

Presentation to Parliamentary Committee on
Finance & Economic Affairs

Pre-Budget Hearings

Virtually in Northwestern Ontario
January 10, 2022

By Steve Mantis
Treasurer

Thunder Bay & District Injured Workers Support Group
Chair

Research Action Committee
Ontario Network of Injured Workers Groups
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Thank you for the opportunity to present to you today.

While I am active in a number of organizations including the:

- Thunder Bay & District Injured Workers' Support Group – Treasurer
- Ontario Network of Injured Workers' Groups – Research Action Committee – Chair
- Centre for Research on Work Disability Policy – Executive Committee Member
- Disability & Work Canada – Steering Committee Member
- New Directions Speakers School – Past Chair
- Community Conversations on Shaw Cable TV – volunteer producer and host

I am appearing today as a representative of the Thunder Bay & District Injured Workers' Support Group (TBDIWSG)¹ and our provincial organization, the Ontario Network of Injured Workers' Groups – Research Action Committee².

I have taken the liberty of including others' words and research in my submission. I don't claim any intellectual property rights and thank those that have come before me in sharing more articulate communications.

The three issues we'd like to raise today are:

1. the growing gap of income inequality in Ontario (and Canada).
2. the negative impact that is having on our democratic society that includes the reduction in public services.
3. to alert the government about our challenge to the United Nations under the Convention on the Rights of Persons with Disabilities (UN CRPD). Our submission to the UN (attached) identifies that the WSIB's practice of deeming is

¹ The Thunder Bay & District Injured Workers Support Group was founded in 1984. The geographic area we serve is approximately one-quarter million square miles. We are a group of workers (and family members) who have been injured or made sick on the job. We have first-hand experience of the WCB/WSIB system and know it needs improvement!

The Thunder Bay & District Injured Workers' Support Group's (TB&DIWSG) mission is to help create Dignity, Respect and Justice for Injured and Disabled Workers in the Workers' Compensation System by assisting and educating workers, injured workers, the public, our elected representatives and WSIB staff.

The organization has four main goals:

1. Provide information and support to injured workers;
2. Provide analysis of legislation and make recommendations for improvements and reform;
3. Educate each other and the general public; and
4. Lobby government and the WCB/WSIB to establish Justice for Injured and Disabled Workers.

² The TB&DIWSG is a member of the Ontario Network of Injured Workers' Groups which has member groups from all across Ontario.

in contravention of the international agreement signed by Canada.

1) Concerns about the corrosive effects of extreme inequality are nothing new. In the 4th century B.C., for example, Plato wrote that no person should be more than four times wealthier than any other, lest the divide lead to laziness among the rich and stifle opportunity for the poor.

He would not be very pleased, then, by a the report from the Canadian Centre for Policy Alternatives, which shows that the country's 100 highest-paid CEOs make more than 200 times the average income - a ratio unprecedented in Canada's history. Nor would he be impressed to learn that the two richest Canadians own as much wealth as the poorest 30 per cent combined.

We have seen this gap between rich and poor grow for the last three decades as year after year, Canadian governments have reduced the taxes that corporations pay. Since 1981, the corporate tax rate on net income (that is on their profit only) has been cut almost in half, from 50.9% to 26.5%. And even with this major decrease in corporate taxes, many corporations are not satisfied. Canada's top corporations often pay far less than the official average corporate tax rate. As revealed by a Toronto Star/Corporate Knights investigation, Canadian companies have used complex techniques and loopholes to reduce their tax bills by \$62.9 billion over the past six years.

Sixty years ago, corporations and individuals contributed approx. equal shares into the government coffers. Today, citizens contribute \$3.50 for every \$1 paid by corporations.

2) Examples of impacts of lack of public services:

- Service levels at the Workplace Safety and Insurance Board (WSIB) have gotten so bad that disabled workers find it impossible to reach decision makers regarding their care and benefits.
- Did you know that 65% of indigenous students in the District of Thunder Bay don't receive the support they need to graduate from High School?
- Public Mental Health Services have long waiting lists which means increased costs to the all of our society.
- The Thunder Bay Point-in-time Count found 474 people experiencing homelessness. The lack of affordable housing means greater costs to our community.
- Benefit levels for Ontario Works and Ontario Disability Support Program are so low that recipients can't afford a healthy diet which increases their risks of disease and accidents which translates into health care costs.
- The reduction in benefits and services at the WSIB means increased pressure on publically funded services and support – health care especially.

We submit that putting a greater focus on preventing the causes of poverty, injury and disease long term can see a significant return on investment. In order to fund the public services needed so critically, we recommend increasing taxes on corporate profit to

previous levels (40 years ago), bringing in a wealth tax on the richest members of our society and increasing WSIB premiums to cover the actual costs of workplace injury and disease.

3) **Deeming laws and practices as violations of the rights of people with work-acquired disabilities in Canada**

Executive summary

Employment injury benefits systems in Canada create harm and damage the human dignity of people with work-acquired disabilities. That people depend upon these “workers’ compensation” programs and their legal design as the “exclusive remedy” for all types of workplace injuries amplifies the adverse impact they can have upon human dignity. Canada has failed to meet the internationally-recognized social security standards on employment injury in several areas.³ Among the most pressing of these human rights problems is the practice of the “deeming” of people with disabilities by the workers’ compensation system. ONIWG makes this submission to the Committee on the Rights of Persons with Disabilities to report on the law and practice of deeming. We hope by providing detailed information about “deeming” that the Committee will be in a better position to raise this issue as a human rights concern with the Government of Canada.

The full submission is attached as Appendix B

Workers who are injured or made ill in the workplace are suffering as a result of

³ This submission focuses on the law and practice of deeming in the Canadian system of income security for the contingency of employment injury. Canadian researchers have also identified several other problems of concern in the workers’ compensation system, including problems linked to experience rating, the termination of benefits based on findings of pre-existing medical conditions, and legal gaps providing less than universal coverage, among other social challenges. On medical care see, for example, Antony Singleton et al (2017) *Bad Medicine: A report on the WSIB’s Transformation of its health care spending*. IAVGO Community Legal Clinic <http://iavgo.org/wp-content/uploads/2013/11/Bad-Medicine-Report-Final.pdf> retrieved on 11 June 2019. On experience rating issues see pages 139-144 in Bob Barnetson (2010) *The Political Economy of Workplace Injury in Canada*, Athabasca University Press, 286 pages. http://www.aupress.ca/books/120178/ebook/99Z_Barnetson_2010-The_Political_Economy_of_Workplace_Injury_in_Canada.pdf retrieved 15 June 2019. Gender disparities in workers’ injury compensation have been documented since at least the 1990s, including in Karen Messing (1998) *One-Eyed Science: Occupational Health and Women Workers*, Temple University Press, 264 pages. An extensive research program on Canadian workers’ injury compensation is led by Katherine Lippel, Canada Research Chair on Occupational Safety and Health Law, Faculty of Law at the University of Ottawa. See her team research website online at <https://droitcivil.uottawa.ca/research-chairs/occupational-health-safety-law/> retrieved on 15 June 2019.

the same mindset – that business needs more breaks.

The Conservative Government of Ontario has prioritized reducing rates for Corporations over service to injured and disabled workers. And to make matters worse, the recently passed Bill 27 will see the WSIB sending Billions of dollars to Ontario Corporations.

For years now, injured workers and frontline advocates have been sounding the alarm that Ontario's Workplace Safety & Insurance Board (WSIB) has been "getting its financial house in order" through austerity and cost-cutting measures thereby ignoring their mandate to help workers injured on the job. Whether it be from slashing compensation for lost wages, denying healthcare treatment and medication, reducing service delivery levels, denying benefits for occupational diseases or refusing to recognize mental health injuries, the cuts have come squarely on the backs of injured workers.

A broken workers' compensation system ... in implementing its austerity agenda, the WSIB has adopted the mindset of a private insurance provider. Just as insurance companies look to deny and cut claims wherever they can, the WSIB has become rigid, aggressive, and adversarial in trying to find ways to deny or terminate injured workers' claims.

We are seeking changes in WSIB policy and practice:

- 1) No cuts based on phantom jobs – Eliminate "Deeming".
- 2) Listen to injured workers' treating healthcare professionals.
- 3) Stop cutting benefits based on "pre-existing conditions".

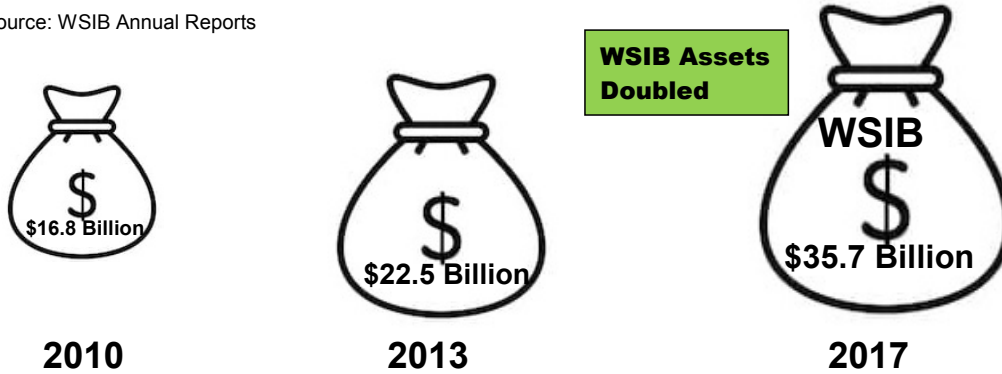
These address some of the WSIB's primary methods of cutting benefits and sending injured workers into poverty. In addition, the WSIB new service delivery model has created more barriers to the access of information and support for workers who they are supposed to serve.

Below is a quick look at WSIB financial numbers and the results for injured and disabled workers.

Workers' Compensation...Follow the Money

Ontario's WSIB: Richer than you think...

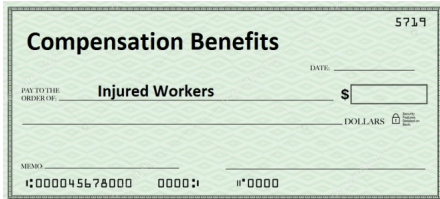
Source: WSIB Annual Reports



Ontario's Injured Workers: Poorer than you think

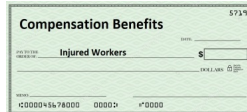
WSIB Benefit Payments

2010: 4.8 Billion



Injured Workers Benefits Cut in Half

2013: \$2.4 Billion

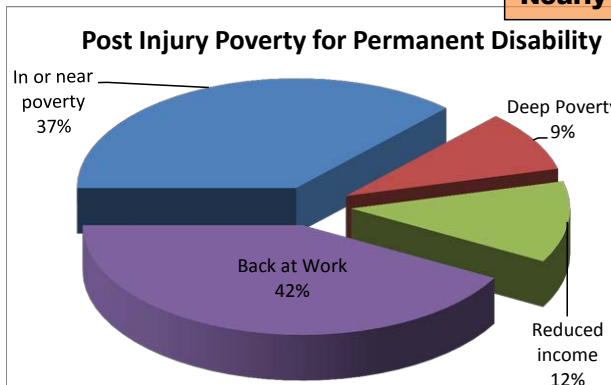


2017: \$2.3 Billion



Research Shows ...

Nearly 50% of Injured Workers in Poverty



Studies of Ontario injured workers with permanent impairments found that 58% have long term reduced earnings, 46% of permanently impaired injured workers live in or close to the poverty level and 9% live in deep poverty (Poverty status of worker compensation claimants with permanent impairments, Ballantyne et al 2015; Labour Market Earnings Recovery, Tompa 2017).

Ontario Network of Injured Workers' Groups Research Action Committee

Workers' Compensation...Follow the Money

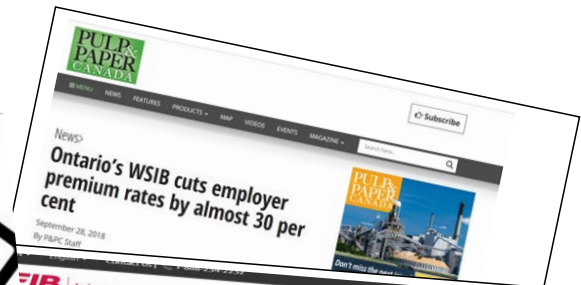
While Ontario's business community celebrates another year of reductions in the rates they pay for workers' compensation, \$2.8 Billion since 2017, Ontario's injured workers pay the price as benefits paid to injured workers are reduced to half of what they were in 2010.

2010 WSIB Benefits: 4.8 Billion

Injured Workers Benefits Cut in Half
\$2.3 Billion cut



2018 WSIB Benefits: \$2.5 Billion



\$2.8 Billion Savings*



Employers get cheaper insurance
\$2.8 Billion profit *

*Source: WSIB 2019 Economic Statement

In addition to elevated poverty levels, disproportionately high rates of injured workers also suffer from an array of mental health struggles following their injuries. A 2012 study found that nearly 50% of injured workers experienced symptoms of depression, while 37% had symptoms of anxiety. In many cases, dealing with the WSIB itself causes these mental health issues to develop. Many TBDIWSG members report that they are unable to even open mail or answer phone calls from the WSIB because of the intense anxiety and panic-like symptoms that are provoked by any interactions with the system.

Downloading costs onto public systems.

Another important consequence of the WSIB's cuts is that the costs of work injuries are being offloaded onto public systems. A common misconception is that the workers' compensation is funded by taxpayers. In fact, this is not true; the system is funded entirely by employer premiums and the WSIB's own investments.

Every year, however, thousands of injured workers are forced onto publicly funded systems like Ontario Works (OW), the Ontario Disability Support Program (ODSP), and CPP-Disability, when they are cut off of WSIB benefits. Similarly, when the WSIB refuses to pay for healthcare treatment for injured workers, those costs are shifted onto OHIP.

The reality is that work injuries are becoming a public burden precisely because the WSIB is trying to find ways to skirt its responsibilities.

Shamefully, those with the most severe and complex injuries, including mental health injuries, are the ones who bear the brunt of the WSIB's cost-cutting measures. The reason is simple: these injuries are the most expensive to deal with. Instead of being seen as human beings with a legal right to compensation and care workers who need the most support are seen as costs and liabilities, and are denied help.

Key Issues

1) No cuts based on phantom jobs — challenges the WSIB's practice of "deeming." In essence, deeming (also called "determining") is when the WSIB pretends an injured worker has a job that they do not in fact have. It then pretends that the worker is earning a salary from the non-existent job, and uses the invented salary as a justification to cut their benefits. Injured workers are frequently deemed to have phantom jobs even when they are medically unable to work, or unable to actually obtain employment. If a worker is unemployed, the WSIB will still pretend they are working and earning money, and cut their benefits accordingly.

2) Listen to injured workers' treating healthcare professionals — relates to the systemic problem of the WSIB ignoring medical evidence from injured workers' treating doctors and healthcare providers. Injured workers are frequently forced back to work before their healthcare professionals say it is safe to do so, and denied treatment or medication prescribed by their doctors. This puts workers at risk of re-injury, prolongs their

recovery, and is another means of cutting benefits. Research from the Institute on Work and Health (IWH) identified a re-injury rate of 45%.

3) Stop cutting benefits based on “pre-existing conditions” — calls for an end to the WSIB’s practice of blaming ongoing disabilities on “conditions” that it claims existed before the work injury. All too often, the “pre-existing conditions” that the WSIB points to never actually affected the person at all until they were injured at work. In many cases, they were never diagnosed by a doctor before the work injury, and never caused the person any symptoms – and yet the WSIB calls them the “real” source of the injury and terminates the worker’s benefits.

Prevention

Another major concern is the enforcement of Ontario’s Occupational Health and Safety laws. The Auditor General in a recent audit pointed out the many deficiencies with enforcement.

The numbers below represent the Ministry of Labour enforcement from 2014 - 2020. ⁴

Fiscal Year (April 1 – March 31)	Part I Tickets Issued *	Part III Prosecutions Initiated	Total Prosecutions
2014/2015	440	35	475
2015/2016	861	94	955
2016/2017	765	115	880
2017/2018	154	79	233
2018/2019	36	50	86
2019/2020	10	37	47

Prosecutions by Fiscal Year: 2015-2020

It is clear that enforcement of OH&S has taken a back seat since 2017 and we see accident rates claiming. Each accident has additional costs to our society.

⁴ <https://www.labour.gov.on.ca/english/es/pubs/enforcement/convictions.php>

We recommend an increase in the numbers and responsibilities of MOL's OH&S inspectors. Note: The Ministry of Labour Safety inspectors are funded thru the WSIB accident fund.

It just makes sense to prevent accidents before they happen. Presently the MOL does not have the capacity to visit most workplaces in Ontario. Annually less than 10% of workplaces are visited by OH&S Inspectors. If the government were to increase the MOL staff compliment that actually visit workplaces and finds ways for the various staff to support good workplace practices, whether it be OH&S or Employment Standards, we could achieve efficiencies.

As a long time gardener, I understand that our health and productivity are subjected to complex and inter-related systems. The story below can give us some insight that goes beyond the garden.

The Farmer and his Amazing Corn

There was a farmer who grew award-winning corn. Each year he entered his corn in the state fair where it won a blue ribbon. One year a newspaper reporter interviewed him and learned something interesting about how he grew it.

The reporter discovered that the farmer shared his seed corn with his neighbors. "How can you afford to share your best seed corn with your neighbors when they are entering corn in competition with yours each year?" the reporter asked.

"Why sir," said the farmer, "didn't you know? The wind picks up pollen from the ripening corn and swirls it from field to field. If my neighbors grow inferior corn, cross-pollination will steadily degrade the quality of my corn. If I am to grow good corn, I must help my neighbors grow good corn."

He is very much aware of the connectedness of life. His corn cannot improve unless his neighbor's corn also improves.

So it is in other dimensions. Those who choose to be at peace must help their neighbors to be at peace. Those who choose to live well must help others to live well, for the value of a life is measured by the lives it touches. And those who choose to be happy must help others to find happiness, for the welfare of each is bound up with the welfare of all.

The lesson for each of us is this: if we are to grow good corn, we must help our neighbors grow good corn. ~ Author Unknown

A productive and healthy Ontario is composed of adults and children that are productive and healthy. Over the last 40 years, we have seen the wealth that is created in our workplaces is not be shared with the vast majority of citizens/workers. Productivity has grown by over 50%, while median hourly wages have stagnated.

It has been those on top of the economic systems that have benefited while the majority of families have not.

Some recent media coverage discusses some of the impacts of income inequality and potential approaches we might pursue.

“There is much disagreement about the causes of rising inequality, but much less about its effects: the decline of trust and social cohesion, the threats to democracy, the impact on economic growth of shrunken demand. The astounding gaps that have emerged between the richest and the rest are not only unfair, but also dangerous in their unfairness.”

Translating those thoughts into the world of occupational health and safety and workplace injury & disease, we have a long way to go to truly support each other, as many injured and disabled workers can tell you.

In terms of the experiences of workers that get hurt or ill thru their work, we see the first part of our social safety net, Workers Compensation or the WSIB, being turned into a short term disability scheme. Created over 100 years ago, Sir William Meredith, (the one time leader of the Conservative Party) the father of Workers Compensation in Canada, laid out key principles.

The Meredith Principles:

- △ Compensation as long as disability lasts
- △ Collective Liability / Employer pays
- △ No fault
- △ Independent Agency
- △ Non-adversarial

Meredith believed that if you treated workers fairly, especially when injured, that social and economic stability would be the result. Unfortunately, these principles have been systematically eroded. And increasingly, workers are calling for the ability to sue their employers for injury and disease.

The evidence is overwhelming that people with disabilities face major barriers to employment with some 50% of us not able to find paid employment. Attached as Appendix A is an analysis done by the Ontario Network of Injured Workers' Groups Research Action Committee on employment outcomes compared to numbers of disabled workers who receive “wage loss” benefits.

As Professor Harry Arthur made clear in his 2010 report *Funding Fairness*, the Ontario Government has consistently interfered in the WSIB rate setting process in order to reduce employer assessments. This has in turn demanded a reduction in benefits to disabled workers in order to balance the WSIB budget.

Once again, government actions that have led to greater income inequality, benefiting primarily large corporations at the expense of the rest of society. While the costs for the tens of thousands of unemployed/underemployed disabled workers does not go away, corporations are no longer sharing that burden.

While there have been some modest steps to help these disabled workers by pegging their benefits to inflation as of January 2018, the many who receive little or no income because of the WSIB's practice of "deeming" are left behind. Deeming is the practice where the WSIB determines how much the disabled worker can potentially earn and then subtracting that from any future benefits, regardless of the actual employment outcome.

One step to address income inequality is to compensate workers who become disabled and are unable to find work, and hold corporations financially responsible to "share the wealth".

Social Assistance

Another area that needs to be addressed is social assistance. Despite recent changes, social assistance remains an outmoded system, designed in the 1990s to be deliberately inadequate, punitive, and coercive.

As a result of the structure and requirements of the programs, which are entrenched in law, people who receive supports actually become sicker, experience more social exclusion, and are less able to participate in the labour market.

We encourage the government to immediately move to increase the social assistance rates up to the poverty line quickly.

While addressing the needs of those on the bottom half of the income equation, we must look at the revenue needed to pay for these improvements.

Without the investment this year, the system will continue to impoverish people, keep them in poor health, increase their distance from the labour market, make it harder for them to participate in their communities, and limit their options and opportunities to build a better life for themselves.

We want to remind committee members that not acting has associated costs. Higher health care costs. Implications for the justice system. Lost productivity that results in between \$4 and \$6 billion in less income tax revenue. Costs of between 4% and 7.6% of GDP each year.

And we want to highlight the multiplier effect in the economy that comes from putting money in the hands of low income people. For every dollar invested, the economic return is \$1.30. That's almost as great a bang for the buck as investing in infrastructure.

Taxation

We have seen a major shift in public policy since the 1970s that has benefited the wealthiest in our society. We need those with the most resources to contribute the most to the public good. As the farmer with the award winning corn knows, we all move forward together or we all suffer.

Sixty-five years ago, people and corporations contributed equal amounts of income tax to the Canadian government.

Since then, the scales have tipped in the corporations' favour. Corporate taxes have been slashed and people have been forced to make up the difference.

In 2015/16 Canadians paid \$145 billion in income tax, while corporations paid \$41 billion.

It's time to begin to rebalance our sources of public revenue. We need to increase taxes on corporate profits and the wealthiest parts of our society. Just imagine the positive things we could do to create an inclusive caring society with an increase of 36% to overall tax revenue.

Appendix A

Analysis of the WSIB performance in recognizing actual wage loss and employment outcomes experienced by injured workers versus the deeming process.

2018

15,203 – 23,930 serious/permanent injuries per year that are recognized by WSIB with a Non Economic Loss (NEL) award (schedule 1 & 2 combined).⁵

2,814 - 3,429 serious/permanently injured workers received a long term locked in benefit ⁶

Ballantyne's research⁷ found :

- only 55% of people with a NEL are back to work 54 months' post injury or 45% unemployed and experiencing full wage loss
- 68.8% of injured workers with a NEL experience an average \$13,500+ annual wage loss
- and 42 % are in poverty or near-poverty

Tompa's research found at 10 years post injury:

- approx. 39% of injured workers receiving a NEL recover less than 75% of pre accident earnings
- approx. 19% recover between 75 - 99 % of pre accident earnings
- approx. 42% have recovered and some are making more than pre accident earnings.⁸

⁵ WSIB website on March 23, 2015 – Statistic Supplement to the 2013 Annual Report – covering from 2009 - 2013

⁶ WSIB website on March 23, 2015 – Statistic Supplement to the 2013 Annual Report – covering from 2009 – 2013 [drawing on data from a freedom of information request November 2014, these numbers are slightly larger ranging from 3897 to 4526 workers who receive a locked in benefit.]

⁷ Poverty status of worker compensation claimants with permanent impairments (2015) in Critical Public Health - Ballantyne et al

⁸ Institute for Work and Health Working Paper #350 Comparative benefits adequacy and equity of three Canadian workers' compensation programs for long-term disability
Tompa E, Scott-Marshall H, Fang M, Mustard C

- 58.3% of workers with a permanent disability (NEL) experience significant wage loss 10 years post injury⁹

Only 14 – 18.5 % of workers with serious, life long injuries who have a work related permanent disability are receiving wage loss benefits 72 months after injury.¹⁰

O'Hagan research reports: "The findings paint a troubling picture of the mental health of injured workers with permanent impairment. The general prevalence of mental health conditions in the sample is of concern, with more than one third of the sample reporting five out of nine mental health diagnoses or conditions; almost 50% reported symptoms of depressed mood and problems concentrating; and somewhat greater than half of the sample had CES-D scores above the suggested cut-off for clinical depression."¹¹

⁹ Labour-market Earnings Recovery Following Permanent Impairment from a Work Injury, Presenter/Principal Investigator: Emile Tompa
Policy Research and Action Forum, November 24, 2017

¹⁰ Determined by dividing the number of people receiving a lock in by the number of people receiving a NEL.

¹¹ Mental Health Status of Ontario Injured Workers With Permanent Impairments (2012) - O'Hagan et al - Canadian Journal Of Public Health

Appendix B

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IN UNITY THERE IS STRENGTH



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Deeming laws and practices as violations of the rights of people with work-acquired disabilities in Canada

Submission to the 22nd Session of the UN Committee on the Rights of Persons with Disabilities held 26 August to 20 September 2019 in Geneva, Switzerland¹²

CANADA

List of Issues Prior to Reporting

Wednesday 4 September 2019

489th meeting, p.m.

Ontario Network of Injured Workers' Groups

Approved by the ONIWG Annual General Meeting on June 19th, 2019 in Toronto

1. Introduction

The Ontario Network of Injured Workers' Groups (ONIWG) was founded in 1991. It brings together 22 local groups from across Ontario to focus on systemic issues facing injured and disabled workers. We are a democratic organization and volunteer led with no staff or significant funding. This is our second submission to the UN Committee on the Rights of Persons with Disabilities. Our previous submission was sent on October 6th, 2016. We also plan to share this submission with the UN Special Rapporteur on the Rights of Persons with Disabilities as a follow-up to her official visit to Canada of April 2-12, 2019.

¹² This submission has been prepared by the ONIWG Research Action Committee and Jeffrey Hilgert, Associate Professor of Industrial Relations, École de relations industrielles, Université de Montréal. We apologize in advance for any undetected errors or omissions. Please send any comments or corrections to < smantis@tbaytel.net >.

ONIWG is a provincial voice for workers who have been injured or made ill on the job. We are injured workers (and their families) who have had first-hand experience with the employment injury benefit system in our province, administered by the Workplace Safety and Insurance Board (WSIB). We see how the system fails too many workers across the Canadian province of Ontario. We refuse to accept the unfair system, and we take united action to demand human rights for people with work-acquired disabilities.

Whether it be through research and submissions to the WSIB and the government, or through organizing rallies and public mobilizations on the streets, ONIWG is committed to advocating for the human rights of all injured workers with work-acquired disabilities.

2. Executive summary

Employment injury benefits systems in Canada create harm and damage the human dignity of people with work-acquired disabilities. That people depend upon these “workers’ compensation” programs and their legal design as the “exclusive remedy” for all types of workplace injuries amplifies the adverse impact they can have upon human dignity. Canada has failed to meet the internationally-recognized social security standards on employment injury in several areas.¹³ Among the most pressing of these human rights problems is the practice of the “deeming” of people with disabilities by the workers’ compensation system. ONIWG makes this submission to the Committee on the Rights of Persons with Disabilities to report on the law and practice of deeming. We hope by providing detailed information about “deeming” that the Committee will be in a

¹³ This submission focuses on the law and practice of deeming in the Canadian system of income security for the contingency of employment injury. Canadian researchers have also identified several other problems of concern in the workers’ compensation system, including problems linked to experience rating, the termination of benefits based on findings of pre-existing medical conditions, and legal gaps providing less than universal coverage, among other social challenges. On medical care see, for example, Antony Singleton et al (2017) *Bad Medicine: A report on the WSIB’s Transformation of its health care spending*. IAVGO Community Legal Clinic <http://iavgo.org/wp-content/uploads/2013/11/Bad-Medicine-Report-Final.pdf> retrieved on 11 June 2019. On experience rating issues see pages 139-144 in Bob Barnetson (2010) *The Political Economy of Workplace Injury in Canada*, Athabasca University Press, 286 pages. http://www.aupress.ca/books/120178/ebook/99Z_Barnetson_2010-The_Political_Economy_of_Workplace_Injury_in_Canada.pdf retrieved 15 June 2019. Gender disparities in workers’ injury compensation have been documented since at least the 1990s, including in Karen Messing (1998) *One-Eyed Science: Occupational Health and Women Workers*, Temple University Press, 264 pages. An extensive research program on Canadian workers’ injury compensation is led by Katherine Lippel, Canada Research Chair on Occupational Safety and Health Law, Faculty of Law at the University of Ottawa. See her team research website online at <https://droitcivil.uottawa.ca/research-chairs/occupational-health-safety-law/> retrieved on 15 June 2019.

better position to raise this issue as a human rights concern with the Government of Canada.

This submission encourages the Committee to focus attention on the human rights of people with disabilities in Canada in the context of employment injury benefit systems. Employment injuries are traumatic injuries or diseases resulting from employment which result in temporary or permanent incapacity or death. The focus of this submission is the problem of permanent incapacity as a work-acquired disability. People with these types of work-acquired disabilities are entitled to receive income security going forward from the employment injury benefit system as it is one essential type of social security.

Deeming was introduced into Canadian law starting in 1979.¹⁴ It is a departure from human rights norms on income security. Deeming allows the adjudicators of employment injury benefits to cut income security benefits. These decisions are based on laws that permit the assumption of employment when in practice injured workers have not secured any employment and remain unemployed. Deeming permits dramatic cuts to employment injury benefits, as we will show in this submission. Deeming causes economic hardship for people with disabilities while employers pocket the savings. Cost-containment for the business community is prioritized over a human right to essential income security.

Deeming laws are based upon stigmatizing people with disabilities. In Canada, stigma is institutionalized in law based on the idea that people need to be incentivized to return to the job market. The long-term use of employment injury benefits is a strong stigma in Canadian society. Systematically, this stigma marginalizes people with work-acquired disabilities. The legal idea of the malingering injured worker plays a critical role in this.

Employment injury benefits are critical lifelines to ensure that people living with work-acquired disabilities are able to live a life with integrity and dignity.¹⁵ Employment injury

¹⁴ A report commissioned by the Ontario government in 1980 helped to introduce deeming into Ontario law. See pages 57-62 in Paul C. Weiler (1980) *Reshaping Workers' Compensation in Ontario*, Ontario Ministry of Labour, <https://ia600207.us.archive.org/28/items/reshapingworkers00weil/reshapingworkers00weil.pdf> retrieved on 11 June 2019.

¹⁵ The prevalence of work-acquired disabilities in Canada highlights the importance of this submission for people with disabilities in Canada: “Among Canadians aged 25 to 64 years with disabilities, over one-quarter reported that at least one of the underlying causes of their disability was work-related. This includes workplace conditions as well as accidents or injuries at work. Men were more likely than women to report a work-related cause of their disability (33% versus 22%)” from Page 13, *Textbox 2, For a quarter of those aged 25 to 64 years, the cause of their disability was work-related* in Stuart Morris, Gail Fawcett, Laurent Brisebois and Jeffrey Hughes (2018) *Canadian Survey on Disability: A demographic, employment and income profile of Canadians with disabilities aged 15 years and over, 2017*. Statistics Canada (Release date: November 28, 2018, Catalogue no. 89-654-X2018002, ISBN 978-0-660-28689-1) <https://www150.statcan.gc.ca/n1/en/catalogue/89-654-X2018002> retrieved on 17 June 2019.

benefits have for over 75 years been recognized by the UN multilateral system as an indispensable and irreplaceable type of income security that is an essential element of social security. The ILO's Philadelphia Principles on Income Security provide a baseline defining what constitutes dignified treatment in employment injury benefits systems.¹⁶ These long-standing principles have been recognized by more recent ILO international labour standards¹⁷ as well as several observations by expert UN human rights bodies.¹⁸

3. Reference to the specific articles of the Convention

Deeming in Canada violates Articles 4, 8 and 28 of the UN Convention on the Rights of Persons with Disabilities as well as the overall human right to social security. This submission asks the UN Committee on the Rights of Persons with Disabilities to identify the Canadian laws and practices of *deeming* in employment injury benefit systems as a human rights violation. We offer seven (7) recommendations for consideration by the Committee to ensure protection of the rights of people with work-acquired disabilities.

In Canada, provincial governments operate employment injury benefit systems. These programs are for compensating workers for work-related injuries and are the oldest form of social insurance in North America, dating back to the early 1900s.¹⁹ These programs provide a liability shield to employers and also crucially provide an income replacement benefit for work-acquired disabilities. Permanently disabled workers are particularly dependent upon the employment injury benefit systems as an income security system.

The 1980s ushered in a period of neo-liberal ideology across North America, including Canada. Key legal changes altered Canada's employment injury disability benefits in all provinces. Damaging restrictions on permanent disability pensions were enacted. Each

¹⁶ *Income Security Recommendation, 1944 (No. 67)*, adopted by the 26th Session of the International Labour Conference held in Philadelphia, provides Guiding Principles for protecting the human right to income security.

¹⁷ These include the *Convention concerning Benefits in the Case of Employment Injury, 1967 (No. 121)* and the *Recommendation concerning National Floors of Social Protection, 2012 (No. 202)*, both ILO labour standards.

¹⁸ The UN Committee on Economic, Social and Cultural Rights noted the importance of employment injury benefits in *General Comment No. 19 on the right to social security (art. 9)*, adopted in 2007. See paragraph 17 and footnote 13 of document E/C.12/GC/19 as well as several references to income security throughout the document. The ILO 2019 General Survey concerning the Social Protection Floors Recommendation, 2012 (No. 202), as a part of the Report of the Committee of Experts on the Application of Conventions and Recommendations, refers at several points to the continued relevance and importance of the *Income Security Recommendation, 1944 (No. 67)*.

¹⁹ For more information on the history of workers' compensation in Ontario, see Terence G. Ison (1996) A Historical Perspective on Contemporary Challenges in Workers' Compensation. *Osgoode Hall Law Journal* 34:807-833.

province in Canada changed laws to restrict the benefits for work-acquired disabilities.²⁰ New rules for benefits were created that focused on reducing costs and returning to the job market. Provinces now “incentivize” workers to return to work and were empowered in law to reduce or terminate benefits. People facing permanent disabilities also became stigmatized and lost income security. Stigmatization remains for people using benefits.

Article 4 – General Obligations

Article 4(1) of the CRPD notes “States Parties undertake to ensure and promote the full realization of all human rights and fundamental freedoms for all persons with disabilities without discrimination of any kind on the basis of disability.” Article 4(1)(c) also states that States Parties must undertake “To take into account the protection and promotion of the human rights of persons with disabilities in all policies and programmes”.

Canada fails to protect and promote the human rights of people with work-acquired disabilities, contravening Article 4 of the Convention. The human right to social security, specifically the right to income security for the contingency of employment injury, is not protected in Canada due to the conditions under which benefits may be suspended under the various provincial workers’ injury compensation laws, including in Ontario.

The Ontario Network of Injured Workers’ Groups recently published a report entitled *Phantom Jobs and Empty Pockets: What really happens to workers with work-acquired disabilities?*²¹ This report explains the challenges facing injured workers due to the law and practice of deeming. We cite parts of our *Phantom Jobs* study in this submission.

“Phantom Jobs” is the common phrase used to describe deeming in Canada. The story of April, an injured worker, explains how deeming works in the province of Ontario.

After her injury, April was unable to return to her job as a book binder, where she used to make \$112 per day after taxes. WSIB (the Workplace Safety and Insurance Board—the Ontario authority responsible for employment injury benefits) decided that she had the skills and ability to work as a receptionist. Although April is applying for many receptionist jobs, no one is hiring her. Still, the WSIB deems her to be earning \$98 per day as a receptionist. Since she was earning a net wage of \$112 per day as a book binder, her WSIB benefits are reduced to \$11.90 per day.²²

²⁰ The law regulating deeming in Ontario is found in Section 43 *Payments for loss of earnings* (Part VI Insured Payments) of the Workplace Safety and Insurance Act, 1997, S.O. 1997, Chapter 16, Schedule A. Similar legal provisions can be found in the employment injury benefits laws and regulations of the other Canadian provinces.

²¹ Ontario Network of Injured Workers’ Groups (2019) *Phantom Jobs and Empty Pockets: What really happens to workers with work-acquired disabilities?* Available online at https://injuredworkersonline.org/wp-content/uploads/2019/05/ONIWG_2019_PhantomJobsEmptyPockets.pdf retrieved on 11 June 2019.

²² Ibid. page 2.

In this example, April's income security benefit is reduced from 85% of her previous earnings of \$112 per day as a book binder to 85% of her lost earnings AFTER she is "deemed" by the authorities as *employed* as a receptionist. This calculation is made in two steps by the Workplace Safety and Insurance Board in the following manner:

Step One: \$112 — \$98 = \$14 as a result \$14 is April's new lost earnings each day

Step Two: \$14 X 0.85 = \$11.90 as the legislated income replacement rate is 85%.

This process of "deeming" is the attribution of a "phantom job" to people having work-acquired disabilities. In the case of April, she never did find work as a receptionist. This is a key part to understanding deeming: The calculation was simply an administrative determination by the Workplace Safety and Insurance Board. April's legal entitlement to income security benefits should be \$95.20 per day (85% of \$112). Because the WSIB has "deemed" her as employed in the labour market, however, she receives \$11.90 per day. Converted to a monthly rate, this leaves April with only \$257.00 of income per month.

In Ontario, the WSIB refers disabled benefit claimants to a specialized service called Work Transitions. Similar services exist in other Canadian provinces. Work Transitions assesses each claimant and provides a "work transition plan" to promote the public policy that claimants return to the active labour market. Roughly 4,350 workers with disabilities are referred into Work Transitions each year.²³ Public data does not provide a precise number of the workers that are "deemed" by the WSIB. In the ONIWG *Phantom Jobs* report, we estimate that it may be more than half of these 4,350 cases.

Article 8 – Awareness-raising (stereotypes, prejudices and harmful practices)

Under Article 8(1)(b) of the CRPD, State Parties agree to adopt immediate, effective and appropriate measures "To combat stereotypes, prejudices and harmful practices relating to persons with disabilities" and to combat stereotypes "in all areas of life".

Canada has failed to combat stereotypes about people with work-acquired disabilities. In fact, in law and in practice, the Canadian laws and policies on employment injury benefits promote the stigmatization of people with work-acquired disabilities. This stigma is institutionalized in employment injury law through the legal assumption that claimants must coercively be "incentivized" to return to work. Canada is in violation of Article 8 of the Convention through these laws and administrative acts of commission.

A clear illustration of how stigmatization has been institutionalized for people with work-acquired disabilities in Ontario is found in a recent decision of the Ontario Superior Court of Justice. In this case, Dean Ferreira was a labourer at a wall forming business. At the age of 31 he was injured at work after receiving a blow with a hammer to his knee, suffering a soft tissue injury that developed into a series of complex medical issues including a chronic pain disorder and psychiatric illness. The original injury was

²³ Ibid. page 4.

in April 2005. After a long series of appeals and obligatory medical examinations that continued until July 2015, the Workplace Safety and Insurance Appeals Tribunal held that Mr. Ferreira was not entitled to loss of earnings benefits after September 2, 2005. In its decision, the Tribunal attacked Mr. Ferreira's credibility, finding that his statements were being exaggerated, embellished with overstatements of his pain and impairment.

As the WSIAT (the appeals tribunal) had ignored all medical evidence in the case, the decision was appealed to the Ontario Superior Court of Justice. The Superior Court of Justice in a decision of May 5th, 2019, found the Tribunal decision to be unreasonable and ordering a new hearing.²⁴ The decision chronicles how deeply stigma has been institutionalized in Ontario. The notion of "malingering" is integrated in the evaluation of claims, even where there is no medical evidence that disputes that a disability exists.

A selection of the higher court's reversal decision describes this process of stigma:

52. The essence of a chronic pain disorder of the kind that the Applicant is suffering from is that there are psychological factors that contribute to the symptoms experienced. Assessing whether someone is suffering from the disorder or simply malingering a psychiatric illness is an essential aspect of making the diagnosis in question. All of the medical professionals who assessed the Applicant made the diagnosis and did not express a concern that he was malingering or that further tests needed to be administered to see if he was malingering. The Tribunal made its own observations and decided that malingering was a concern and that the Applicant was exaggerating and embellishing his condition. It did not have the medical expertise to make this assessment, and there was no medical opinion before it that it could rely on in support of its conclusion.²⁵

The decision of the Ontario Superior Court of Justice does not contest the use of the "malingering" concept. The court ruled the Tribunal erred without medical support for a finding of malingering. The decision illustrates the depth of institutionalized stigma in the employment injury benefit system in Ontario. Malingering as a concept is written in law.

Stigmatizing people with work-acquired disabilities is an important factor for deeming. When disabled claimants are deemed employable, a fear of "malingering" helps justify the decision. If someone is deemed as employable but is unemployed, for example, this stigma is legal evidence to explain why they are not working. The use of malingering is pervasive in Canadian workers' compensation. It is used to restrict benefits to cut costs for employers and it is written into provincial laws. The human values and assumptions that underlie the notion of malingering have undercut human rights in Canadian society.

Article 28 – Adequate standard of living and social protection

²⁴ Note in this timeline how long the benefit claimant has been engaged in administrative appeals and reviews as the initial injury of Mr. Ferreira was in April 2005. Even after the Ontario Superior Court of Justice decision, the file for employment injury benefits continues to be open and another hearing has been scheduled 14 years after the initial workplace injury. This system is described as one that re-injures workers long after their initial work injury.

²⁵ Ferreira v. Workplace Safety and Insurance Appeals Tribunal, 2019 ONSC 3437 (CanLII), paragraph 52, <http://canlii.ca/t/j0v21> retrieved on 11 June 2019.

Article 28(1) of the CRPD says that “State Parties recognize the right of persons with disabilities to an adequate standard of living for themselves and their families ... and shall take appropriate steps to safeguard and promote the realization of this right without discrimination on the basis of disability.” Furthermore, Article 28(2) reads “State Parties recognize the right of persons with disabilities to social protection and to the enjoyment of that right without discrimination on the basis of disability, and shall take appropriate steps to safeguard and promote the realization of this right....”

Canada has failed to ensure income security in cases of employment injury for people with work-acquired permanent disabilities. International human rights principles of social security on employment injury benefits, elaborated clearly in the Philadelphia Principles on Income Security²⁶ which have been accepted broadly across the UN human rights system²⁷ are violated due to deeming laws and practices in provincial employment injury benefit systems. The first Guiding Principle of income security is that “Income security schemes should relieve want and prevent destitution by restoring, up to a reasonable level, income which is lost by reason of inability to work....”²⁸ The practice of deeming in Canada violates internationally-recognized safeguards of income security by imposing severe conditions that arbitrarily suspend the income benefits of people facing work-acquired disabilities. Income security benefits are in principle to be set based on one’s prior income lost, meaning social assistance is not an equal substitute.²⁹ The result is

²⁶ See footnote 5.

²⁷ See footnotes 6 and 7.

²⁸ Article 1 of the ILO *Income Security Recommendation, 1944 (No. 67)*, referenced in the *travaux préparatoire* as the *Philadelphia Principles of Income Security*. Notably, “Labour is not a commodity” was also added to the ILO’s Constitution at the same conference. Article 1 states a basic principle underlying the human right to income security in the context of employment injury benefits, that income security should be based on income lost. This is often rejected as an idea by provincial governments in Canada. Ontario, for example, commissioned a report by a Toronto-based private accounting consultancy firm in June 1978 arguing that a “right to a post-accident standard of living fully equivalent to the pre-accident standard of living” was unacceptable due to the danger of malingering. Malingering – to exaggerate or feign an illness or injury to escape work – was raised by successive governments as a reason to curtail these benefits as malingering “took away the incentive of injured workers to return to work.” For an account of this history and the institutionalization of stigma in Canadian workers’ injury compensation, see Robert Storey (2006) *Social Assistance or a Worker’s Right: Workmen’s Compensation and the Struggle for Injured Workers in Ontario, 1970-1985*, *Studies in Political Economy*, 78:1, 67-91, DOI:10.1080/19187033.2006.11675102.

²⁹ This key distinction is recognized in ILO Recommendation No. 67 (1944) and in Article 9 of the International Covenant on Economic, Social and Cultural Rights (the right of social insurance is a component of the human right to social security). General Comment No. 19 on the right to social security under Article 9 (E/C.12/GC/19, Adopted 23 November 2007) of the Committee on Economic, Social and Cultural Rights elaborates the right “to access and maintain benefits... without discrimination in order to secure protection” from “employment injury...” (para 2.). These are income security rights for persons with disabilities. Article 28 of the CRPD has been

that provincial employment injury benefit systems are causing declining standards of living in Canada as deeming impacts people with work-acquired disability *exclusively*.³⁰

The *Phantom Jobs* report illustrates how deeming creates declining standards of living for injured workers in Ontario. Here is the story of Harvey, a highrise window cleaner.

Harvey worked as a highrise window cleaner. In 1995, the clips on his ladder extension broke, and he fell 44 feet. His right foot took the full impact of the fall, shattering his ankle and turning his heel into dust. A year later, he managed to return to his job on a rebuilt foot.

In July 2009, though, Harvey sustained another injury to the same foot. He couldn't walk and needed another surgery. Harvey was still waiting to see a surgeon when the WSIB deemed him able to work as a parking lot attendant or light assembler – jobs that were not actually suitable or available to him. With his phantom job and deemed wage, Harvey's compensation was reduced to \$419 per month (*less than \$20 per day, much less than he earned before his injury*). He and his wife, Evelyn, were forced onto social assistance. Harvey had never been put in this kind of position before. He started working at the age of 15 and was proud of that. At 18, he started his career as a highrise window cleaner and loved every moment of it. He felt ashamed that he was no longer able to provide for his family. Their debt grew larger with each missed rent and utility payment and they were forced to rely on food banks.

Harvey has now had four surgeries on his foot. The financial fallout from his phantom job began while waiting for the first surgery. His ankle still has an S shape to it, and he requires a custom brace, orthotic shoes and boots, a four-post cane, and a mobility scooter. He rates his pain at 8 out of 10 every day. Harvey and Evelyn's life will never return to what it was before the workplace accident. Their financial future is one of unending poverty, brought on by the WSIB's practice of deeming. Harvey didn't just lose his ability to work; he lost the ability to live his life as he'd planned. As Evelyn says, "the WSIB is a 'safety net' full of holes big enough to drop a highrise window cleaner and his spouse through."³¹

The laws and practices of deeming in Canada create poverty among people struggling with work-acquired disabilities. Deeming happens in all provincial systems. It denies

noted as creating "an obligation for States parties to take appropriate measures to ensure that persons with disabilities receive equal access to mainstream social protection programmes and services." See page 47, Cataline Devandas Aguilar, United Nations Special Rapporteur on the rights of persons with disabilities, 2017, *The Human Right to Social Security: Social protection and persons with disabilities, International Social Security Review*, Volume 4, Issue 4: 45-65.

³⁰ As the conclusion of one study on workers' compensation law in Ontario also noted, "It is difficult to escape the conclusion that workers' compensation has failed many injured workers, especially those with permanent disabilities who are unemployed." See page 146 in Andrew King (2014) *Making Sense of Law Reform: A Case Study of Workers' Compensation Law Reform in Ontario, 1980-2012*. LL.M. thesis. Faculty of Law, University of Ottawa.

³¹ Page 5. Ontario Network of Injured Workers' Groups (2019) *Phantom Jobs and Empty Pockets: What really happens to workers with work-acquired disabilities?* Available online at https://injuredworkersonline.org/wp-content/uploads/2019/05/ONIWG_2019_PhantomJobsEmptyPockets.pdf retrieved on 11 June 2019.

people the right to basic income security for the contingency of employment injury. It is important to note that several disability rights organizations are working with legislators to try to stop the practice of deeming. One Private Member's Bill was introduced in the Legislative Assembly of Ontario, receiving its first reading on 27 May 2019. It would amend Section 43 of the Workplace Safety and Insurance Act to end deeming.³²

The systemic impact of deeming in Ontario can in part be observed in statistics from two major social assistance programs: Ontario Works, a general social assistance program, and the social assistance program for people with disabilities, Ontario Disability Support Program. In Ontario, hundreds of people claiming social assistance benefits each month also report receiving WSIB benefits, an indicator that WSIB income deeming is keeping people with work-acquired disabilities below poverty thresholds for social assistance. In the period from 2003 to 2017, the average reported monthly cases of the claimants receiving WSIB benefits was 657 for Ontario Works and 3,264 for ODSP.³³

4. Proposed recommendations

The following recommendations have been developed in consultation with injured workers in Ontario. We ask the Committee to study and consider these suggested recommendations for Canada. These seven (7) recommendations aim to support the fundamental protection of the human right to income security for all people with work-acquired disabilities. These recommendations are followed by questions for the Government of Canada that, if answered, can help legislators implement the changes.

Recommendation 1 – *Ensure that employment injury benefit systems are based upon human rights values exclusively, not the values of cost-containment for employers. Integrate human rights values into the administration of employment injury benefits.*

³² An Act to amend the Workplace Safety and Insurance Act, 1997 in respect of compensation for loss of earnings, Respecting Injured Workers Act (Workplace Safety and Insurance Amendment), 2019. Mr. W. Gates, Private Member's Bill, Bill 119, 1st Session, 42nd Legislature, Legislative Assembly of Ontario. <https://www.ola.org/en/legislative-business/bills/parliament-42/session-1/bill-119> retrieved on 11 June 2019.

³³ *Ontario Works and ODSP – Average Monthly Cases, Cases in receipt of WSIB and Cases with a WSIB Assignment*, Fiscal Years 2003-2004 to 2016-2017. Averages are calculated from the table of averages prepared by the Ministry of Community and Social Services, SDMT, SAMS. A case refers to a single individual or a family unit on social assistance (e.g. a family on social assistance is counted as one case). The table reports that the WSIB assignment numbers are subject to change as information on WSIB assignments are entered with a time-lag, resulting in lower counts in more recent years. Fiscal year 2014-2015 combines Service Delivery Model Technology data from April to October 2014 with Social Assistance Management System data from November 2014 to March 2015.

The Government of Canada last studied the action required to implement the ILO's international labour standards on employment injury benefits in 1972.³⁴ Considering the Philadelphia Principles of Income Security (Recommendation No. 67) as well as other internationally-recognized human rights of people with disabilities and the human right to social protection, when will the Government of Canada update this report to study the current laws and practices in all provinces as they pertain to protecting income security in cases of work-acquired disability?

Recommendation 2 – *End the deemed wage loss system. Prohibit cutting benefits for people with work-acquired disabilities based on the notion of employment prospects with no actual employment. Base benefits exclusively on actual pre-injury wage loss.*

What actions have been taken by the Government of Canada to ensure that people with work-acquired disabilities receive adequate income security? What actions have been taken by Canada to monitor and protect against abuses in workers' compensation at the provincial level, including the practice of deeming?

Recommendation 3 – *End the stigmatization of the use of employment injury benefits faced by people with work-acquired disabilities. Challenge the assumptions that people with disabilities must be incentivized to return to work with an income penalty. Remove "malingering" as a notion from Canadian society and from each of the provincial laws.*

What actions have been taken by the Government of Canada to ensure that people with work-acquired disabilities are not stigmatized in Canadian society? Has the government studied the impact of the provincial laws on the concept of malingering? In Canada, are laws on return to work being used to unjustly end entitlements to income security benefits by people with work-acquired disability?

Recommendation 4 – *Provide a transparent accounting of all claimants that have been deemed in all provinces. Revise past benefit reductions for people with work-acquired disabilities who have had income benefits reduced due to "deemed" job assessments.*

How many people with work-acquired disabilities in Canada have been deemed as being employed or employable under provincial systems when the person has held no actual work or employment? How many of these cases of deeming have resulted in the re-evaluation of earnings and reduced income security benefits?

Recommendation 5 – *Assess and eliminate disparities based on gender, race and immigration status in the administration of benefits for persons with disabilities. Take special measures to end hardships faced by immigrants due to deeming practices.*³⁵

³⁴ Labour Canada. 1971. *Employment Injury Benefits: Action required in Canada to implement standards adopted by the International Labour Organization as regards employment injury benefits*. Ottawa: International Labour Affairs Branch, Canada Department of Labour. 271 pages.

³⁵ Newspapers have documented the obstacles facing temporary foreign workers in Canada who become injured at work and then seek WSIB benefits. See Sara Mojtahedzadeh, Oct. 5, 2017,

Among the people having been deemed by the provincial systems, what disparities exist based on the gender, language spoken or immigration status of the claimant? What actions have been taken to ensure the protection of these groups where disparities in access to income security benefits exist? What actions have been taken to ensure the basic human right to income security for employment injury of migrant workers who may lose their Canadian work visas after having a work-related injury while in Canada as temporary foreign workers?

Recommendation 6 – *Maintain adequate funding for the legal aid services to injured workers. Stop the cuts to legal aid as proposed by the province of Ontario in June 2019, cuts disproportionately targeting legal aid clinics for injured workers with disabilities.*³⁶

What actions have been taken by the governments of Ontario and Canada to study the impact on people with disabilities of the proposed deep cut in funding to legal aid services? How does Ontario plan to ensure future access to justice and income security benefits for people with work-acquired employment injuries?³⁷

Tribunal slams WSIB practice that cuts benefits to injured migrant workers, *Toronto Star*, <https://www.thestar.com/news/gta/2017/10/05/tribunal-slams-wsib-practice-that-cuts-benefits-to-injured-migrant-workers.html> retrieved on 15 June 2019.

³⁶ The government of Ontario announced that their 2019-2020 provincial budget would cut \$133 million from Legal Aid Ontario. Several community groups have recently denounced this decision and called on the government to reverse the cuts which were targeted disproportionately at the legal clinics serving injured workers. See Injured Workers Online, June 12, 2019, *Legal Aid Ontario cuts specifically target injured worker services*, <https://injuredworkersonline.org/legal-aid-ontario-cuts-specifically-target-injured-worker-services/> retrieved on 15 June 2019. In 1998, the Ontario government enacted the *Legal Aid Services Act* in which the province renewed and strengthened its commitment to legal aid. The Act established Legal Aid Ontario (LAO), an independent but publicly funded and publicly accountable non-profit corporation, to administer the province's legal aid program. See Legal Aid Ontario, *About* section, <https://www.legalaid.on.ca/en/about/default.asp> retrieved 15 June 2019. Legal Aid Ontario has dedicated legal clinics for injured workers including people with work-acquired disabilities with low-income who use the services of these clinics extensively. The recent budget cut announcement by the Ontario government cuts these dedicated clinics for injured workers by 22% versus 1% to 2% cuts for other clinics.

³⁷ On June 14, 2019, Injured Workers Community Legal Clinic in Toronto issued a news release on the impact of these budget cuts on injured workers in Ontario. It describes the dire situation imposed by the Minister of Justice: “On June 12th Injured Workers Community Legal Clinic was informed that our clinic’s budget was reduced by 22% retroactive to April 1st. As one of the “worker focused” specialty clinics in Ontario, we received one of the deeper cuts as LAO implements the Ford government’s first round of legal aid funding reduction. Larger cuts have been promised for next year. While a cut of 22% sounds significant, it is worse than it seems. Because the 22% cut is retroactive to April 1st, it will mean an actual reduction of much more than that to our funding for the remaining fiscal year. The magnitude of this cut means that the clinic will have to reduce staff and services. We are facing a layoff of 40% of staff and even

Recommendation 7 – *Devise just financing mechanisms that satisfy the human rights obligation to ensure income security for people with work-acquired disabilities. In order to balance the conception that premiums for employment injury benefits are burdens to society, governments should recognize in policy that these income security premiums, even when paid by employers, are valued by Canadians as public goods and a part of the total wages and benefits earned by workers in the course of work and employment.*

What actions are being taken in Canada to ensure financing mechanisms that protect and sustain the human right to income security for all people with work-acquired disabilities? How is the Government of Canada raising awareness of compulsory social insurance as a public good human rights obligation in general as well as a human rights entitlement for people with work-acquired disabilities?

then, there would not be enough savings to absorb the cuts. After 50 years of serving the injured worker community, future services are uncertain. LAO administrators were explicit that the “worker clinics” had been targeted because of our law reform and community development work.... The cuts will reduce direct client service and adversely impact particularly disadvantaged groups. The clients served by the worker focussed clinics are people with disabilities, most of them permanent. Most of our clients struggle with mental health issues and poverty, and many additional barriers including language, race, gender and citizenship status. We have served our community for 50 years and we will continue as best we can, representing and supporting people with disabilities whose life has been disrupted by workplace injury and illness.” Injured Workers Online, June 14, 2019, *IWC: cuts will reduce services to injured workers*, <https://injuredworkersonline.org/iwc-cuts-will-reduce-services-to-injured-workers/> retrieved 15 June 2019.