

## Clothing Allowances

### Backgrounder

A clothing allowance is a yearly sum injured workers receive if they wear a brace or other device needed for their injury that causes clothing damage. In 1996 the new WSIB changed its policy, reducing clothing allowances by 50%. While the Board claimed this cost-cutting exercise was based on "scientific research" and "clinical evidence" that newer braces caused less wear or tear on clothing, when challenged they could provide no credible proof at all.

After prolonged lobbying, in 2006 then President Jill Hutcheon restored the clothing allowance to all workers affected. However, the Board decided workers would not get their money back for the 10-year period when the allowance was cut. Again, for injured workers, it was a simple issue of justice: If the WSIB admitted it was wrong and reversed its policy, why not give the money back?

### **The right to retroactive benefits – a struggle almost won?**

Five injured workers, represented by Injured Workers Consultants Community Legal Clinic, have fought this policy change from the beginning. All the injured workers involved had a life-long back disability and wore a back support (corset) that damaged their clothing. After six years of meandering through the appeal system, a 2012 interim decision by the Appeals Tribunal found the WSIB's 1996 clothing allowance policy had been developed contrary to the Act and had not met the standard of "good faith".

Despite the 2012 Tribunal decision, much welcomed by the workers, the appeal was not yet over. Under Bill 99 changes to the Act, when a policy is found "inconsistent" or not authorized by the Act, the Tribunal must send it back to the WSIB for further consideration and wait for their response. The WSIB Board of Directors rejected the Tribunal opinion and directed it to deny the appeal.

However in January 2014 the Tribunal delivered its final ruling [[WSIAT Decision no. 1057/09](#); 2014 ONWSIAT 205 (CanLII)]. While acknowledging that the WSIB sets policy, the Tribunal still agreed that the merits and justice of the case warrants allowing the appeal - the five workers are entitled to their full allowance for the years 1996-2006.

## Seeking justice for all

The appeal only dealt with 5 injured workers. Many organizations such as the Ontario Federation Labour and legal clinics have written to ask the WSIB to pay all the affected injured workers their arrears of clothing allowance payments. Approximately 5,000 other injured workers, older and permanently disabled, were unjustly denied full compensation. In June 2016, the WSIB announced workers who wore a WSIB-approved back support or back corset and did not receive the full Clothing Allowance amount payable during the period from November 1, 1996 to January 3, 2006 could submit their request for a reconsideration. In October, it further announced letter and form would be sent to each worker affected to encourage their application.

It is not clear if the Board will modify its attitude to its own powers displayed in the appeal. In opposing the WSIAT interim decision, the WSIB board of directors acted as though it had limitless powers to develop policy, if it has discretion to do so under the Act. The WSIAT upheld its "audit function" as a guarantor that WSIB decisions follow the principle and the letter of the law.