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'IN UNITY THERE IS STRENGTH'

July 21, 2016

Kathleen Wynne, Premier
Legislative Building
Queen's Park
Toronto ON
M7A 1A1

Dear Premier Wynne:

Re: WSIB's principle of "Better at Work" contravenes "Time to Heal" and WSI legislation

The Ontario Network of Injured Workers' Groups has often raised the concern that many injured workers are not given proper time to heal and are pushed back to work prematurely. The WSIB's 2016-2018 Strategic Plan states: "Through our people, processes and technology, we will champion innovative and evidence-based approaches to drive better programs and services." The purpose of this letter is to engage the Government and the WSIB in a conversation about their mistaken and harmful philosophy that "immediate" return to work, rather than "early and safe" return to work is always preferable. We want the change to be official WSIB policy, which should be consistent with the "early **and safe**" return to work legislation and with the evidence in current research:

s.40 (2) *The worker shall co-operate in his or her early and safe return to work …"* (emphasis added).

This debate is often misunderstood as injured workers wanting benefits instead of work. Let us be clear that injured workers, particularly the permanently disabled workers we represent, want to return to work as soon as they are able. However, this work must be safe, and the emphasis on "immediate" return to work can disrupt the healing process and does not work as a general rule. Each case should be decided according to the individual injured workers' situation and "time to heal" should be safeguarded **officially**. This is a fundamental principle of workers compensation confirmed by the Supreme Court of Canada in the 20013 Martin and Laseur decision. Looking at the Nova Scotia chronic pain regulation, the court said:

> *"…the treatment of injured workers suffering from chronic pain under the Act is not based on an evaluation of their individual situations, but rather on the indefensible assumption that their needs are identical. In effect, the Act stamps them all with the "chronic pain" label, deprives them of a personalized evaluation of their needs and circumstances, and restricts the benefits they can receive to a uniform and strictly limited program." (par. 99)*

The same can be said about the sweeping generalizations in the WSIB's "Better at Work" guidelines. One size does not fit all.

The disappearance of "Time to Heal" document

There was a day when the WSIB recognized time to heal for injured workers. This was before the politics of the "unfunded liability" came vigorously to the fore and David Marshall was hired by the Ontario Government to lead the organisation.

The WSIB had a "Best Approaches Document", dated November 2005, and called "**Recognizing Time to Heal – Assessing Timely and Safe Return to Work"**. It's important to note that it reflected the balance between timeliness and safety of the return to work, reflecting our legislation. Here are some useful quotes:

- "**It is recognized that there are cases where "rest" is an appropriate form of treatment and required in order to speed recovery and facilitate a successful return to work."**
- **"We cannot ignore the impact of pain on an individual and on their functional abilities, especially in the early stages of recovery."**
- **"The patient should use common sense and listen to what his/her body is trying to tell him. The patient should not ignore the warning signs of overdoing it, or allow a mild increase in discomfort to put him/her off work. In general exercises that encourage a good range of movement but avoid large or sudden forces are most suitable."**
- **"The patient may be advised to see a medical practitioner for specific advice to facilitate timely recovery, either because of the severity of the initial injury, or if recovery appears to be slower than expected."**
- **"As outlined earlier, there are cases where "rest" is an appropriate form of treatment, and required in order to speed recovery and facilitate a successful return to work".**
- **"Neither the WSIB nor the employer should insist on a return to work too early in these situations. Too early a return to work could cause damage, result in further injury for the worker, and more time away from work."**

- **"On the other hand, it is possible to lose sight of the fact that not everyone can return to work the day following the injury, even if the employer has a return to work program. This can be true even for soft tissue injuries and those injuries considered somewhat minor in nature".**

This was a very useful document to guide WSIB decision makers. **But it was removed and replaced with the new "immediate" return to work doctrine**. What happened? Did new research make it irrelevant? Or was the change due to broader political issues having little to do with "evidence" or concern for the injured worker?

The New WSIB Doctrine Against Time to Heal: "Better at Work"

The "Better at Work" document is now used as a guide to the WSIB case management program. The document says it "aligns to, and supports programs and practices at the WSIB such as work reintegration, short and long term case management, and health care." These are core services provided by our compensation system. Therefore the new doctrine should have a solid evidentiary base. Especially since it abandons the notion that rest and time off work is permissible and rehabilitative from case to case, to the new notion that "recovery happens at work".

Our analysis shows that the abandonment of the "Time to Heal" document and the adoption of the "Better at Work" document is not based on evidence but rather on a US private insurance industry inspired ideology. The main organisation credited for this change is the American College of Occupational and Environmental and Occupational Medicine (ACOEM), and its 2016 report in particular. It is not actually a "college" and below we have cited the academic opinions that this organization is biased and serves the private insurance industry as an advocate for lowering benefits for the injured. We will show that the conclusions of this report are not evidence based. This WSIB transformation is harmful to injured workers because the concept of "time to heal" is undermined, if not totally abandoned. It is also inconsistent with the early and safe return to work legislation as it undermines the safety of the return to work process.

Why no consultation on such fundamental change?

This fundamental change seems to have come by stealth. No discussion paper was issued, no public consultation by an organisation with a strong history and robust infrastructure to support consultation. The way the Time to Heal Best Practice was replaced by its opposite, "Better at Work" is in our view nothing short of scandalous.

Ontario critique of trend to immediate return to work

Instead of the appearance of new research disproving time to heal, an important warning against dispensing it came via a study of the Institute for Work and Health, led by Dr. Ellen MacEachen. The study "**A deliberation on "hurt versus harm' logic in early-return-to-work policy**" was published in "Policy and Practice in Health and Safety" in February 2007. The study reviewed Ontario data and warned against the practice of "early return to work" before full recovery that was being put forward in many countries. It concluded that "there has been a limited appraisal of its effectiveness" and

cautioned that the general trend could in some cases hinder workers' ability to return to sustainable work". The article is attached.

Empirical Research or "reverse logic"?

Dr. MacEachen presented the above research at the Preventing Work Disability symposium to promote concerted action in Montreal on October 23, 2006. One of her slides warned that the idea that the push for an immediate return to work is not science but simply "reverse logic:"

"**Research shows that…the longer a worker is off work, the less likely they are to return and the more likely they are to experience mental health problems…."**

"Reverse logic: If a long time away is unhealthy, then a short time away is health promoting."

We cannot lump all disabilities in a simple average and build a theory accordingly. Length off work is determined by a wide variety of factors. For example: is the injury temporary or permanent? How significant is the physical and/or psychological impairment? How is the recovery process? What is the nature of work for this injured worker? And so on. Many injured workers in the WSIB Serious Injury Program (at 60% NEL or above) have not returned to work after years of their injury. Is there a problem in their moral fibre? Are they lazy? Does it mean that if they were pushed back to work sooner they might have returned to work despite their significant impairment?

We have to discount the simplistic reverse logic argument behind the pseudo-science that the longer injured workers are off work the harder it is to return to work. This may have a grain of truth or even be true in some situations, but the conclusion that immediate return to work is the answer is false.

Another IWH study warns about premature return to work. In 2008 the Institute for Work and Health Published a guide to identifying and solving return to work problems titled "Red Flags - Green Lights". Immediate Return to Work was identified as a potential red flag:

"Red Flags:"
"Is the worker expected to return immediately after injury?
"Although next day return to work (RTW) is not unusual for a worker with a minor or simple injury, a quick RTW can be too early for a worker with a complicated injury (e.g. that involves an inconclusive diagnosis or additional surgery). However, if a worker does not return to work, he or she may be viewed as non-compliant and could lose or face a reduction in compensation benefits."
"In some cases a worker experiences pain and health problems beyond the usual symptoms. In these situations, the insurer might prompt the worker to RTW before the injury is fully understood, which can contribute to delayed healing or re-injury."
Work absences after an initial RTW might signal pain or worsening injury. Absences might also indicate that the worker could benefit from additional recovery time."

“Green Lights:
“If there is concern about the safety of returning to work because the extent of a worker’s injury is unclear or functional abilities are difficult to identify, delayed RTW to give time to heal or time for further assessment could prevent a failed RTW.”

This sounds like a well balanced approach to individual circumstances. But the disappearance of the “Time to Heal” document has buried this sound approach.

The ACOEM Approach has been Discredited

In the New Zealand Medical Journal, Dr. Gordon Purdie noted that statements about the chance of ever getting back to work if a person is off work for 20, 45 and 70 days are being repeated by government and non-government agencies in New Zealand and Australia. They have been presented with the intent to influence public policy. They are presented to general practitioners in the context of certifying people as fit for work. He wrote that the statements are based on an incorrect interpretation of the referenced study, are not justified and should be corrected (NZMJ 20 November 2015, Vol. 128 No. 145).

Why did the WSIB chose the American College of Occupational and Environmental Medicine (ACOEM)’ approach?

Former WSIB President David Marshall delivered a speech to the C.D. Howe Institute on April 1, 2014 (published in the Liversidge e-Letter of June 18, 2014) about reducing the WSIB’s expenditures which sheds light on the Board’s new “immediate” return to work idea and the American organisation promoting it:

> *“We concluded pretty quickly that we didn’t have a revenue problem so much as we had a serious expense problem…we had to challenge certain assumptions that had taken root. For example, for many years in clinical circles, the belief existed that injured workers required lengthy, passive rehabilitation before they would be before they would be ready to return to work. Yet in 2006, the American College of Occupational and Environmental Medicine (ACOEM) issued a ground-breaking study that concluded this belief was wrong. It said “strong evidence suggests that activity hastens occupational recovery, while inactivity delays it. Clinical researchers were also reporting that workers who were not back at work suffered depression, and were prone to developing chronic physical impairments. Finally we learned that if a worker does not return to work within 90 days of their injury – the chances that they would ever return to work drop by 50%. We realized with clarity and urgency that if we were going to deliver value for our stakeholders and reduce costs, we would have to help workers recover and get back to work as early and safely as possible. We were doing no one any favours – in fact we were doing harm – by allowing the system to drag out this process. So we undertook a complete transformation of our approach”.*
> http://laliversidge.com/Portals/0/eLetters/The%20Liversidge%20e-Letter%2020140618%20The%20WSIB%20-%20An%20Historic%20Transformation.pdf)

Confusing Early Mobilization (Medical Rehabilitation) and Early Return to Work

The idea that "time to heal causes harm" is extremely dangerous to injured workers. It should be noted that the discarded "Time to Heal" document did not promote the depicted "lengthy, passive rehabilitation before returning to work". It in fact noted that the idea of "no lost time" (if possible) began two decades earlier with the WCB medical rehabilitation strategy of the early 1990's. The document was warning that there should not be an "extremist" interpretation that early return to work should not be immediate or unsafe. The new theory conflates two things that are not identical. Early activity is good (medically approved and according to individual circumstances). Staying at work or returning to work immediately requires a different threshold of recovery and is not identical to early mobilization or early physical rehabilitation.

The Workplace is no Rehabilitation Centre

Once physical rehabilitation is equated with staying at work, the misconception that the workplace is a rehabilitation centre takes hold. But the workplace is no rehabilitation centre. It has a different purpose (to produce a profit and maximize production), it has a different climate, is fast paced, and often marked by hostility to injured worker by employers, supervisors, and sometimes co-workers. The Ontario Government has heard extensively from workers all across Ontario on the dismal situation facing precarious workers. The horror stories abound, with workers facing hostility, not being paid properly, and so on. The Harry Arthurs Inquiry reported, with extreme concern, numerous injured workers facing employer harassment. While not all employers are the same, why should we pretend that employers provide a supportive "rehabilitation-centre-like" environment? "Time to Heal" provided a necessary respite. Forcing the injured workers back to work prematurely is inhumane. It will not work if our goal is sustainable employment.

Research shows a significant rate of re-injury after return to work. Forcing seriously injured workers back to work is counterproductive (i.e. high risk of re-injury) and does not result in sustainable employment. Information began to emerge from research in the 1990s which found that early return to work did not necessarily result in sustainable employment. A 1995 study by Butler, Johnson and Baldwin looked at Ontario WCB data of 11,000 injured workers with permanent partial disabilities from injuries between 1974 and 1987. This was the first to analyze work absences that occur after the first return to work. They found that the rate of successful returns to employment, measured by first return to work, is 85%. However, the rate of success evaluated over a longer time period is only 50%. A most striking statistic in this research is the re-injury rate: "Almost 60% of those who returned to work had one or more subsequent injury related work absences." About 32% of the injured workers who had been employed at the one year mark had become unemployed by the three year post-injury point (Managing Work Disability: Why First Return to Work is Not a Measure of Success, Industrial and Labor Relations Review, Vol. 48, No. 3). This indicates that about one third of the workers who had returned early to work were not able to sustain it.

A more recent analysis by the Institute for Work and Health shows that re-injury after return to work remains a very significant problem. It concludes that, in Ontario, a large

fraction of lost-time claims are repeat claims and a large fraction of repeat claims are with the same employer. It also found that the risk of repeat claim depends on age & duration of previous claim. Long-duration claims have lower re-injury risk, long-duration claims followed by re-injury had lower wage replacement and medical costs (Repeat workers' compensation claims, Etches, Mustard et al, IWH Plenary Series, Toronto, January 31, 2012, attached). This suggests that, when injured workers are given a longer time to heal before returning to work, the re-injury rate is lower; and when there is a reinjury, the workers compensation costs are less than they are for injured workers who returned to work sooner and were also reinjured. This suggests that the recent reduction in benefits expense for the WSIB may be short lived.

ACOEM Vision of 'Better at Work" Not Evidence Based.

Before embarking on a fundamental shift in the view of time to heal and recovery, one would have expected our public WSIB to have required a high standard of science to justify the change. The early and safe return to work balance should be a legal requirement. Instead, the new doctrine lacks empirical research, its promoters admit to it, and our system does not pose the question of the safety of the new order.

The June 27, 2006 ACOEM document is called "Preventing Needless Disability by Helping People Stay Employed". Rather than promoting Ontario's legislative balanced concept of "early and safe" return to work, the paper promotes the concept of "Stay at Work/Return to Work". This notion, per se, suggests a bias against time to heal, which is discounted as the paper claims that in most cases absence from work is not medically necessary. Workers who do not return to work immediately adopt a "disabled self-concept", but are really not impaired and could be working if they had stayed at work all along. Not a complimentary view of workers and injured workers, we might observe. The main thesis of the document is that injured workers should stay at work because to be off work is harmful to them. The paper was strong on conviction, but weak in providing any evidence.

Where is the ground breaking research? Where is the new science that led the WSIB to discard the "time to heal" idea and undertake their "complete transformation?

It turns out that the paper itself declared its ignorance of any new research or science to back up their harsh suggestions. It says:

"**Increase the Study of and Knowledge about SAW (Stay at Work) and RTW (Return to Work)**
"The SAW/RTW process has not been systematically and formally studied in sufficient detail. Little solid methodological foundation or medical evidence exists to support or improve commonly used methods and tools…very little funding or research has addressed outcomes for those covered by the workers' compensation system."

Reverse Logic instead of Empirical Research

The admitted lack of data did not deter the ACOEM from offering its common sense understanding of matters pertaining to injured workers recovery. Here are some examples:

- **"Research confirms that people who never lose time from work have better outcomes than people who lose time from work"**. The research is not cited. But could this simply be a form of reverse logic? A paper cut may lead to no time loss and quicker recovery than a lumbar fracture, but does this prove the general theory they advocate?

- "**According to medical anthropologists, patients take on the "sick role" after becoming ill or injured. To recover, they must relinquish these roles. The sick role exempts people from their normal responsibilities while giving them the right to receive care from others and be free of fault. Those who have trouble coping with their circumstances are likely to resist relinquishing those roles, using them instead to feel good about themselves and ensure their future security"**.

We are not told who these medical anthropologists are, what peer reviewed studies they have published. We are left with a picture of injured workers that reminds us of the 1950's or earlier, when injuries were considered "all in the heads" of injured workers, who were considered a conniving sort, looking for easy money and an escape from responsibility.

- "**People who feel they have been ill-served and retain a lawyer get involved in an adversarial system that hardens and polarizes positions, prolonged needless disability, and increases the likelihood of poor functional outcome. One multi-state insurer's analysis shows that the median cost of worker's compensation claims of those with legal representation is about $30,000 more than those without representation. The median cost of represented claims ranges between 10 and 20 times higher than the median cost of unrepresented ones".**

This may reflect the frustration of the US private insurance industry with lawyers and representatives; however it fails to empirically address the link between getting proper compensation (according to legislation) and "poor functional outcomes".

<u>A policy based on stigma of injured workers?</u>

The ONIWG had occasion to hear the ACOEM lead of the 2006 report, Dr. Jennifer Christian, at the Ontario Summit to Prevent Work Disability at the University of Toronto May 12 and 13, 2010. What struck us was the stigma behind her assumption that time to heal or time off work is harmful to injured workers. We were shocked to hear that time off work entrenches an "imagined" impairment that does not exist. In case we misunderstood her words, she left them in writing in the document "Introduction to the New Work Disability Prevention Paradigm (2008);

"**Instil a sense of urgency to normalize daily routine because prolonged time off work is often harmful. In only a few weeks, most people make adjustment and adopt a new view of themselves and their situation. Some people begin to think they are permanently disabled regardless of the medical facts. Once that idea is implanted, it is hard to shake."**

The stigma was visible also via a cartoon on page 19 of her slide presentation (reprinted in the Manual for the event). The caption was "**Problem: Inauthenticity, Cynicism, Abuse, Waste**. The vignette had a supposed injured worker go to the pharmacy to ask: **"Can you give me something that will make me feel better, but not quite good enough to go back to work?"** (copy attached).

ONIWG had welcomed the opportunity to share ideas on how to help injured workers. Faced with that kind of stigma however, our cooperation ended abruptly. At the same time we were successful in working with Ontario academics and the WSIB in adopting an anti-stigma statement and brochure. Little did we know or could predict that the stigma we rejected would be the basis of policies to come under David Marshall, and that they are continuing as we speak.

ACOEM: independent or "in the service of industry"?

In the 2006 above quoted report, the ACOEM promotes the need of "getting treating physicians out of a loyalties bind" that exists with their patients". It turns out that the ACOEM has its own "loyalties bind". In the main, they are working for employers and insurance industry clients.

In the International Journal of International Health 2007 article by Dr. Joseph Ladou (and 5 other doctors) called "ACOEM: A professional Association in Service to Industry, this bias was fully explained. The ACOEM "**is a professional association that represents the interests of its company-employed physician members…Today the ACOEM provides a legitimizing professional association for company doctors, and continues to provide a vehicle to advance the agendas of their corporate sponsors. Company doctors in ACOEM recently blocked attempts to have their organisation take a stand on global warming**." The last comment reminds us of the "disconnect" between our provincial attitude to climate change and this US based organisation.

The same article goes on to explain that in 2004 the State of California adopted the ACOEM Occupational Medicine Practice Guidelines as the "gold standard" of medical care and recovery expectations. However, it says:

"**The Rand Corporation performed a rigorous review of the ACOEM Practice Guidelines and concluded that, 'the evidence base for treatment recommendations for non-surgical conditions were of uncertain validity and comprehensiveness.' The majority of the experts conducting the Rand study felt that 'California could do a lot better by starting from scratch".**

Listening to the Injured Worker Again

A common fear we hear from injured workers is that “the WSIB is pushing me back to work too soon”. Why should we not trust the injured worker to know when he or she is ready? Are we to assume that they are just imagining a disability that is non-existent or smaller than it is? Are we to assume they don’t like their job? Or that they want to sit at home? Who is the WSIB to second guess the injured worker and often the treating medical professional?

An insightful critique of the Stay at Work/Return to Work Movement (SAW/RTW) was written by Michael Lax, Occupational Clinical Centres, Dept. of Family Medicine, State University of New York in 2015. It was called “Not Quite a Win Win: the corporate Agenda of the Stay at Work/return to Work Project” (1-21 NEW SOLUTIONS: A Journal of Environmental and Occupational Medicine. As the title suggests, the article refuted the “business case” that the SAW/RTW movement benefits all parties equally, employers, workers and “insurers”. The article points out that the proponents of this theory, principally the ACOEM are not unbiased, but financially dependent upon industry and insurers through contracts. This financial dependency seriously compromises any claim to independence and objectivity, as another crucial goal inevitably becomes the protection of their corporate relationship. The article also points out that they want to limit the role of treating doctors and silence the voice of injured workers. One of the key proposal for change regards the voice and participation of injured workers in the process: “**Most importantly, injured workers should be included as subjects playing a central role in every aspect of their recovery and rehabilitation process, the outcome of which will have a profound effect on their lives…In the medical and disability evaluation process, the worker’s voice is expressed in the history given to the clinician. In recent years that history has been devalued as a subjective, biased and uninformed information source. The search for supposedly objective measures to determine causation and assess disability has been intense, taking the workers’ voice right out of the picture. The demand to reinstate that voce in the clinical setting is an important aspect of implementing an alternative agenda.”**

We Need an Ontario-worker based solution:

*Abandon the better at Work Principle and Document and the link to ACOEM 2016 Report

*Return the Time to Heal Best Practice and elevate it to the Operational Policy Manual

*Reject stigma of Injured Workers inherent in the ACOEM and in the Better At work document

*Make decision making by elevating the importance of the treating medial professionals’ opinions

*Put the injured workers in the process at all levels. Reinstate the voice of injured workers in the clinical setting.

*Regularly monitor the experience of injured workers after they return to work or are deemed to return to work.

Is there political will?

An article in the Toronto Star Monday July 18th "WSIB slashes benefits and forces legal battles" shows how WSIB measures to reduce the unfunded liability have a huge cost in terms of the destruction of the lives of injured workers and the growing dysfunction of the workers compensation system. For example, the statistics reported on the increase in the WSIB appeals backlog:

- 3,927: Active appeals at the WSIB's independent appeals tribunal in 2009
- 9,435: Active appeals in 2015
- 56%: Percentage of appeals resolved at the tribunal within nine months in 2009
- 24%: Percentage of appeals resolved at the tribunal within nine months in 2015
- 6 months: Average time to be offered first hearing at the tribunal in 2009
- 17 months: Average time to be offered a first hearing at the tribunal in 2014

In his letter to the IAVGO community legal clinic dated June 24, 2016, WSIB President and CEO Tom Teahen said: "It is not in our interest, or the injured workers' interest, for them to return to work too soon. It's about safely getting them back to health and work."

Without commenting on the letter itself, we endorse this sentiment. It shows that the President recognizes the "time to heal principle". However, in order for it to be alive, it needs to be enshrined in the policy and practice of the WSIB.

Yours truly,

Steve Mantis, Chair
ONIWG Research Committee

Copies: WSIB, IWH, NDP, OFL

Preventing Needless Work Disability by Helping People Stay Employed

Presented by:

Dr. Jennifer Christian
Founder and Chair
60 Summits Project
http://www.60summits.org/

Repeat workers' compensation claims

A prospective analysis in Ontario, Canada and Victoria, Australia

Etches J[1], Mustard CA[1,2], Ruseckaite R[3] and Collie A[3,4]

1. Institute for Work & Health, Toronto, Canada
2. Dalla Lana School of Public Health, University of Toronto
3. Institute for Safety, Compensation and Recovery Research, Melbourne
4. School of Public Health and Preventive Medicine, Monash University, Melbourne

IWH Plenary Series, Toronto, January 31, 2012

https://www.iwh.on.ca/system/files/plenaries/plenary_2012-01-31_jetches.pdf