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August 8, 2021

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### Submission on WSIB Insurance Fund Surplus Distribution Model Consultation

The Ontario Network of Injured Workers Groups (ONIWG) is submitting our response to the Ministry of Labour Workplace Safety and Insurance Board (WSIB) Insurance Fund Surplus Distribution Model Consultation that was announced July 15<sup>th</sup>, with a deadline date of August 10<sup>th</sup>. Injured workers have always been considered a stakeholder with the WSIB and the Government and we can only assume that seeing as this was not brought to our attention and it was buried on their website in the employers' section, their intent for the surplus distribution is solely for employers, and we are not on your radar at all.

We are the injured workers who you identify as the "high risk"; the 10%, those with serious injuries that have extended recoveries and ongoing and permanent impairments. Our issue is the way the WSIB treats these workers and the way and frequency with which their benefits are inappropriately reduced or eliminated.

Ontario legislation enacted the Workmen's Compensation Act Workers in 1914, known as the historic compromise, where workers gave up the right to sue their employers in exchange for full and fair compensation as long as the injury lasts, protecting employers from lawsuits and allowing them to calculate payments as a cost of doing business.

In exchange, injured workers were to benefit from a compensation system that was no fault, non-adversarial, provided compensation that lasted as long as the injury lasted, employer paid, collective liability and an independent public agency. Injured workers have already made submissions before the United Nations raising their concerns over the failure of Canada (Ontario/the WSIB) to respect their rights and there are bound to be other legal challenges waiting in the wings.

Legislative obligations were defined in this Act and making the changes proposed in this consultation without ensuring that the government's and WSIB's obligations to injured workers are fully and properly met is irresponsible and indefensible.

These legislative obligations include:

1. Loss of Earnings – Injured workers’ Loss of Earnings, reduced in 1998 when Bill 99 ordered they be reduced to 85% from 90% to eliminate \$3.1B from the unfunded liability, falling on the backs of injured workers. Currently, Manitoba, Alberta, British Columbia and the Northwest Territories pay Loss of Earnings at 90% of net average earnings.

The practice of deeming is perhaps the most damaging to injured workers and their families. The deduction of minimum wage or more from their pre-injury wage results in negligible and sometimes zero Loss of Earnings benefits, forcing many to turn to other government programs such as ODSP and OHIP. This aggressive attack on our benefits only serves corporate interests at the expense of injured workers, their families and the public purse. Before the WSIB can properly consider itself “fully funded”, we demand that the WSIB ensure sufficient funds are being spent properly compensating injured workers for their lost wages. Our government must pass Bill 119 which will put an end to deeming, only allowing it when an appropriate job offer is declined.

2. Discriminatory legislation changed in 2016, requiring the WSIB to cover work-related chronic mental stress injuries but discriminatory practices are still ongoing and these injuries are not being treated as other injuries. Currently, only 6% of these claims are allowed in comparison to a 78% allowance rate for other injuries, according to WSIB data. The proper handling of these claims, including payment, must be upheld before the WSIB is considered in a surplus position.
3. All recommendations of the Demers Report respecting occupational diseases must be implemented, including the implementation and proper funding for the occupational disease standard panel. Victims of occupational disease also need more funding in order to be properly compensated.
4. NEL benefits continue to go down, paying \$126M in 2010 and reduced 65% to \$43M in 2015. The 2021 Base amount of \$63,152.40, with potential adjustments up to a maximum of \$91,219.55 for a catastrophic disability of a young worker, are nowhere comparable to awards granted in personal injury cases. Injured workers find the current rates used by the WSIB very demeaning and are insulted by the payments they receive which come nowhere near to representing the affects that their permanent injuries have on their lives. The Jackson Report said, “These are very difficult measures justifiable only because of the seriousness of the UFL and the threat it poses to the viability of the system” (page 51). Given that the unfunded liability has been eliminated and the WSIB now has a surplus, injured worker benefits must be restored and NEL awards must be rated more in line with their historic rates and the base NEL amount should be significantly increased so that permanent impairments are more accurately acknowledged.

5. The Operational Review Report pointed out that the WSIB did not conduct sufficient claim suppression audits and the WSIB must allocate resources before it declares itself fully funded or in a surplus position. It must fulfill its legislative obligation to investigate and penalize claim suppression.
6. The Cost-of-Living reduction from 75% of the Consumer Price index down to 50% was justified in the Jackson Report, estimating \$9.3B savings to the unfunded liability. Injured workers should be paid inflation at the actual rate of the consumer price index.
7. Bill 99 reduced the Loss of Retirement Income benefit, paid by the WSIB, from 10% to 5%, again another saving of \$1.4B towards the unfunded liability. The WSIB should be paying 10%.

The WSIB's unfunded liability, created by accumulated reduction of employer premiums over time, was at an all-time high in 2011 at \$14.2 billion. Full funding for the WSIB was to be achieved by 2027 but was reached in 2018. It is not only concerning that the WSIB was able to eliminate the UL in such a short time but the question must be asked how they did it.

We know that since 2017, employers' premiums have been reduced by \$2.8B annually while the total annual workers' benefits have been reduced from \$4.8B in 2010 to \$2.3B in 2017.

The number of claims and the duration time for them has increased in both 2018 and 2019, according to the WSIB 2020 Economic Statement. Savings from the defunct UL should be used to provide an incentive to workplace health and safety and practices that promote a safety culture in businesses. Since the number of injuries has been increasing since 2015, and occupational diseases claims are rising, why has the WSIB granted 200 businesses in Ontario \$3.2M as its largest quarterly rebate to businesses in its Health and Safety Excellence program in June of this year.

Elimination of the unfunded liability should never have fallen on the backs of injured workers. All cuts that reduced benefits to injured workers while eliminating the unfunded liability must be restored in full.

There must be true accountability and transparency to ensure that the Health and Safety Excellence program is benefitting employees as well as the employers, as is the intent of the program, rather than being another opportunity for employers to recover their compensation premiums while mishandling injury claims in the workplaces.

Since March 2020, COVID-19 has greatly affected how we are doing business. We know there are real costs for all workers who have been deemed essential and were affected by COVID while at work. And the real and final costs of COVID to workers are still to be determined.

Why was the WSIB quick to defer premium payments for businesses beginning in April of 2020 but refused to consider helping injured workers by offering a supplement to help cover extra costs associated with COVID, similar to that offered to seniors, persons with disabilities and other marginalized persons. The WSIB must ensure that there are funds available for all those affected before looking at how to spend their surplus funds.

Ultimately, the Workmen's Compensation Act, now known as the Workplace Safety & Insurance Board, was created to take care of workers who are injured or made sick or killed in their workplace by being provided with security of benefits and in exchange employers were protected from lawsuits. As seen by this and undoubted many submissions on behalf of injured workers, you, our government, must demand that the WSIB abolish all practices that are harmful to injured or ill workers and fulfill their legislative obligations.