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Submission on the Ontario Retirement Pension Plan  
Presented by the Ontario Network of Injured Workers' Groups

1. Introduction

The Ontario Network of Injured Workers' Groups (ONIWG) was founded in 1991 and since then has actively advocated on behalf of injured workers; this is done primarily on a systemic basis. We intervened in three Supreme Court of Canada cases that affected the rights of injured workers including the *Martin & Laseur v Nova Scotia*; the latter case involved a Charter challenge to the strict limits to the Nova Scotia chronic pain regulation. We also routinely meet with senior levels of the Ministry of Labour, including the Minister of Labour and also with senior management at the Workplace Safety & Insurance Board (WSIB) and participate in public consultations on issues that affect injured workers. At these meetings, the Ontario Network of Injured Workers' Groups advocate for systemic change to benefit all injured workers.

Our group members are injured worker organizations in the province of Ontario. ONIWG is a democratically governed organization, with 22 member groups from all parts of Ontario. These individual groups also work closely with other groups and agencies in their individual communities in order to advance the interests of injured workers. The individual injured workers' group typically works with and has strong ties to both local labour councils and to local labour unions. They often will work with local legal clinics, who provide much needed advice and support. They also work with the local Office of the Worker Advisor, local Members of Provincial Parliament, and in many cases local municipal governments. It is these community roots that have enabled events like Injured Workers' Day (June 1) and the Day of Mourning for Workers Killed and Injured on the Job (April 28) to be successful province-wide events.

2. Our reasons for participating

First, we applaud the provincial government for its courage and determination in helping average working Ontarians fund an adequate retirement. We believe that the proposed Ontario Retirement Pension Plan is an important step in replacing disappearing defined benefit pension plans. We hope that Ontario leads the rest of Canada in this pension initiative so that in the near future not only will Ontarians benefit, but all working Canadians can benefit from this important initiative.

However, the Ontario Network of Injured Workers' Groups has some concerns with respect to the potential design of the plan. We have these concerns because of our experience with the Canada Pension Plan. The Canada Pension Plan has some critical design flaws with respect to its treatment of workers' compensation benefits that lead to significant reductions in an injured workers' retirement income. Many of these design flaws affect injured workers in receipt of long term workers' compensation benefits. Today, we propose to highlight these design flaws in the Canada Pension Plan in the hopes that the Ontario Retirement Pension Plan will avoid these flaws.

To do this, we will first briefly discuss the workers' compensation system so that you understand how an injured workers' long-term worker's compensation benefit is determined. We will then discuss the Canada Pension Plan and the design flaws that affect injured workers' retirement income. We will propose some solutions to these problems and methods of paying for these solutions. We will then discuss a few general issues with the Ontario Retirement Pension Plan that are not specific to injured workers.

We will be making some simplifying assumptions.

First, you may be aware that the injured workers movement has significant concerns with both the Workplace Safety & Insurance Act and the adjudication of that Act by the Workplace Safety & Insurance Board. We do not feel that this is an appropriate venue to air these grievances. The only criticisms that we will make of the Workplace Safety & Insurance Act will be relevant to our discussion of the Ontario Retirement Pension Plan. Also, any examples we give will assume that the decision made by the Workplace Safety & Insurance Board is the correct decision; we do this because we feel that design flaws that exist in the Canada Pension Plan affect all injured workers, including those workers whose long term benefits are adjudicated correctly.

Also with respect to the Canada Pension Plan, we will only discuss the retirement benefit. As you know, the Canada Pension Plan has more benefits than a retirement benefit. It has a death benefit, survivor's benefits, a disability benefit and a disabled contributor's child benefit. As the discussion of the Ontario Retirement Pension Plan has only talked about retirement income, we are assuming that the plan will only have a retirement benefit and therefore, any examples of the impact of the Canada Pension Plan will not look at the impact of receipt of the Canada Pension Plan disability benefit. If this changes and the Ontario Retirement Pension Plan encompasses more than retirement benefits, we would like the opportunity to address these benefits at a later date.

### 3. Overview of Workers' Compensation

The Workplace Safety & Insurance Act compensates workers who are injured or made ill as a result of their work. In 2013, there were 194, 442 accident claims registered by the Workplace Safety & Insurance Board of which 150,496 were allowed; approximately 25% of those accidents resulted in some income loss benefits. Also in 2013, 6.6% of all injured workers suffered a permanent impairment as a result of their workplace injury. In 2013 there were 153, 460 workers' who were receiving benefits more than 6 years after their accident ; these workers will

continue to receive these benefits until they turn 65. As of the end of 2013, the average percentage of benefits for these workers is 47.1% of Net Average Earnings. In 2013, the Workplace Safety & Insurance Board paid \$2.5 billion in total benefits to injured workers.

The cost of these benefits, along with the other benefits and services that the Workplace Safety & Insurance Board provides are paid by the employers of Ontario. In 2013, the Workplace Safety & Insurance Board levied \$4.5 billion in premiums and earned \$2.0 billion in net investment income from the accident fund.

a. The structure of long term income loss benefits.

The design flaws in the Canada Pension Plan become significant when an injured worker receives long term loss of income benefits. For this reason, you have to understand generally how the Workplace Safety & Insurance Board calculates an injured workers' long term loss of earnings benefits.

Workers' compensation benefits are based on an injured worker's average net earnings prior to the accident; gross wages are covered up to a maximum of \$84,200 per year. In converting a worker's gross average earnings to net average earnings, the Workplace Safety & Insurance Board must deduct a worker's probable income tax payable, the probable Canada Pension Plan or Quebec Plan premiums payable and the probable employment insurance premiums payable. This figure is known amongst Workers' Compensation practitioners as a worker's "Earnings Basis".

An injured worker who receives a long-term loss of earnings benefit will typically go through three phases. First, the worker receives benefits equivalent to 100% of their net average earnings. Through this time, the WSIB engages in many medical and vocational rehabilitation services that will lessen the impact of the worker's injuries. After this process is over, the WSIB must calculate what the injured worker could earn in a "suitable employment or business"; this is the deeming process. Ideally, this process would take into consideration the extent of the permanent disability and its impact on that worker's ability to earn a wage after vocational rehabilitation. Once this deemed wage is determined, the injured worker gets 85% of the difference between the worker's earnings basis and this deemed wage. The Workplace Safety & Insurance Board can adjust this benefit to reflect changed circumstances until 6 years or 72 months after the accident; at that point, the injured workers' benefit cannot change, other than in narrow circumstances, until the worker reaches 65 years of age.

In cases that are properly adjudicated, there are in general three scenarios that can happen at the 72 month review.

First, the injured worker can be found to be unable to return to any form of work due to their work related injury; those workers will receive 85% of their net average earnings until they reach 65. Second, a worker can be deemed to earn some wage and then return to work at that wage; in that case, an injured worker will receive approximately 85% of their net average earnings from the combination of workers' compensation benefits and earnings from employment. The final case is that a worker can be deemed to earn some wage then return to work at less than that wage

or not return to work at all. In those cases, the injured worker will receive substantially less than 85% of their net average earnings.

There is a final benefit that a worker with a loss of earnings benefit can receive. This is the Loss of Retirement Income benefit. After 12 months of receiving a loss of earnings benefit, the Workplace Safety & Insurance Board will put an amount equivalent to 5% of the worker's benefit into a loss of retirement account; a worker has the option of contributing an extra 5%. This forms part of the accident fund and the Workplace Safety & Insurance Board manages the fund for the worker. When the worker turns 65, the contributions and any investment gains are returned to the worker. Depending on the size of the fund that benefit can be paid as a lump sum or as a stream of benefits equivalent to a tax-free annuity. In our view, the Loss of Retirement Income Benefit is not satisfactory, as it provides for an inferior defined contribution pension plan.

#### 4. The Structure of Canada Pension Plan and its problems

No contributions can be made to the Canada Pension Plan from workers' compensation benefits. The injured worker does not have the option to contribute and the Workplace Safety & Insurance Board cannot make contributions on an injured worker's behalf. This has an impact in two ways.

First, as noted above a worker's net average earnings are calculated by subtracting, in part, the probable Canada Pension Plan premiums that would be payable for that worker. This leads to a reduction in the worker's benefits. For workers earning more than \$51,100 gross, the reduction in benefits due to this is \$2356.70 per year, or just less than \$200.00 per month. However, since no contributions are made on behalf of an injured worker, this will lead to a reduction in the amount of their Canada Pension Plan when they are seniors. In effect, the injured worker is paying for a Canada Pension Plan benefit that they can never receive; this is fundamentally wrong.

The effect on a worker's eventual Canada Pension retirement benefit can be large. For workers that do not return to any form of work, they will have a significant reduction in their retirement pension regardless of the amount of workers' compensation that they receive. At 65, they face the grim prospects of a smaller and sometimes much smaller retirement benefit than they would have received and the loss of their workers' compensation loss of earnings benefits. We would submit that the Loss of Retirement Income benefit is no substitute for the loss of the Canada Pension Plan benefit. Workers in this situation, who only received a partial loss of earnings benefit, face the prospect of significant earnings loss until age 65 and significant reductions in their Canada Pension Plan retirement benefit; these workers would be at a high risk of having to receive income supplements for seniors living in poverty.

Even workers who return to work at a wage loss, could face steep reductions in their Canada Pension Plan benefits. While their earnings before the age of 65 would be the equivalent of 85% of their net average earnings, their Canada Pension Plan contributions are only made on substantially less than 85% of their net average earnings. Again, this leads to a reduction in an injured worker's Canada Pension Plan retirement benefits; the amount of the reduction would vary with the amount of their wages and how old they were when the accident happened.

We would submit that these are critical design flaws in the Canada Pension that can significantly reduce an injured worker's retirement benefit. These design flaws should not be copied into the Ontario Retirement Pension Plan.

## 5. Proposed Solutions

The design flaw that affects an injured worker's long term workers' compensation benefits is easily fixed. When designing the Ontario Retirement Pension Plan, do not amend the Workplace Safety & Insurance Act to deduct probable Ontario Retirement Pension Plan premiums from an injured worker's gross average earnings. In that way, the injured worker does not have a reduction in their workers' compensation benefits to reflect a payment to the Ontario Retirement Pension Plan that is never made.

We would submit that this would not be sufficient. Not reducing an injured worker's long term workers' compensation benefit to reflect premium payments that are never made, does not solve the problem that the Ontario Pension Plan Premiums would never be paid with respect to an injured worker's long term loss of earnings benefit. An injured worker should not have to face a reduced government sponsored retirement pension because that worker suffered a work-related injury. Instead, we would ask that premiums be paid to the Ontario Retirement Pension Plan on an injured worker's long term loss of earnings benefits.

There are a few ways that this could be paid for. First, as we have indicated, the Loss of Retirement Income benefit, as it currently stands, is an unsatisfactory defined contribution plan. We suggest that the 5% that the WSIB pays to the Loss of Retirement Income fund ought to instead be paid as a premium to the Ontario Retirement Pension Plan; this would reduce or eliminate the impact of a work-related injury on an injured worker's retirement benefit. The contribution could be kept at 5% of the benefits to reduce the loss to an injured worker's retirement income. Or the Workplace Safety & Insurance Board could pay the full 7.8% of the contribution and raise employer premiums to cover the difference; this is the preferred option of the Ontario Network of Injured Workers' Groups.

Other ways of paying for the cost of the premium could involve reducing an injured workers' gross earnings by the amount of the probable Ontario Retirement Pension Plan premiums and use the cost savings from this reduction to fund the premium payment; the remainder can be paid for by a reduction in the Loss of Retirement Payment or by increases in employer premiums or by a combination of the three. This is less favourable, as injured workers already have reductions to their workers' compensation benefits; further reductions may not be affordable for the average injured worker.

## 6. General Submissions on the Ontario Retirement Pension Plan

We have some comments on the Ontario Retirement Pension Plan that are not particular to injured workers, but we feel should be raised

a. Child Rearing Drop Out

We have spent the bulk of this submission pointing out design flaws in the Canada Pension Plan with respect to injured workers. This does not mean that the injured worker movement does not support the Canada Pension Plan. It does most things right.

The one thing that the Canada Pension Plan does right, that ought to be emulated by the Ontario Retirement Pension Plan is the Child Rearing Drop Out. It is well known that having children and raising a family will often mean reduction in a parent's income. While sometimes the father of the children reduces his hours or stops working to perform child care, the burden of raising children is disproportionately felt by women. The child rearing drop out reduces the impact of not working in order to raise children. With the Canada Pension Plan, any year that a child is under 7, one of the parents can drop that year out of their contributory period. If that parent did not work in that year, the Child Rearing Drop Out would significantly reduce the impact of child rearing on that person's Canada Pension Plan.

This is something that ought to be emulated by the Ontario Retirement Pension Plan.

All of which is respectfully submitted  
Ontario Network of Injured Workers Groups