INJURED WORKERS
COMMUNITY LEGAL CLINIC

June 19, 2024

WSIB Consultation Secretariat
200 Front Street West
Toronto, Ontario M5V 3J1

Sent by email to: consultation_secretariat@wsib.on.ca

Dear Consultation Staff,

Re: The WSIB's Consultation on Independent Living Policies

Injured Workers Community Legal Clinic is a legal aid clinic with a province-wide mandate. We have specialized in the area of workers' compensation since 1969. As a legal aid clinic, our services are provided to people with little or no income for no charge. In addition to legal advice and representation, our mandate includes community development, public legal education and participation in law and policy reform.

Thank you for the opportunity to make a submission for Phase 2 of this consultation. We are, however, concerned with the scope of this review and strongly believe that further, more in depth consultation is required.

Section 1: Summary of Positions on Major Issues in the Modified/Draft Policies

The summary positions outlined in this section will be explained in further detail in section 2.

1. Further public consultation is required for each policy
2. There must be proactive adjudication and the establishment of benchmarks for doing so
3. A hybrid approach (threshold percentage + individual assessment) for entitlement to benefits and services in the Independent Living policies.
4. Clarify unclear, restrictive, & exclusionary definitions, such as "serious injury" & "serious illness"
5. Remove categorical exclusions and restrictions
6. Clarify annual rates for benefits and services
7. Eliminate the unnecessary stratification of benefits
8. Remove the unnecessary reviews of entitlements, which creates a culture of fear, uncertainty and anxiety

Tel: (416) 461-2411
Fax: (416) 461-7138

411-815 Danforth Ave
Toronto, ON M4J 1L2

9. Add in lock-in protections

10. Make changes to the language in various policies

Section 2: Explanation of Positions on Major Issues

1. Further Public Consultation Is Required For Each Policy: While we applaud the WSIB's efforts in revamping these policies, we are of the position that the scope of the review is substantial and requires further in-person/online consultations with stakeholders, especially injured and ill workers, who will be the ones directly impacted by these policy changes. The magnitude of this policy review is considerable and warrants further consultation.

It would be reasonable for the WSIB to conduct in-person/online public consultations focused on 1 or 2 policies at a time. This would ensure a thorough discussion with stakeholders, allowing all parties to better understand the intent behind specific proposed changes, which will help inform submissions to the Board. It would also be an important opportunity to discuss concerns both big (e.g. a threshold or principle) and small (e.g. language or more minor – but still important – changes).

We acknowledge that this would be a more labour-intensive endeavour; however, the breadth of these policy changes is far-reaching, and the implications, including any unintended consequences, would be best to address now, rather than after the new policies have been rolled out. If this was one or two policy reviews, the current process may be adequate; however, because there are 9 policies to review, it is paramount that proper consultations transpire.

The WSIB has a long history of holding in-person consultations. However, that tradition has largely been forgotten, replaced by impersonal written consultations, where comprehensive conversations cannot take place. We would request that the WSIB revive the tradition of in-person consultations. To be clear, we do not mean a WSIB presentation with a short Q&A (a presentation is not a consultation). We mean soliciting feedback on each section of each policy to flesh out concerns and suggestions. New technologies can make this process much less cumbersome and increase accessibility for those unable to attend in person, as the consultations can be conducted virtually.

In short, this suite of existing and draft policies is complex; therefore, it would be best to facilitate a consultation process where policies can be examined individually – in-person and/or virtually, with direct input from injured and ill workers.

2. There Must Be Proactive Adjudication And The Establishment Of Benchmarks: The existing suite of SIP benefits can be challenging to grasp for experienced representatives, let alone injured and ill workers. With this consultation process, the number of Board policies will expand and the policies will become more technical and legalistic, and lead to more bureaucracy; therefore, it will be more difficult for injured/ill workers to navigate these policies and processes.

As a result, WSIB Case Managers must play a more proactive role in the adjudication of potential benefits and services within these policies, as injured and ill workers should not be expected to know what benefits and services that they may be entitled to. This proactive role would be consistent with the WSIB's operation as an inquiry system. Policy 11-02-02 states: "As an inquiry system (rather than an

adversarial system), the WSIB gathers relevant information, weighs evidence, and makes decisions." Unfortunately, over time, the WSIB has generally become less proactive in the adjudication of benefits and services, despite the Board's mandate to inquire and adjudicate.

One way to ensure proactive and ongoing adjudication would be for the WSIB to establish benchmarks in a claim in which the Case Manager must adjudicate whether the injured/ill worker is entitled to any of the benefits and services under these policies. Three obvious examples of benchmarks would be: 1. When the injured/ill worker receives a NEL award; 2. When a NEL award is Re-Determined; and 3. If the injured/ill worker is deemed competitively unemployable. Importantly, this list of three benchmarks is not exhaustive and it should be expanded (for example, those requiring temporary entitlement would not be captured by these suggested benchmarks).

3. A Hybrid Approach (Threshold Percentage + Individual Assessment) For Entitlement To Benefits And Services In The Independent Living Policies. : We maintain the position from our 2022 submission to the Serious Injury Program (SIP) Value-for-Money Audit Consultation – Phase 1, in which we recommended a hybrid approach in determining eligibility to the suite of benefits and services in the Independent Living Policies. More specifically, we would submit that the best results can be achieved by combining a threshold (existing system) with an individualized assessment (proposed system). These two options are not mutually exclusive. We believe that a hybrid model would lead to the best results for injured and ill workers – and for the WSIB.

<u>Threshold</u>

We propose that the threshold be reduced from a 60% NEL rating/100% PD rating to a 30% NEL/PD rating to trigger automatic entitlement (**We explained our proposal for a 30% threshold in our Phase 1 submissions [the old PD chart rated a totally immobile back at 30%]) .** However, the main point is, regardless of where that threshold is set (even if it were to remain at the current 60%), the existence of a threshold should absolutely not be eliminated.

A threshold type system is open, simple to apply and provides certainty. The debate in a threshold system is where you draw the line. There is clearly a problem with the ratings presently in use. But the answer is not to eliminate the threshold system entirely. It is to add the flexibility of an individualized assessment for situations which the threshold system does not capture.

<u>Individualized Assessment</u>

An individualized assessment of each injured workers' needs and abilities would be consistent with the obligation to determine each case on the merits and justice and would enable the Board to recognize the individual circumstances of each injured worker.

On one hand, two people may have the same NEL rating but very different needs to support independent living, while on the other hand, two people may have the same needs but very different disability ratings. For instance, a worker with a 20% NEL rating and a worker with a 70% NEL rating may both require someone to shovel their snow, paint their house, drive their car, etc. This example demonstrates why individualized assessment is important.

Nonetheless, too much individualized assessment can be a drain on administrative resources, with compensation funds being directed away from injured workers. An individualized assessment system can only succeed if injured and ill workers have confidence in the decision makers and the decision making process. For a significant number of injured workers, that trust is not there. It should be noted that it's likely that most individualized assessments would be appealed, unless the Board gives the maximum to the injured worker.

In short, it's our position that a 30% rating combined with individualized assessments would be the best way forward for the Board when adjudicating entitlement to the benefits and services in the Independent Living policies.

4. Clarify Unclear, Restrictive, & Exclusionary Definitions: The definitions for serious injury and serious illness are flawed. Both definitions reference "significant/severe functional limitations". We disagree with the Board adopting two different standards in these definitions. The Board should eliminate the reference to "severe" and maintain the use of "significant". Moreover, the policy should not contain separate definitions for injury and illness, as eligibility is based on the criteria in the policies, irrespective of disability.

Draft Definitions

> "A serious injury means a work-related injury that results in significant/severe functional limitations that impact a worker's ability to live independently such that they require assistance or other appropriate measures:
> • for six months or more, or
> • permanently.
>
> A serious illness generally means a work-related illness that results in significant/severe functional limitations that impact a worker's ability to live independently such that they require assistance or other appropriate measures, that:
> • the worker is unlikely to recover from, and/or
> • is a progressive life-limiting illness."

Significant/Severe

The Board should exclude the term "severe", as it would be associated with the existing policies requiring a 60% NEL/100% PD, thereby maintaining a disproportionately high standard for entitlement. This would defeat the purpose of the WSIB's consultation to make the benefits and services more readily available for injured/ill workers. In addition, the use of two terms will create confusion for injured/ill workers and WSIB staff, resulting in barriers and delays in entitlement.

It is our position that maintaining the reference to "significant" is appropriate, as it creates a reasonable standard and one that does not raise the bar to an impractical level. Use of the word "significant" would also be familiar to staff at the Board, as it is regularly used when reviewing causation (i.e. a significant contributing factor).

We would submit that the reference to 6 months in order to be considered seriously injured is arbitrary and too rigid. An injured/ill worker who has significant functional limitations impacting their ability to live independently for which they require assistance for 1 month or 4 months should also be considered seriously injured and eligible for any entitlements that may be reasonable based on the circumstances. Many workers will require assistance much sooner than 6 months, especially during the acute phase. Ultimately, the 6 month minimum will lead to absurd results, similar to how the existing threshold for entry into the SIP can deny a worker with a 59% rating, even if they cannot work and if they require various types of assistance.

Furthermore, the examples listed under each "category" of functional limitations is far too restrictive. For example, it ignores the compounding effect of multiple disabilities: a person may have significant difficulty under several categories, which combined, render the execution of activities of daily living extremely difficult; however, no single category of functional limitation on its own may amount to "inability or extreme difficulty". Therefore, the criteria as it is currently laid out in the policy is significantly flawed.

Serious Illness

Our primary position is that the proposed definition for serious illness should be eliminated. There should be one definition for both serious injury and serious illness. There is no legitimate rationale to have separate definitions for different types of conditions. All that matters is whether someone requires the supports available through these programs. Creating different standards for different types of disabilities will leave the Board open to *Charter* and *Human Rights* litigation.

Furthermore, the definition for serious illness is flawed. It is too restrictive and too exclusionary. For example, the provision with respect to "progressive life-limiting illnesses" will exclude certain types of illnesses, such as those that last for a period of time, but lead to an eventual recovery (e.g. certain cancers which may be treated into remission). This definition would likely be challenged under the *Canadian Charter of Right and Freedoms* and/or the *Ontario Human Rights Code*.

5. Remove Categorical Exclusions And Restrictions

We also have grave concerns with the categorical limitations outlined in draft Policy 17-06-01, Independent living and quality of life measures. This policy states that many musculoskeletal injuries, minor traumatic brain injuries, psychological injuries, etc. do not typically result in significant/severe limitations for 6 months or more, and therefore, cannot be considered a serious injury or severe impairment, preventing further entitlements.

The limitations outlined in this policy are discriminatory and unnecessary. The biggest source of injuries at the WSIB are musculoskeletal. Each claim should be reviewed individually to determine whether the worker meet the definitions for serious injury and severe impairment outlined in the policy. A musculoskeletal injury for one person may not meet the definition of serious injury; however, the injury may have a more significant impact on another worker and meet the requirements in the definition, especially when combining the impact from multiple conditions/disabilities. Blanket exclusions should be avoided at all costs.

Psychological conditions are another type of injury that occur often at the WSIB, yet they will generally be excluded from being deemed a significant injury or severe impairment, per the draft policy. As a result of *WSIAT Decision No 2157/09*, the WSIB was forced to create the Chronic Mental Stress policy because it was determined by the Tribunal's Panel that the existing legislation and policy discriminated against injured workers with chronic mental stress. By excluding many psychological impairments from being considered, the Board is perpetuating the discrimination and stigma against workers with psychological injuries, similar to the facts in *Decision No 2157/09*.

We insist that all categorical exclusions and limitations be removed.

6. Clarify Annual Rates For Benefits And Services: The draft policies provided by the Board outline confusing and partial information regarding the annual maximum rates outlined in the Table of Rates for the various allowances and the quality of life benefit. This must be clarified.

The draft ILA policy breaks down the ILA into three allowances – home maintenance allowance, transportation allowance and additional expenses allowance – with the addition of a quality of life benefit in a separate policy. While it is clear what type of expenses are meant to be covered by the home maintenance allowance, we cannot say the same for the transportation allowance and additional expenses allowance, given the details outlined. The purpose and advantage of separating the ILA into these three allowances is unclear to us.

The maximum outlined in the current Table of Rates for the ILA is $4,887.97 per year.

After reviewing the policies, it is unclear how this amount would be applied to the proposed allowances. Would $4,887.97 apply to each allowance separately? Or would $4,887.97 be the combined total for all 3 allowances? It is challenging to make submissions when information provided is unclear and unknown. With that being said, we would make two recommendations based on this limited information: 1. The $4,887.97 amount should apply to each of the 3 proposed allowances; and 2. Case Managers must have discretion to permit coverage/reimbursement for costs/expenses above the maximum rates. This discretion should be exercised on a case-by-case basis to ensure that workers are not out-of-pocket for something that they are entitled to, simply because the total annual amount provided by the Board is insufficient.

Furthermore, the Quality of Life Benefits policy references the Table of Rates for the annual amount for the quality of life benefit; however, there is no quality of life amount outlined in the Table of Rates. It's our position that there should not be an annual limit. Injured and ill workers will typically be limited to one hobby. Therefore, the Board should not establish a limit, as any limitation will likely force many injured workers to select a new/different hobby, especially those living in more remote environments who are more likely engaged in outdoor hobbies that can be more expensive.

The current ILD policy references hobby equipment. Using the financial criteria from this existing policy is logical: costs related to the hobby should be reasonable and cost-effective considering alternatives on the market. We would also note that case law does not provide specific financial limits for hobby equipment. For example, in *WSIAT Decision No. 198/19, 2019*, the injured worker was entitled to a RIP Chair to pursue their hobby related to off-road recreation, with an estimated cost of approximately $40,000 USD. In short, the costs associated with this RIP Chair were considered

reasonable and cost-effective considering market rates. The Board should not be introducing policies which reduce injured workers' current entitlements.

We strongly urge the Board not to impose a financial limit for the Quality of Life Allowance benefit.

7. Eliminate the Unnecessary Stratification of Benefits: The stratification of benefits will lead to a reduction in injured/ill workers' ability to receive entitlement to benefits and services. It will also create an environment where administrative burdens increase enormously, delaying, prolonging, and complicating processes associated with obtaining entitlements. It will also increase the number of appeals as well as the overall cost of administering the system. It seems that the negative consequences of sub-dividing and stratifying the benefits as proposed outweigh any potential benefit to doing so.

For example, it is unclear what benefit is added by introducing five Levels of Care in the proposed Personal Care Attendants and Allowance Policy (17-06-05), when an assessment using the Activities of Daily Living Scale should provide the necessary information to assign the appropriate hours or level of care. What is it adding to the program other than further potential points of disagreement?

Another example, which has already been mentioned, is the division of the ILA into three different benefits. In our view, this triples the administration and appeals of the program, creating disproportionate costs/resources spent administering the program rather than paying out benefits. This is bad for the Board and it is bad for injured workers. The Board should take a critical look at the level of stratification and division within these policies and eliminate any which does not add significant value to the program.

8. Remove the Unnecessary Review(s) of Entitlements: Many of the existing and draft policies outline that a material change of circumstance must be reported to the Board and that entitlements/benefits can be altered when there is a material change. This is appropriate and consistent with the *Workplace Safety and Insurance Act* (*WSIA*). However, numerous draft policies also include additional paragraphs stating that reviews can be conducted upon request by various individuals, such as Employers, and in some cases, that these reviews can randomly be initiated by the Board.

Injured and ill workers are already under significant stress as a result of navigating the bureaucratic WSIB. The fact that reviews can be done on a whim will only further exacerbate the anxiety and stress injured and ill workers experience as a result of dealing with the Board. This will create an atmosphere where injured and ill workers feel like they are under constant surveillance and that the Board's goal is to reduce/eliminate their entitlement to benefits and services. The Board should not introduce policies which create a culture of fear, uncertainty, and anxiety among injured workers.

The provisions stating that reviews can be conducted – sometimes at random – are excessive and needless and these new provisions should be removed from the policies, leaving only the reference to a material change in circumstance, per the *Act*.

9. Add Lock-In Protections: In order to address the above outlined concern of creating a culture of fear, uncertainty and anxiety (as well as reduce administrative burdens), we recommend that the Board include lock-in provisions to this suite of policies. Lock-in provisions were implemented in the context of LOE to provide injured and ill workers a certain level of stability and security.

Unfortunately, there are no references to lock-in provisions for these draft policies, meaning that the predictability and certainty associated with locked-in LOE benefits is not extended to the suite of benefits related to Independent Living.

Lock-in is important for injured workers. It signifies that certain entitlements are safe from WSIB interference and review. Lock-in should be extended to workers with serious injuries/illnesses and to severely impaired workers with entitlements in the Independent Living policies. These workers have experienced the most debilitating injuries and greatest hardships as a result of their accidents/illnesses and should not have to go through unnecessary bureaucratic hurdles to maintain their benefits and services. Like in the previous section, the unpredictability caused by the lack of security for the benefits and services in this policy suite will only increase the fear, uncertainty and anxiety experienced by injured and ill workers. We strongly urge the Board to enact lock-in provisions for these benefits and services, so that injured/ill workers can live their lives with less red tape.

10. Changes Required to Language in Various Policies: In numerous policies, the Board uses language that is too general and vague without clear parameters and criteria, which will lead to inconsistent adjudication by Case Managers. In other policies, the Board's language is too restrictive and limiting, when it should be more flexible and liberal in order to establish entitlement in a reasonable manner.

One example of vague language is the use of terms such as "generally", "typically", or "may" – without further guidance as to the bounds of that discretion. Whenever the Board is granted discretion, it needs to be coupled with parameters or guidance on how and when that discretion is to be exercised. Whenever lists are provided, it should be explicit that those lists are not exhaustive.

Further examples will be provided below; however, we reiterate our position that there is too much to point out at once and that the policies need to be reviewed one or two at a time.

Section 3: Other Recommendations & Concerns

In this section, we are outlining policy-specific concerns, comments and recommendations. Importantly, this list is not exhaustive. To reiterate, we would request that a public consultation in-person/online would be beneficial for all parties considering the scope of this consultation.

3.A. Independent living and quality of life measures – Overview and definitions

1. Page 1: Principles:

Recommendation: The individual injured or ill worker should determine whether a form of self-care, leisure and productivity leads to improved health, has therapeutic value or improves quality of life, not the WSIB. This is subjective and will differ from worker to worker. The WSIB should take the injured/ill workers comments at face value.

II. Page 2 and Page 3: Draft policy: "The following are the significant/severe functional limitations the WSIB generally associates with a serious injury or illness that impact a worker's ability to live independently."

Recommendation: We already outlined our general concerns with respect to "significant/severe functional limitations" and our concerns with the definitions for "serious injury" and "serious illness." We also have concerns with this list, as it's too restrictive.

If the Board does not modify the definitions of serious injury and serious illness, per our request, and the Board maintains the statement outlined above, then the statement should be modified to **outline that the list of significant/severe functional limitations the WSIB associates with a serious injury and illness is not exhaustive**.

III. Page 5: Draft policy: "The WSIB generally will not approve any of the above benefits and services, or other requested benefits or services where: • it may impede the worker's recovery, or • there are other more appropriate measures to facilitate independent living for the specific injury or illness."

Recommendation: The second bullet point should be eliminated. Injured and ill workers often have complex medical needs. In some cases, one benefit or service may assist an injured/ill worker with their condition(s), while other benefits and services may also improve the same or other condition(s). We disagree with the WSIB treating benefits and services as mutually exclusive (i.e. "either or"). The benefits and services should be seen to compliment one another to achieve the best result for workers. Exclusion for the provision of certain benefits and services because the worker is eligible for other benefits and services is inappropriate and inflexible and will be used to limit entitlements.

3.B. Quality of Life Benefits Draft Policy

I. Page 1: Policy: "Severely impaired workers may be entitled to one or more quality of life benefits."

Recommendation: Replace "may" with "will". Severely impaired workers will be entitled to one or more quality of life benefits. The discretion is unnecessary. The eligibility is premised on whether a worker is severely impaired.

II. Page 1: Policy: "The WSIB may authorize one or more of the following benefits and services to improve a severely impaired worker's quality of life: a quality of life allowance."

Recommendation: For clarity, add the word "annual" when referencing the quality of life allowance.

III. Page 2: Quality of life allowance: "Where the worker lives in an institution on a permanent basis or for the foreseeable future, entitlement to the quality of life allowance may be considered on a case-by-case basis.

Recommendation: The statement above should be removed from the policy. An individual in an institution should have the ability to engage in a safe and appropriate hobby, like all other workers. Workers in institutions should not have fewer entitlements compared to workers who are not in institutions.

IV. Page 2: Quality of Life Allowance: "The allowance may cover physical fitness programs, recreational programs (e.g., art, music), and general interest courses."

Recommendation: Modify language: The allowance may cover physical fitness programs, recreational programs (e.g., art, music), and general interest courses. **This list is not exhaustive.**

V. Page 3: Hobbies: "To enhance a severely impaired worker's quality of life, the WSIB may reimburse them for expenses related to a hobby, such as the purchase of hobby equipment and supplies, equipment modification and related training, and reasonable start-up costs of a new hobby."

Recommendation: If a hobby is approved, the WSIB **will pay**/reimburse for expenses related to the hobby, such as the purchase of hobby equipment and supplies, equipment modification and related training and reasonable start-up costs of a new hobby. **The policy should state that the list of what the Board pays for is not exhaustive**. The WSIB should purchase supplies/equipment if the worker does not have the financial resources to do so. The Board currently pays vendors directly for supplies and equipment, so it can be done.

VI. Page 4: Eligible hobbies and related expenses: "Depending on the type of hobby and cost, the WSIB may recommend that the worker rent necessary hobby equipment or participate in the hobby in a community setting before purchasing hobby equipment."

Recommendation: Depending on the type of hobby and cost, the WSIB may recommend that the worker rent necessary hobby equipment or participate in the hobby in a community setting before purchasing hobby equipment. **The WSIB will pay or reimburse the worker for any rental fees and/or costs associated with participating in the hobby in a community setting before purchase.**

VII. Page 4: "The WSIB does not support hobbies it considers to be inherently risky or perilous, including but not limited to those involving firearms or motorized vehicles. The WSIB does not pay for the construction of structures for hobby-related purposes, including but not limited to woodworking or automotive shops, pools, spas, or greenhouses."

Recommendation: All exclusions identified above should be removed from the policy. The WSIB should not be in the business of making moral judgments. The WSIB should not dictate whether lawful hobbies and activities are considered risky or perilous – that is a very subjective.

Ultimately, millions of gun owners exist in Canada. This is a well known fact. The vast majority use their guns for hunting and/or target shooting. It is also a fact that these hobbies and activities are quite safe. Furthermore, the limitation on firearms would disproportionately impact Indigenous populations, and rural and Northern Ontario communities. It is imperative that this discriminatory provision be removed.

WSIAT decisions have granted entitlement to motorized vehicles such as Rip Chairs and Side-by-Side vehicles. See WSIAT Decision No. 1335/23, 2023 and Decision No. 198/19, 2019. Thus, any limitation on the purchase of motorized vehicles would conflict with existing case law and would result in a major roll back of potential entitlements for workers. Importantly, motorized vehicles can be modified to ensure safety (i.e. roll cage, 3-point harness, etc.). Hobbies such as off-roading are enjoyed by millions of Canadians and these devices are disproportionately utilized by Indigenous, rural and Northern Ontario communities. This discriminatory exclusion must also be removed.

We also object to the Board's provision that would exclude the construction of structures related to hobbies such as swimming, woodworking, producing food, etc. Per the policy, the Board will generally only allow the hobby allowance for one hobby. Because of this one hobby limitation, the Board should not restrict its ability to pay for more expensive structures, equipment, etc. Workers' lives has been radically transformed as a result of their accident/exposure. Therefore, the Board must pay for costs related to a hobby and should not exclude certain types of hobbies.

We would also point out that the existing policy does not limit hobby equipment purchases based on type of hobby nor is there a maximum amount outlined in the policy. The policy does dictate that costs should be reasonable in terms of costs/benefits and that the item is cost-effective considering market costs for similar items. This criteria is reasonable and should be maintained in the new policy.

In short, the WSIB must eliminate the section which excludes various hobbies from entitlement. Additionally, the Board must explicitly state that there is no maximum dollar figure on the purchase of hobby equipment/construction of a structure, and that in those cases, the Board must review the reasonableness of the costs/benefits and compare the costs to similar items in the market.

V. Page 4: Eligible hobbies and related expenses: "The WSIB will generally consider entitlement to one hobby only. Entitlement to a subsequent hobby may be considered following a permanent change in the severe impairment."

The WSIB **will** consider entitlement to a subsequent hobby following a permanent change in the severe impairment.

Recommendation: Further clarity on the criteria being used to evaluate subsequent hobbies is necessary. "The WSIB will generally consider entitlement to one hobby only. Entitlement to a subsequent hobby **will** be considered following a permanent change in the severe impairment, **if their age prevents them from participating in the hobby and/or if non-compensable condition(s) combine with the compensable condition(s) to prevent participation in the hobby.**

VI. Page 4: Payment: "The WSIB may require the worker to provide a cost estimate of the requested hobby equipment and related expenses, as well as a summary of the worker's interest in the hobby and the intended benefits and/or goals of the hobby."

Recommendation: The second half of the statement should be removed from the policy. There is no criteria listed relating to proving or describing a worker's interest and the benefit to them; therefore, this is unnecessary and will create additional paperwork, serving no purpose. It would be absurd for the worker to explain their interest in a hobby and then allow the Board the decision-making power to deny entitlement to the hobby because the worker did not answer the question "correctly", according to the Board.

VII. Pages 4 and 5: Mental Health Supports for Family Members: "Eligible family members are generally entitled to a maximum of ten sessions. Additional sessions may be approved where there is a significant deterioration in the work-related injury or illness… If a person eligible for mental health supports under this policy does not qualify for bereavement counselling under 20-02-02, Bereavement counselling, the WSIB will provide up to ten sessions of bereavement counselling under this policy."

We support the WSIB's intention to provide mental health supports for eligible family members. While it appears to be the WSIB's intention to allow family members to access mental health support immediately following a traumatic workplace accident, the definition of serious injury (requiring disability of 6 months or more) seems to preclude this practicality. Hopefully corrections to the underlying definitions of significant/severe injury/illness (referred to previously) will address this concern within this policy.

Recommendation: The WSIB should not limit entitlement for mental health support/bereavement counselling to family members. These supports should be extended to the worker's primary caregiver and close friends so that it is consistent with the provision outlining who may be eligible if the worker does not have eligible family members.

Recommendation: The WSIB should eliminate the reference to the maximum number of treatments for mental health and bereavement treatments. If a family member, friend, or caregiver experiences a psychological condition stemming from the compensable accident and requires ongoing treatment, the Board should approve it. It would not be fair to provide a general maximum of 10 sessions and then cut the individual off if the treating health professional is requesting additional treatments. Our clients and their family are low income and would not be able to pay for ongoing treatments.

Recommendation: If the Board extends mental health/bereavement counselling to family members, a close friend or the primary caregiver, then the Board should also be required to pay for any medication prescribed by the counsellor/therapist/psychologist/etc. It is logical that if the Board pays for treatments, that any medications flowing from the psychological condition(s) also be paid for.

3.C. Independent Living Allowances Draft Policy

I. Page 2: Independent Living Allowances: "For example, if the WSIB provides a worker with vehicle modifications, then the worker generally would not be entitled to the transportation allowance."

Recommendation: By including the aforementioned statement in the policy, the Board will all but guarantee that individuals do not receive entitlement to both benefits. As a result, the statement should be struck from the draft policy. There is no need to pre-emptively deny entitlement (i.e. "generally") for vehicle modifications if entitled to the transportation allowance. Just because an injured worker required modifications to their vehicle, does not mean they should not be entitled to use other modes of transit through the transportation allowance. For example, a wheelchair user may have needed modifications to their family vehicle in order to be a passenger, but the family member who usually drives them places may not always be available to take them where they would like to or need to go. That injured worker should have access to a transportation allowance to be able to take a taxi, for example, just like other injured workers in the serious injury program.

3.D. Independent Living Devices Draft Policy

I. Page 3: Other Health Care Items: "Items such as hot tubs, pools, all-terrain vehicles, tractors, snowplows, and riding lawnmowers are not approved as the WSIB does not consider such items to be a

necessary, appropriate, and sufficient means of meeting the objectives of providing independent living devices."

Recommendation: The paragraph above must be removed from the policy. There must not be a complete denial of such items. These items should be considered under this policy and/or the Quality of Life Benefits policy. Case law referenced above clearly indicates that the Board can pay for all-terrain type vehicles. Furthermore, snowplows/riding lawnmowers could greatly improve one's ability to live independently. The Board should make a case-by-case decision.

3.E. Home Care Draft Policy

I. Page 1: Guidelines: "Each home health care program is tailored to the individual's needs and may include medical treatment, therapy services, rehabilitative services, and palliative or end-of-life care. Home health care service providers may include nurses, physiotherapists, occupational therapists, speech pathologists and social workers."

Recommendation: There should be a statement explaining that the list of home health care programs and home health care service providers identified in the policy is not exhaustive.

II. Page 1: Guidelines: "Home health care programs may be provided by public or private health care organizations, depending on the worker's location and specific treatment plan."

Recommendation: We support the principle of a public health care system. As such, priority and preference should be given to public home health care programs by the WSIB. If there are no public options available, then private options should be used.

III. Page 1: Entitlement: "The worker is in need of at least one professional health care service, such as nursing, physiotherapy, occupational therapy, speech-language therapy, or social work."

Recommendation: Add statement: "This list of professional health care services is not exhaustive."

IV: Page 2: Payment: "Home health care program services are paid directly to the home health care provider."

Recommendation: The policy should include a statement outlining that home health care program service rates can be negotiated between the Board and the provider. This will ensure that the worker receives the health care treatments that they have been granted. Workers, especially ones in rural and Northern Ontario, often have difficulty securing health care professionals when the professional discovers that the injury is work-related. This is often because the rates provided to health care providers are insufficient. For home care, costs will increase for the providers (i.e. mileage), so it becomes paramount that the WSIB negotiates with the provider to ensure the provision of treatments for the worker.

3.F. Personal Care Attendants and Allowance Draft Policy

I. Page 2: Entitlement Criteria: There is reference made beginning on page 2 with respect to the Activity of Daily Living Scale Form.

Recommendation: You have not provided the form, so we cannot comment on it. Nonetheless, any form used by the WSIB should be publicly available on the website.

II. Page 3: Personal Care Allowance: "In choosing a non-agency attendant, the worker should ensure the attendant has received adequate training to provide the necessary care. The WSIB does not cover any costs associated with such training. Where a worker requires highly specialized care, the WSIB may require evidence of the attendant hired having received sufficient training before issuing the personal care allowance."

Recommendation: The WSIB should not deny training requests from non-agency attendants. Non-agency attendants are typically close family and/or friends. These individuals are likely sacrificing employment opportunities in order to assist the injured/ill worker. Because of this, the WSIB should reimburse for necessary and reasonable training costs. The decision would be made on a case-by-case basis.

III. Page 4: Non-Agency Attendants: "The WSIB will pay the worker for the personal care provided by a non-agency attendant prior to the date an entitlement decision is made up to the date of entitlement, based on the lesser of:
• the actual costs incurred for the care provided, or
• the amount associated with the level of care needed."

Recommendation: The worker should be reimbursed for all actual costs for personal care from a non-agency attendant, not the lesser amount, as indicated above. It would be unfair for the Board to deny costs retroactively, when the injured worker could not have reasonably known what level of care the WSIB would approve if occurring at a later date (e.g. after winning an appeal).This would be consistent with the fact that agency attendants are paid prior to the date an entitlement decision is made, up to the date of entitlement, based on the actual costs of the care provided, not based on the amount associated with the level of care needed. This inconsistency must be fixed.

IV. Pages 4 and 5: Hiring Non-Agency Attendants: "Workers who meet the criteria for the personal care allowance may hire one or more attendants to provide the assistance they require. An attendant could be a health care professional such as a nurse or personal support worker, or a spouse, family member, or friend."

Recommendation: This section must state that the list of non-agency attendants outlined is not exhaustive.

Recommendation: We have very serious concerns with the fact that seriously injured/ill workers would be considered the Employer of the non-agency attendant. Our clientele is typically not sophisticated. English is generally the second language. Most have mental health condition(s), some of which are extremely serious. When you combine these factors, it becomes obvious that many of these workers will not be able to comprehend their responsibilities as an Employer due to the added complexity, bureaucracy, and paperwork, even with assistance from a bookkeeper. A former client of our clinic abandoned their entitlements granted by the Board when they were advised that they would have to register as a businessperson to receive care in their home. Imagine for a moment that you are seriously

injured, you do not speak English, you have mental health challenges and then the Board sends you a package stating that you have to register as a small businessperson in order to receive care. Ultimately, many workers will not pursue this entitlement for these reasons.

The Board has the administrative resources (Human Resources, Accounting/Finance Departments, etc.) and experience to hire the non-agency attendants as direct employees. If the Board is paying for a bookkeeper and is considered the Employer for WSIB purposes, then it would make sense for the Board to just pay the non-agency attendant directly, similar to how the Board pays the agencies. The worker would still collaborate with the WSIB to recommend and hire non-agency attendants, as the worker will have a pre-existing relationship with the person hired.

V. Page 4: Hiring Non-Agency Attendants: "According to the *Employment Standards Act*, all attendants are entitled to at least 11 consecutive hours free from performing work in each day. In addition, attendants are entitled to at least 24 consecutive hours free from work each week, or at least 48 hours free from work in every period of two consecutive work weeks. The *Employment Standards Act* also requires employers to pay an attendant overtime pay, or to provide paid time off work, for each hour that is worked over 44 hours in a work week."

Recommendation: The *ESA* requirements should apply to agency attendants hired by the Board, too. The Board must provide the agencies with a copy of the pertinent provisions of the *ESA* and ensure that agencies provide sufficient staff to meet their statutory obligations.

VI. Page 5: Hiring Non-Agency Attendants: "The WSIB pays flat monthly rates corresponding with one of five levels of care, as outlined above, regardless of the numbers of hours the attendant works per week and/or whether the attendant is entitled to overtime pay."

Recommendation: Attendants shouldn't be forced to perform free labour and they must be compensated for the hours worked. Not paying someone for their labour is wage theft and violates basic labour standards and principles.

VII. Page 6: Registration as employer: "WSIB coverage is mandatory for all personal care attendants employed by an injured or ill worker for more than 24 hours per week under this policy. A worker employing their own attendant, including a family member, for more than 24 hours per week is automatically registered with the WSIB as an employer. The associated costs are paid for by the WSIB."

Recommendation: We would submit that WSIB coverage must be mandatory for all non-agency attendants, irrespective of hours worked per week. The WSIB should expand coverage to as many workers as possible rather than limit coverage to certain types of workers, employed for a certain number of hours.

VI. Page 6: Continuation during attendant's annual paid break: "Workers receiving the personal care allowance are required to provide their attendant(s) with up to two weeks of paid vacation once per year under the *Employment Standards Act*. The WSIB will continue to provide the personal care allowance during this two-week period to allow the worker to pay the attendant during their vacation.

With advanced notice from the worker, the WSIB will also cover the cost of an agency attendant while the worker's usual attendant is on vacation."

Recommendation: The WSIB must ensure that proper *ESA* entitlements are provided. The ESA states: "An employee whose period of employment is five years or more is entitled to three weeks of vacation time after the completion of each 12-month vacation entitlement year." This provision should be outlined in the policy to make it consistent with the *ESA*.

Recommendation: Entitlement to the Loss of Retirement Income (LORI) should be extended to all non-agency attendants hired by the worker and all non-agency attendants should be provided workplace benefits similar to WSIB staff. In most cases, the non-agency attendant will have to quit their job and/or reduce the number of hours worked in order to provide care to the worker. They will also lose out on future employment opportunities. Furthermore, they will be forced to reduce contributions toward retirement funds and they will likely have access to their benefit plans reduced or eliminated. In order to ensure that workers receive the care they are entitled to by providing fair compensation to non-agency attendants, the WSIB should extend LORI to those individuals employed for over 1 year, similar to injured/ill workers. Benefits should also be extended to non-agency attendants, beginning at the same time benefits are provided to Board staff. The provision of benefits and a LORI will provide extra incentive for non-agency attendants to be employed consistently and over the long term and this would create consistency with agency attendants who have access to pensions and benefits.

3.G. Home Modifications Draft Policy

I. Page 1: Policy: "Home modifications to facilitate the living arrangements of a live-in caregiver will not be authorized."

Recommendation: This exclusion should be eliminated from the policy. A decision to modify living arrangements for a live-in caregiver should be made on a case-by-case basis. We oppose exclusions such as this.

II. Page 1: Policy: "Home modifications to create a hospital-like or clinical setting to allow the worker to receive health care at home, or so that the professional services of a health care practitioner may be provided to the worker in their home, are not considered necessary, appropriate, and sufficient as a result of a work-related injury or illness, nor are they considered an appropriate measure to facilitate independent living or improve a severely impaired worker's quality of life."

Recommendation: Home modifications to create a hospital-like or clinical setting to allow health care at home should be determined on a case-by-case basis. We oppose the complete exclusion of these types of home modifications.

III. Page 2: Entitlement Criteria: "Entitlement to home modifications may be considered where:… the work-related injury or illness and a non-work-related condition impact the worker's ability in the above way, where the work-related injury or illness is the primary factor and such financial assistance is not available through other agencies or sources."

Recommendation: The WSIB should not premise a decision for entitlement to home modifications based on whether the injury/illness is the "primary factor." The "primary factor" establishes a higher threshold than is required by the law; therefore, it should be removed. The WSIB must continue to use the "significant contribution test" to determine whether a worker may be entitled to home modifications. It is our position that this legal test is applicable and should be enshrined in this section of the policy. Importantly, with "a significant contributing factor" test, the work-related condition(s) do not have to be the "primary factor" in order to establish entitlement.

IV. Page 3: Eligible Homes: "A secondary residence purchased by the worker after the date of the work-related injury or illness will not be considered for modification."

Recommendation: This statement should be removed from the policy because it is too restrictive. In some situations, workers may have been saving for a second home, house hunting or in the process of purchasing a second home before the accident/illness. Therefore, the complete exclusion for home modifications to a second home purchased after an accident would be unfair.

V. Page 3: Eligible Homes: "The modifications to a secondary residence are limited to the entrance, one bedroom, and one bathroom, and must generally be completed without modifying other rooms of the home or outdoor areas of the property, other than to allow the worker to access the home. The WSIB will not approve separate modifications to additional rooms of a secondary residence such as a basement or second bathroom, or to outdoor areas of the property, such as a shed or waterfront area."

Recommendation: This statement should be modified because it is too restrictive and exclusionary. The Board should not restrict modifications to specific areas of the home/only for access to the home. These limitations and exclusions will lead injured/ill workers to not use their second homes due to limited possibilities. Certainly, kitchens are essential to a person's ability to use a home, and should definitely not be excluded. More flexibility should be provided.

VI: Page 3: Rental Properties: "Workers are not entitled to reimbursement for rent increases following a move, or to modifications to subsequent rental units, should the worker move due to substantial rent increases."

Recommendations: This provision is patently unjust and unfair and must be removed from the policy. Generally, injured/ill workers are forced to move as a combined result of their injury/illness (rental unit cannot be modified), reduced income (85% or less of net income), reduced/no employment opportunities (unable to apply for higher paying jobs/unable to work) and rent increases. But for the accident, the worker would not likely be in the precarious situation in which they require a new rental. If a worker is forced out of their unit for any reason directly or indirectly as a result of the accident and compensable injuries (i.e. they have to change apartments because their apartment cannot be modified to assist with their work-related condition(s)), the WSIB must pay the difference in rent. Ultimately, renters are typically lower income individuals. Because of the injury, the LOE rate they receive cuts their income by at least 15%, a significant drop. This leads to many of our clients sleeping in their cars, sleeping on the streets or sleeping in shelters. The Board paying the difference in rent for a reason directly/indirectly related to the injured/ill workers' compensable condition(s) is the moral, just and ethical approach the Board should take.

VII. Page 4: Existing Structures: “If the required major modifications, including additions, to an existing home are not structurally feasible, and the worker decides to purchase another home that meets their accessibility requirements and/or that can be modified, then the WSIB may provide a reimbursement amount to offset the cost of the required accessibility features in the purchased home. The WSIB will only provide a reimbursement amount once.”

Recommendation: The last sentence stating the reimbursement will only be provided once should be removed from the policy. A decision to allow home modifications more than once should be reviewed on a case-by-case basis.

IX. Page 4: Existing Structures: “The WSIB will determine a reimbursement amount based on the estimated cost of the accessibility features in the purchased home, as well as the estimated cost of any required modifications to the purchased home. Once the reimbursement amount is approved by the WSIB, and the worker's offer to purchase the home is accepted, the reimbursement funds will be dispersed in a manner that the WSIB determines will best ensure the security of the funds.”

Recommendation: A statement should be added explaining that any costs exceeding the estimate approved by the Board will be paid by the Board.

X. Page 4: Existing Structure: “The WSIB is not responsible for any aspect of the home purchase or financing, and does not purchases homes under any circumstance.”

Recommendation: The part stating that the Board does not purchase homes under any circumstance should be modified to allow discretion in certain circumstances. In some cases, due to the worker’s condition, the state of their home, where they live and where they plan to move, it may make financial sense for the WSIB to pay for the cost of a new home (the injured/ill worker would own the home). This would be decided on a case-by-case basis and would be premised on whether it is reasonable for the Board to pay for the house.

XI. Page 4: Existing Structures: “However, the WSIB will consider entitlement to modifications to the purchased home up to the estimated cost of modifying the prior home.”

Recommendation: The Board should not limit modifications up to the estimated cost of modifying the previous home. Reasonable costs above the estimated cost should be considered on a case-by-case basis.

XII. Page 4: Relocation: “Examples include:”

Recommendation: The policy should state: “Examples include, but are not limited to:”

XIII. Page 5 and Page 6: “Increased utility costs, property taxes, or rent: Where a worker's principal residence is a rental property that does not qualify for modification and the worker finds an appropriate alternate rental property, they may be entitled to reimbursement for increased rental costs. The WSIB will contribute up to a maximum of 40 percent of the worker's rent with documentary evidence of the increase. The WSIB will only contribute to the increased rent for a duration of five years.”

Recommendation: The WSIB should contribute the total difference in the rental fees between the initial apartment and the subsequent apartment. The worker should not lose money due to having to move because of their injury/illness. Furthermore, the Board is allowing possible modifications in 2 homes for eligible workers. The least the Board can do is ensure that the renter/worker is not having to move and pay increased rent due to their injury/illness. This proposal is providing lesser benefits to injured workers who rent over those who own, which is unacceptable.

In some cases, workers living in remote locations will have to move to the city for health care and treatments, which will lead to a substantial increase in rental costs. The WSIB must make sure that these people are properly taken care of.

Recommendation: The WSIB contribution for rent should be for the life of the worker. Where there is a spouse and/or children living with the worker, the Board should continue to contribute for a duration of five years subsequent to the workers' death to ensure the family has some level of financial stability stemming from the compensable injury/illness.

XIV. Page 6 and Page 7: Ownership and Removal: "The request must be made within one year of the home modification or installed device no longer being needed"

Recommendation: There is no need for a time limit to request removal of a modification and/or device. The modification/device should be removed upon request.

3.H. Vehicle Modifications Draft Policy

I. Page 1: Definitions: "Vehicle for the purpose of this policy means a vehicle that meets the definition of 'motor vehicle' in the *Ontario Highway Traffic Act* and is primarily designed for year-round use on highways as defined in the *Ontario Highway Traffic Act*."

Recommendation: The definition is too restrictive and should not potentially restrict vehicles that cannot be used year round.

II. Page 2: Eligible Vehicle: "the vehicle will be the worker's primary mode of transportation."

Recommendation: The Board should not exclude vehicles that are not considered primary from being eligible for vehicle modifications. The decision should be made on a case-by-case basis. For instance, a worker may use a combination of public transit for local travel and a personal vehicle for longer distance travel, such as to visit family or to go on vacation. The draft policy, as written, would exclude vehicle modifications because the automobile is not the primary mode of transportation. This would be unfair and lead to an absurd result that could prevent the worker from going on vacation, traveling to see family, etc. That will lead to a reduction in the worker's quality of life and it would likely lead to a psychological condition. Public transit availability must not be used by the Board to deny vehicle modifications.

III. Page 2: Eligible Vehicle: "The WSIB may request a Safety Standards Certificate or other documentation that demonstrates the vehicle is safe and operable."

Recommendation: A statement must be added outlining that the WSIB will reimburse the worker for costs associated with providing these documents.

IV. Page 2: Purchasing a vehicle to modify: "The WSIB determines the amount to reimburse for the features. The WSIB does not reimburse the cost of the vehicle itself."

Recommendation: The WSIB should not outright exclude the purchase/reimbursement of a vehicle itself. The decision should be made on a case-by-case basis. Based on the circumstances, it may be reasonable and financially responsible to purchase a new vehicle.

A former client of our clinic received entitlement to a 100% PD. As a result, the WSIB purchased the worker a taller wheelchair. However, the wheelchair did not fit inside his van. The client asked the Board to purchase a new van so that his wheelchair would fit inside. The Board denied the request, stating that the they modify vehicles, but do not purchase new ones. The worker could not afford a new vehicle. This is an example of when the Board should pay for a new vehicle.

V. Page 2: Purpose-built accessible vehicles: "The WSIB does not contribute the full cost or purchase vehicles directly."

Recommendation: The WSIB should retain the power to contribute the full cost of a purpose-built vehicle. If a worker requires a purpose-built accessible vehicle as a result of their compensable injuries/illnesses, the Board should bear the responsibility of contributing the full cost.

Recommendation: The Board should purchase purpose-built vehicles directly. Currently, the WSIB requests that vendors/providers sign up online with the Board, so that the companies can be paid directly. This practice is used for the purchase of side-by-side vehicles. This should be extended to purpose-built vehicles. Many injured workers are low-income and do not have the capability to purchase high costs items. It would be reasonable for the Board to purchase the vehicle directly.

VI. Page 4: Insurance: "The WSIB does not pay for repair or replacement of the vehicle modification where the damage is due to a motor vehicle accident."

Recommendation: The WSIB should pay for the repair or replacement of the vehicle and vehicle modification(s) that are not covered by insurance, where the motor vehicle accident results from the compensable injuries.

3.I. Guide and Support Dogs Policy

I. Recommendation: The policy should not be restricted to guide and support dogs. Research demonstrates that other animals can be effective as guide and support animals, too. There is no need to limit the policy exclusively to dogs.

II. Page 1: Designated Conditions: "Designated condition means one of the following serious injuries or illnesses for which there is strong and consistent evidence of the effectiveness of animal-assisted intervention involving ownership:
• significant/severe vision loss

• severe to profound bilateral hearing loss
• spinal cord injuries resulting in significant immobility necessitating the use of a wheelchair, or
• partial or full amputations resulting in significant immobility necessitating the use of a wheelchair, where a prosthetic device is not sufficient to facilitate independent living."

Recommendation: The list of designated conditions is too restrictive and is discriminatory against psychological conditions in particular. As a result, the list should be removed in its entirety, or at the very least, modified to include psychological conditions and to explain that the list is not exhaustive.

The draft policy on Guide and Service Dogs is an example where those with psychological injuries are left out by the Bard, in essence, minimizing the severity of the effect of this type of compensable injury on activities of daily living. The medical literature supports that a service animal would be a necessary, appropriate and sufficient health care measure for psychiatric and psychological conditions. The WSIAT has also agreed that the acquisition of a service dog for mental health reasons may be an appropriate health care benefit.

For example, in *Decision No. 1835/21, 2022,* the worker was found to be entitled to a service dog in relation to compensable major depressive disorder, post-traumatic stress, and somatic symptom disorder with predominant pain, particularly in relation to the worker's capacity to control negative emotions. Even in 2007, the WSIAT rejected the proposition that OPM Document No. 17-06-04, "Guide and Support Dogs," applied only to dogs intended to service blind or deaf workers. In *Decision No. 410/07*, the Panel found that the services a dog performed for a worker in receipt of a 40% NEL award for PTSD were "indistinguishable in principle from those performed by guide or support dogs, namely to 'enhance the worker's independent living and quality of life'." The decision concluded that OPM Document No. 17-06-04, "Guide or Support Dogs," is applicable to dogs who perform a service to workers with compensable psychotraumatic conditions.

The WSIB should not now in 2024 enact a regressive policy which rolls back an entitlement which is already recognized as appropriate and available to injured workers. The proposed policy on Guide and Service Dogs must be revised to include psychological conditions.

Enacting the policy as proposed would in fact be discriminatory. A recent *Human Rights Tribunal of Ontario* case is instructive on this point. In *Robinson-Cooke v. Ontario (Community and Social Services), 2023 HRTO 1133,* an ODSP recipient with a number of physical and mental disabilities challenged ODSP's Guide Dog Benefit Policy. The applicant required the support of a service dog in order to be able to live independently, particularly with respect to managing her PTSD symptoms. After obtaining and training a dog to meet her specific needs, the applicant applied for an additional benefit provided by ODSP intended to cover the costs of feeding and maintaining a service dog [the Guide Dog Benefit] but was denied because her dog was not trained by a facility accredited by Assistance Dogs International [ADI].

The HRTO found the denial of the benefit was discrimination based on the ground of disability, as evidence was presented at the hearing to establish that it was not possible for her to obtain a dog trained by an ADI-accredited facility because of her particular disability-related needs. The HRTO required the respondent to review the certification process used in other provinces for determining eligibility for

similar benefits. It also ordered the respondent to consult with relevant agencies and individuals in its review and to consider in particular the appropriate process for individuals requiring dogs for mental health disabilities that are not veterans or first responders. The WSIB should undergo the same review and consultation process as ordered by the HRTO, in order to avoid the enactment of a discriminatory policy.

III. Page 2: Entitlement Criteria: "There are no contraindications to owning the recommended animal. Contraindications may include, but are not limited to, a history of violent or abusive behaviour toward humans or animals, worsening of symptoms, substance use or inability to control emotions."

Recommendation: The exclusions premised on substance abuse, the worsening of symptoms or the inability to control emotions should be removed from the policy. They are too broad and vague. In addition, it would be discriminatory to prevent someone with a substance abuse problem from entitlement to a guide or service dog. Furthermore, research indicates that dogs can help to regulate a person's emotions.

Conclusion

In closing, we thank you for reviewing our submission. We would, however, like to meet with you directly to discuss our various proposals and discuss further details we have been unable to include. Please contact me via email at chris.grawey@iwc.clcj.ca to arrange further discussion.

Sincerely,

Chris Grawey
Community Legal Worker
Injured Workers Community Legal Clinic