



## **WORKERS' HEALTH AND SAFETY LEGAL CLINIC**

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19 June 2023

Mr. Jeffrey Lang, President and CEO  
Office of the President  
Workplace Safety and Insurance Board  
200 Front Street West  
Toronto, Ontario  
M5V 3J1

**RE: Dispute Resolution and Appeals Consultation  
The Need for Changes**

Dear Mr. Lang:

The recently opened, and with the greatest of respect, poorly advertised consultation of 08 June 2023 on dispute resolution and appeals services advises, “Over the next two years, we’ll be making changes to improve our dispute resolution and appeals processes.”

It is mystifying that the WSIB would commence a two-year process to implement massive changes not seen since the introduction of the *Workplace Safety and Insurance Act, 1997* with a consultation during the summer months when stakeholders are on holidays and the Ontario Legislature is not even sitting.

Despite being involved in the Value for Money Audit consultation and a regular attendee to Appeals Services Division Stakeholder meetings, I was not advised of the consultation. I would also point out that injured workers who will be directly impacted remain unaware that future appeals will be severely restrained by a new process effectively eliminating the worker’s ability to bookmark appeals for later action.

I request, given the impact this consultation will have, that an independent third party conduct the consultation or, in the alternative, that the submission deadline be extended to 29 September 2023. There are many flaws in the entire process and cataloguing them all would prolong this letter and delay its delivery. However, I wish to highlight the following:

*The Value for Money Audit was Not a Consultation*

I was surprised that the auditors retained a third party employer side lawyer as their expert on workers’ compensation. I am hard pressed to find an example of a situation where a presumably neutral consultation fails to make any effort to appear balanced. The lawyer’s past employment history as being on the worker side might have been sufficient for the auditors but I feel

confident in writing that it was insufficient for actual worker side representatives to accept as sufficient neutrality.

Further, the recommendations were not discussed. Had any of those recommendations been placed squarely before the worker stakeholders I guarantee you would have received complaints minutes after the proposed recommendations were floated.

*The Recommendations fail to address the Crux of the “Problem”*

While I do not speak for all worker representatives, I am confident that most (if not all) representatives interested in making submissions do not accept the assumptions made by the WSIB as the basis for the consultation.

The function of the appeals process is to correct the errors made by initial decision-makers. As I am sure you are aware, the high overturn rate is not indicative of a poorly functioning appeals system but of a failure at the Operations Division to make correct decisions. This failure will be a significant portion of any submission by representatives who frequently represent injured workers.

*The Deadline Double Standard*

The lack of transparency of internal WSIB processes leaves representatives like myself frustrated that such a major consultation is being rushed during the summer vacation period.

I would note that the WSIB regularly invites submissions on short time frames with little understanding as to what, if any, commitment the WSIB gives to representatives and why more time can't be given. For example:

- The Serious Injury Program Consultation gave representatives one month to make submissions. The WSIB has had those submissions for seven months without a new policy being released or an update being given.
- The Second Phase of the Temporary Employment Agency Consultation gave representatives one month to make submissions. The WSIB has had those submissions for six months without a new policy being released or an update being given.

I would also note that hearings would already have been scheduled months in advance during this period. As well, holiday schedules would already have been arranged. This sudden and new consultation deserves more time and is unfair to stakeholders. Given that this process will take two years, there is no reason to refuse a deadline extension to a date outside the summer holiday period: 29 September 2023.

Further, given the intention to impose new time limits on injured workers – who should all have been notified – this consultation should be done by an independent third party to verify if the recommendations are even correct. If the WSIB can retain Jim Thomas for a policy consultation with independent hearings, a similar approach should be taken for this consultation.

Thank you for your attention to this matter.

Yours truly,

*John Bartolomeo*

John Bartolomeo  
Lawyer / Co-Director

cc: Mr. Walsh, Chair, WSIB  
Mr. Pokan, COO (A) and Advisor to the President & CEO, WSIB (via electronic mail)  
The Hon. Monte McNaughton (via electronic mail)  
Ms. Vaugeois, MPP (via electronic mail)