ONTARIO NETWORK of INJURED WORKERS' GROUPS

# WE DEMAND: STOP CUTTING BENEFITS BASED ON 'PRE-EXISTING CONDITIONS'

## Background: PRE-EXISTING CONDITIONS

Around 2012, after hiring a notorious American insurance doctor to give them policy suggestions, the WSIB began a practice of reducing or eliminating injured workers' benefits by aggressively penalizing people who they felt had "pre-existing conditions." This has taken many forms, including reducing the length of time workers receive wage loss and healthcare benefits, cutting the Non-Economic Loss (NEL) awards given for permanent injuries, and more. This differs from the Board's pre 2012 practice of limiting benefits only for "pre-existing impairments."

What's the difference? A *pre-existing impairment* is a condition that has symptoms, and that had previously limited a worker's ability to do their job. What the WSIB now calls *pre-existing conditions* includes things that may have never affected the worker before.

## Why is this important?

The WSIB's focus on "pre-existing conditions" is one of its most common methods of cutting people off benefits. If everything can be blamed on a "pre-existing condition" instead of the work injury, the WSIB can avoid paying benefits and save itself money. Many of these "pre-existing conditions" were never diagnosed by a doctor before the work injury, and never caused any symptoms. In fact, the WSIB's interpretation of "pre-existing conditions" is so broad that they include factors that are simply a part of normal aging. Rather than treating injured workers as human beings, they are treated like used cars, with depreciating value as they age.

***"It is a change in benefits with no change in legislation. I think we should be ashamed of the system, you have some of the most vulnerable people in our society being victimized by a corporate structure."***
***-Ron Ellis, former chair of the WSIB's appeals Tribunal (CBC News, Oct 2016)***

***<u>HOW THIS POLICY WORKS IN PRACTICE:</u>***
***A worker in her 50s who has spent her lifetime in manual labour – but has never been injured or had any symptoms of spine problems – slips and hurts her back at work. The WSIB may approve benefits for a short time, but after she gets an MRI, the Board sees that she has some "degeneration" in her spinal discs. Even though this degeneration was likely caused by a lifetime of heavy lifting at work, and has never prevented her from doing her job every day for the last 30 years, the Board's policy dictates that after a few weeks, her ongoing and permanent pain is not caused by her fall at work, and ends her benefits.***

***The same is true for mental health injuries. Advocates have seen cases of mental stress denied because the worker may have offhandedly reported feeling some depression to their family doctor five years ago. There are even cases where post-injury family breakdown is blamed as a pre-existing condition responsible for an injured worker's psychological impairment.***

There is a long established legal understanding called the "thin skull" principle that is meant to protect all workers. At its most basic, it means that if two people experience a head injury of equal force, and one is more injured because their skull happens to be thinner, the more injured person cannot be penalized simply because of the state of their pre-injury body. In the context of workers' compensation, it means that each injury must be looked at on the basis of how it affected the injured worker in question, not how it might have affected some imagined "average worker." The WSIB's pre-existing conditions policy is creating a system in which only people with perfect bodies and minds can receive full compensation, and this is unfair.

# What is the demand?

The WSIB has a responsibility to honour the long legal history of the thin skull principle, and must stop reducing injured workers' benefits because of pre-existing conditions that have never caused the worker any symptoms.

# What are the solutions?

- **The WSIB must return to its previous policy and practice of only reducing benefits if a worker had a verifiable pre-existing impairment**. "Pre-existing conditions" that were asymptomatic and undiagnosed prior to the work injury, and that did not affect a worker's functioning, must not be used to cut or deny benefits.

- **These principles must be codified** in the Workplace Safety & Insurance Act, to prevent the WSIB from attempting to skirt them again in the future.