?

**The Chair (Mr. Pat Hoy):** Any other comment?

**Ms. Leeanna Pendergast:** I'd just like to respond to Mr. Tabuns and say that the changes that we propose, in fact, are supportive of the Arthurs review and provide the regulations that are necessary to facilitate the Arthurs panel and the Arthurs review and recommendations. So the government does support sections that comprise this schedule of the bill.

**The Chair (Mr. Pat Hoy):** Mr. Tabuns.

**Mr. Peter Tabuns:** If, in fact, this is your vision of the WSIA, the Workplace Safety and Insurance Act, can you tell us when the hearings were held in public for all those who will be affected by the changes to have their say? Were there hearings?

**Ms. Leeanna Pendergast:** We're going to get you some information.

**Mr. Peter Tabuns:** I'm happy to have others comment.

**The Chair (Mr. Pat Hoy):** Identify yourself for Hansard, and then you can begin.

**Mr. Nick Robins:** My name is Nick Robins. I'm in the policy division of the Ministry of Labour.

To provide a bit more information about the legislative amendments, if the bill is passed, the bill would need to be proclaimed to come into force. There are various regulation-making authorities under the proposed amendments, and some of those authorities deal with the subject of Mr. Arthurs's consultations. For instance, one regulation-making authority under 100(c) would allow the LGIC to prescribe the amount of the insurance fund required to make the fund sufficient by the prescribed date.

These are some of the topics of the consultations that Mr. Arthurs is leading. What has been described as the intent here is the Arthurs consultation would be providing some valuable information that could then be considered.

**Mr. Peter Tabuns:** Maybe it's because I'm new around here, but generally, before you bring forward a law, around here you generally have some level of consultation with the stakeholders. Unless you're prepared to surprise me in the next few minutes, I don't remember any hearings on reshaping the law. Can you inform me of any hearings that were held?

**Mr. Nick Robins:** I cannot.

**Mr. Peter Tabuns:** None?

**Mr. Nick Robins:** The primary purpose of the Harry Arthurs consultation is to assist in informing some of the key questions related to the regulations that would be able to be made under the legislation, if passed.

**Mr. Peter Tabuns:** Can you tell me now that the regulations that will come forward will protect all injured workers from any reduction in their benefits?

**Mr. Nick Robins:** The legislative amendments that are proposed to the Workplace Safety and Insurance Act do not contain any provisions that would negatively affect workers' benefits.

**Mr. Peter Tabuns:** And that's the opinion of the government, that workers will be fully protected?

*Interjection*

**Mr. Peter Tabuns:** Nodding is not adequate. I need someone to speak up.

**Ms. Leeanna Pendergast:** Yes, Mr. Tabuns. Yes.

**Mr. Peter Tabuns:** So if, in fact, it's found that there are financial problems with the WSIA, the government will ensure that the changes that are needed are not going to be done on the backs of workers. Is that correct?

**Ms. Leeanna Pendergast:** That's correct, Mr. Tabuns. Full funding will not be achieved on the backs of injured workers.

**Mr. Peter Tabuns:** So this schedule—and I apologize to you, witness, I find it very frustrating that we have an act before we have the consultations. As you might imagine, I don't think that's the proper order of things, but I will go back to the parliamentary assistant.

We're in a situation where you're going to bring forward this act, and you're saying that the regulations that can be made by cabinet will be so far-ranging that they could, in fact, go against the spirit of what's in the schedule. Is that correct?