RIGHTS DON'T RETIRE

Working together to end age discrimination at the WSIB

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Introduction: The Problem with the WSIB's Age Cut-Off

In Ontario today, people are working longer than ever before. Many older adults stay in the workforce well past age 65, because they need the income, or they enjoy their work. The law no longer requires anyone to retire at the age of 65.

But the Workplace Safety and Insurance Board (WSIB) still acts as if it does. Under the *Workplace Safety and Insurance Act* (*WSIA*), injured workers stop receiving their Loss of Earnings (LOE) benefits at age 65, even if they would have continued working. If someone gets injured at age 63 or older, they only get LOE benefits for two years. This means that workers injured later in life lose crucial income support simply because of their age.

This age-based cut-off doesn't reflect today's reality. It treats all older workers the same, regardless of their circumstances, and it has the greatest impact on workers who can least afford to lose income, including workers in physically demanding and precarious jobs, and those who don't have a safety net to fall back on.

In this report, we explain the WSIB's age limit on benefits, why it's outdated and unfair, and what the numbers tell us about older Ontarians' participation in the workforce. We also outline why this law is discriminatory, as it denies support to injured workers solely based on an increasingly arbitrary age rule. Potential solutions to age-based limits will be outlined in the report.

It's time for Ontario's workers' compensation system to catch up with the modern reality of work and aging, and to make sure that no worker loses compensation for a workplace injury just because of their age.

Background: How the WSIB's Age Cut-Off Came to Be

Most workers in Ontario are covered by workers' compensation. It provides compensation for lost earnings from work-related injuries and illnesses. Those workers are not able to sue their employer for their injuries.

Before 1990, Ontario's workers' compensation system paid lifetime pensions to workers who were permanently injured on the job. The amount was based on the worker's disability level and what they earned before their injury.

In 1990, the law was changed. The pension system was replaced with a wage-loss system. Under this new system, workers with permanent disabilities receive LOE benefits that stop when they turn age 65. If they are injured at age 63 or older, they only receive up to two years of LOE benefits.

For a worker over 63 who suffers a recurrence of a prior workplace injury, no LOE benefits are payable at all.

At age 65, an injured worker may receive a small one-time payment meant to replace lost retirement income at age 65. However, if you're injured at age 64 or older, you don't get any retirement income benefit at all.

The WSIB's limited re-employment obligations for employers allow an injured worker to return to their workplace, under certain circumstances. But these obligations end when a worker reaches age 65.

In 1990 when the law was introduced, this approach was justifiable because mandatory retirement at age 65 was legal and common. Ontario's *Human Rights Code* even defined "age" as 18 to 64, meaning that protections against age discrimination ended at age 65.

By the early 2000s, the landscape looked different. Mandatory retirement had become unpopular, and the government promised to end it. In 2005, the Ontario government introduced Bill 211, which banned mandatory retirement. However, the WSIB argued that removing the age 65 cut-off from the workers' compensation system would be complicated and time-consuming.

So, Bill 211 included a special clause saying that the WSIB's age-based limits would still apply even though the *Human Rights Code* now banned age discrimination.

The Ontario Human Rights Commission strongly objected. They said these age limits were discriminatory and sent the message that older workers are "of lesser worth" than younger ones. The Commission warned that the law could violate the *Charter of Rights and Freedoms* and recommended that the government review the rule within five years.

The government ignored those recommendations. Bill 211 became law in 2006, keeping the WSIB's age 65 limits in place permanently.

The law allowing the WSIB to maintain an age limit was challenged in court in 2008. The challenged centred on the law being contrary to the *Charter of Rights and Freedoms*. In the case *Gouthro v WSIAT* (2014 ONSC 7289), the court sided with the government. It said that the cut-off wasn't based on bias against older workers, but on the fact that very few people over 65 were working at the time. Since the WSIB system pays for lost wages (not lifetime pensions), age 65 was still considered a reasonable dividing line at the time. For more information about the *Gouthro* decision, see Appendix 1.

Allen's Story

Allen is a maintenance worker who injured his left knee at work on September 8, 2009. While descending from a scaffold, Allen slipped off the bar with his left foot, causing his left knee to twist and buckle, resulting in a meniscus tear. Allen received LOE and healthcare benefits from the WSIB. At the time of his injury, he was 52 years of age. Allen required five medical procedures for his compensable left knee. Most recently, he had surgeries in March 2022 and in January 2025. The WSIB covered Allen's healthcare expenses related to these procedures and his recovery without question. Allen's age was not considered a factor when determining eligibility to healthcare benefits.

Following his March 2022 surgery, Allen returned to work prematurely in August 2022 because his LOE benefits were set to expire in September 2022, when he turned 65. Allen needed to get back to work, as he could not afford to lose income.

Allen believes that his premature RTW contributed to his ongoing knee issues that resulted in another surgery in January 2025. Once again, the WSIB covered Allen's healthcare costs. But because Allen's initial injury occurred when he was under 63 years of age, he did not receive LOE benefits when he was off from work following the 2025 surgery, as he was over the age of 65. This does not make sense to Allen. The WSIB accepted the injury, the surgery, the treatments and acknowledges that he could not work while he recovered, yet the WSIB did not pay him LOE benefits due to a discriminatory law.

Allen returned to work in May 2025. During his time off, his source of income was sick benefits through work. The sick benefits did not pay at the same rate as WSIB benefits, so he ended up losing money.

It surprised Allen to find out how the WSIB gets away with discriminating against older injured workers. Allen believes that the law needs to change so more people are not negatively impacted because of age, like he was.

The *Charter of Rights and Freedoms* and the Age Cut-Off

Section 15(1) of the *Charter of Rights and Freedoms* guarantees everyone the right to equal protection and equal benefit of the law without discrimination, including discrimination based on age.

Section 43(1)(c) of the WSIA, which outlines the WSIB's age cut-off, clearly creates a distinction based on age, since it ends income protection for injured workers solely because of their age.

Here's why that distinction is discriminatory under the Charter:

1. It treats workers as if they all retire at age 65, regardless of their real circumstances. This is an outdated stereotype that no longer reflects reality for a growing number of workers.
2. It denies a benefit that younger workers receive. For example, a worker who gets hurt on the job at age 64 could get just two years of compensation for lost wages. But, a worker injured at the age of 60, doing the same job, with the same type of injury, can get compensation for five years, until they turn 65. The only difference is age.
3. It undermines the economic security and inherent dignity of older workers. Workers who have spent a lifetime contributing to the economy face the prospect of being told their injury somehow doesn't matter after the age of 65.
4. It disproportionately impacts workers in lower-wage and physically demanding jobs, which are often done by immigrants and racialized workers. These are the workers who are more likely to stay in the workforce beyond age 65 based on need, and the least likely to have private pensions or savings to rely on. There are much higher rates of poverty among elderly racialized women and immigrant women.[1]

Why the Cut-Off Is Arbitrary and Outdated

When the age limit was created in 1990, it reflected the norms of the time. At that point, mandatory retirement at age 65 was still legal in Ontario, and very few people stayed in the workforce beyond that age. In fact, a majority of workers retired in their early 60s. In other words, the age limit reflected the times.

But Ontario has changed dramatically since then and the retirement age in Canada more broadly is increasing for several reasons:

1. The loss of unionized manufacturing jobs with pensions and the creation of precarious jobs without pensions that forces people to remain in the workforce longer to support themselves and their families.
2. The increasing life expectancy and the choice to remain employed for social and other reasons.
3. The abolishment of mandatory retirement in the provinces across Canada.
4. High rates of inflation and increased cost of living.

In 2024, for the first time on record, the median retirement age exceeded 65. This means that 50% of the people retiring in 2024 were over the age of 65. This is dramatically different from 2004, when the median retirement age was 61.4.[2]

A 2024 report from Statistics Canada reveals that 21% of Canadians aged 65 to 74 were employed in 2022, with 9% working by necessity and 12% working by choice. Individuals working by necessity represented a whopping 351,000 people.[3]

Recent statistics in Ontario reveal the substantial number of older people who remain employed. In 2024, more than 421,000 people over the age of 65 were employed, with just under 164,000 of those workers being over the age of 70.[4]

These statistics are clear: Canadians in general and Ontarians in particular are staying in the workforce later in life.

Brian's Story

Brian worked as a mason for more than 40 years. He helped build many of the infrastructure projects that we see across the province.

Throughout Brian's work life, he never experienced a work-related injury until a few years ago. However, Brian always thought that if he ever did get injured, that the WSIB would have his back. Brian found out the hard way that wasn't the case.

In July 2021, at the age of 63, Brian experienced a serious injury to his bilateral ankles and feet when he stepped on an overhanging scaffold plank and fell 2.5 metres to the ground. Because of the seriousness of the injury, Brian was unable to work, so he received Loss of Earning (LOE) benefits and healthcare benefits from the WSIB. Brian has undergone four surgeries, with the possibility of more in the future.

Unable to return to his pre-injury job, the WSIB started to provide retraining in courses for Mortgage Agent Licensing. While Brian was taking these courses, there were disruptions due to surgery on his work-related injuries. The surgery resulted in blood clots in Brian's lungs, causing him to be on blood thinners for six months.

In July 2023, the WSIB called Brian and explained that his LOE benefits would terminate shortly, two years post-accident, as he was injured when he was 63 years of age. To add insult to injury, the WSIB also cut Brian off from the retraining program before he was finished.

The WSIB decision to terminate Brian's LOE benefits and end his retraining is unethical and immoral. In Brian's opinion, this is clearly age discrimination and the law needs to change. Brian never expected to receive benefits for life. What Brian did expect to receive was LOE benefits and retraining until he was recovered, retrained and capable of working again.

Throughout Brian's life, he prioritized maintaining excellent health so he could continue working into his 70s to support his family financially, like some of his colleagues. Brian also wanted to continue working because he loves what he does. Unfortunately, due to Brian's injury and the unjust law, he has been without employment income since July 2023.

Statistics About Older Injured Workers at the WSIB

The annual number of workplace injuries experienced by people aged 63+ in Ontario has increased dramatically over the past 30 years. In 1994, there were 4,430 claims registered for workers aged 63+, compared to 16,784 claims registered in 2024. That is an increase of 279%. As a percentage of all claims registered, those aged 63+ represented a measly 1.2% of all claims in 1994, compared to 7.1% in 2024, an increase of 492%.

The number of claims registered for those aged 63+ declined from 2019 to 2024, likely because of the effect of COVID-19 on the economy. However, since 2022, the annual number of claims registered for this age group has increased and it is likely that the number of claims registered this year will surpass the number from 2019. Despite the reduction of claims registered for this age group from 2019 to 2024, the overall share of claims this group represents actually increased during this period, from 6.7% to 7.1%.

63+ WSIB CLAIMS IN ONTARIO (5-YEAR INTERVALS)[5]

(see graphs on back page of report)

Year	Number of Claims 63+	Percentage of all Claims	Total Claims
1994	4,430	1.2%	369,504
1999	4,113	1.1%	363,615
2004	6,037	1.7%	351,344
2009	8,758	3.5%	247,862
2014	12,060	5.2%	233,645
2019	17,107	6.7%	257,039
2024	16,784	7.1%	236,392

The numbers show us that the original basis of the current law, namely that most people stop earning wages by 65, is simply not the case anymore. The line drawn in section 43(1)(c) of the *WSIA* is now arbitrary. It stops compensating for wages lost, not because a worker's loss of earnings has ended, but simply because of their age.

Why It Can't Be Justified

Under the *Charter*, any limits on equality rights must be reasonable and justified.

The current age-cut off in the legislation can't be considered reasonable or justified, because:

- It's based on outdated assumptions, not current evidence, including statistical data.
- Other provinces (like British Columbia and Alberta) have shown that it's possible to assess retirement plans individually and allow benefits beyond 65.
- The current approach causes significant harm to older workers who lose crucial income when they need it most.

A change to the law would also not negatively impact the WSIB's ability to be financially accountable and responsible. The Board's financial position is strong.

The financial experts look at the sufficiency ratio. The WSIB sufficiency ratio measures whether there are enough funds to cover future expected benefit payments (liabilities). A ratio of 100% means the WSIB is fully funded. The WSIB achieved a fully funded position (over 100%) in 2018 and has maintained it since then.

The board's robust financial position can also be demonstrated through WSIB premium rates and "surplus" distribution. Average employer premium rates per $100 of insurable earnings dropped from $2.35 in 2018 to $1.23 in 2026. Average employer premium rates are said to be at the lowest level in 50 years. Furthermore, the provincial government has announced three multi-billion-dollar giveaways to business over the past 12 months due to the Board's surplus and strong financial position. Clearly, the Board is in a position to improve the law to better support those for whom the system is built: injured and ill workers.

The Bottom Line

Section 43(1)(c) of the *WSIA* discriminates against workers based on age. In its current form, it is out of step with modern workforce realities and data, and it does not align with basic *Charter* values.

Ending this cut-off would make the workers' compensation system fairer and much more reflective of how people structure their working lives today.

What Is To Be Done?

It's helpful for us to understand how other provinces have addressed age-based limits in their workers' compensation legislation. These examples should serve as useful precedents to guide an Ontario-made solution.

Looking Westward

Ontario's approach to injured workers over 65 is among the strictest in Canada. By contrast, other provinces, like British Columbia and Alberta, have built more flexible systems that recognize that many people work past 65 and have adapted their legislation to reflect this.

British Columbia

In British Columbia, if a worker is under the age of 63 when injured, they can receive wage-loss benefits until the later of [6]:

- the date they turn 65, or
- the date they would have retired after age 65, as determined by the compensation board.

Workers can provide evidence to show they planned to keep working beyond 65, such as:

- confirmation from an employer that they intended to continue employing them after the age of 65;
- details about the type and duration of the work;
- financial or retirement planning documents showing a later retirement date;
- proof of ongoing financial responsibilities (like mortgages or debts); and
- evidence they could continue to work.[7]

If a worker is 63 or older when injured, they can still receive benefits until the later of:

- two years after the injury, or
- the date they would have retired, as determined by the board.

This approach recognizes individual circumstances instead of applying a one-size-fits-all rule. However, it is not without criticism. A 2018 report to the Board of Directors of the Workers' Compensation Board of British Columbia, noted that this approach could disadvantage young, permanently injured workers, who may not know their retirement plans at the time of their injury. The policy the board uses to assess duration of benefits only contemplates considering evidence of the worker's circumstances at the time of their injury. This, in practice, limits consideration of the potential impact of the permanent injury on a worker's retirement options.[8] There are also practical challenges in gathering the necessary evidence to establish when you would have retired.[9]

Alberta

In Alberta, the law defines the "normal retirement age" as 65 or five years after the date of injury, whichever comes later.[10] Like in B.C., workers can also provide evidence showing they planned to continue working past normal retirement age and would have done so if not for their injury.

This evidence can include:

- statements from employers, unions, or co-workers confirming that work was available, and the worker intended to continue;
- proof that the worker had been working past age 65 at the same or similar earnings; or
- evidence showing the worker stayed employed past age 65 but earned less because of their injury, not by choice.[11]

Both Alberta and B.C.'s laws demonstrate that age-based limits can recognize the individual plans of workers. Their systems give older workers an opportunity to demonstrate their work and retirement plans, which may result in ongoing financial support from the compensation board.

What do the Numbers Tell Us?

It is evident from the numbers that Ontarians are staying in the workforce longer, and that any cut-off must reflect how people are working and living today. The statistics tell us that more and more people are working past the age of not just 65, but 70 as well. Recall the data:

In 2024, more than 421,000 people over the age of 65 were employed, with just under 164,000 of those workers being over the age of 70.[12]

When Canada's first *Old Age Pensions Act* was passed in 1927, it was available to people at age 70. When the Canada Pension Plan was established in 1966, it provided a retirement pension at age 70. In the early 1970's both pensions were made available at age 65. Following the end of mandatory retirement, more people continued to work past age 65 and Canada has provided the option to defer payment of the Old Age Security benefit to age 70 since 2013. That was 12 years ago, when the average and median age of retirement was still well below age 65. As noted above, there are about 164,000 workers aged 70 and over currently in Ontario's workforce. Times have changed.

An Ontario Approach

An Ontario-made approach could incorporate the following provisions and principles:

Compensation for loss of earnings ends at the later of,

- age 70, if the worker was less than 65 years old at the time of injury or recurrence;
- 5 years after the date of injury or recurrence if the worker was 65 years of age or older at the time of injury;
- another date, if the Board is satisfied that the worker would have retired at a date later than provided for above, but for the injury or recurrence.

This imports the individualized aspects of B.C. and Alberta's approach, but also reflects Ontario's statistical reality, which shows us that people are working past the age of 65 and 70.

Any proposed changes should be retroactive to the abolition of mandatory retirement in December 2006.

Regardless of the specific solution, the age 65 barrier needs to go, as a necessary first step to justice.

Juan's Story

Juan works as a bus operator. He was injured in May 2022 at the age of 63.The injury occurred when Juan was on his way to the operator's washroom. A middle-aged woman ran toward Juan, asking for help, as she was being harassed by a man. Juan tried to de-escalate the situation. However, the man vented his anger at Juan and started to yell. Sensing the woman might be in danger, Juan told her to leave the station right away. After she left, Juan continued his way to the washroom where the man assaulted him. The WSIB approved Juan's claim for a psychological injury, and he received LOE and healthcare benefits.

Because Juan was 63 at the time of injury, the WSIB cut him off LOE compensation two years post-accident, in May 2024, while he was still in a return-to-work program with his employer. Juan did not return to full-time regular hours until October 2024. This meant that Juan lost income from May to October 2024, while he gradually increased his hours. The WSIB told Juan that they cut him off because that's what the law and policy says. Juan's employer refused to top him up for the wages that the WSIB otherwise would have paid, but for his injury. During this 5-month period, Juan was short funds to pay his bills and daily expenses. Juan was even forced to borrow money from his sister to pay for the basics.

According to Juan, what happened to him is an injustice! The policy of disqualifying older injured workers from LOE benefits is discriminatory. Juan states that he was protecting a vulnerable woman from harm and his reward was being cut off benefits prematurely because of his age. Juan believes that the provincial government and the WSIB should show some empathy and that they should not have left him out to dry.

Conclusion

The world of work has changed significantly, but Ontario's workers' compensation law has not kept up with the changing times.

When the age 65 cut-off for wage loss compensation was first introduced, most people were expected to retire by that age, and did so. That's no longer the case. Today, more Ontarians than ever are working past age 65 for a variety of reasons. Yet, if these workers are injured on the job, the law assumes their working life is already over.

This assumption is not just outdated, it's unfair. It punishes older workers for their age and ignores the reality that many continue to contribute to the economy well beyond age 65. The law draws an arbitrary line that cuts off support for people who are still employed.

Other provinces have developed ways to handle this issue, allowing injured workers to show that they intended to work longer and to continue to receive crucial benefits to a more reasonable point. There are options that Ontario can and must look to for guidance, because it's time to bring the *WSIA* into line with today's realities.

Ending the age 65 cut-off isn't just an urgently needed law reform. It's a matter of fairness, dignity, and justice for every worker in this province.

APPENDIX 1

Gouthro v WSIAT (2014 ONSC 7289)

Mr. Gouthro was employed by the city of Toronto. He got injured on the job at the age of 63 in 2001. Based on the *WSIA*, he received LOE benefits for two years. He decided to challenge the law on the basis that it violated the *Charter of Rights and Freedoms*, specifically the equality provisions of the *Charter*.

The Divisional Court ruled against Mr. Gouthro in his judicial review application. In other words, the court agreed with the decision of the Workplace Safety and Insurance Appeals Tribunal (WSIAT) that the age 65 cut-off for lost wages compensation was constitutional. In reaching their decision, the court made some key findings:

- The *WSIA* age cut-off treats older workers differently, but not unfairly under the *Charter*.
- The court acknowledged that the age 65 cut-off does create a distinction because of age, but decided it was not discriminatory in a constitutional sense.
- The purpose of the law is to replace lost wages, not to provide a lifetime pension. The WSIB system is designed to pay people for income they lose because of a work injury. The court said that it's reasonable to stop wage-replacement benefits at age 65 because most people retire and stop earning wages by that age. The cut-off, the court said, was based on real labour market data which showed that few Ontarians over age 65 were still working. The court said it was reasonable to base the system on that reality.
- The court said the age limit wasn't meant to suggest that older workers are less valuable or less capable. Instead, it was an "administrative line" drawn for practical reasons — to mark the end of a person's working life for the purposes of the compensation system.
- Even if the age-based cut-off had a negative effect on some people, it served a valid public purpose, since it helps the workers' compensation system stay financially sustainable. It was therefore a reasonable way to achieve a legitimate policy goal.

The court concluded that the cut off was not discriminatory under section 15 of the Charter and decided that even if the law did result in a distinction based on age, it was reasonable and based on available evidence.

Endnotes

[1] Leclerc, Karine. (2024). The poverty rate and low-income situation of older persons in Canada: An intersectional analysis. Statistics Canada. https://www150.statcan.gc.ca/n1/en/pub/45-20- 0002/452000022024002-eng.pdf?st=_XXQtJIj.

[2] Statistics Canada. Table: 14-10-0060-01 (formerly CANSIM 282-0051). Retirement age by class of worker, annual. January 27, 2025. Custom. https://www150.statcan.gc.ca/t1/tbl1/en/tv.action?pid=1410006001.

[3] René Morissette and Feng Hou. Employment by choice and necessity among Canadian-born and immigrant seniors. Statistics Canada. April 24, 2024. https://www150.statcan.gc.ca/n1/pub/36-28-0001/2024004/article/00002-eng.htm.

[4] Statistics Canada. Table 14-10-0327-01 Labour force characteristics by gender and detailed age group, annual. January 24, 2025. Custom. https://www150.statcan.gc.ca/t1/tbl1/en/cv.action?pid=1410032701.

[5] Freedom of Information Request Data from WSIB. 2025.

[6] *Workers Compensation Act* [RSBC 2019] Chapter 1 at s. 201(1)

[7] For example, see: A2102176 (Re), 2022 CanLII 62111 (BC WCAT), https://canlii.ca/t/jqh48.

[9] Paul Petrie, "Restoring the Balance: A Worker-Centered Approach to Workers'' Compensation Policy," March 31, 2018 at p. 50.

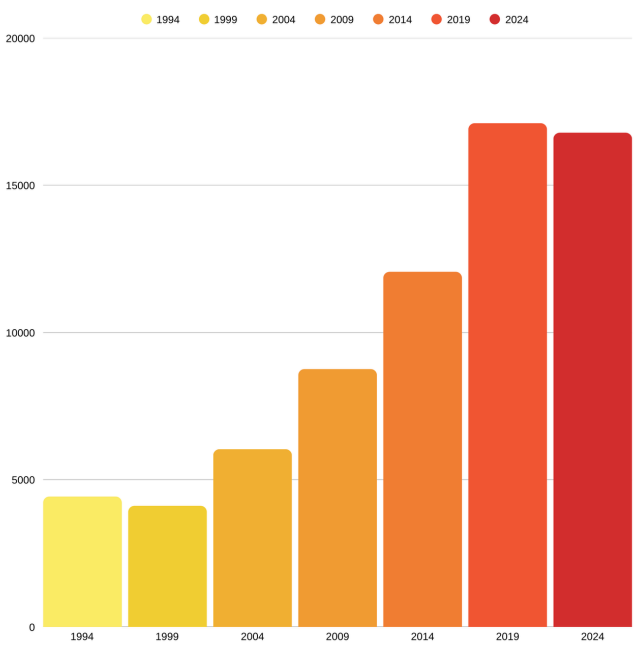
[10] *Workers' Compensation Act*, RSA 2000, c W-15 at s. 60.1, https://www.canlii.org/en/ab/laws/stat/rsa-2000-c-w-15/latest/rsa-2000-c-w-15.html.

[11] For example, see: Decision No.: 2020-0272, 2020 CanLII 42746 (AB WCAC), https://canlii.ca/t/j8fq4.

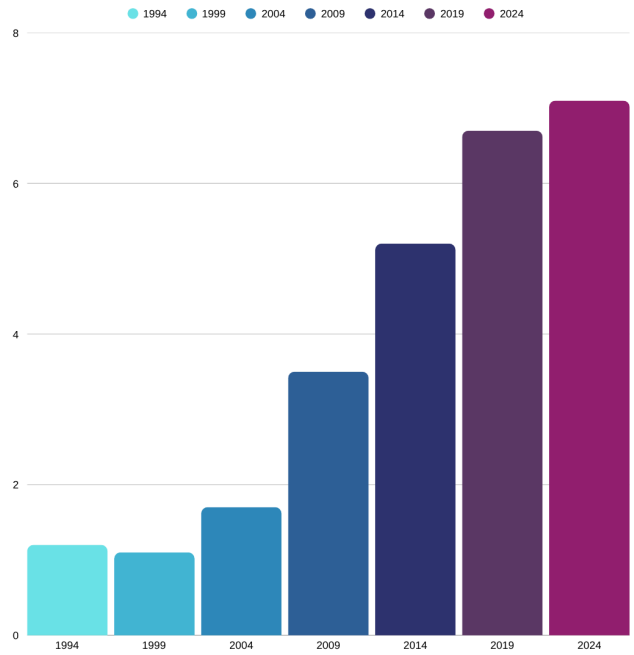
[12] Statistics Canada. Table 14-10-0327-01 Labour force characteristics by gender and detailed age group, annual. January 24, 2025. Custom. https://www150.statcan.gc.ca/t1/tbl1/en/cv.action?pid=1410032701.

63+ WSIB CLAIMS IN ONTARIO (5-YEAR INTERVALS)

Overall Claims



Percentage of Total Claims



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Working together to end age discrimination at the WSIB

This report was written by:

Injured Workers Community Legal Clinic
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November 2025

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