



THUNDER BAY & DISTRICT INJURED WORKERS SUPPORT GROUP

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JUSTICE FOR INJURED WORKERS

Injured workers need a compensation and rehabilitation system that recognizes the special difficulties they face as persons with disabilities in obtaining and maintaining suitable and sustainable employment. In Ontario, this compensation system will seek to assist injured workers with both social integration and the attaining of suitable employment. It will be a system that fully compensates and supports those workers who have suffered a workplace injury, illness or disease; assists such workers in returning to employment with dignity; and which aids in protecting all workers from injury or illness at work. We acknowledge that the injured workers with permanent lifelong disabilities will require an extra level of care and service. To that end the following document outlines how this result can be achieved. This document is premised on the principals put forth by Justice Sir William Meredith.

The Meredith Principles

Over one hundred years ago, Sir William Meredith tabled a report in the Ontario Legislature, establishing what would become known as the Meredith Principles. Like all workers compensation systems in all the provinces (except Quebec) in Canada, the Meredith Principles are the foundation of the WCB.

The Meredith principles rest on the Historic Compromise in which employers fund the compensation system and share the liability for injured workers. In return, injured workers receive benefits while they recover, and cannot sue their employers. The Historic Compromise gave both sides financial security which can be summed up as:

- Employers would be protected from lawsuits by injured workers and be able to calculate payments as a cost of doing business.
- Injured workers would receive prompt benefits for as long as the disability lasted in a non-adversarial system. More specifically the Meredith Principles are:

No Fault: No need to prove the accident was the employer's fault, no extra charge to the employer.

Non-adversarial: An inquiry system, based on benefit of the doubt that "seeks to compensate," and cannot be challenged in court. No blame.

Compensation for as long as disability lasts: Worker can depend on security of benefits based on lost wages and promptly paid. The injured worker was not to become a financial burden on their family or the community.

Employer pays: Employer pays the rates because the costs can be passed on to others (in prices of goods and services, and in wage negotiations). Meredith noted that workers cannot pass the cost on and pay in other ways, including some level of lost income despite the compensation.

Collective liability: Employers pay into single accident fund and do not suffer financial consequences from the cost of a specific accident.

Independent Public Agency: Set up to be a non-partisan organisation to administer claims and assessments. Meredith indicated the system was to provide "full justice" not "half-measures," to the injured worker. The early WCB had a motto: Justice and Humanity Speedily Rendered

JUSTICE FOR INJURED WORKERS

Ontario workers deserve a compensations system that fully compensates and supports those who have suffered a workplace injury or illness; assists such workers in returning to employment with dignity; and which aids in protecting all workers from injury or illness at work.

Justice for Injured Workers Means:

1. **A Public, Responsive System Based on Collective Liability and Comprehensive Coverage**

- Our compensation system will be independent and publicly administered. Studies show that the privatised insurance company model is much more costly and much less effective than a public system.
- Collective liability is an important founding principle of the system, which will be protected. Schedule II will be eliminated and all employers will come under the collective liability system. Experience Rating will be eliminated as it undermines the principle of collective liability and produces incentives for employers to hide claims and to harm injured workers, having a negative impact on health and safety in the workplace.
- Our compensation system will be administered with the understanding that its primary purpose is to compensate and support injured workers. It will seek to do this. Perhaps under the old motto: Justice, Humanely and Speedily Rendered. In this context the name will revert from the Workplace Safety and Insurance Board (WSIB) to The Workers' Compensation Board (WCB). Furthermore WCB policy will function as a guideline for interpretation and implementation of legislation (not as rules). Entitlement outside of policy will be granted on the merits and justice of each case.
- The Workers Compensation Board of Directors will have strong representation from Labour and the Ontario Network of Injured Workers' Groups (ONIWG). The Board will be comprised of a total of nine members, four of which will be appointed by employers and four of which will be appointed by Labour, at least two of which will be injured workers appointed by the Ontario Network of Injured Workers Groups (ONIWG). There will also be a chair person appointed by the Government with the agreement of both the employer and labour groups.
- The public will be provided with regular opportunities to have input on the legislation, the policy, and the practice of the Board. This will happen in various ways including an annual public review by a legislative committee; a special public review of the Act every four years (as exists in other provinces); and an open-door policy to encourage those who develop and approve policy to have regular interaction with Labour and injured worker groups to ensure that the decision makers have a clear understanding of their needs and the impacts of policy.
- The Board will conduct and support regular and thorough research on the impacts of short and long term injuries and diseases including tracking long term outcomes for workers with a permanent disability and the WSIB/WCB's sufficiency in addressing them.
- All workers in Ontario will be covered by workers' compensation legislation.
- All work-related disabilities and illnesses will be covered, including occupational disease, repetitive strain injuries, workplace stress (including mental health and PTSD), and pain conditions resulting from workplace injury and illness. The Board will be pro-active in identifying and providing coverage for compensable conditions, especially in newly emerging industries and conditions of work.

- Survivors of workers who are killed by occupational injury or illness will be provided with support and benefits, which ensure that they are financially secure. Benefit payments will be applied retroactively to the date of the injury or illness.
- Non-dependent immediate family members of workers who have died from occupational injury or disease will be compensated.
- There will be full compensation coverage for secondary victims of occupational exposures to workplace substances; including people who are harmed by substances or exposures inadvertently brought home from the workplace by the originally harmed worker.
- Workers who must be re-assigned or quarantined or temporarily removed from work due to possible exposure to an occupational hazard or communicable disease such as SARS or Covid 19 , or any future communicable diseases, will be financially protected. The workers will have their wages protected with re-assignment and they will receive full workers compensation benefits if they need to be quarantined or there is no alternate suitable and available work.

2. Quality Adjudication

- The WCB/WSIB administration and the WCA/WSIA Tribunal will operate in an enquiry system.
- Adjudicators will thoroughly investigate all aspects of a claim to ensure entitlement is fairly adjudicated.
- Adjudicators will proactively seek and request the medical information necessary to adjudicate a claim. Adjudicators will automatically consider psychological or chronic pain entitlement where there is insufficient evidence to allow a claim on an organic basis.
- Ontario Human Rights Codes will apply in all cases and supersede the WCA/WSIA.
- Adjudicators will not request medical reports in long established claims except in the event that the injured worker's treating physician has reported a change in the medical condition of the injured worker.
- Injured workers should be able to navigate the system on their own; legal representation should not be needed. At the beginning of all claims, the Board will provide the injured worker with a simple but comprehensive written explanation of the system and how to navigate it as is provided in the Accessibility for Ontarians with Disabilities ACT (AODA). The material will emphasize that the Board is there to help and to provide information on how to get assistance both inside and outside of the system. The material will be available in multiple languages and alternative format if requested.

- Board decisions will be speedily rendered, with no undue delays once all medical information has been collected.
- High quality initial adjudication will be provided and adjudicators will be well paid in recognition of the importance of their work. The Board will endeavour to employ adjudicators who can directly communicate with claimants in their own language or form of communication and with an understanding of their culture.
- High quality adjudication will be achieved through (1) quality training of adjudicators and (2) more attentive service:
 - Adjudicators will receive training in legal and medical matters, including mental health issues. As half of permanently injured workers experience mental health effects of injury and disease, the Board will train adjudicators to recognize and respond in a supportive manner to the injured worker upon any signs of psychological problems.
 - Adjudicators will be taught empathy and respect. This may be achieved by including sessions with injured workers and their family members on a regular basis and having an advisory body permanently in place.
 - Training will provide adjudicators with the understanding that the purpose of the system is to provide compensation and support to injured workers in lieu of their right to sue employers as stated in its founding principles put forward by Sir William Meredith. Adjudicators will understand that their role is to seek to compensate and provide full benefits to the injured worker based on the merits and justice of the case.
 - Adjudicators must ultimately follow the Act.
 - More attentive service will be achieved by reducing caseloads for claims adjudicators, maintaining the same adjudicator throughout a claim (to the extent possible), and improved communications between injured workers and adjudicators. Communication will be improved in part by increasing opportunities for face to face meetings.
- Adjudicators who are properly trained will be able to provide a higher quality of adjudication and will reduce the number of appeals.
- The Act will provide that injured workers are covered financially during the period that the WCB is rendering a decision up to the final level of appeal.
- Adjudicators will accept the opinion of the treating physician/health care provider.
- The Board will include, with all its negative decisions, a full, multi-lingual and alternate format description of the appeal system and resources for assistance such as legal aid clinics, Office of the Workers Advisor (OWA), lawyers, and para-legals.

3. Full Compensation and Dignity

- The compensation system will fully compensate an injured worker for the impact of the injury or illness on their life within a system, which seeks to be simple, straightforward, and accessible, and which seeks to provide security and dignity to the person as long as the disability lasts.
- Wage-loss benefits will replace the full income lost due to the injured worker's injury or disease until it is determined if the injury or disease is permanent.
- A permanent pension based on level of physical and/or psychological impairment will be paid for life. If the actual wage loss is greater than the pension, a supplement will be paid.
- If there is a benefit plan with the pre-injury employer, the employer will continue coverage for the two years of the re-employment obligation. In any case, the WCB will provide and pay for an equivalent plan to an injured worker and their family, where there is a permanent disability except where they have employment, which provides better coverage.
- Compensation benefits will include payments, by the WCB, to CPP to maintain the retirement entitlement.
- The Act will establish a current updated minimum wage-loss benefit payable regardless of the pre-injury earnings.
- The current practice of deeming/determining an injured worker to have phantom wages will end and wage loss benefits will be based on the injured workers' actual wage loss.
- Severely injured, disabled or diseased workers will receive additional benefits and support allowances including updates and renovations that allow them to live in dignity.
- CPP disability benefits will not be deducted from an injured worker's compensation benefits.
- Benefits will be fully indexed to the cost-of-living.

4. Medicine that Heals

- Our compensation system will restore injured workers into the hands of their treating healthcare practitioners. It will allow them the choice of their practitioners and be open to alternative treatments.
- Injured workers will have the right to the same relationship to the healthcare system as all Canadians. Specifically they will be treated within the public, one-tiered, system under the direction of their main treating doctor.

- The Board will work with Ontario health care providers, their organisations and medical schools to improve education and awareness of workplace based injuries and illnesses.
- The Act will confirm that the worker has the right to choose their initial and subsequent health care providers. The guiding principle of the system will be to accept the opinion of the worker's doctors and/or other health care providers, including the medical diagnosis, all aspects of the treatment plan and work capacity.
- During the period of recovery, the WCB will recognise and proactively accommodate the special needs of an injured worker in their home environment.
- Principles of Managed Care have no place in our public, no fault system. The compensation system and its medical professional staff and advisors, including Nurse Case Managers, will take care to avoid claims control and benefit control activities. They will not function as behind-the-scenes adjudicators.
- Workers will have the right to heal after injury without pressure from the Board or employer to return to work prematurely.
- The employer will not have the right to require the injured worker to undergo a medical examination.
- Maintenance physiotherapy and other long-term treatments including medications such as medical marijuana will be recognised and allowed as necessary ongoing components in many cases of permanent disability even where the worker has reached "maximum medical recovery". Such ongoing treatment can both help to prevent a worsening of the condition and can help an injured worker cope with their disability.
- In the case of an injured worker experiencing a secondary disablement resulting from the original injury, the injured worker will be reassessed by their personal physician and the WCB/WSIB will accept the assessment provided by the injured worker's physician.

5. Comprehensive Vocational and Social Rehabilitation

- Injured workers need a rehabilitation system that recognises the challenges and barriers they face as workers with varying and unique limitations in obtaining and maintaining employment. The system will include injured workers in the process with both social integration and obtaining employment, noting that the work must be suitable, meaningful, available and sustainable to the injured worker.
- Return to the pre-1990 WCB Vocational Rehabilitation Division; where the Worker's Compensation Board rehabilitation philosophy was predicated on the concept that we see the injured worker settled in the community and employed at a job that is entirely suitable. Our goal is the appropriate job for the injured worker. It

is basic that we consider the whole injured worker and that we examine what the injured worker can do rather than what they cannot do. This type of evaluation enables the injured worker to ascend the social scale and prevent automatic assignment to a lower status and economic plane. Our belief is that rehabilitation is not complete without employment in a useful job for which the injured worker is suited.

- Rehabilitation will not be considered complete without a viable job. The WCB itself will set an example by hiring injured workers. The Board will recognize, though, that some injured workers are competitively unemployable. Competitively unemployable injured workers will receive full benefits and social rehabilitation services.
- The Board will take an active and in-depth role in facilitating return to work in co-operation with the treating physician. This means actively working with an injured worker to ensure that their accident employer takes all reasonable steps to accommodate the job and workplace environment to the injured worker's disability. The Human Rights Code will apply.
- When it is in the injured worker's best interests, the Board will provide the injured worker with retraining to return to a new job with the accident employer.
- Where work with the accident employer is not available or is not suitable, then the WCB/WSIB, in conjunction with the treating physician, will actively assist the injured worker in locating and settling in to work with a different local employer, usually after an individually designed training program. If geographical relocation is necessary for an injured worker to take a position, it must be approved by the injured worker and the injured worker's treating physician. If the relocation is not approved by the injured worker, then the injured worker will receive full benefits and social rehabilitation services until appropriate work is found.
- In facilitating return to work, the Board must take a hands-on approach to the plan, ensuring that the injured worker will receive the agreed upon support to ensure a safe and viable return.
- The Board will employ a holistic approach in facilitating return to work. This means going beyond the narrow approach of looking at whether the essential elements of a job are suitable and available. A holistic approach to suitable work might look at whether the work environment is safe, including whether it is free from co-worker or manager harassment or hostility. It also looks at whether the work is sustainable (i.e., that the injured worker will be able to continue in that position on a longer-term basis) and meaningful (i.e., that the work makes a substantive contribution to the employer's business).
- A holistic approach also looks at the injured worker as a whole person in developing a sustainable and suitable plan for return to work. This includes consideration of the injured workers personal characteristics. This includes considering mental health issues, and recognizing that pain may be a real barrier to return to work.

- Plans for accommodated work must be developed in close consultation with the injured worker and a support person of their choice. Any ergonomic assessment will be done with the injured worker present and involved.
- The Board will recognize that some injured workers will only be capable of returning to work on a part time basis due to the nature of their limitations. Injured workers who return to part time work will receive benefits to compensate them for their wage loss.
- When it is in the injured worker's best interests, the Board will assist the injured worker and the employer in providing accommodations that lead to a sustainable and meaningful job. For example, the Board might provide an injured worker with a specialized computer that would enable them to return to their pre-injury job. The computer would move with the injured worker, should they change jobs.
- Special care will be taken to ensure that the injured worker will not be placed in a job which could cause a worsening of the condition or a re-injury.
- Experience rating will not be used as an incentive tool for return to work compliance for employers since it produces adverse effects. Any incentive tool will be carefully developed to ensure that its' result is to achieve truly suitable work which is in a physically and socially acceptable environment and which is clearly long-term. The best incentive tool will be one controlled by the injured worker.
- Where there is a union, the employer and Board will work with the union if the union's input is relative to the position, including Joint Return to Work Committees. These Joint Committees will be properly resourced, trained and supported by active enforcement and involvement by the Board. The Joint Committee will have the authority to recommend modifications to the workplace as required to accommodate the injured worker.
- There will be a progressive discipline process and penalties for employers who refuse to re-employ injured workers and for those who withdraw employment offers; provide unsafe, unhealthy, or fraudulent return-to-work arrangements; harass injured workers; or terminate their employment later. There will be no time limit on these obligations.
- The Workers Compensation Act will include provisions to recognize that injured workers, as persons with disabilities, face lifelong disadvantages in obtaining and sustaining employment. All injured workers with a permanent disability will have a lifelong entitlement to return to work and rehabilitation services, including restoration of benefits in situations where finding work is not realistically possible, or for periods in which they are having difficulty finding new work and require support.
- Injured workers in accommodated jobs or with a permanent impairment rating of 10% or more will automatically be restored to full compensation and entitled to further rehabilitation services if they lose their employment for any reason except criminal offenses. This will recognize the fact that injured workers often face barriers to finding employment, even if they were able to return to regular work after their

injury.

- Quality publicly recognized and provincially accredited rehabilitation services will be provided. Rehabilitation and employment must be suitable for the injured worker, vocationally, socially, financially, physically, and psychologically, including the injured worker's primary treating physician's recommendations. Injured workers will have the right to partake in the design and approval of their rehabilitation plan. The Board will not impose the plan. The plan will be flexible to take into account the injured worker's circumstances and changes in those circumstances. A new plan can be developed if necessary.
- A rehabilitation plan when required will include support for new special circumstances.
- English as a Second Language programs will be made available to injured workers whose first language is not English. These programs will be high quality and of sufficient length to allow these workers to become proficient in English.
- Where rehabilitation includes attending school, injured workers will be part of the process to choose the appropriate school and except in special circumstances approved by the injured worker, the schools will be accredited public institutions.
- The Board will recognize volunteer work as a valid form of vocational or social rehabilitation for those who remain unemployed or as part of a vocational rehabilitation plan and will not be penalized by volunteering. For vocational rehabilitation, volunteer work can make a valuable contribution to training and allow a worker to gain job experience. If an injured worker seeks training that is later determined to be necessary, the WCB/WSIB must be responsible for all costs associated with it. Volunteer work can also have a social rehabilitation function for injured workers who are completely unemployable or otherwise unable to return to paid employment.
- Many injured workers would have been able to return to school or otherwise improve their circumstances had it not been for the compensable injury or illness. The system will recognise that injured workers face barriers in advancing through their careers and therefore the Board will support retraining to the injured worker's full potential.

6. Access to Justice

- At all levels of decision-making the Board and the appeal systems will operate on an enquiry basis. This is in contrast to an adversarial basis. Decision makers will be trained to seek and obtain all relevant information to help the injured workers establish their claim recognizing that it is often difficult for injured workers to overcome numerous barriers in obtaining it themselves.
- There will be no time limits for injured workers in filing a claim and in appeals.

- Employers will have the right to appeal only on injured workers issues where they have direct involvement: specifically, initial entitlement and return to work with the accident employer.
- There will be full disclosure to the injured worker of all documents, including medical, and information relating to their claim; including general correspondence between the employer and the Board.
- Employers will have restricted access to information about an injured worker. Information on an injured worker's claim will be provided only in active appeals on initial entitlement or return to work with that employer. Medical information will not be disclosed to the employer except that which is specific to a contested issue on which the employer has appeal rights.
- There will be full recognition and communication by the Board of the injured worker's right to free advice and representation, from a representative of their choice, their union if they have one, community legal clinics, the OWA or from Legal Aid Ontario certificate holders.
- Injured workers or their survivors will not need to use the services of fee-for-service consultants. There will be sufficient funding provided for all of the representation programmes from appropriate funding sources such as the Ministry of Labour and Legal Aid Ontario.
- Injured workers will have the right to an independent appeal of Board decisions. The Workers' Compensation Appeals Tribunal (currently called the Workplace Safety and Insurance Appeals Tribunal) will not be bound by WCB/WSIB policy.
- A tripartite appeal panel made up of a representative for the injured worker, the employer and a neutral chairperson will be available as a matter of course.
- Appointments to the Tribunal will be competent and qualified in Workers Compensation law and policy.
- Members of the Provincial Legislature, including their trained staff, will be among those who provide assistance, including representation at appeals.

7. Funded Arms Length Programmes

The legislation will ensure that sufficient funding will be provided to such arms length organisations as:

- The Office of the Worker Advisor (sufficient means the OWA has the ability to handle all injured workers' claims regardless of union affiliation within 30 days).
- The Ontario Network of Injured Workers Groups (ONIWG)

- Support systems such as the Occupational Health Clinics for Ontario Workers (OHCOW), the Workers Health and Safety Centre, and the Occupational Disability Response Team (Prevention Link)
- Community Legal Clinics and Legal Aid Certificates
- An Occupational Disease Standards Panel
- The Institute for Work and Health and other research initiatives.
- A Database agency which would, for example, maintain a disease/cancer database (including parental and occupational information for childhood cancers and birth defects) along with a tracking system for workers with hazardous exposures (along the lines of the mining master file.)

8. Proclamation of Special Days

- There will be official recognition of June 1st as “Injured Workers Day.”
- There will be official recognition of April 28th as the “International Day of Mourning for Persons Killed or Injured in the Workplace.” (under Bill C-223). There will be an official two minutes of silence and stop work in the workplace and provision will be made for workers’ representatives to attend ceremonies.
- There will be official recognition of February 28/29 as Repetitive Strain Injury Awareness Day.

9. Improving Workplace Health and Safety

(Since this document is attempting to focus on compensation, we have not attempted to be comprehensive in this section. For the purposes of this document we want to focus on H&S points which overlap with the compensation system)

- The workers’ compensation system will find an effective way of working with the Ministry of Labour, organized labour and injured workers’ groups to aid in providing safer workplaces.
- Incentive programs such as merit rating, if used, will be based on joint labour management safety audit inspections.
- Employer-based behavioural safety incentive programmes will be prohibited.
- The Ministry of Labour will impose and collect heavy fines and penalties on employers who violate health and safety laws, including criminal prosecutions for reckless disregard for human life. A 25% surcharge on fines will be made available to victims of workplace injury or disease and a 25% surcharge on fines will be made available to the Ontario Network of Injured Workers Groups (ONIWG).
- The Board and Ministry of Labour will ensure prompt investigation of the cause of all injuries and illnesses, including occupational diseases, and then verify that the employer has fixed or removed the hazard that caused it. The Form 7 will include a required section to ensure employer compliance by removing the hazard. A copy of

the form 7 will go automatically to the worker, the joint health & safety committee and where there is one, to the union.

- The Ministry of Labour will significantly increase the number of inspectors available to enforce health and safety rules and to identify safe and unsafe workplaces and order them to ensure compliance.
- The Ministry of Labour will ensure and enforce mandatory entry-level and on-going workplace specific safety training.