



INJURED WORKERS
COMMUNITY LEGAL CLINIC

**REPRESENTING INJURED WORKERS
FREE OF CHARGE SINCE 1969**
A community directed not for profit legal aid clinic

November 30, 2021

Standing Committee on Finance and Economic Affairs
Chair Ernie Hardeman
Vice-Chair Ian Arthur
99 Wellesley Street West
Room 1405, Whitney Block
Queen's Park
Toronto, ON M7A 1A2

Dear Chair Hardeman and Vice-Chair Arthur,

Re: Submissions to the Standing Committee on Finance and Economic Affairs re Schedule 9 in Bill 43

This submission pertains to the unintended consequence that the proposed minimum wage increase included in Schedule 9 of Bill 43 will have on injured workers as a result of the WSIB's predatory practise known as "deeming"/"determining." We have proposed amendments to Bill 43 at the end of this letter to rectify the injustice caused by deeming.

To reiterate the statements made to the Standing Committee by our clinic and the Ontario Network of Injured Workers' Groups on November 29, 2021, it is our position that the injured worker community should not be collateral damage in the much needed - but insufficient - increase to Ontario's minimum wage (to be clear, we support the Ontario Federation of Labour's demand for a \$20 per hour minimum wage).

Our legal clinic and others in the injured worker community have raised this matter with this government and previous governments – and also the WSIB – on many occasions over the past number of years. In particular, we have asked that minimum wage increases not be used to cut the benefits of injured workers who are "deemed"/"determined" to have earnings from phantom jobs they do not have.

In short, with "deeming", the WSIB dreams up a "phantom"/"imaginary" job that it claims the injured worker could in theory get, takes away wages the worker is "deemed" to be earning, and leaves the injured worker with little or no compensation benefits, regardless of whether the injured worker is actually employed or not.

For instance, a warehouse worker earns \$20 an hour when he suffers a permanent leg injury and cannot return to his old job. While recovering, he receives full benefits – 85% of his take home pay. The WSIB eventually tells the injured worker that it is time to return to work after some re-training. The WSIB then "deems" the worker in a 40 hour per week \$14.35 minimum wage job as a cashier, despite the fact that he is not actually working in that position.

This warehouse worker will lose hundreds of dollars per week and thousands of dollars per year as a result of the wages from his "deemed"/"phantom" job of \$14.35 per hour being deducted from his pre-injury warehouse worker job of \$20 per hour.

As of January 1, 2022, the warehouse worker will lose even more money as the minimum wage and, in turn, the minimum deemed wage will increase to \$15 per hour.

With Schedule 9 in Bill 43, injured workers deemed in server and bartender positions, will be the most impacted. The current minimum wage for servers and bartenders is \$12.55/hr. On January 1, 2022, the wage for those workers will be harmonized with the general minimum wage at \$15.00/hr. While this harmonization in wages is long overdue, the unintended consequence is that injured workers deemed as servers and bartenders will ultimately lose thousands of dollars a year as a result of the much-needed wage hike.

Most egregious and the greatest injustice is inflicted on minimum wage workers who experience a work-related injury. Once deemed, the minimum wage injured worker's WSIB benefits will effectively be terminated as the wages from their deemed job are the same as the wages from their pre-injury job.

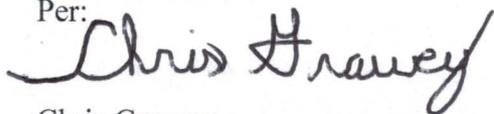
We once again ask you to take this matter into your own hands and ensure that the minimum wage increase is not used to the detriment of injured workers. It is apparent from the WSIB's response to the minimum wage hike in 2018 and the WSIB's continued use of deeming injured workers during the COVID pandemic, that the Board's money management function has once again trumped its obligation to provide fair compensation to injured workers. As Committee Members, you can no longer stand by and allow this conflict of interest – in which the Board acts as both “judge” and “money manager” of workers' compensation benefits – to continue.

Specifically, we have outlined three proposals/amendments, ranked in order of preference:

1. Bill 43 shall be amended to incorporate the provisions from Private Member's *Bill 119, Respecting Injured Workers Act (Workplace Safety and Insurance Amendment), 2019*. Bill 119 amends the Workplace Safety and Insurance Act (WSIA), in order to restrict the practise of deeming, except when an injured worker refuses an offer of suitable and available work without good cause; or
2. Bill 43 shall be amended to declare an immediate moratorium on deeming until new legislation, which restricts or eliminates deeming, can be brought forward by the Government and/or opposition parties during the next legislative session; or
3. Bill 43 shall be amended to include a provision which would prevent deemed injured workers from being negatively impacted by the minimum wage increase.

Sincerely,
INJURED WORKERS' COMMUNITY LEGAL CLINIC

Per:



Chris Grawey
Paralegal

Cc: Honourable Monte McNaughton
Member of Provincial Parliament (MPP) Wayne Gates