

**Presentation to The Standing Committee on Social Policy**  
**On BILL 149: An Act to amend various statutes with**  
**respect to employment and labour and other matters**  
**Re: SCHEDULE 4: WORKPLACE SAFETY AND INSURANCE ACT, 1997**

**About IWC**

Injured Workers Community Legal Clinic is one of 71 community legal aid clinics supported by Legal Aid Ontario. Fifty-four of these serve specific geographic communities. IWC is one of 17 specialty clinics that focus on a specific area of law. The clinic has been providing legal advice and assistance on workers' compensation matters without charge to people who are financially eligible since 1969. In addition to individual representation our mandate includes public legal education, working with injured worker organizations, and identifying areas of law and policy that could be improved for people who become ill or injured as a result of their work.

**Introduction**

We welcome the government's interest in injured workers and legislative improvements to our workers compensation system. In this submission we will limit our comments to Schedule 4 of the Bill regarding the Workplace Safety and Insurance Act. We have some comments on what the Bill provides and we will also comment on what is missing and what the Bill should also address with appropriate amendments.

The strong financial position of the WSIB creates an opportunity for the government and the WSIB to make significant improvements in compensation for injured and ill workers. The WSIB currently has assets in excess of \$5.8 billion, and that is after the rebate program that began in 2022 and distributed \$1.2 Billion to employers in premium rebates. The average premium rate for Ontario businesses in 2024 is the lowest it has been in more than 20 years.

The financial position of the WSIB is a direct result of legislative changes made in 1998. The government was concerned about the workers' compensation board's unfunded liability and appointed Cam Jackson as the Minister Without Portfolio for Workers Compensation Reform. Jackson's 1996 "New Directions" Report costed out the savings by 2014 from specific benefit reductions (p.52):

- reducing inflation indexation = \$9.3 Billion;
- reducing benefits from 90% to 85% of net = \$3.1 Billion;
- reducing compensation for loss of retirement income from 10% to 5% = \$1.4 Billion.

Injured workers groups and organized labour opposed the cuts because the unfunded liability was not a debt and should not be addressed by reducing compensation for injuries. However, as a result of the cuts borne by injured workers and their families, the unfunded liability was eliminated in record time. Injured workers have been asking: 'when are our benefits going to be restored retroactively?'

Now that the WSIB is 'over-funded' at 118%, it is a perfect opportunity for the government to rebalance the workers' compensation system.

The vast majority of claims reported to the WSIB are success stories: 87% get medical treatment, recover and get back to work earning the same wages in less than a year.

It is the other 13% of injured and ill workers that we should be concerned about. Every year the WSIB recognizes that about 15 to 17,000 injured workers have permanent disabilities. That adds up pretty quickly – 17,000 last year, 16,000 the year before, 15,500 the year before that – just counting from 2020, we have approximately 65,000 new injured workers with permanent disabilities. These are the people that come seeking help from legal clinics, or your offices, or injured worker support groups. This is the group research shows experience high levels of poverty and unemployment.

For injured workers living under the austerity restrictions of the 1998 legislation, it was encouraging in 2022 when the government proposed to have the WSIB look at restoring wage loss benefits to 90% of net earnings. However, the WSIB gave \$1.2 Billion to employers in rebates and nothing was done to restore injured workers benefits.

Bill 149 should be amended to require that before the WSIB declares a surplus, it must first consider whether an adjustment of any workers compensation benefits is appropriate before paying rebates to employers.

### **Occupational Disease Reform**

A study commissioned by the Ontario Government in 2019 to examine the scientific practices of the WSIB, conducted by the Occupational Cancer Research Centre, identified that Ontario has the lowest acceptance rate of cancer workers' compensation claims among industrialized nations (Demers Report, 2020). Ontario must do better.

When the burden of proving work relatedness is too heavy, most victims of occupational disease don't file claims and for those who do, many work related illnesses are rejected by the WSIB.

Ontario's failure to recognize the true extent of occupational disease has huge social and economic costs for our entire society. For example, when occupational diseases go unrecognized by the WSIB, there is a tremendous additional economic burden on our over stressed health care system.

Health costs that should be covered through workers' compensation are shifted to the taxpayers. Our social assistance programs bear the cost of supporting those who are too sick to work. Employers are not held accountable and workplace hazards are not recognized and addressed.

Presumptions that recognize work relatedness based on current epidemiological studies are an important tool to identify occupationally caused illness and disease. We welcome Bill 149's amendment to the Act which changes the required latency period from 25 to 15 years for fire fighters who develop presumptive, work-related, esophageal cancer.

We agree with the submission of the Occupational Disease Reform Alliance that, while this is a step in the right direction, even 15 years is too high a threshold. The government's 2020 Demers' Report noted that the latency periods found in most epidemiological studies focus on single exposures and don't factor in the impact of multiple exposures. They should not be used as hard and fast boundaries for causation because they can overestimate the time for a disease to develop by not considering other risk factors like frequent high exposures and exposure to multiple carcinogens that can have an additive or multiplicative impact on the development of the disease.

We urge the committee to consider amendments that incorporate the 4 basic principles proposed by the Occupational Disease Reform Alliance into the recognition of occupational disease by the WSIB.

### **Benefit Indexation**

We welcome the government's introduction of provisions for additional adjustments of injured worker's benefits. The costing of benefit reductions set out in the 1996 Jackson report (referenced above) showed that the reduction of inflation indexing of benefits was expected to result in the biggest cost savings of the 1998 benefit reductions. However, full adjustment for inflation was restored effective 2018 and so the indexation problem has been largely addressed going forward.

There is an ongoing disagreement between the Ontario Network of Injured Workers Groups and the WSIB about the adjustment formula prescribed by the current legislation. The provisions proposed in the Bill are complex, vague and discretionary. More specific direction should be given to ensure that injured workers are properly supported in the face of inflation. One option would be for the Bill to require that benefits be adjusted by whichever rate is higher (as between the formulas suggested by ONIWG and the WSIB).

In addition to our above comments on the proposed amendments regarding occupational disease and benefit indexation, we believe that there are other benefit improvements that are more clearly needed to rebalance the workers compensation system. Three specific requests are outlined below.

### **Restore Wage Loss Benefits to 90% of Net Earnings**

Prior to the 1998 amendments, wage loss benefits were based on 90% of net pre-accident earnings. Many people believe that it should be 100% of net earnings.

In 1998 the benefit rate was reduced to 85% of net solely as a cost saving measure (as outlined in the Jackson Report referenced above). Restoring the rate to 90% may not be significant for the 87% of injured workers who successfully return to work with no loss of earnings within a year of injury or illness. But for the injured workers with permanent disabilities, the group that is growing by 17,000 every year, the return to wage loss benefits to 90% of net would mean a lot.

Most provinces are now paying workers compensation benefits at 90% of net earnings: Prince Edward Island, Quebec, Saskatchewan, Alberta, British Columbia and the North West Territories have all moved to 90% of net. Ontario should not fall behind. In fact, many people question why workers' compensation benefits should be any less than 100%. If a worker is injured doing their job and spends a month in the hospital, why should their income be reduced for that month? Ontario should strive to be a leader in this realm. Rather than lagging behind other provinces, Ontario should aspire to lead the charge in eventually increasing the compensation rate to 100% of pre-accident wages.

For injured workers with permanent disabilities who could not return to their old jobs, some are unable to return to work at all and will depend on their loss of earnings benefits for decades to come. Some may only be able to work part time or sporadically and depend on partial loss of earnings benefits. Those benefits are tied to the wage they earned right before they got sick or injured. In reality they would have gone on to get promotions or raises or better jobs but now they are stuck forever with 85% of what they earned at the time of injury.

Restoring the wage loss benefit rate to 90% will make a difference for those with permanent disabilities. This should be done now, for all injured workers. The change should be fully retroactive to 1998 for all injured workers. With an 87% success rate at returning injured workers to work, it is a relatively small proportion of workers compensation claimants who are dependent on ongoing loss of earnings benefits.

The WSIB is currently 118% funded. Bill 149 should be amended to restore benefits to 90% of net for all workers and to repay the workers injured since 1998 whose benefits were based on 85%. The WSIB can now afford restitution now for the cuts made in 1988 to address concerns about the unfunded liability.

### **Restore Loss of Retirement Income Benefit to the Level of CPP**

Until 1990, injured workers with a permanent disability were compensated by a permanent disability pension that was paid for life and based on a percentage of pre-

injury earnings. In the 1980's the government commissioned a series of studies on worker's compensation by Professor Paul Weiler. He recommended changing to the wage loss model we now have, where compensation is based on the difference in earnings before and after the injury. He also recommended that benefits stop at age 65 because the law allowed for mandatory retirement and most workers had to leave their employment at age 65. He noted that it was important for compensation to cover the loss of retirement income resulting from the injury.

Prof. Weiler recommended that the provincial government achieve this by negotiating with the federal government to continue contributing to the Canada Pension Plan for workers on wage loss benefits. That proved impractical and so the 1990 legislation provided that the Workers' Compensation Board would set aside an amount equal to 10% of the wage loss benefits paid and place it in a retirement savings fund to be paid out at age 65. They chose 10% because the total of employer and employee contributions on wages to the CPP was 10% at the time. In 1998, based on the recommendations in the Jackson Report, the government cut Loss of Retirement Income Benefit contribution to 5% purely as a cost saving measure.

The amount of compensation that injured workers receive now for their loss of retirement income is terribly inadequate. "*Retirement pension poverty among injured workers with long term workers' compensation claims*" is a study published last December by the University of Waterloo Public Health Department. It states: "Although workers' compensation board retirement income policy was intended to make up for loss of contributions to the Canadian federal pension fund, the Ontario injured workers' retirement pension now pays less than half of the amount workers would have received in the federal pension." <sup>1</sup>

Bill 149 should be amended to restore the loss of retirement income benefit to at least 10% for all injured workers. However, the current total for employer and employee contributions to the CPP is about 12%. To restore the loss of retirement income benefit to the intended purpose of mirroring the CPP contribution rate, it should be set at 12%.

### **End the Age 65 Based Termination of Wage loss Benefits**

Mandatory retirement was normal in the 1980's when Ontario changed from the permanent disability pension system to a wage loss benefit system. Since that time a number of Supreme Court of Canada decisions have found mandatory retirement to be age discrimination under the *Charter of Rights and Freedoms*. At the urging of the Ontario Human Rights Commission, the Ontario Human Rights Code was amended in 2007 to prohibit mandatory retirement and discrimination on the basis of age.

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<sup>1</sup> <https://www.cambridge.org/core/journals/the-economic-and-labour-relations-review/article/retirement-pension-poverty-among-injured-workers-with-longterm-workers-compensation-claims/2EF00B2F686147ACE75BB22A7A8C710B>

At the standing committee hearings for that legislation, the WSIB asked for an exemption on the ground that many aspects of the system were linked to age 65 and it was too complicated to make an immediate change. The submission of the Ontario Human Rights Commission opposed the WSIB's request. However, the legislation was amended to exclude the *Workplace Safety and Insurance Act* from age discrimination under the Code. The WSIB has had 17 years to iron out the "complications" of presuming mandatory retirement, but nothing has changed.

Compensation for loss of earnings ends at age 65, or 2 years after the date of injury, whichever is later. The employer's obligation re-employ an injured worker ends at age 65. For workers injured after age 65, there is no compensation for loss of retirement income.

Many Ontarians want to continue working past age 65; many have to for economic reasons. Ontario needs their knowledge and skills. The Canada Pension Plan allows workers to contribute from their earnings until they reach age 70. Alberta and B.C. have developed ways to address this. The Alberta workers compensation system sets the age of retirement at 5 years after the injury for people injured past age 65. Both Alberta and B.C. provide an opportunity for an injured worker to show an intention to continue working to a later date and extend the eligibility to be compensated for lost earnings.

The age 65 limitations in the *Workplace Safety and Insurance Act* are unfair and out of touch with the present reality of people in the workforce after age 65. Bill 149 should be amended to eliminate those restrictions.

### **Conclusion**

The reduction of workers compensation benefits implemented in 1998 created hardship for permanently disabled workers. Maintaining those cuts has become increasingly indefensible. The WSIB has been in a surplus for several years. This presents an opportunity to rebalance the system. Bill 149 should be amended to restore benefits to pre-1998 levels, end the age 65 related limits on benefits and expand the use of presumptions to reduce the impossible burden of proof on workers with occupational disease.

Respectfully submitted February 12, 2024.

Injured Workers Community Legal Clinic

## List of Recommendations

1. Bill 149 should be amended to require that before the WSIB declares a surplus, it must first consider whether an adjustment of any workers compensation benefits is appropriate before paying rebates to employers.
2. We support Bill 149's amendment to the Act which changes the required latency period from 25 to 15 years for fire fighters who develop presumptive, work-related, esophageal cancer. We agree with the submission of the Occupational Disease Reform Alliance that, while this is a step in the right direction, even 15 years is too high a threshold.
3. We urge the committee to consider amendments that incorporate the 4 basic principles proposed by the Occupational Disease Reform Alliance into the recognition of occupational disease by the WSIB.
4. We urge the committee to consider amendments that incorporate the 4 basic principles proposed by the Occupational Disease Reform Alliance into the recognition of occupational disease by the WSIB.
5. The indexing provisions proposed in the Bill are complex, vague and discretionary. More specific direction should be given to ensure that injured workers are properly supported in the face of inflation. One option would be for the Bill to require that benefits be adjusted by whichever rate is higher, as between the formulas suggested by ONIWG and the WSIB).
6. Bill 149 should be amended to restore benefits to 90% of net for all workers and to repay the workers injured since 1998 whose benefits were based on 85%. The WSIB can now afford restitution now for the cuts made in 1988 to address concerns about the unfunded liability.
7. Bill 149 should be amended to restore the loss of retirement income benefit to at least 10% for all injured workers. To restore the loss of retirement income benefit to the intended purpose of mirroring the CPP contribution rate, it should be set at 12%.
8. The age 65 limitations on loss of earnings benefits in the Workplace Safety and Insurance Act are unfair and out of touch with the present reality of people in the workforce after age 65. Bill 149 should be amended to eliminate those restrictions.