

# 100 YEARS OF WORKERS' COMPENSATION: ARE THE NEEDS OF INJURED WORKERS BEING MET IN 2013?

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No “half measures”: Workers’ compensation 100 years after Sir William Meredith  
Toronto, October 31<sup>st</sup> 2013

# Workers in the time of Meredith



# 2013: the «new world of work»



Vosko, *Managing the Margins*, 2010  
Benach, Muntaner & Santana, *Employment Conditions and Health Inequalities*, 2007  
Tompa and Scott-Marshall, 2005  
MacEachen et al 2012  
Lewchuk et al, 2013

- Precarious employment
  - Decent work vs bad jobs
  - “Non-standard” employment
    - Time, relations, space
  - Insecurity
    - Job insecurity
    - Employment strain
- Formal vs informal economy
- Migrant (national or international) vs local workers

# What's a business case?



# Business case for workers' compensation

- Meredith, 1913
- «In these days of social and industrial unrest it is, in my judgment, of the gravest importance to the community that every proved injustice to any section or class resulting from bad or unfair laws should be promptly removed by the enactment of remedial legislation and I do not doubt that the country whose Legislature is quick to discern and prompt to remove injustice will enjoy, and that deservedly, the blessing of industrial peace and freedom from social unrest. Half measures which mitigate but do not remove injustice are, in my judgment, to be avoided.»
- **Depoliticize occupational injury**

2013: Have we forgotten that occupational injury can be political?



# What's conventionalisation/normalisation?



Carson, 1979  
Mattei, 1976

# What's conventionalisation/normalisation?



# Costs of doing business

- 1913

- Once workers' compensation was introduced, employers could factor in the cost of compensation as a cost of doing business.

- 2013

- Employers factor in fines for OHS violations as part of the cost of doing business
- Protective equipment and machinery cost more than the fines they will be required to pay if they get «caught»

# Fines that could be imposed on a corporation for failing to comply with inspector's order

## Québec fines tripled in 2010...

	<b>Québec</b>	<b>Ontario</b>	<b>Alberta</b>	<b>B.C.</b>	<b>Federal</b>
<b>Maximum Fine</b>	3,000\$ 2nd + offence: 6,000\$ / 12,000\$	500,000\$	500,000\$ - 1,000,000\$ Depending on nature of notice	618,730+ 2nd + offence: 1,237,461+	1,000,000\$

Marcel Simard, 2000 updated, Lippel, 2013

# Kill a Worker Go to Jail

- OFL Says Justice Is Not Served Until Vale Executives Are Behind Bars
- OFL Applauds Successful Appeal that Slaps \$750,000 Fine Against Metron Construction in Deaths of Four Workers



# Business case for workers' compensation

- 1913

Ensure employers against unexpected cost fluctuations

- 2013

- We have returned to the individualisation of costs in the name of making individual employers «responsible» for the workers they injure

# Individualisation of costs: 2013

- **Experience rating**

- Each employer is billed according to costs of compensation
- It is no longer possible to factor the cost of the accident into the cost of the product
  - ...the competition may be paying lower premiums

- **Intended behaviour**

- Primary prevention
- Promoting early return to work

- **Unintended behaviour**

- Systematic challenges
- Externalisation of risks
- Creating meaningless make-work projects

# Under-reporting of injury...and other invisibilities

- Why workers don't claim
  - Systematically contested
  - Afraid of reprisals
  - Don't know they are covered
    - For mental health problems
    - For musculoskeletal disorders
    - Because they are temps
  - Can't prove occupational causation (disease)
  - May not be covered...
    - Lippel, Cox, PPHS 2008



# Externalisation of risks: Temps

- With temp agencies as the sole employer, work accidents don't show on the client employer's workers' compensation experience-rated record.
- **"We were providing industrial labour... to a client. The client was receiving an .... [workers' compensation] award for best health and safety practices. That day I had two people...rolled out the back door in the ambulance. The client kept his health and safety record up high because he outsourced to staffing companies all the risky jobs, all the heaviest lifting. All the jobs that required any type of dangerous work went to a staffing agency. So, his [workers' compensation] record looked...perfect. "(Vaughn, owner, mid-sized temp agency)**
- This arrangement provides an incentive for client employers to hire temp agency workers for the relatively dangerous work.
- It also hides the injury location.
- MacEachen et al 2013

# Does self-monitoring by the self-employed lead to effective prevention?

«If the first 2 or 3 call the office to say they won't take the load, if the fourth on the list wants to take it, it's his right, we wouldn't tell him, well the other 3 won't take it, don't go. If the guy wants to take the risk, that's up to him.»



# How does workers' compensation meet the needs of the precariously employed?

- Part time
- On Call
- Temp agency workers
  - What are your benefits?
  - What are your rights for vocational rehabilitation?
  - What right to return to work?
- Self-employed
  - What benefits can you access?
  - What premiums must you pay?

# Details matter



# Quantum of compensation for loss of earnings

## Québec

- 90% of your net salary
- Minimum basis for calculation is minimum wage X 40 hours
- Part-time minimum wage earners or temporary workers are better off;
- Part-time high wage earners are still penalized

## Ontario

- 85% of net salary
- No minimum.
- Future wage loss of all temporary or part-time workers will be underestimated

# 2013: A business case in every file

- Right to rehabilitation
  - Cost benefit analysis of how much the worker will cost the system if nothing is done.
- How does deeming work when applied to the precariously employed ?
- Those who are undercompensated because there are no minimum benefits will not access rehabilitation that meets their needs.

# Workers' comp and globalization

- In 1913 competitors were all covered by the same workers' compensation scheme.
- In 2013 there is a race to the bottom between countries that are reducing social protections...trying to keep up with those that never had them.

# Managing Claims or Caring for Claimants:

Effects of the Compensation Process  
on the Health of Injured Workers



**Katherine Lippel,  
Marie-Claire Lefebvre,  
Chantal Schmidt and  
Joseph Caron**

# How does the compensation system affect workers' health?

## • Positive effects

- Provides access to health care
- Sometimes allows withdrawal from work and time to heal

## • Negative effects

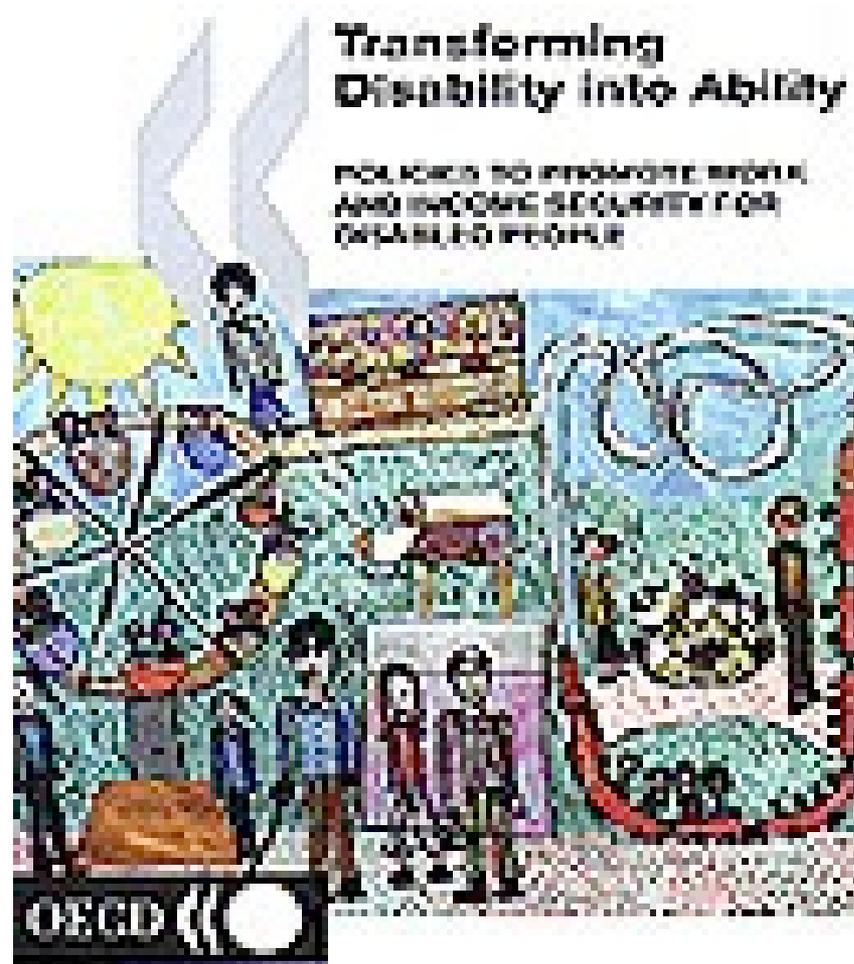
- Stigma
- Imbalance of power
- Social support is key in protecting workers from negative effects

Why do some workers feel so bad about the system?



# It's not just an Ontario problem...

- International organisations like the OECD provide «guidance» as to ways to promote «return to work» for all...



# Injured workers in the rehabilitation process

- **Australia**

«I felt like a number with skin on».

Worker quoted by  
Roberts-Yates, 2003

- **Ontario**

«We're just trying to keep her working...we just want to prevent...that three year mark before we get hit [with premium costs]»

- Employer quoted by  
MacEachen et al,  
PPHS, 2011

- **Québec**

- “She explained to him that he would have to pay me for the rest of the year, and that his insurance would go up; she explained all that to him in front of me...
- So you realize that you're just a tiny object... It was like saying, ‘Put her somewhere in a chair, at least it'll cost you less. You've got to take her back! Wait a couple of months then get rid of her!’ That's what it meant to me.”

- Worker quoted by Lippel, IJLP,2007

So where should we be going?



# Key qualities in a system

- Coverage as broad as possible (both in terms of who is covered and what is covered)
  - Minimum benefits with no maximum insurable earnings
  - Financed exclusively by employers
    - Mutualized premiums
    - Not individually experience rated
  - Job protection, protection from reprisals
  - Public system
  - Independent adjudication mechanisms including separate appeal system independent of the administration that pays for benefits
- Lippel, 2012, AJIM

# Essential objectives of a system

- Promote workers' dignity
- Meet workers' needs

- Combat stigma of injured workers
- Combat discrimination in the compensation system
- Discourage contestation
- Value workers' mental health
- Stigmatize strategies that harm workers

...

In all the ways we will identify during the course of this conference



# Principles are not enough

- In New Zealand the Accident compensation scheme, still underlines the importance of the “Woodhouse Principles”
  - But wage replacement benefits cease if a worker is deemed capable of performing full time work, regardless of previous income.
    - Armstrong & Laur, 2007
- Meredith principles are important symbolic underpinnings of workers’ compensation in Ontario
  - But paying lip service to those principles may well facilitate technical amendments that undermine the quality of support provided to workers.

Thank you

<http://www.droitcivil.uottawa.ca/chairohslaw>