

TORONTO INJURED WORKERS' ADVOCACY GROUP

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September 20, 2010

Ms Judy Geary, Vice-President of Work Reintegration
Workplace Safety and Insurance Board
200 Front Street West
Toronto, ON
M5V 3J1

Dear Ms Geary:

Re: New Work Reintegration Program

The Toronto Injured Workers' Advocacy Group (TIWAG) is a collective of injured worker representatives working in the Toronto area. Our collective includes representatives from Industrial Accident Victims' Group of Ontario, Parkdale Community Legal Services, Rexdale Community Legal Clinic, Injured Workers' Consultants, Toronto Workers' Health & Safety Legal Clinic, and West Toronto Community Legal Services.

We understand that the WSIB, under your leadership, is implementing a new Work Reintegration Program to replace the current Labour Market Re-entry and Early and Safe Return to Work programs. We have written this letter to express our views on this issue.

We understand that the new Work Reintegration Program is partly a result of the KPMG value for money audit of the current LMR program. We agree with some of the recommendations in that report such as the recommendation for more Board oversight, increased accountability for employers and service providers, and more worker choice in the LMR process. However, we also have several grave concerns about the report's tone and content. The first part of this letter comments on that report, and the second part is a comment on the proposed response to the report, the Work Reintegration Program.

KPMG Value-for-Money Audit

Our first concern stems from the report's discussion of "long term benefit dependency" and its stigmatic characterization of injured workers. This value-for-

money report oversteps the scope of its review in recommending benefit reductions (which would require legislative reform) to discourage workers from remaining on “generous” WSIB benefits when they could be induced back to work or transferred to social assistance programs.

The underlying assumption of the report is that workers stay on benefits because they don’t *want* to work, and require benefit reductions “to discourage use of disability benefit as a path to early retirement.” This is a phrase used in the report itself on page 33. This perpetuates an offensive stereotypical view of injured workers as “lazy” and it has no place in an auditor’s report.

Furthermore, the report provides no evidence that lowering benefits translates into improved rates of employment for injured workers. A recent academic study using statistics from the OECD show quite the opposite. The countries with the most generous benefit levels for persons with disabilities also had the highest rates of employment for persons with disabilities (see Bonita Heath: “Benefits versus Rights: A False Dichotomy in the Political Economy of Disability?” Presented at International Conference on Income Redistribution, Asker, Norway, April 28, 2010.)

The report’s focus on cost-cutting measures in general, including the recommendation of fixed service fees and integration with EI employment programs, in our view, is misguided. The objective of retraining needs to be to return workers to sustainable, actual employment. The only valid measure of LMR success, then, is actual, sustainable employment. The Board’s practice of deeming ‘retrained’ workers to be employed in phantom jobs obscures this objective. In a system that puts costs first, deeming will render LMR outcomes meaningless.

We urge the Board to focus on the objective (actual employment) instead of the cost. Any focus on cost-cutting measures without attention to actual employment outcomes is meaningless – how cost effective can any program be if it has no known result? We are quite concerned that integration with other benefit schemes and cost capping will result in integrating programs down; that is, reducing the scope and content of the programs.

Cost effectiveness is not the goal of LMR/work reintegration. The goal of work reintegration must be financial security for injured workers.

Work Reintegration Program

A number of members of TIWAG have met with you and your colleagues at various consultations on the WRP. Our group has taken time to discuss and review what the Board has publicly released about this new initiative, and what

your office has stated in meetings with our members. Our understanding of the program is that it:

- focuses on returning the worker to work with the accident employer
- removes the bright line between early and safe return to work and LMR
- endeavours to provide workers with choice in the type of work or retraining
- aims to create new alternatives to academic retraining
- includes elements of long-term assistance and follow-up with the worker to assist with reintegration and accommodation
- Ends the Board's reliance on private colleges for LMR retraining
- Includes supervision of retraining that will be moved primarily "in-house"

Vulnerable (non-union) workers face particular challenges

We have concerns about the WSIB's new focus on returning injured workers to the workplace with their accident employers, and the negative consequences this focus could have for many of the workers we serve. We recognize that for many workers, particularly those who have the protection of a union, returning to work with the accident employer is a viable option and should be supported by the Board where it is in the worker's best interests. However, return to work with the accident employer is not always sustainable or safe.

As representatives in the clinic system, we most frequently serve workers injured while working in non-unionized workplaces, often in temporary or precarious jobs. These workers are often newcomers to Canada. In these situations, there is a huge power imbalance between the worker and the employer, leaving the worker vulnerable.

Older workers, migrant workers, and temporary workers are three groups that may be differentially affected by the new WRP. The emphasis on an early return to work with an accident employer may be ill advised for older workers, who have greater obstacles in returning to work and may be towards the end of their work years.

Migrant workers, seasonal workers, and temporary agency workers will also face unique barriers in returning to work. They are not with the same employer year-round, have limited accommodated work available to them in many cases, and have an already precarious and low-waged employment relationship before the employer is asked to provide any accommodation. Such workers do not ordinarily have the support of a union, and many are newcomers with language barriers in the workplace, limiting their ability to advocate with their employer or to take on non-physical work tasks.

Smaller workplaces also present challenges in return to work. An Institute for Work and Health study on return to work in small workplaces highlighted how return to work can create hardships injured workers, employers, and coworkers, leading to tainted workplace relations and a 'discourse of abuse'. The study found that the demands of early return to work in small workplaces could create tension and mistrust, eroding previously good workplace relationships (see Joan Eakin, Ellen MacEachen, and Judy Clarke: "Playing it smart' with return to work small workplace experience under Ontario's policy of self-reliance and early return" in Policy and Practice in Health and Safety, 2003.)

We frequently see these vulnerable workers after a failed return to work attempt. In many of the cases we see, employers will make a work environment so intolerable for the worker that they feel they have to leave. This is done by poisoning the work environment and slowly chipping away at a worker's resolve. This might involve practices such as giving workers meaningless tasks, putting them on the least desirable tasks or shifts, regularly switching around hours of work, or belittling them in front of coworkers. In some cases, an employer will simply give the worker a meaningless made up job to ride out the reemployment or experience rating period, after which time the made up 'modified' work will cease to be available. These workers are then denied further compensation benefits because their job loss is thought to be related to employment factors.

In other cases, modified work plans lead to toxic work environments by unduly burdening other workplace parties. For instance, co-workers may become resentful of an injured worker who has been given the lightest aspects of the work, leaving them responsible for heavy work. Or, supervisors may be expected to continue meeting production quotas despite having to accommodate an injured worker who must work at a reduced pace.

We are concerned that the increased focus on returning to accident employers will lead to more toxic workplaces. We are concerned that this will result in an increase in unsafe or inappropriate jobs being deemed suitable, and that more workers will be labelled as uncooperative when the (intolerable) employment relationship breaks down.

We encourage the WSIB to take steps to address the special needs of more vulnerable workers. Early recognition of toxic work environments is essential. We also strongly encourage the WSIB to enact safeguards for these workers so that, if their employment relationships breakdown, they retain access to LMR and loss of earnings benefits.

Here is our suggested list of benchmarks for a successful work reintegration program. A successful program will:

1. Provide work that is suitable
 - Does the worker's doctor approve of the work plan?
 - Does it protect time to heal?
2. Provide work that is meaningful and sustainable
 - Is the work available in the long term?
 - Is it an actual job that existed before the accident?
3. Recognize the signs of a toxic work environment
 - Are coworkers or supervisors disadvantaged by the modified work plan?
 - Are there signs of attempts to get rid of the worker, such as excessive discipline, or sudden problems in the employment relationship?
4. Provide resources for worker who cannot return to work with the accident employer, including quality retraining
5. Provide an actual job or financial security for injured workers with permanent impairments
6. Provide support for other employers to hire injured workers (such as special resources, training, as needed)

Adequate time to heal

We have further concerns about the Board's estimation of a six-month recovery time for injured workers. The recovery time required will vary based on the individual's unique personal factors (age, health before the accident, access to health care and family support etc.) and the nature of the injury – not on an arbitrary six month deadline. The best persons to address the ability to return to work and the timing for that return are the treating physicians.

We are worried about the prospect of returning an injured worker to work too soon, thereby increasing the likelihood of re-injury and new accidents. Similarly, workers who are returned to the job while on pain medication or other prescription drugs may be a danger to themselves and their co-workers.

The six month timeline is also inconsistent with chronic pain guidelines. Current guidelines require evidence of pain that has persisted six or more months beyond the usual healing time. For those with chronic pain disability then, a six month timeline for return to work will have them pushed back to work before there

condition can even be diagnosed. We would be interested to hear how the Board intends to address chronic pain situations.

Ergonomists are valuable in return to work

The recent elimination of ergonomists from the Board's staff was a great loss to workers and employers. It is particularly problematic that the Board has chosen to eliminate these positions while at the same time structuring a work reintegration program that promises increased support for and focus on return to work with the accident employer. We believe that ergonomists play a critical role in work reintegration by identifying suitable work that meets a worker's medical restrictions, and advising against dangerous work outside a worker's restrictions. They are key to ensuring safe and sustainable return to work, particularly for non-unionized workplaces.

Retraining and modified work should be meaningful and provide choice

We agree with the Board's decision to cease its reliance on private schools. We encourage the use of public institutions that are accredited, so that retraining provides recognized skills and respected credentials. Employers will choose to hire a worker with an education from a known and respected public school over one who lists a school they have never even heard of, or one of dubious quality on his or her resume.

We also support the Board's focus on increased worker choice in retraining. We agree that choice is an important element to successful retraining. We hope you will extend this principle of choice for workers who return to work with the accident employer as well. As noted earlier, we often see cases, particularly when subcontracting or temporary agencies are involved where workers are returned to meaningless make-work positions. For example, one worker spent his days feeding paper into a small shredder. Another worker was given a bucket of ball bearings to sort by size. They would be dumped back into the original bucket each night and the next day he would be asked to sort them again.

These made up positions that exist solely for the purpose of avoiding experience rating surcharges are not suitable. Giving workers some input and choice into the work reintegration process would help to prevent these types of practices from occurring.

Practice changes are necessary to respect Human Rights

We encourage the WSIB to emphasize employers' obligations to accommodate injured workers to the point of undue hardship under the *Ontario Human Rights Code*. This duty extends beyond accommodating the work injury – employers

must also accommodate non-compensable conditions and other personal factors (such as family status and religion). We think it is imperative that Board staff receive training on Human Rights. It would also be useful if the Board would remind employers of their human rights obligations in writing upon setting up a return to work or retraining.

Request for ongoing consultation

In short, the unique context and personal characteristics of each worker need to be taken into consideration before they are slotted into a one-size-fits-all model of work reintegration. Your office has said that the new program is based on some successful programs in other jurisdictions, and we are eager to hear about the specific details of these programs and their successes.

We understand that the new WRP will involve ongoing consultation with workers and their advocates about the strengths and weaknesses of the program so that it can be revised and refined as necessary to best address the Board's obligation to compensate injured workers, care for their work-related injuries and illnesses and return them to the workforce when it is safe for them to do so.

We would like to request a meeting with you to further discuss the concerns raised in this letter and how the Board intends to address them in implementing the new WRP.

Thank you for this opportunity to provide you with our position. We look forward to meeting with you soon.

Sincerely,

Toronto Injured Workers' Advocacy Group (TIWAG)

Per:

Laura Lunansky

cc. Mr. David Marshall, President
Mr. Steven Mahoney, Chair
Hon. Mr. Peter Fonseca, Minister of Labour