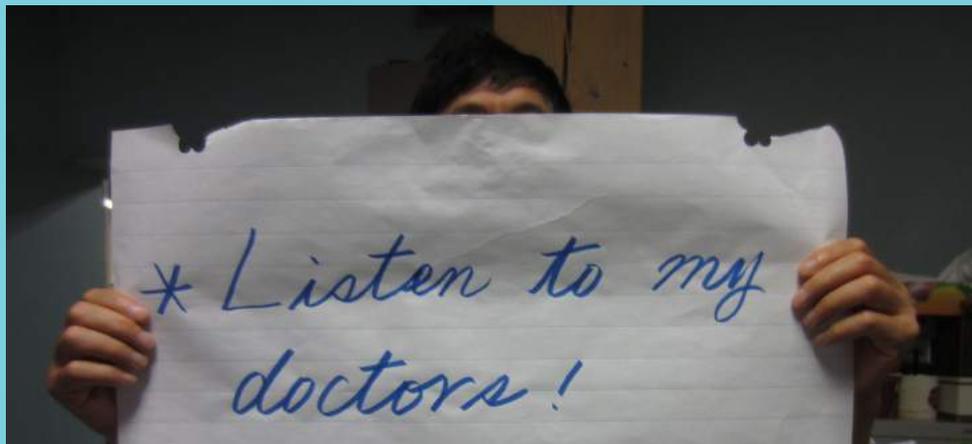


REAL HEALTH CARE FOR

injured workers



CAMPAIGN BACKGROUNDER
OCTOBER 2017

FAIRNESSFORINJUREDWORKERS.ORG

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October 2017

*Pay for
Treatment.*

*Listen to
Treating Doctors.*

*Protect
Marginalized
Workers.*

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“Real Health Care for Injured Workers”

CAMPAIGN BACKGROUNDER

The Workplace Safety and Insurance Board (WSIB) is forcing many disabled workers into crisis over their health care.

The WSIB’s “Better at Work” initiative aggressively pushes injured workers back to work against the advice of their treating doctors. The WSIB also ignores doctors’ treatment recommendations, claiming that it is not necessary health care.



The result is devastating. Injured workers cannot get the treatment and time to heal that their doctors say they need. They are falling into poverty, unemployment, ill-health and mental instability.

The WSIB is supposed to objectively determine health care entitlements. However, Ron Ellis, former chair of the independent appeals tribunal concluded the WSIB has a culture of “proactive denial” and that the WSIB’s “adjudicative factual findings are routinely not evidence-based.”^[1]

Injured workers groups, immigrant rights groups, health care providers, legal clinics, labour organizations, private bar advocates, and concerned community members are calling for change.

The Ontario government should pass legislation to ensure that people injured at work can follow the advice of their doctors. The *Workplace Safety and Insurance Act* needs to be strengthened, and brought in line with Quebec legislation. To that end, the government should:

Amend the *Workplace Safety and Insurance Act* so that the treating doctor confirms that the work is safe.

AND

Amend the *Workplace Safety and Insurance Act* so that workers get the treatments their doctors prescribe.

Treating doctors must confirm that work is safe.

It is vitally important for the legislature to give Ontarians the assurance that if they are injured at work, the WSIB will listen to their health care providers about when it's safe to return to the workplace. This assurance is poorly lacking.

In June, IAVGO Community Legal Clinic published *No evidence: The decisions of the Workplace Safety and Insurance Board*.

In that report, IAVGO analyzed the 2016 decisions of the Workplace Safety and Insurance Appeals Tribunal and found that in 110 cases, the WSIB failed to listen to workers' treating health care professionals about the safety and appropriateness of return to work.

Ontarians need to know that if they get injured at work, they can follow their doctor's advice about when to go back.

The Tribunal concluded that the WSIB:

- Disregarded medical opinion about return to work;
- Wrongly required workers to disregard medical advice;
- Endangered workers (during return to work) by placing them at risk of re-injury;
- Disregarded psychological safety in return to work; and,
- Made decisions that were illogical or unreasonable.^[2]

The publication of *No Evidence* is just the latest in a series of outcries from concerned stakeholders. In 2015, Dr. B. Steinnagel launched a lawsuit against the WSIB because her employer, a medical reviewing agency, fired her when she refused to change her medical opinion to one the WSIB wanted to hear.^[3] And, in December 2015, a group of doctors and advocates produced a report untitled *Prescription Overruled*, which denounced the WSIB for failing to provide adequate health care services to their patients and for ignoring treating medical professionals.^[4] Stakeholders have lost confidence in the system and are sounding alarm bells about the way WSIB treats medical evidence.

It's time for the government to step in. Ontarians need to know that if they get injured at work, they can follow the advice of their doctors – especially in something as crucial as when it's safe to return to work.

Workers must get the treatments their doctors prescribe.

The *Workplace Safety and Insurance Act* requires the WSIB to pay for necessary, appropriate and sufficient health care expenses and says that workers are entitled to make the initial choice of health care professional. This is not happening.

In May, IAVGO published *Bad Medicine: A report on the WSIB's transformation of its health care spending*. *Bad Medicine* shows that the WSIB has significantly cut health care benefits to injured workers and is increasingly taking patient care out of the hands of workers' doctors.

Ontarians need to know that if they get injured at work, the WSIB will fund treatment their doctors prescribe.

As detailed in *Bad Medicine*, the WSIB is:

- Significantly cutting prescription drug benefits that affect thousands of injured workers per year;
- Capping the length of treatment regardless of the worker's type of injury or outcome;
- Imposing diminishing fee structures in some cases so that health care providers are paid less for each treatment after the first four weeks;
- Paying health care providers up to 33% less if they advise the worker cannot return to their pre-injury job; and,
- Shifting health care spending away from services whose sole focus is patient welfare, and towards services, heavily controlled by WSIB, that are structured to drive down the costs of benefits paid to injured workers.

Bad Medicine also shows that the primary measures the WSIB uses as evidence of improved health outcomes – the reduction in the incidence and severity of permanent impairments – are the result of changes to the WSIB's adjudication practices. They constitute a cut in benefits themselves, rather than a reflection of improved health care.^[5]

Injured workers and their doctors are frustrated because injured workers are not getting the health care they need. Ontarians need to know that if they get injured work, the WSIB will fund treatment their doctors prescribe.

Amend the Act.

In Ontario, as it currently stands, there is incredible pressure on injured workers to return to work immediately after an injury.

How return to work currently works in Ontario:

The *Workplace Safety and Insurance Act* says an employer must attempt to provide suitable work for the injury that, where possible, restores the worker's pre-accident earnings. The worker has a duty to cooperate in this process by doing modified work if it's suitable and available.

Employers are heavily incentivized to offer modified work immediately after an injury because if the worker has any lost time, their premium rates increase. WSIB, as a systems administrator, is also heavily incentivized to push workers back to work immediately to avoid paying benefit costs. As a result, WSIB often ignores doctors who say injured workers need time to heal or that the work the employer offers is unsuitable.

How return to work currently works in Quebec

The workers' compensation act in Quebec is based on a similar goal of returning injured workers to suitable and available employment. However, s. 179 of the Quebec Act requires the worker's physician to certify that:

- (1) the worker is reasonably fit to perform the work;
- (2) the work, despite the worker's injury, does not endanger his health, safety or physical well-being; and
- (3) the work is beneficial to the worker's rehabilitation.

There is also an appeals process for workers who disagree with the decision of their doctor and the worker is not bound to do the work assigned him by his employer until the report of the physician has been confirmed by a final decision.

Amending the Act

The legislature should amend the Act to mirror the Quebec legislation. Given the crisis injured workers are facing in getting health care their doctors recommend, the legislature should also amend the s. 33 (1) to clarify that "necessary, appropriate and sufficient health care includes health care as prescribed by the worker's treating physician."

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[2] IAVGO Community Legal Clinic (2017). *No evidence: The decisions of the Workplace Safety and Insurance Board*. Toronto: IAVGO.

[3] Ontario Federation of Labour and Ontario Network of Injured Workers' Groups (2015, November 5). *Prescription Over-ruled: Report on how Ontario's Workplace Safety and Insurance Board systematically ignores the advice of medical professionals*. Toronto: OFL and ONIWG.

[4] Ibid, Ontario Federation of Labour and Ontario Network of Injured Workers' Groups, 2015.

[5] Singleton, A. and IAVGO Community Legal Clinic (2017). *Bad medicine: A report on the WSIB's transformation of its health care spending*. Toronto: IAVGO.

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Media Articles

1. **New WSIB policy on mental health will set workers back decades, critics say.** *Toronto Star*. October 15, 2017.
2. **Tribunal slams WSIB practice that cuts benefits to injured migrant workers.** *Toronto Star*. October 5, 2017.
3. **Foreign farmworkers in Canada fear deportation if they complain.** *New York Times*. August 13, 2017.
4. **WSIB cutting costs at expense of workers' health.** *Toronto Star*. May 24, 2017.
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7. **Injured worker broken down by 10-year battle with WSIB.** *CBC News*. November 3, 2016.
8. **Injured farm worker struggles to survive after support cut off.** *Toronto Star*. October 7, 2016.

9. **WSIB policy pushes hurt workers into 'humiliating' jobs and unemployment, critics say.** *Toronto Star*. September 12, 2016.
10. **Secret drug policies putting injured workers at risk, critics say.** *Toronto Star*. August 29, 2016.
11. **Provincial watchdog sees major spike in injured worker complaints.** *Toronto Star*. July 23, 2016.
12. **Injured workers routinely cut off WSIB by improper rulings.** *Toronto Star*. July 21, 2016.
13. **WSIB critics say spending cuts are 'devastating' injured workers.** *Toronto Star*. June 10, 2016.
14. **Migrant worker program called 'worse than slavery' after injured participants sent home without treatment.** *CBC News*. May 16, 2016.
15. **Ontario migrant worker who sliced his neck takes on WSIB.** *The Hamilton Spectator*. March 21, 2016.
16. **System failed injured worker who left country.** *Toronto Sun*. March 21, 2016.

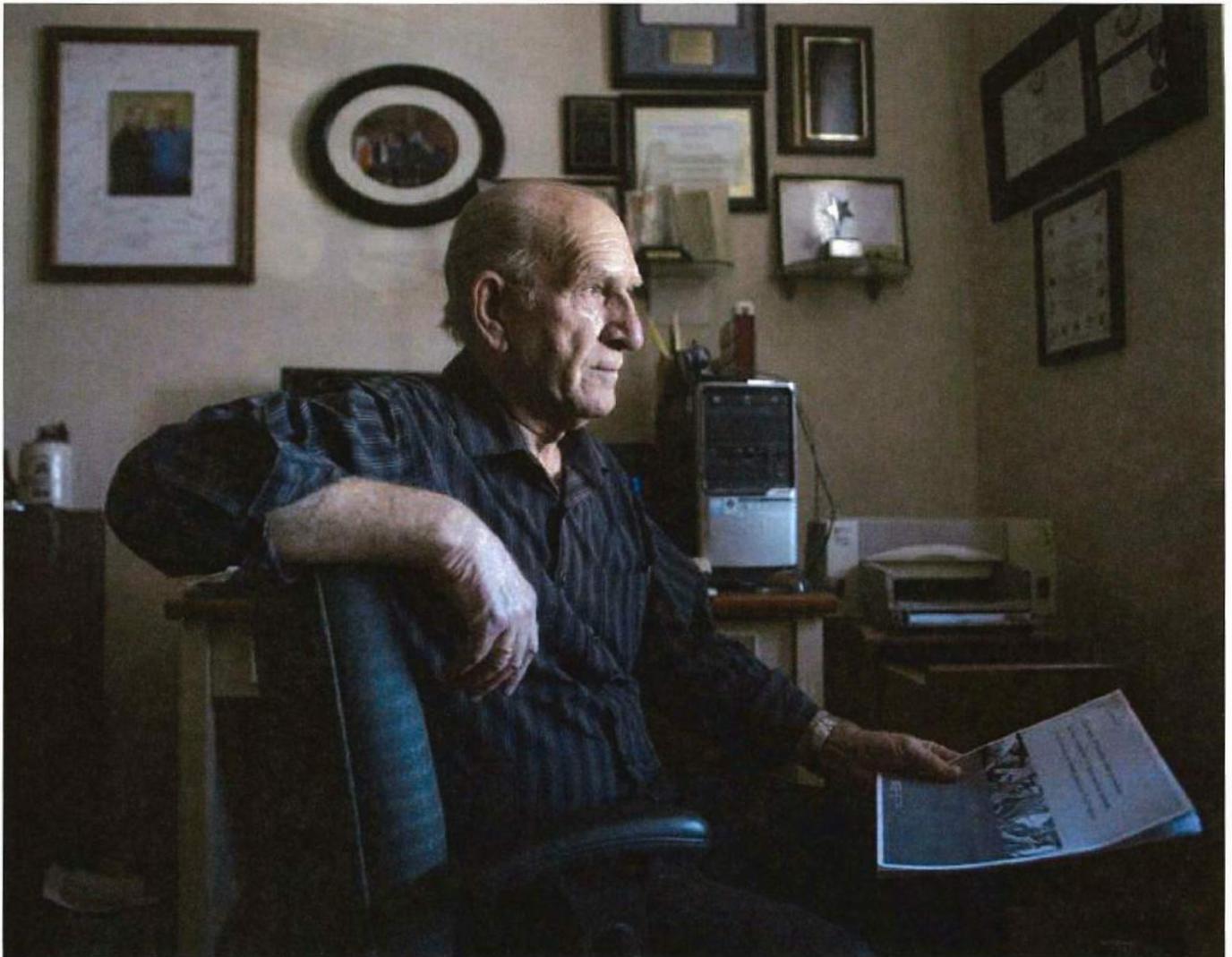
17. **Investigate workers' complaints: Editorial.** *Toronto Star*. January 31, 2016.
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20. **MD claims WSIB fired her over medical opinion.** *Toronto Star*. September 23, 2015.



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New WSIB policy on mental health will set workers back decades, critics say

Workers making claims for chronic mental stress must meet a different standard of proof than other injured workers.



Karl Crevar, who injured his back on the job in 1987 and has been an injured worker advocate ever since, says workers already vulnerable or precariously employed will struggle the most to meet the board's new requirements on chronic stress claims. (PETER POWER / FOR THE TORONTO STAR)

By **SARA MOJTEHEDZADEH** Work and Wealth reporter

Sun., Oct. 15, 2017

A new mental health policy at the provincial workers compensation board leaves workplace accident victims “in a worse position than they have ever been,” according to a coalition of legal experts and injured worker advocates.

The policy, announced last week, requires workers making claims for chronic mental stress to meet a higher standard of proof to get compensation than those with other kinds of work-related injuries. In a letter sent this week to Premier Kathleen Wynne, a coalition of

12 legal clinics and private practice lawyers said this violates the charter rights of workers with mental health issues, denying them equal protection under the law.

“The (Workplace Safety and Insurance Board’s) policy will set workers with mental disabilities back decades. Most workers with mental disabilities will not be able to get WSIB support because of this new policy,” said Maryth Yachnin, a lawyer with the Industrial Accident Victims Group of Ontario, a signatory of the letter.

The policy affects workers who believe they have suffered prolonged trauma on the job: for example, a nurse who has experienced years of sexual harassment and subsequently developed depression.

Such workers were previously **excluded** from making compensation claims at all, which the WSIB’s independent appeals tribunal ruled to be unconstitutional. Earlier this year, the provincial government passed new **laws** to remove the exclusion.

But the legislation also gives the WSIB latitude to create its own guidelines on how to administer legislative requirements. The board’s new chronic mental health policy will require workers to prove their workplace was the “primary or main cause” of their illness — a different standard than other injured workers must meet.

Usually, workers need only prove their workplace was one significant contributing cause to their injuries in order to receive compensation — a principle that is “firmly established” in tort law, according to the letter.

“This new test directly discriminates against workers with mental injuries,” it adds.

The WSIB said its new policy, including the predominant cause test, is modelled on existing coverage in British Columbia, Alberta, Saskatchewan and Quebec.

“We want anyone dealing with work-related mental stress to get the help and support they need,” board spokesperson Christine Arnott said in an email.

“We will carefully monitor this new service as we help support mentally healthy workplaces across Ontario.”

Karl Crevar, who injured his back on the job in 1987 and has been an injured worker advocate ever since, says workers who are already vulnerable or precariously employed will struggle the most to meet the board’s new requirements on chronic stress claims.

“You’re going to have a lot of people impacted by this,” he said. “People are suffering. And those types of claims should not be treated any differently than any other claim.”

The WSIB’s new guidelines were formed after consultation with both employers and worker

representatives. According to one submission from an employer association, “stress cases are not the same as ‘other’ kinds of workplace injuries,” and treating them as such is a “momentous miscalculation and policy design error.”

But the coalition’s letter argues: “The Supreme Court of Canada and the Workplace Safety and Insurance Appeals Tribunal have rejected the wrong-headed notion that mental injuries are less real, more subjective and more suspect than physical ones.

“Imposing a more restrictive standard for mental injury entitlement sends a message that workers claiming entitlement for these conditions are a greater risk for fraud or that their conditions are ‘all in their head.’”

The WSIB policy on chronic mental stress will come into effect in January next year.



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Tribunal slams WSIB practice that cuts benefits to injured migrant workers

Compensation board slashed benefits for illiterate migrant worker in Jamaica arguing he could work as a cashier in Ontario — even though he was no longer legally entitled to be in the country.

By **SARA MOJTEHEDZADEH** Work and Wealth reporter
Thu., Oct. 5, 2017

A workers' compensation board practice that slashes benefits to injured migrant farm workers by deeming them capable of finding alternative employment in Ontario is illegal, an independent tribunal has ruled.

The landmark case at the Workplace Safety and Insurance Appeals tribunal is the result of nearly nine years of petition by Michael Campbell, a migrant worker from Jamaica who injured his back in a 2008 farm accident in Niagara-on-the-Lake. He returned home a month after his accident and his injuries prevented him from ever returning to Ontario under the Seasonal Agricultural Workers Program.

The Workplace Safety and Insurance Board subsequently cut his loss-of-earnings benefits arguing he could find a job as a cashier in Ontario — even though Campbell lives on a remote farm in Jamaica, has only basic literacy and numeracy skills, and has lost his legal right to live and work in Canada.

The tribunal found the cuts to his loss-of-earning entitlement, which are meant to recognize the reduced earning potential of an injured worker, an “abrogation” of the WSIB’s legal



Chris Ramsaroop of Justica for Migrant Workers says WSIB policy doesn't reflect the re needs to change. (JIM RANKIN / TORONTO STAR) | [ORDER THIS PHOTO](#)

here' but treat them as if they can anyway."

The Star has previously reported on the difficulties migrant workers face in accessing the compensation they are legally entitled to after a workplace accident.

"This is the norm where workers are basically discarded, disposed of, and their health-care

responsibilities are downloaded on their home communities,” said Chris Ramsaroop of Justicia for Migrant Workers.

“The (WSIB) policy doesn’t reflect the reality of migrant workers or their lives. It is an insult to the dignity of those migrant workers and their families,” said Ramsaroop.

A psychologist report provided to the tribunal found Campbell possessed a “good work ethic” and was “industrious, dependable and conscientious.” But as a result of his injury, a medical expert found he was no longer able to do manual labour or agricultural work. Campbell, who is now in his 50s, lives on a remote farm with his family, and testified that his accident has now made it difficult to earn a living.

The tribunal ruling has now ordered the WSIB to calculate and pay Campbell’s loss-of-earning entitlements based on what alternative work he could be reasonably expected to find in Jamaica.

A WSIB spokesperson said the board will study the ruling.

“We are carefully reviewing the tribunal’s comments and will look at what, if any, changes may be made to our policies and procedures to ensure we’re achieving the right outcome for people,” Christine Arnott said in an email.

Yachnin said overall policy change was needed to ensure injured migrant workers receive the treatment they are legally entitled to.

“They feel dismissed, that their losses are treated as not real. And I think the message that the WSIB sends is that their losses don’t matter.”

Foreign Farmworkers in Canada Fear Deportation if They Complain

[Leer en español](#)

By DAN LEVINAUG. 13, 2017



Migrant farmworkers from Jamaica working on a vineyard at Tregunno Family Farms in the Niagara region of Southern Ontario. Credit Aaron Vincent Elkaim for The New York Times

SUMMERLAND, British Columbia — Desperate to provide for his family, Hilario Mendoza leapt at the chance to leave [Mexico](#) to pick cherries on a farm in British Columbia.

But bad weather left him so idle that he often worked just three hours a day — far less than the 40 hours a week he said he had been promised under [Canada's](#) program for temporary farmworkers. While he waited to go to the fields, he found himself crammed with 34 other laborers into a small house where rain leaked onto their beds.

Months of complaints went nowhere — and then he was abruptly sent back to Mexico.

“We were abandoned,” Mr. Mendoza said of his 2014 experience on the farm. “There are lots more people in Mexico wanting to work in Canada, so they don’t protect our rights.”

Canada’s seasonal agriculture worker program was set up to recruit migrants from Mexico and 11 Caribbean nations to work for up to eight months a year to address chronic labor shortages.

But critics say the program is poorly supervised, leaving workers vulnerable to exploitation by employers, often denied the Canadian labor benefits they are entitled to and at risk of deportation if they complain about employment conditions.

“Migrant workers are employed and live under a different set of legal rights than Canadians,” Mr. Ramsaroop added. “The very existence of temporary foreign worker programs enables the Canadian government to deny basic freedoms and protections as a result of their immigration status.”

The farmworker program is part of a broader initiative that also brings in temporary foreign workers for other industries, like fish processing and home health care. While Canada has decreased the overall number of temporary foreign workers since 2014, the farmworker program is growing, with visas approved for more than 34,000 laborers in 2016, up from about 25,000 in 2011, government figures show.

Josh Bueckert, a spokesman for the federal department that oversees the program, said in an email that the workers “are protected by all the same rights and protections as Canadians.”

The department provides a telephone tip line and a web page, he said, where cases of potential fraud or abuse can be anonymously reported, though neither is in Spanish, the only language many of the farmworkers speak.

Since April 2014, the department has received more than 5,000 tips, and over 640 have resulted in an inspection or a referral to the authorities, Mr. Bueckert said.

In May, however, [a report by Canada’s auditor general](#) found scant federal oversight of the temporary foreign worker program, with only 13 of 173 planned inspections completed in the 2016 fiscal year. Temporary foreign workers had not been interviewed during any of the completed inspections, according to the report.



Hilario Garcia Mendoza, 42, left, from Mexico, eating dinner in the home he shares with other workers after an 11-hour day of working in the nearby vineyards in Summerland, British Columbia. Credit Ruth Fremson/The New York Times

There are thousands of employers in the temporary foreign worker program, yet just eight employers are listed as noncompliant, and only one for labor violations.

Advocacy groups point out that the federal government's oversight authority is limited because provinces and territories are responsible for enforcing health, labor and workplace safety standards for the workers, and protections are uneven. Most provinces, however, do not even know the names of the temporary foreign workers employed there, who they work for or where they are.

This month, the British Columbia government announced plans to collect such data for a registry that would help protect workers from abusive employers.

Advocates also point to other problems with the system. Consulates of the workers' home countries are charged with helping the laborers if they need assistance. Yet officials often side against workers in disputes to prevent employers from hiring more compliant laborers from other countries, advocates say.

In 2014, the British Columbia Labor Relations Board ruled that the Mexican government had improperly interfered by blacklisting from the program a Mexican worker who consular officials suspected was a union sympathizer.

Felix Martinez, a former Mexican consular liaison officer, testified in that case on behalf of the worker. He said in an interview that the consulate was “terrified” of challenging employers.



Mexican migrant farmworkers at Beverly Greenhouses in the Hamilton region of Southern Ontario, Canada. Credit Aaron Vincent Elkaim for The New York Times

“The priority was to keep employers happy so they continue to request Mexicans,” said Mr. Martinez, who left the consulate in 2011 and now works for the United Food and Commercial Workers Union in Canada.

The Mexican Consulate in Vancouver did not respond to multiple interview requests.

Mr. Martinez said he had seen foreign workers exposed to toxic pesticides, housed in metal shacks and forced to use a stream as their only source of drinking water. Most

workers, he said, keep silent rather than risk being sent back to the poverty of their homelands.

“It’s either this or starve,” he said.

Some Mexican workers said that before leaving for Canada each year, Mexican officials warn them not to make trouble.

“They always say, ‘You’re going to Canada to work, not to cause problems,’” said Erika Zavala, a 32-year-old single mother, while in her trailer at an organic carrot farm in British Columbia. She has worked there since 2014.

At the farm, she weeds on her hands and knees for 10 hours a day, earning about \$8 an hour. The trailer she shares with another Mexican woman has no hot water. In past years, she has slept in a decrepit, mice-infested Airstream with a door that could be locked only from outside.

Though she earns less than she did at previous Canadian farm jobs, Ms. Zavala said she never complained because she fears being barred from the program.



Erika Zavala, 32, a seasonal worker from Mexico, weeding rows of plants in the organic carrot farm where she works near Cawston, British Columbia. CreditRuth Fremson/The New York Times

For some, however, the program has been a success.

Julio Meneses, 40, has traveled from Mexico to work for the past 16 seasons at Beverly Greenhouses, a sprawling cucumber farm in Ontario. Now a supervisor earning around \$15,000 during his eight-month stint, he has been able to pay his son's tuition at two of Mexico's most prestigious universities.

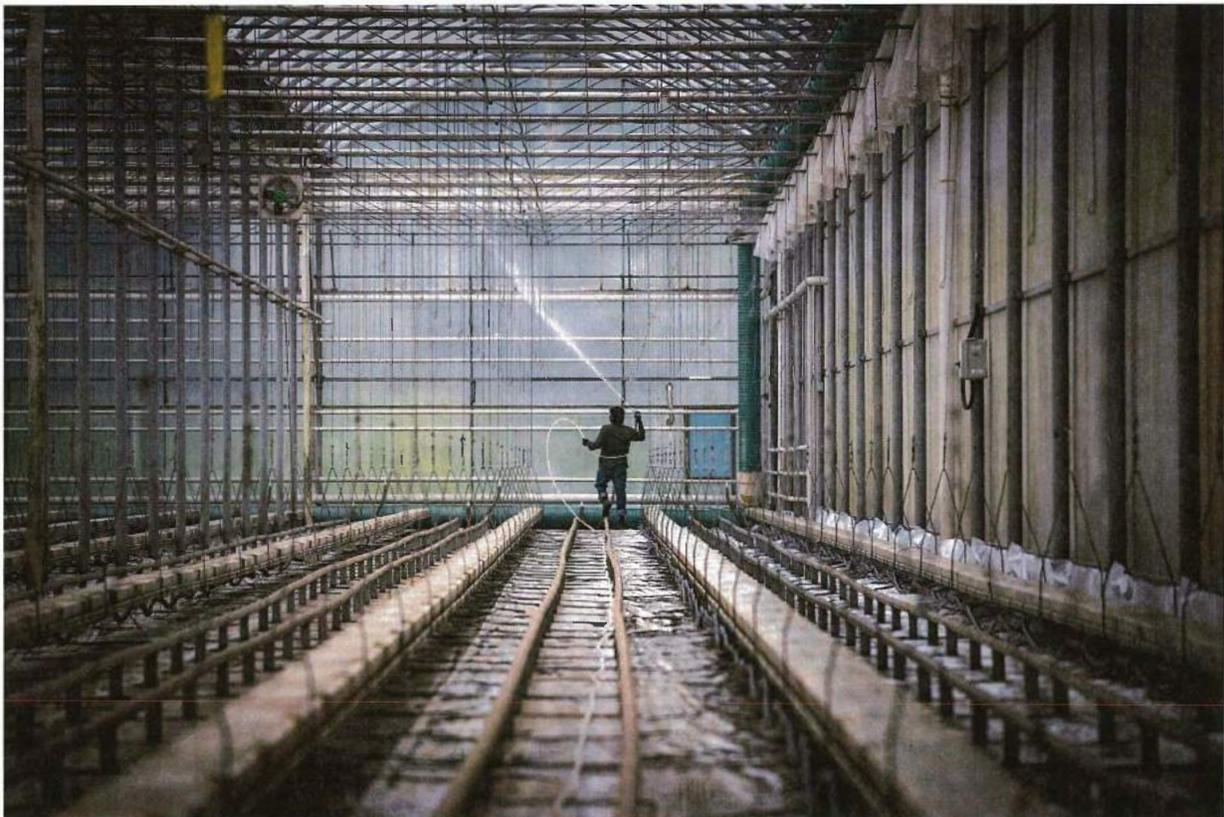
Once his son finishes school, he said, he'll stay in Mexico. "For now, I'm building something for the future," he said.

Canadian employers cite such economic success stories while dismissing suggestions that the program exploits workers.

"They're not going to work for you properly if they're not happy," said Phil Tregunno, 62, a fourth-generation fruit farmer in Niagara-on-the-Lake, Ontario, who has hired 120 foreign workers over the course of this year.

Ken Forth, the president of Foreign Agricultural Resource Management Services, an organization in Ontario that assists with requests and transport of workers in the program, said that employers faced rigorous standards and that workers could receive quality medical care in Ontario and qualify for a Canadian pension.

He disputed claims that workers had been improperly sent home, saying that foreign governments in the program must approve repatriations.



Armando Farfin, a Mexican migrant farmworker, at Beverly Greenhouses in Southern Ontario. Credit Aaron Vincent Elkaim for The New York Times

But Michael Campbell, 54, who was a temporary farmworker in Ontario for nine seasons, had a very different experience. He was sent home in 2008 when he hurt his back picking peaches.

A father of four, Mr. Campbell said he was left permanently disabled, and filed a claim with the Ontario Workplace Safety and Insurance Board, the provincial agency responsible for providing workers' compensation. In 2011, the board ruled that he was not entitled to further compensation, claiming he could make up the loss of earnings by working as a cashier in Ontario — even though he was ineligible for a Canadian work visa.

“It’s farcical,” said Maryth Yachnin, a lawyer at the Industrial Accident Victims Group of Ontario, a legal clinic in Toronto that is representing Mr. Campbell in the case.

Mr. Campbell has appealed the ruling and was asked to testify before a board tribunal in Ontario in June. “I want justice,” he said, speaking by phone from his home in St. Elizabeth, [Jamaica](#).

But in May, Canada’s immigration ministry rejected the application for the visa he would need to come to testify, over concerns he would stay in the country illegally, according to an emailed statement from the ministry.

Ms. Yachnin said immigration officials took issue with Mr. Campbell’s lack of income, despite the clinic’s explanation that overstaying the visa would jeopardize the very compensation case he has tried so hard to win.

Taken together, she said, the government’s actions reflect a deep disregard for the rights of temporary foreign workers.

“They just don’t see these people as people,” she said.

Paulina Villegas contributed reporting from Mexico City.

A version of this article appears in print on August 14, 2017, on Page A4 of the New York edition with the headline: Deportation Fears for Farmworkers in Canada. [Order Reprints](#) | [Today's Paper](#) | [Subscribe](#)



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WSIB cutting costs at expense of workers' health, report says

Study, based on freedom of information requests to worker compensation board, notes there's been a significant cut in prescription drug benefits affecting thousands of injured workers a year.



A new study based on freedom of information requests to the WSIB notes there's been a significant cut in prescription drug benefits affecting thousands of injured

workers a year. (FRANCIS VACHON / THE CANADIAN PRESS FILE PHOTO)

By **SARA MOJTEHEDZADEH** Work and Wealth reporter

Wed., May 24, 2017

Ontario's worker compensation board is saving money by reducing spending on drug benefits for workplace accident victims and by providing financial incentives to their health-care providers to limit treatment time, a new report compiled by a Toronto-based legal clinic says.

The study released Wednesday, which is based on a series of freedom of information requests to the Workplace Safety and Insurance Board, says there has been "a significant cut in prescription drug benefits that affects thousands of injured workers per year" since a cost-cutting drive initiated at the board in 2010. It also found a shift toward "services that are structured to drive down the cost of benefits paid to injured workers."

"For injured workers, the WSIB's historic 'transformation' has resulted in substantial, harmful cuts to health-care benefits," says the report, which was conducted by the Industrial Accident Victims Group of Ontario (IAVGO) and Toronto lawyer and worker compensation specialist Antony Singleton.

"Injured workers need to be able to trust WSIB to provide the health care they need, but this report shows that the WSIB is abusing that trust and unfairly **reducing claims costs** at the expense of workers' health," said Jessica Ponting, a community legal worker with IAVGO.

Since 2010, the WSIB has sought to reduce its \$14 billion unfunded liability, but maintains that health outcomes are improving amongst injured workers. When it comes to health benefits, it says the falling price of drugs and a board-wide strategy to limit the prescription of harmful narcotics has saved money.

WSIB has responded to past criticisms of its health services, including a formal complaint to Ontario's ombudsman by injured worker advocates, by saying it has "confidence in the integrity of Ontario's health-care professionals" and that it "acts quickly to ensure workers receive timely, specialized medical care."

The IAVGO study, entitled "Bad Medicine: a report on the WSIB's transformation of its healthcare spending," claims the organization slashed spending on prescription drugs by one-third between 2010 and 2015, and reduced the number of claimants it provides drug benefits to; in 2010, 38 per cent of successful claimants were allowed drug benefits but by 2015, the figure was 27 per cent.

“This reduction has exceeded the decline in the total number of allowed claims entering the system,” the report says.

“As things currently stand, some 18,000 injured workers per year have disappeared from the drug benefits program, with no viable explanation from the WSIB,” it adds.

Read more: [Class action against WSIB claiming unfair benefit cuts given go-ahead](#)

The report claims statistics do not corroborate the WSIB’s contention that cheaper drug prices have resulted in efficiencies. That is because the overall reduction in the board’s drug spending has far outpaced the decline in average drug costs per individual claimant. The report also says the board’s data shows its narcotics strategy has had “no discernible effect on either the incidence or per-claim cost of narcotic drugs, and therefore does not explain the reduction in drug benefit spending.”

The board’s health-care programs for injured workers also provide financial incentives for health professionals to limit treatment by incorporating “cost-control measures” in their structure, the report argues.

The WSIB’s “programs of care” for different types of common workplace injuries are supposed to “integrate recovery and return to work planning.” In examining programs for musculoskeletal injuries — one of the most pervasive and costly types of worker compensation claims — the report found that treatment is capped by the board at eight weeks, regardless of the worker’s expected recovery time or individual circumstances. Further treatment is only made available if a WSIB adjudicator allows it.

In some eight-week programs, the report says, physicians get a declining rate of pay the longer the treatment. For example, for lower back and musculoskeletal, practitioners get paid a flat fee of \$400 per treatment in the first month, but that fee is slashed in half for treatments in the second month of recovery.

Doctors also get paid more to tell the board that a worker with a musculoskeletal injury is ready to go back to work. When filling in mandatory treatment outcome forms, doctors are paid \$600 if they deem the worker fit to return to regular duties. But they are paid up to 33 per cent less, between \$400 and \$500, if they advise that the worker cannot return to their pre-injury job.

The result, argues the report, is a structure that “puts the health-care provider’s financial interests in conflict with the interests of the worker, who may need additional treatment and time to recover from her injury.”

The WSIB says 92 per cent of injured workers now return to work with no wage loss, and that permanent impairments as a result of workplace accidents are on the decline. But the report says those statistics reflect the board’s more restrictive decision making in allowing

compensation claims.

“The WSIB has, for years, misused its data to mask significant cuts to benefits. This report pulls away the mask to reveal the true face of the WSIB’s austerity measures,” said Singleton.

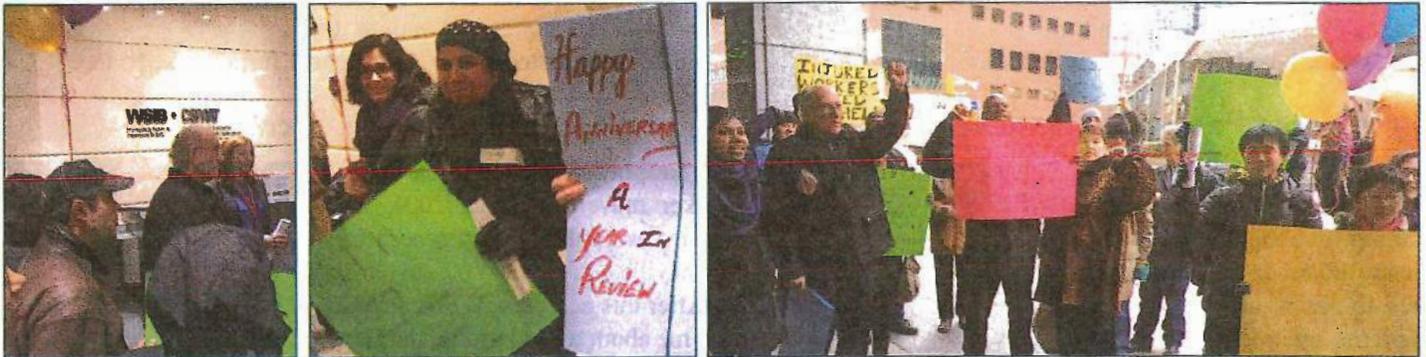
“The WSIB’s permanent impairment data do not give a direct, independent measure of the actual health outcomes of injured workers. They instead record the WSIB’s adjudicative decisions about entitlement to benefits,” the report says.

“For injured workers, then, the supposed benefits of the (WSIB’s) transformation are an illusion, so no one feels them,” it concludes. “The cuts, by contrast, hurt because they are all too real.”

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Injured Workers Deliver Message to Head of WSIB on One-Year Anniversary

No More Exploitation! We Will Fight for Compensation!



Injured workers surprised the WSIB on Wednesday, February 8 – organized and angry! Their message was clear: “A year is long enough! Changes Now!”

February 2017 is Tom Teahen’s one-year anniversary as the President and CEO of the WSIB. In his year on the job, he has done nothing to fix the crisis that injured workers are facing. Instead, he has lowered premiums for employers and taken up an “endless meetings” approach to deflect attention from the urgent changes that are needed. Injured workers, the Ontario Network of Injured Workers’ Groups and several legal clinics organized a delegation to the WSIB to tell Teahen that his inaction is unacceptable.

The group of injured workers marked Teahen’s “Paper Anniversary” by giving

him gifts of newspaper headlines from the last year and a package of papers including injured workers’ statements about their experience under his leadership and what they want to see changed. A

spokesperson from the WSIB told us she would take our concerns to Teahen.

The group left chanting “No more exploitation, we will fight for compensation.”

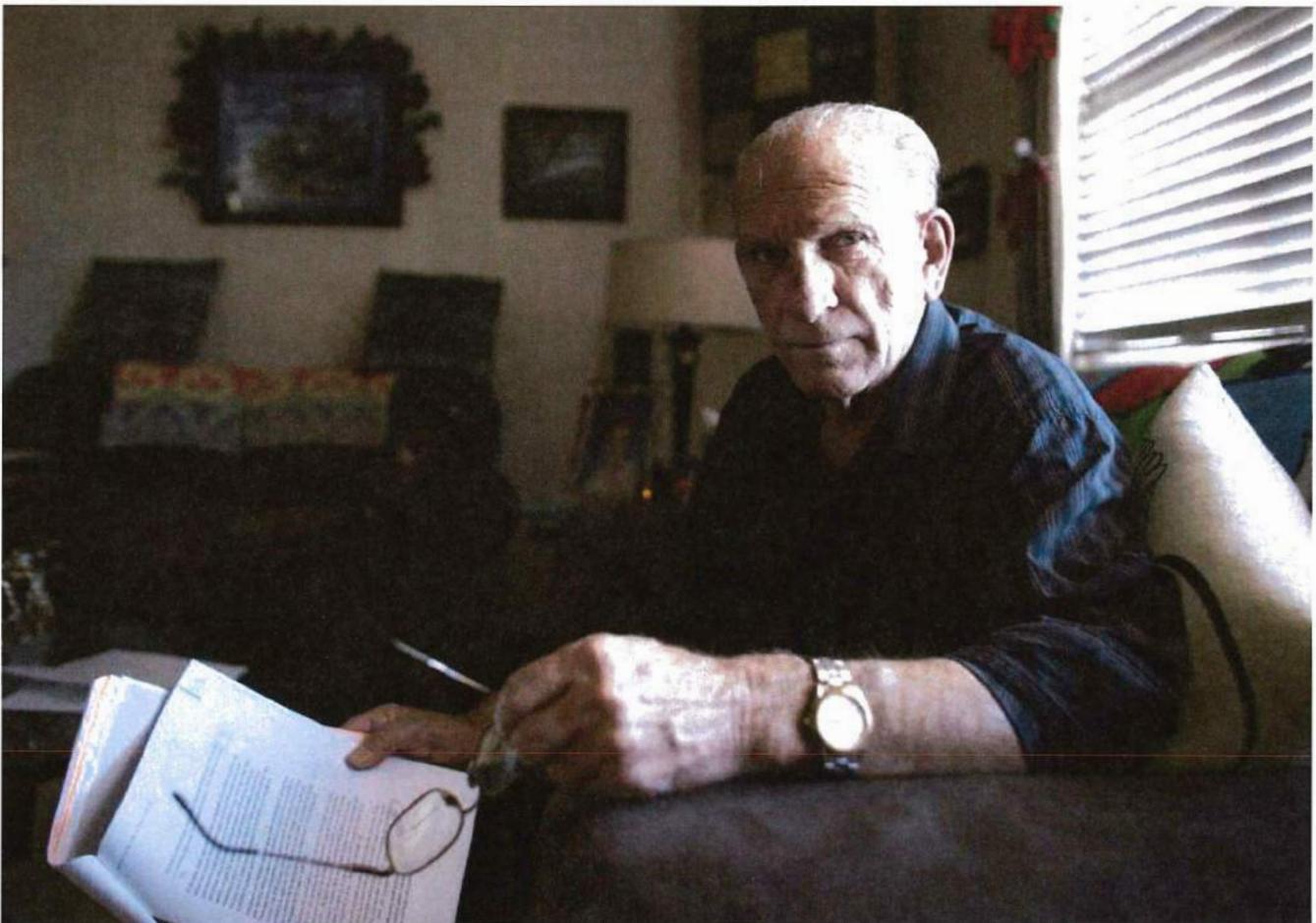
*Justice for injured workers: Newspaper
of the Ontario Injured Workers.
(February 2017) No. 12. p. 1*



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Doctors frustrated workers' compensation boards seem to ignore medical opinions, report says

A new report by the Toronto-based Institute for Work and Health offers valuable findings “with respect to improving engagement with health care providers,” a WSIB spokeswoman said.



Karl Crevar hurt his back on the job in 1987 and has since been an advocate for injured workers. A new report suggests widespread frustration amongst doctors with workers' compensation boards, including the WSIB, for ignoring medical opinions. (PETER POWER / FOR THE TORONTO STAR)

By [SARA MOJTEHEDZADEH](#) Work and Wealth reporter

Mon., Jan. 9, 2017

They are the first port of call for workers hurt on the job. But when decisions are made about accident victims with complex injuries, a new study suggests doctors feel sidelined by workers' compensation boards.

The [report](#), conducted by the independent, Toronto-based Institute for Work and Health, examined the role of doctors and other health care professionals in workers' compensation across four provinces, including Ontario. It found doctors treating workers with complicated or prolonged conditions were frustrated by an "opaque and confusing" system where their views on a safe return to work after an accident appeared to sometimes be ignored by case managers with no medical training.

"It quickly became clear that there was a significant amount of disagreement and confusion about what the role of health-care providers should be in the return-to-work process and in the workers' compensation system more generally," the report concluded.

Agnieszka Kosny, a scientist with the IWH who led the study, said doctors rarely reported encountering significant problems when their patients had visible, acute physical injuries. But that changed when workers had multiple injuries, chronic pain and [mental health](#) conditions.

In those cases, health care professionals expressed concern that compensation boards' return-to-work programs "might not be appropriate and could do more harm than good" and were sometimes motivated by "cost-containment" rather than the best interests of patients.

"Sometimes where things go off the rail is when a decision is made, and the health care provider feels like they have been excluded from that process. I think that further alienates them from the process," Kosny said.

In a statement to the Star, Workplace Safety and Insurance Board spokeswoman Christine Arnott said the board "values its relationships with health care providers" and said the study "confirms the importance" of its return-to-work programs.

"There are valuable findings in the report with respect to improving engagement with health care providers," Arnott said, adding board staff will meet with the report authors to discuss the study later this month.

Critics say the findings bolster a formal [complaint](#) made to Ontario's ombudsman a year ago by labour groups, doctors, and injured worker advocates asking the provincial watchdog to investigate

the Workplace Safety Insurance Board for ignoring medical opinions provided by physicians treating workers, resulting in accident victims being unfairly cut off benefits or **pushed** back to work too early.

“This is not something that’s new. Its something that we have brought to the attention of the government as well as the compensation board,” said Karl Crevar, who has been an activist in Ontario for more than two decades, ever since he hurt his back on the job in 1987.

“This is another piece of evidence to say there is a systemic problem,” added Aidan Macdonald of the Toronto-based legal clinic Injured Worker Consultants. “Somebody needs to take it seriously, and somebody needs to do something about it.”

The ombudsman has yet to make a decision on whether it will launch a probe.

In a statement to the Star, the **ombudsman** said its assessment of the issue was “ongoing” and that it was “monitoring ongoing dialogue” between the WSIB and complainants.

The latest IWH study is based on interviews with close to a hundred doctors in British Columbia, Manitoba, Ontario and Newfoundland and Labrador. Researchers also interviewed 34 compensation case managers, although the WSIB declined to participate in the study because it was “in midst of changes to its service delivery model,” according to the board. Researchers spoke to case managers employed by private companies to deal with WSIB claims instead.

Doctors in the study expressed dissatisfaction with dealing with case managers with “limited medical knowledge.” One Ontario health-care provider described treating an injured worker with a neck, or cervical spine, injury whose benefits were almost denied because of confusion over basic anatomy.

“For some reason, (the WSIB) had requested records, and there was something in the patient’s chart about cervical dysplasia, like of your cervix, the female genital organ. They said she wasn’t covered because she had a pre-existing condition, which is completely ridiculous,” the doctor said.

Compensation case managers told researchers they often had difficulty getting information from health care providers treating injured workers, resulting in a “heavy reliance” on the advice of so-called independent medical consultants who review workers’ medical files, but often never meet the patient.

The report found a number of doctors treating injured workers were concerned such **consultants** “were not independent” and that their medical opinions were “problematic.”

“Some health care providers believed that case managers may cherry pick opinions offered by internal consultants, choosing those that were favourable to the workers’ compensation board (for example, ones that reduced costs),” the study said.

Kosny said she saw a role for independent medical consultants in the compensation system, especially if injured workers did not have a regular doctor or were seen by emergency room staff. But she said provinces such as Ontario could consider adopting a system like Manitoba’s, where such consultants actually examine patients in person.

She said family doctors offered valuable assessments of accident victims because they had better overall knowledge of their health, adding that treating physicians needed more support from compensation boards to play an active role in decisions about benefits and return-to-work programs.

“There just doesn’t seem to be a lot of resources that are specifically directed at health care providers,” she said.

In the meantime, Crevar said, workers are falling through the cracks.

“We have injured workers in dire straights, on the verge of family break down or even committing suicide because they don’t know what to do,” he said. “And we are seeing more and more of that throughout the province.”

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Injured worker 'broken down' by 10-year battle with WSIB

Backlog adding 3-4 year wait to independent appeal process, says WSIB president

By Ashley Burke, [CBC News](#) Posted: Nov 03, 2016 5:00 AM ET Last Updated: Nov 03, 2016 8:42 AM ET



Alan Facchinato in 2002 on the job underground at the Sifto salt mine in Goderich, Ontario. (Submitted)

An injured salt mine worker in Ontario says he has contemplated suicide after a decade-long fight for compensation, a fight that he now may have to wait at least another year before it is resolved.

- [WSIB's 'devastating' compensation policy all about board's bottom line, lawyers charge](#)

Alan Facchinato, 55, of Goderich, Ont., has been battling with the Workplace Safety and Insurance Board (WSIB) since 2006 in a quest for compensation for a serious back injury sustained on the job.

The long, drawn-out process has made his life "a living hell" in his words. He's been waiting a year for the board's independent appeals tribunal to hear his case and now he's learned he has to wait at least another year due to a backlog.

"It's a ridiculous time frame," said Facchinato. "I never thought it would drag on like this. I'm a shell of the man I used to be. I feel empty. I feel desolate."

"I have a heart. I'm a human being," he added. "They've broken me down to the point where I can't fight anymore. It gets to the point where I think 'hey suicide is a really good option right now' because there's no pain."

'I'm a shell of the man I used to be. I feel empty. I feel desolate.'

- Alan Facchinato, Injured Worker

Facchinato's not alone in his wait.

There are "significant delays" of two to three years for injured workers dissatisfied with the board's decision to have their case heard by an independent tribunal, said Thomas Teahen, the president of the WSIB.

"Our system shouldn't have the delays," Teahen said on CBC's *Ontario Today*. He said he has committed to the minister and deputy minister to streamline the process to get delay times down.

"We for sure need to do a better job."



Thomas Teahen is president of the Workplace Safety and Insurance Board. He appeared on CBC's *Ontario Today* on Nov. 2, 2016. (CBC News)

Ombudsman monitoring problem

The delays are a problem the ombudsman of Ontario is currently assessing to find out if a systemic investigation is warranted, according to Paul Dubé's most recent annual report.

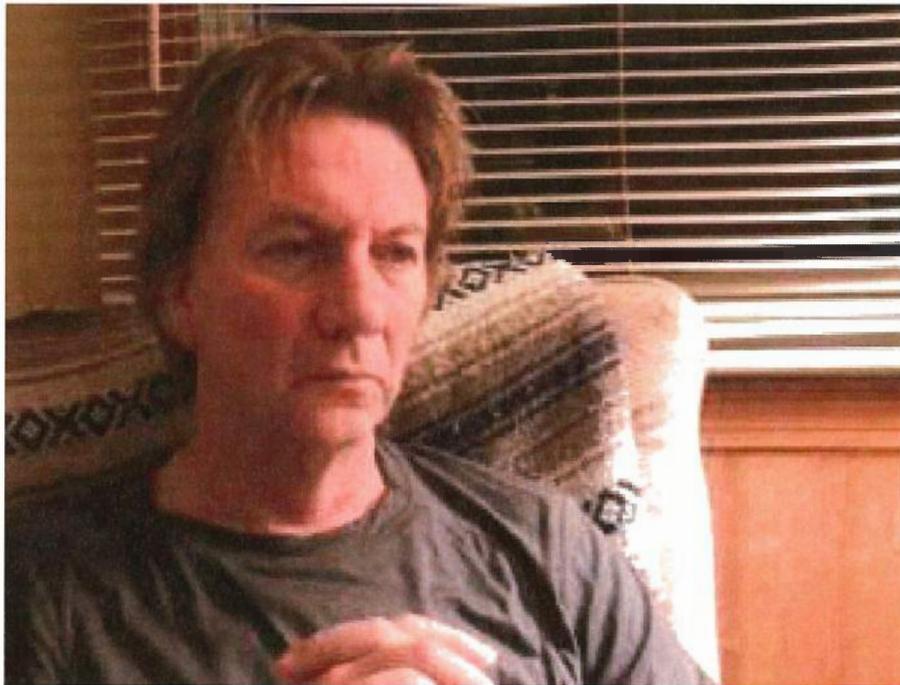
His office has received an increase in complaints about the tribunal over the past year, with most involving delays. There were 128 complaints in 2015-2016, up from 99 the fiscal year before.

The office looked into the cause of delays and found that the number of injured workers appealing the board's decision has doubled over the last few years.

That's meant that the Workplace Safety and Insurance Appeals Tribunal (WSIAT) has had its workload doubled too — from 4,000 active appeals to more than 9,000, according to the report.

Worker says it's 'ludicrous'

Facchinato calls it "ludicrous" that he filed his appeal with the tribunal in September 2015 and was told this month not to expect a hearing until the end of 2017.



Alan Facchinato worked as a salt miner for 27 years before he injured his back on the job in 2006. (Submitted)

"It's a living hell, day in and day out," said Facchinato. "I have to get some closure. It's like they're doubting my integrity. I don't lie. I tell the

'It's a living hell, day in and day out. I have to get some closure.'

- Alan Facchinato, Injured Worker

truth. When you doubt my integrity, my truthfulness, it cuts very deep."

Facchinato worked 27 years driving heavy machinery on uneven roads underground at the Sifto Salt mine in Goderich, the Lake Huron community about 120 km northwest of Kitchener, Ont.

He said the constant pounding took its final toll on his back in 2006. He had to have surgery on a disc and returned to work in a different role fixing miner's headlights. He said he could only work for six hours a day, until the pain was too much, but says he was pushed by his employer and WSIB to work eight hours a day.

In November 2015, Facchinato says he collapsed on the job and was rushed to hospital. That was last day he ever worked.

Faccinato has been trying to get benefits and a percentage of his salary ever since.

"I never got one red cent," he said. "It's taken a toll."

His first marriage ended, and he went from making \$100,000 a year to living off of \$14,000 from the Canada Pension Plan.

"That's all I get," he said. "It's really tough. You can't live on that kind of money now a days."

Appeals tribunal hires new chair

The province appointed David Corbett as the new Chair of the WSIAT in September. The president of the WSIB says he's already met with him once and says they are both committed to working together to fix the problem.

"Workers deserve speedy hearings from us and the tribunal," said Teahen.

Facchinato says he's happy Teahen wants to improve the system, but says workers who have been living and breathing the long wait times are under so much duress, the damage is done — they're broken.

"I wish he could put his body, his mind, his soul into the position of a guy or person that's actually waiting," said Facchinato. "They will never understand what it's like until they're in that position."

'Workers deserve speedy hearings from us and the tribunal'

- Thomas Teahen, the president of the WSIB



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WSIB's 'devastating' compensation policy all about board's bottom line, lawyers charge

Some injured workers have had benefits cut by half since pre-existing conditions policy came into effect

By Ashley Burke, [CBC News](#) Posted: Oct 27, 2016 5:00 AM ET Last Updated: Oct 27, 2016 10:16 AM ET

Lawyers who represent people injured on the job in Ontario say a new policy introduced by the province's Workplace Safety and Insurance Board is having a "devastating" effect on their clients, and accuse the board of unfairly cutting injured workers' benefits in order to meet its own financial demands.

As CBC News reported Tuesday, [injured Lanark County paramedic Dan O'Connor](#) says he fears losing his home after the board slashed his benefits by half. O'Connor was ordered to resume a transitional training course despite debilitating back pain that makes it difficult for him to commute or sit in a classroom.

O'Connor's case has shed light on what many of those who deal with the board are characterizing as a larger, systemic issue: they claim the WSIB routinely blames pre-existing medical conditions for exacerbating workers' injuries, using that as an excuse to slash their compensation.

"It's ridiculous," said retired lawyer Ron Ellis, who served for 12 years as chair of the board's appeals tribunal.

'I think we should be ashamed of the system. You have some of the most vulnerable people in our society being victimized by a corporate structure.' - *Ron Ellis, former chair of the WSIB's appeals tribunal*

"It's a very large reduction in benefit entitlement with no change in the legislation," Ellis said. "I think we should all be ashamed of the system. You have some of the most vulnerable people in our society being victimized by a corporate structure."

Following a report by Ontario's auditor general showing the WSIB was short billions of dollars, the province ordered the board to clean up its financial mess before it jeopardized workers' benefits

In 2011 the WSIB's unfunded liability — the amount by which its future payment obligations exceeded its bank balance — hit an unsustainable \$14 billion. Getting out of that financial hole required "radical and rapid steps," according to an independent report commissioned by the province.

Since then, the board has managed to reduce its liability to \$5.6 billion, setting it six years ahead of schedule in its mandate to get in the black by 2027.

Board hired American consultant

How did the WSIB pull off such a dramatic recovery?

In 2012, the board hired Hawaii-based consultant Dr. Christopher Brigham, paying his firm nearly \$100,000 to review its policy on permanent impairment and create a tool to help staff rate cases.

According to the report submitted by Brigham and Associates, best practices within the industry "clearly identify that impairment due to an injury must be differentiated from impairment due to other health issues, including degenerative processes associated with aging or other pre-existing conditions."

Around the same time — and perhaps even earlier — lawyers who represent injured workers say they started noticing a dramatic shift away from a long-accepted principle known as the "thin skull rule."

Thin skull rule

The rule dictates that workers with thin skulls should be treated no differently than workers with normal skulls when bricks fall on their heads. The thin-skulled worker will suffer worse injury, but shouldn't be denied compensation just because their fragile cranium is a pre-existing condition.

'It undermines the very core of the workers' compensation system. The results have been really devastating.' - *Maryth Yachnin, lawyer*

Maryth Yachnin, a lawyer with the Industrial Accident Victims Group of Ontario, said the shift away from the thin skull rule began well before the board updated its official policy in 2014.

"They started cutting permanent impairment awards by half," said Yachnin. "[Workers are told], 'If you're still injured it's because you're older, you have pre-existing degenerative conditions, so we don't have to pay you anymore.'"

But the policy doesn't make sense, Yachnin insists, because in most cases the workers were able to perform their jobs without any problems — until they were injured.

"It undermines the very core of the workers' compensation system," said Yachnin. "The results have been really devastating."

'There's no malice here'

The WSIB said its pre-existing condition policy went into effect in November 2014, and followed extensive consultations led by the province's former deputy labour minister Jim Thomas. Prior to its adoption, the WSIB was the only compensation board in Canada without a policy dealing with pre-existing conditions, the board said.

"There's no malice here. What we're trying to do is be fair, follow our policies and make the best decision possible," said John Genise, the board's director of service delivery in Ottawa. "The policy provided us with a little more guidance and rigour around how to approach those cases."

The board rejects the accusation that the policy was really about saving money. Nor is the WSIB's improved financial outlook the result of any one policy change, Genise said.

"There's a multitude of factors, from what I understand, that have put us in a better financial situation," he said, including a drop in the number of claims across Ontario, an early intervention approach that gets workers back on the job sooner and financial gains earned by the board's investments.

Class-action lawsuit

Nevertheless, Toronto lawyer Richard Fink launched a multimillion-dollar class-action lawsuit in 2014 against WSIB on behalf of injured workers who had their benefits cut due to pre-existing conditions.

An Ontario judge dismissed the case in July 2015, but Fink appealed. The case was heard Sept. 16 and he and his clients await the decision.

Retired lawyer Ron Ellis said the public often doesn't care about WSIB cases because there's a widespread perception that workers are abusing the system. He said in his experience, they form a small minority.

"I think it's true that the public has had very little sympathy with injured workers ... until it becomes their father, wife or daughter," said Ellis. "It's a system that we totally depend on and it's been totally undermined, and it's upsetting."

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Injured farm worker struggles to survive after support cut off

An illiterate Jamaican farmer with a Grade 4 education told by WSIB he could find customer service work in Ontario after traumatic injury. Worker's advocates call the decision 'farcical.'



Injured migrant worker Anthony Brown with a picture of one of his three children. Brown worries about supporting his family in Jamaica since he can no longer work his small plot of land after a traumatic accident in Ontario. (SUPPLIED PHOTO)

By **SARA MOJTEHEDZADEH** Work and Wealth reporter
Fri., Oct. 7, 2016

Anthony Brown is illiterate, permanently injured, and lives on a farm in rural Jamaica. But according to Ontario's worker compensation board, he could still reasonably be expected to land a full-time sales job in Canada.

Which is why the Workplace Safety and Insurance Board has cut the former migrant worker off long-term benefits, after the father of three was thrown off the back of a flatbed truck at a Niagara-area fruit picking operation, sustaining traumatic injuries.

It's a decision his lawyers call "farcical" since Brown no longer has the legal right to be in Ontario, has worked his entire life growing yams and plantains, has received no job retraining, and is disabled.

"It just is laughable," said Maryth Yachnin of the Industrial Accident Victims Group of Ontario, a Toronto-based legal clinic. "Even if he were here, he wouldn't be able to do a customer service job given the severity of his injuries and his lack of education. He just isn't employable."

In a statement to the Star, the WSIB said it was unable to comment on individual cases but that it has "a long history of treating migrant workers with care, compassion and respect.

"The WSIB is planning outreach and engagement activities with the migrant worker and farming community to identify how we can continue to improve the services we provide to migrant workers," it said.

"Migrant workers who are injured on the job in Ontario are entitled to the same benefits and services as any worker in an Ontario workplace covered by the WSIB," the statement added.

If the WSIB deems injured workers capable of finding a suitable job in Ontario, their benefits are cut accordingly. Critics say that system is flawed, generally, and is especially absurd for migrant workers like Brown who are usually sent back home after an injury — but are treated by the board as if they still live in Ontario.

In a sworn affidavit sent to the board this summer, Brown said he "didn't understand" the

ruling.

“I don’t have the money to travel to Ontario and I don’t think I could legally work there,” he said.

“This is the position they take on all migrant workers cases,” Yachnin added.

When Brown arrived in Ontario in 2006, he says picking fruit, planting trees, and clearing brush as a migrant worker in verdant Niagara-on-the-Lake held the promise of extra money for his family, despite the 50- to 60-hour weeks and a dorm stuffed with 16 workers. Brown had worked the land since he was a child. Back home, his parents were unable to pay for schooling past Grade 4; his affidavit says he cannot read or write much more than his own name.

A few months into the job, he was thrown off the back of a work truck, smashing his head, back, neck and arm. The WSIB accepted Brown’s claim and awarded him a one-time payment of around \$20,000 given the severity of his injuries. But it has now cut him off ongoing loss-of-earning benefits, which injured workers are entitled to if their disabilities prevent them from returning to their pre-accident wages. After almost a decade of legal to and fro, the board maintains Brown has recovered enough to get a full-time customer service job in Ontario.



Injured migrant worker Anthony Brown at his home in Jamaica with his family. Now 49, Brown can't lift more than 10 lbs., according to an independent medical evaluation. He is physically unable to farm his own land or find any kind of suitable work given his injuries and his location in a remote part of the country, his lawyers argue.

Except Brown no longer lives in Ontario. As a migrant worker, his visa was tied to being a farm labourer in Niagara-on-the-Lake — a job multiple doctors have said he will never perform again. So Brown returned home, with no prospect of ever working in Canada again.

Now 49, Brown can't lift more than 10 lbs., according to an independent medical evaluation. He is physically unable to farm his own land or find any kind of suitable work given his injuries and his location in a remote part of the country, his lawyers argue. They say he also cannot access the kind of ongoing health care he'd be entitled to as an injured worker in Ontario because public services are limited in rural Jamaica.

Yachnin says Brown's compensation to date is not a fair exchange for never being able to work again, and getting little support for rehabilitation in Jamaica.

“Practically speaking, this man is completely changed from the way he was before his injury. His life is completely changed and yet he has no financial support from the WSIB, even though they agree he has injuries,” Yachnin said. “That’s troubling because it suggests a lack of regard for the actual fact of his injuries. Would they have that lack of regard for a Canadian worker?”

Injured worker advocates say the system is fundamentally discriminatory. The Star has previously [profiled](#) a complaint made to the Ontario Human Rights tribunal arguing injured migrant workers are not getting the health care they are entitled to because of their immigration status.

A Canadian Medical Association Journal study shows that between 2001 and 2011, over 780 migrant farm workers in Ontario were sent home for “medical or surgical reasons.”

In its statement, the board said workers who are repatriated “may still be entitled to further treatment or assessments” but added that a migrant worker’s immigration status “is a factor unrelated to the worker’s accident.”

This summer IAVGO launched a charter challenge to the WSIB’s policies on behalf of a migrant worker in a similar situation to Brown, although the case is not expected to be heard for a couple of years. The legal notice filed by the clinic argues that the worker’s constitutional right to equality has been violated, since the only reason he could not access loss-of-earning benefits and health care was that he was a migrant.

“As racialized persons working in largely white communities, (migrant workers) face racial discrimination on the job and in the communities where they work and live,” the notice says.

At the very least, advocates say they want the board to treat migrant workers in line with their actual circumstances: for example, judging their ability to get a new job and access health care based on conditions in their own country, rather than in Canada — where they are unlikely to ever live or work again.

“We think the board should actually help them to find jobs in their home countries,” Yachnin said. “The board is not providing them with meaningful health care because the board doesn’t want to deal with logistics.”

On a fuzzy phone line from his yam farm in Jamaica, Brown — who feels he has been stripped of his identity as a producer and provider — says such measures would go some way to softening his sense of disposability.

“They don’t treat you good,” he said. “As soon as you get hurt, they are not looking after you.”

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WSIB policy pushes hurt workers into 'humiliating' jobs and unemployment, critics say

Ontario's worker compensation board says early return-to-work plans help accident victims recover. Critics say it's all about cutting costs.



Jeannie Howe, photographed in her Hamilton apartment, says she was subjected to

bullying and intimidation after returning to work following a workplace accident. Critics say the worker compensation board forces injured workers back on the job too quickly, often to meaningless and demeaning duties. (COLE BURSTON / TORONTO STAR) | [ORDER THIS PHOTO](#)

By [SARA MOJTEHEDZADEH](#) Work and Wealth reporter
Mon., Sept. 12, 2016

On a snowy, slippery day in December 2013, Hamilton resident Jeannie Howe smashed her head and back in a workplace fall.

Eight weeks later, she was back on the job. She was at least happy to get out of the house, but she remained groggy and suffered from “constant headaches.”

According to Ontario’s Workplace Safety and Insurance Board, a swift return to work is the best way for injured workers to recover — and is part of the board’s “evidence-based approach” to helping accident victims.

Experts and injured worker advocates say the board’s return-to-work program is not actually evidence-based at all. Instead, they say, in practice the policy cloaks cost-cutting measures in misunderstood and poorly applied research.

The result, critics argue, is that vulnerable workers are often forced back to work too soon, sometimes against their doctor’s orders, into “modified” jobs that can be demeaning and potentially harmful.

“The way the policies are drawn up, there isn’t a lot of nuance between making sure someone doesn’t lie down for six months with a bad back, which is good practice, and forcing people to go back to a completely meaningless task, which is bad practice,” said University of Ottawa professor Katherine Lippel.

“Humiliating and demeaning work is not therapeutic.”

According to board statistics, some 92 per cent of claimants now safely and quickly return to meaningful employment after an accident. In a statement to the Star, the board said its early return-to-work program was adopted in 2010 “following a decade of poor return-to-work and recovery outcomes for workers.”

“Our return-to-work program is an evidence-based approach aimed at achieving the best possible outcome for injured workers,” it said.

But having conducted several studies of the early return-to-work policy in Ontario over the

past decade, University of Waterloo professor Ellen MacEachen says she is skeptical about how that evidence has been implemented.

“The best I could come up with is there’s a lot of back pain research that talks about rest being bad and activity being important. All of these ideas are broadened to return-to-work (policies). But not everyone has a back injury,” she told the Star.

“It’s all done in the name of preventing chronic disability, and part of that is quite legitimate,” said Lippel, who teaches law and is a former adjunct scientist at the Toronto-based Institute for Work and Health. “But saying that what works for bad backs works for post-traumatic stress disorder, for instance, is clearly not the case.”

“It’s the unfunded liability that is driving all of this,” she added, referring to the board’s future debts — currently sitting at about \$6 billion.

In its statement to the Star, the board said its early return-to-work policies are “not a cost saving measure.” In a 2014 speech at the C.D. Howe Institute, former WSIB president David Marshall said new research proved that early return-to-work was in the best interests of workers. It would also, he noted, save money at the board.

“We realized with clarity and urgency that if we were going to deliver value for our stakeholders and reduce costs, we would have to help workers recover and get back to work as early and safely as possible,” he said.

“We have fundamentally cut the length of time that workers are off work and therefore needing benefits.”

In an ongoing investigation into WSIB practices, the Star has highlighted criticism that reform at the board, aimed at reducing its significant unfunded liability, has sometimes come at the expense of proper care for injured workers. While the board says its early return-to-work program is about getting accident victims “back to health and safe, suitable work,” critics say, in practice, that is not always happening.

In 2012, for example, an independent review of WSIB practices conducted by former York University president Harry Arthurs said encouraging workers to return to their jobs was laudable, but warned that the current system created “pressure for workers to return to work prematurely or to ‘non-jobs’ where they perform meaningless functions until it is advantageous for the employer to dismiss them.” That is because employers are penalized for every day their workers lose time on the job — starting immediately after their accident.

Workers can be kicked off benefits if they refuse accommodated duties — even if their doctors say they should not be working or that modified work makes their symptoms worse, said Aidan MacDonald, a lawyer for the Toronto-based legal clinic Injured Worker Consultants.

MacDonald says he acted for one client who was forced back to work against her doctor's orders; her modified work plan involved stapling documents together all day — even though the office photocopier did the same thing. Another client's accommodated duties consisted of sorting nuts and bolts into buckets. Yet another client was called up by his boss while still in hospital to try to get him back on the job.

“There is no strong mechanism to make sure that we're not putting both employer and workers in ridiculous situations,” said Lippel. “And the ridiculous situations are harmful to the workers' health, and they are harmful to the relationship between the employer and the worker.”

“You get mocked and jeered by your co-workers. You're getting paid and they have to actually work for their pay and you're sitting in the cafeteria. It can be very humiliating for workers,” MacEachen added.

That, says 38-year-old Jeannie Howe, was her experience.

After falling in 2013 while working for a car rental company, Howe says, she fractured her rib and was later diagnosed with a concussion and whiplash causing crippling headaches. She went back to work after the eight weeks' recovery allowed by the board and was initially reassigned to dust, clean countertops and move cars around the parking lot. But she says her colleagues harassed her and accused her of “doing nothing” — even filming and taking photos of her on the job.

“Going back to work and doing something as opposed to being at home and thinking about the pain is a great idea,” she said. “But (the board) has no idea what co-workers do (to you).”

Her concussion, she says, left her with cognitive difficulties and she says her driver's licence was eventually suspended. At that point, she says, the WSIB said her employer no longer had a duty to accommodate her — and she was cut off benefits.

“I pretty much broke down. I went to see a therapist and I broke down. I couldn't handle the amount of stress,” she said.

In a statement, the WSIB said employers had a duty to accommodate and reintegrate injured workers, but said the link between Howe's experience and the board's return-to-work policies was “unclear.”

But MacDonald says being forced back to work too early or into meaningless jobs can be counter-productive for workers and their bosses alike.

“When people aren't able to keep up with their jobs because they're in pain, their production suffers. They come under increased pressure from employers and co-workers, which can cause significant feelings of depression and anxiety.”

The Star asked the board how it monitored the success of its return-to-work policy. In response, the WSIB said it looked at the number of workers in employment with no wage loss one year after their accident. The WSIB said it didn't track what happens to injured workers beyond a year in the job, although it held more than 22,000 worksite visits in 2015 to "to assist injured workers and employers facilitate return to work."

"The WSIB does not systematically follow up with injured workers following their return to work," the board said in a statement.

A 2015 study conducted by professors at McMaster and Trent Universities looking at injured workers with permanent impairments in Ontario found that 46 per cent were living on the poverty line five years after their accident.

"What you have to evaluate and what I haven't seen many people evaluate is whether the nature of the alternative work that's being offered is doing more harm than good," said Lippel.

In the meantime, the flaws in the program are "just not right," she said.

"It's not morally right — and it's not good science."

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Secretive drug policies putting injured workers at risk, critics say

Legal clinic fighting to get list of drugs covered by worker compensation board as benefit spending drops.



Linda Broer spent years fighting with the WSIB to get her treatment covered after suffering a severe neck strain from constantly looking at surveillance cameras at the detention centre where she works. (GEOFF ROBINS / FOR THE TORONTO

STAR)

By **SARA MOJTEHEDZADEH** Work and Wealth reporter

Mon., Aug. 29, 2016

It's the body tasked with recommending which drug treatments are covered for tens of thousands of injured workers across the province. But no minutes are taken at its meetings, its members are a secret, possible conflicts of interest are not publicly reported and the full list of drugs subsidized by Ontario's worker compensation board is unknown.

Critics say that lack of transparency surrounding the Workplace Safety and Insurance Board's Drug Advisory Committee and its overall drug policies are compromising the care of often-vulnerable injured workers — who sometimes have no idea whether drugs prescribed by their doctor will be paid for by the board until they're out of pocket at the pharmacy.

"These are some of the most heartbreaking cases," said Maryth Yachnin, a lawyer with the Industrial Accident Victims' Group of Ontario (IAVGO), a Toronto-based legal clinic.

"We think it would really help people if they knew what drugs they could get covered for. We see a lot of people being bounced around because the board won't tell them beforehand. They won't find out until they turn up to the pharmacy that (a prescription) is not approved. Meanwhile, they're not taking medication for very serious conditions."

In a statement to the Star, the WSIB said releasing its formularies — the list of prescriptions the board will pay for — could be "misleading" as they "do not guarantee entitlement, nor do they necessarily limit entitlement should clinical reasons require otherwise."

"WSIB formularies contain thousands of medications potentially required in the treatment of work-related injury or illness," the statement added.

But injured worker advocates say they want to know why getting seemingly basic information is so hard.

The board's Drug Advisory Committee ensures that the WSIB's drug benefit program is "done in accordance to best practices," according to board documents. It makes recommendations to the board about its formularies, although the WSIB retains final decision-making power. Critics say almost nothing is known about the committee itself.

Yachnin's legal clinic has made multiple freedom-of-information requests about the DAC. In its written response to the clinic, the board said the DAC did not take minutes of its meetings and that members were "physicians and pharmacists with diverse background and expertise." It did not name the members, citing privacy concerns.

The Star asked for records of conflict of interest, for example, if a member had previously conducted research or worked for a pharmaceutical company in connection with a drug. The board said one conflict was reported in 2015, but details are not made publicly available. The Star also asked for the names of DAC members, but the board said they would not be disclosed “as was agreed as part of their ongoing engagement.”

The board also told the Star it is currently "undertaking a procurement process to form a new group of DAC members."

“There’s no accountability, in essence,” said Yachnin.

The WSIB’s spending on drug benefits has plummeted by more than 30 per cent since 2009, statistics requested by the Star show. The board attributes that to the shrinking cost of generic drugs, a decrease in the number of claims and a crackdown on narcotics prescriptions.

But critics say many injured workers struggle to get even non-narcotic prescriptions covered by the board and want to know why the list of drugs eligible for WSIB subsidy is a secret. By contrast, the Ontario Drug Benefit program makes its compilation of more than 4,300 government-funded drugs publicly available online.

Yachnin’s legal clinic has sought to obtain the details through a Freedom of Information request, but the request was rejected by the WSIB. The clinic has appealed and is awaiting a decision from the province’s Information and Privacy Commissioner.

Advocates blame lack of transparency for leaving vulnerable, often low-income workers — and their doctors — guessing as to what prescriptions will actually be covered.

“What is (the board’s) formulary? I don’t know. I don’t know that anybody does. They just say, ‘Oh we’re not covering that,’” said Hilary Balmer, a former registered nurse who now works as a paralegal helping injured workers make compensation claims at the board.

“Even though a physician recommends it, a treating doctor recommends it, the board will turn around and say, 'We won’t cover it.' And sometimes what happens is the injured worker will go without because they don’t have the money to pay for it.”

Linda Broer says the drug prescribed to her by a medical expert in spinal cord rehabilitation handed her back her life. But it took years of fighting with the WSIB to get the treatment covered.

After sustaining a severe neck strain from constantly looking at surveillance cameras, the detention centre worker says, she was left with chronic neck and shoulder pain and migraines so severe she was sometimes hospitalized. Her doctors tried multiple therapies, but only one worked: Botox injections.

But the WSIB refused to cover the drug. On the recommendation of the DAC, Botox is not an approved treatment except for cases of cervical dystonia, a rare neurological disorder, according to the board's website.

The WSIB also hired a medical consultant who argued that Broer's Botox treatment was "highly questionable," according to the final ruling on her case at the board's independent appeals tribunal. The tribunal rejected the consultant's opinion, noting that WSIB's doctor had not actually treated Broer.

"I find that the worker has entitlement for the Botox injections. The treatment is necessary and appropriate for her compensable condition," says the written decision by Workplace Safety and Insurance Appeals Tribunal vice-chair Sonja Hodis.

Broer had to rely on her private insurance covering the treatment until the tribunal ruled on her case in 2016, a fight that took four years to win.

"What would have happened if Manulife never paid for my Botox, which is \$450 every four months or even three months?" said the London-based mom, who says she's been able to continue working full-time because of the drug. "I couldn't afford that out of pocket. Or I would have to, because you know what? It's my lifesaver."

"I've got clients that can't afford to pay for their drugs so they do without," Balmer added. "It's making life a living hell."

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Provincial watchdog sees major spike in injured worker complaints

Ontario's worker compensation board facing hundreds of ombudsman complaints, as injured worker advocates call for an official probe.



Hundreds of complaints about the Workplace Safety and Insurance Board have been filed with Ontario's ombudsman's office at a time when advocates for injured workers have been calling for an official probe. (FRANCIS VACHON / THE CANADIAN PRESS FILE PHOTO)

By **SARA MOJTEHEDZADEH** Work and Wealth reporter
Sat., July 23, 2016

The number of complaints made to the provincial watchdog about Ontario's worker compensation system has jumped by almost 20 per cent over the past year, the Star has learned.

Nearly 600 complaints were made to the ombudsman about the Workplace Safety and Insurance Board between last April and March of this year, according to statistics requested by the Star — a spike from 2014/2015, when the watchdog received about 480 grievances about the board. A further 141 complaints have been lodged in the past three and a half months.

The increase comes as doctors, labour groups and injured-worker advocates [call](#) for a formal investigation into the WSIB, alleging “systematic disregard” for medical advice given by accident victims' own doctors. That, critics say, often leads to workers being unfairly kicked off benefits.

“I feel like it's a pretty strong indication to the ombudsman that external intervention is needed,” said Aidan MacDonald, of the Injured Workers' Consultants Community Legal Clinic.

“People don't seem to be able to trust the WSIB to fix its own problems, so I think this does support our request that a full investigation by the ombudsman is necessary to hold the WSIB accountable for its systemic injustices.”

In an emailed statement, a spokesperson for the board said it was “misleading” to suggest there had been a significant increase in complaints, because the number in 2014/2015 dipped somewhat compared with previous years. From 2011 to 2013, an average of 580 WSIB complaints were lodged with the ombudsman.



WSIB president Tom Teahen. (MELISSA RENWICK/TORONTO STAR)

“We track the numbers of complaints received by the ombudsman and treat them very seriously. The number of complaints has remained relatively constant over the past five years,” the statement said, adding that the number of grievances made to the board’s internal Fair Practices Commission declined over the past five years.

Linda Williamson, a spokesperson for the provincial ombudsman, said she could not comment on whether the recent increase in complaints would affect the organization’s decision to investigate, which has yet to be finalized.

“Generally speaking, although complaint volume can be a consideration, it is just one of many factors the ombudsman reviews in deciding whether or not to launch an investigation,” she said.

“WSIB has consistently been among the top five or top 10 most complained-about provincial government organizations over the past several years.”

Last year, the WSIB received the fourth highest number of complaints of any provincial government organization. Williamson said she did not know how the board currently ranks, as the figures would be released in the watchdog’s annual report this fall.

In an ongoing investigation into board practices, the Star has detailed allegations of unfair — and even [unlawful](#) — cost-cutting [measures](#) that critics say came at the expense of some of the province’s most vulnerable workers. These include the use of so-called [paper doctors](#), who review injured workers’ files without ever examining them in person, and wrongly attributing accident victims’ symptoms to “pre-existing conditions” so as to reduce compensation.

The number of complaints against the board’s independent appeals tribunal has also increased since last year, from 99 complaints to 128 — a 23 per cent increase. As previously reported by the Star, the [tribunal](#) has been an important avenue for workers to challenge board decisions, but has been hampered by massive backlogs.

“Injured workers are just being cut off benefits,” Macdonald said. “They’re being denied treatment that they need, they’re being denied medication that they need.”

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Injured workers routinely cut off WSIB by improper rulings

Critics say decisions citing pre-existing conditions unlawfully force vulnerable workers to battle for compensation they're entitled to.



Mark Winegarden, pictured outside his home, was injured while working as a paramedic and had to battle with the WSIB for years before he won his case at a tribunal. (NICK KOZAK / SPECIAL TO THE STAR)

By **SARA MOJTEHEDZADEH** Work and Wealth reporter

Thu., July 21, 2016

For 17 years, Mark Winegarden dedicated himself to the care of others as a Wasaga Beach paramedic. But he says that when he needed care himself following a workplace injury, the system failed him.

Four years after making a successful Workplace Safety and Insurance Board claim for an injured lower back, Winegarden was abruptly cut off benefits when the board revisited his file. The sudden ruling concluded his symptoms actually stemmed from a “pre-existing condition” rather than his traumatic accident — a reversal that advocates for injured workers say is unlawful but increasingly common.

Indeed, the board’s own independent appeals tribunal is systematically rejecting decisions to slash benefits based on alleged pre-existing conditions, a Star analysis has found. Since 2012, about 80 per cent of injured workers’ appeals on that issue have been successful, according to a tally of tribunal rulings.

“It’s depressing in the extreme to witness a major institution like the board operating in a manner that puts the administration of justice into disrepute and being allowed to get away with it,” said Ron Ellis, a noted legal expert who served as the first chair of the board’s independent tribunal from 1985 to 1997.

“The impact on the injured workers it affects is dramatic, but the rest of us should be ashamed of it from a rule-of-law perspective.”

Critics say the rate at which the WSIB’s decisions on the issue are being slapped down suggests it regularly violates the legal tenet underpinning the entire workers’ compensation system: the thin-skull doctrine, which says injured workers cannot be denied benefits for health conditions that never interfered with their work abilities before an accident.

The result, critics argue, is that vulnerable workers are forced into protracted confrontations with the board if they want to win the compensation they are legally entitled to.

Responding to a list of questions from the Star, board spokesperson Christine Arnott said the board had recognized there was a “growing challenge in adjudicating claims with pre-existing conditions” and a “risk of inconsistency.” As a result, the WSIB introduced a new policy on pre-existing conditions in 2014, which Arnott said is compatible with the thin-skull principle and “provides consistency in decision making and alignment with other jurisdictions.”

Because of the backlog at the Workplace Safety and Insurance Appeals Tribunal (WSIAT), the board’s 2014 guidelines have yet to be tested. But Ellis believes the new policy, which says pre-existing conditions can be considered if they are shown “to contribute to the degree of (a worker’s) permanent impairment,” could still be unlawful.

“I have yet to see the legal opinion in which (the board) argues the legal merits of their new policy,” Ellis told the Star. “They appear to have decided it was cheaper to overrule the thin skull doctrine.”

Reviewing WSIAT’s rulings over the past three years on files involving pre-existing conditions, the Star found at least 60 successful appeals. The board’s decisions were upheld just 15 times.

The thin-skull doctrine has been repeatedly affirmed as a vital part of workers’ compensation. In 1950, a Royal Commission on the subject decreed that “all workmen are entitled to the full protection under the Act without any discrimination based on their physical condition.” In 1998, the WSIB’s own legal counsel, Paul Holyoke, called the thin-skull principle the “cornerstone” of the province’s workers’ compensation system.

Yet it took Mark Winegarden three years to win back the benefits he was legally entitled to based on that principle.

“You hate being judged as that guy who is abusing the system. And it comes from your peers. It comes from your neighbours. It comes from a lot of people. It’s demoralizing,” he told the Star.

The 54-year-old hurt his back in 2007 while lifting a 200-pound patient, forcing the previously active and energetic paramedic to undergo surgery. The board gave him a relatively high permanent impairment rating at 32 per cent.

But in 2012, the board suddenly cancelled Winegarden’s claim. According to his case documents, the WSIB reviewed his file, drawing on the advice of a medical [consultant](#) who had never even examined Winegarden. That consultant said his ongoing suffering was related to a pre-existing condition rather than his workplace accident.

In 2015, the appeals tribunal ruled that the board's medical consultant was not "persuasive" because he "did not provide reasons to support his conclusion." While Winegarden did have a pre-existing back condition, the tribunal found there was "no evidence of significance" to suggest it had interfered with his work until his accident — meaning he could not be denied benefits by the board.

The WSIB did not comment on Winegarden's case, but said in an emailed statement that it "operates under a wage loss system which is designed to provide ongoing compensation to injured workers for wages they've lost as a result of workplace injuries/illnesses. Because of this, we have an obligation to assess entitlement to benefits throughout the life of a claim on an ongoing basis."

Critics argue the board has sought to more aggressively identify pre-existing conditions as a means of reducing benefit entitlement since 2010, when then-president David Marshall was tasked with cutting the WSIB's \$12 billion unfunded liability.

The change has been most marked since 2012, Ellis says, when the board hired a Dr. Christopher Brigham to review its policy on permanent impairments. The ensuing report suggested the board consider any pre-existing conditions workers might have had when ruling on compensation.

As [reported](#) by the Star, Brigham previously ran a U.S.-based "workers' compensation cost containment" company, and is embroiled in a legal battle there over an alleged "scheme" to unfairly cut accident victims off insurance benefits. The allegations have not been proven in court. Brigham described himself to the Star as a "strong advocate for those who are recovering from injury."

While the WSIB has now been forced by its appeals tribunal to revive his benefits, Winegarden says it's been something of a pyrrhic victory: the board has since told him he could be working at a customer service job — and has cut back his entitlement accordingly.

Meanwhile, Winegarden says, he suffers from chronic pain after his surgery left him with severe keloid scarring, an overgrowth of scar tissue on his spine. The pain leaves him bed-bound three to four times a week, he says; he uses a catheter to empty his bladder and is on 200 mg of morphine daily to treat his symptoms.

"There are days that I just feel like a complete failure," he said.

"I had so much guilt because of all the people I had picked up over the years (as a paramedic) who I had decided that they were just seeking medication," he added.

But even when accident victims are in the right, Winegarden says, he believes the emotional toll of fighting the board's decisions is too high for many.

“The (board) knows a certain percentage are just going to abandon their claims. A certain percentage are going to fight, but they won't have the resources,” he said.

“There's no penalty for the board having behaved like that.”

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WSIB critics say spending cuts are 'devastating' injured workers

Letter signed by more than 140 doctors, legal clinics, and labour groups, expresses deep concern about injured workers who are increasingly unable to get the treatment their doctors recommend,



Indira Rupchand fights back tears as she recalls details of injuring her back in a workplace accident in 2013. (VINCE TALOTTA / TORONTO STAR) | [ORDER THIS](#)

PHOTO

By **SARA MOJTEHEDZADEH** Work and Wealth reporter

Fri., June 10, 2016

Dramatic changes to health-care services for injured workers, including a 40 per cent funding drop in rehabilitative treatment and a 30 per cent drop in drug benefit spending, is having a “devastating” impact on some of the province’s most vulnerable citizens, according to a letter obtained by the Star.

The letter, to be delivered Friday to senior Ontario government figures and signed by more than 140 doctors, legal clinics and labour groups, expresses deep concern about injured workers who are increasingly unable to get the treatment their doctors recommend because of significant health-care changes at the Workplace Safety and Insurance Board. The letter claims that shift is designed by the board to cut costs at the expense of injured workers.

“We only have one body,” said Indira Rupchand, 56, who hurt her back three years ago on a manufacturing production line. “If we are hurt at work, I think we deserve to be treated with dignity and get the treatment that is recommended. Many times we are railroaded.”

The board has moved away from relying on the medical advice of injured workers’ own doctors in favour of opinions provided by physicians in specialty clinics contracted by the WSIB, according to the letter. The board has doubled its spending on such clinics over the past 10 years.

WSIB has responded to criticisms of its health services, including a formal [complaint](#) to Ontario’s ombudsman by injured worker advocates, by saying that it has “confidence in the integrity of Ontario’s health-care professionals” and that it “acts quickly to ensure workers receive timely, specialized medical care.”

But critics say specialty clinics’ treatment programs often push injured workers back on the job before they are ready and set unrealistic recovery dates. Workers’ benefits are frequently cut off according to those recovery timelines, without the board ever following up with the worker or their doctor about their health.

“It turns the focus away from health care and toward a date,” said Maryth Yachnin, a lawyer with the Industrial Accident Victims Group of Ontario (IAVGO).

Meanwhile, the board has cut its spending on drug benefits by close to 30 per cent since 2009, according to the letter. Funding for services like physiotherapy and psychological treatment provided by doctors not affiliated with the board also plummeted by 40 per cent

between 2005 and 2014. That statistic was obtained by IAVGO through a freedom of information request.

Such rehabilitative services are often vital for real, long-term recovery, Yachnin says, and are frequently recommended by injured workers' own doctors — only to be ignored by the board.

“(Workers) feel like they are coming up against a wall when they’re trying to get services that will actually help them recover,” she told the Star. “They don’t listen to workers’ doctors and specialists.”

When it comes to the WSIB’s own specialty clinics, the board is “setting the terms and conditions of what the (clinics) reports are providing,” she added. “They set out the specific way they want doctors to frame their answers . . . the answers are generally not as candid as you might see from the workers’ (own) doctors in our experience.”

Questions about the WSIB’s health-care provision have already been raised: as [reported](#) by the Star, a Hamilton-area doctor is currently suing the board and one of its private health-services contractors, claiming she was terminated after delivering a medical opinion that did not suit the WSIB.

After injuring her back in 2013, Rupchand says she received just a couple of physiotherapy sessions through one of the WSIB’s specialty clinics before being told to start working again. The stress of working while still injured was the start of a downward spiral, according to the Toronto-area resident who says she has since contemplated suicide as a result of her ordeal, and is currently separated from her kids.

“All this is a systematic thing with injured workers,” said Rupchand, who is helping to organize a day of action on Friday to raise awareness about the issue. “I’ve heard people going through this so many times.”

“It’s causing a lot of stress. I’m a single mother and it’s hard. That’s why I’m still feeling pain and that’s why it’s so important that the WSIB listens to treating doctors,” she added.

“As injured workers, they don’t believe us. I was never believed.”

With files from Jacques Gallant

Injured workers

By the numbers



Source: Toronto Star

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Go Public

Migrant worker program called 'worse than slavery' after injured participants sent home without treatment

Cousin of Jamaican man who died from workplace injury says when workers get ill 'they just dispose of them'

By Rosa Marchitelli, [CBC News](#) Posted: May 16, 2016 5:00 AM ET Last Updated: May 16, 2016 12:53 PM ET

The family of a migrant farm worker who died several months after a severe head injury says the program that brought him to Canada stripped him of his labour rights after he was hurt, then tried to cut off his access to health care.

Sheldon McKenzie, 39, suffered the injury at work, and his family say they were forced to intervene to keep him from being shipped back to Jamaica without getting the medical care he required.

His cousin, Marcia Barrett who lives in Winnipeg, says more needs to be done to protect the rights of migrant labourers who come to work under the Seasonal Agricultural Worker Program that provides temporary foreign labour to Canadian farms.

Hundreds of those workers have been sent home from Canada in similar circumstances, a practice known as "medical repatriation."

"It's worse than slavery — they dispose of them," Barrett told Go Public.

Man spent more than decade working on Canadian farms

For 12 years, McKenzie went back and forth from Jamaica, spending months in Canada doing manual labour on farms. The money he made was sent back home to his wife and daughters.

In late 2014, he started working on a tomato farm near Leamington, Ont. It would be his last job.

In January 2015, Barrett got a call saying her cousin had hit his head at work and was in a coma in hospital.

"His face was completely bandaged, he was swollen. We got there, he was on life-support," Barrett said.

His condition was so bad, doctors had to remove part of his brain due to swelling and internal bleeding.

Pressured to ship injured worker back, says family

Barrett says right away there was pressure from McKenzie's liaison officer to have him return to Jamaica. No longer able to work, he lost his work visa and no longer qualified for health-care coverage.

She hired lawyers to try to get him a humanitarian visa so he could continue getting medical care in Canada. She succeeded in getting a temporary stay, but McKenzie died before a decision was made on a humanitarian visa.

Barrett expected support from the Jamaican liaison officer assigned to McKenzie's case as part of the seasonal worker program, but she says that didn't happen.

"What I found out after much talking to people who will never talk on camera, when the migrants are hurt, sometimes they don't take them to the hospital, they ship them back to Jamaica," she says.

"Their only goal was to ship him back home. The only way he wasn't shipped back in three days is because we dug our heels in and said no because the health care in Jamaica is not up to par to take care of the type of injury that he had."

Liaison says workers are protected

Go Public asked Carlton Anderson, the chief Jamaican liaison officer for Canada, about the allegation that liaisons are helping to have farm workers sent home quickly after being injured.

In a statement, he said he is unaware of that happening saying "this type of action by an officer would be inconsistent with the officer's obligation and commitment to the worker."

Anderson, whose office works with the Canadian government to administer the program, said such actions would not be tolerated.

"The well-being of the worker is the prime reason for our existence or presence in Canada," he wrote. "However, there is no work without the program and there is no program without the employers."

'Unique and vulnerable' workers

About 30,000 farm workers come to Canada annually through the Seasonal Agricultural Worker Program. That number has steadily increased over the last decade. Most come from Mexico and Jamaica, but also from several Caribbean countries.

The program is intended to allow Canadian farmers to hire workers on temporary visas during the planting and harvesting seasons when they are unable to find local workers to fulfil their labour demands.

Canadian farmers who hire the workers get to decide who can, and can't, return. The farms work with Jamaican liaisons when deciding who can come back. Barrett says that leaves workers powerless.

"If they complain, they get sent home and don't come back. Some are the only support for their family," she says.

The program has been running for 50 years, but Canadian researchers have only recently been able to access privately collected data on illnesses and injuries that led to workers being sent home.

A study published in the Canadian Medical Association Journal Open reports that between 2001 and 2011, 787 migrant farm workers in Ontario were terminated and sent back to their countries of origin for medical reasons. It found the workers were a "unique and vulnerable occupational group," because the federal government will take away an individual's work visa if they get ill or hurt, then the provinces cut off access to health care.

Only one in 50 injured or sick workers left willingly, according to the study.

Advocates call it 'an apartheid system'

For years, Chris Ramsaroop, an organizer with [Justicia for Migrant Workers](#) has been trying to get the government to make changes to the program's rules to give workers more rights. He says injured workers are routinely cut off from health-care coverage, and appeals can take months.

"To be blunt, I consider this an apartheid system. Migrant workers live and work under a different set of legal rights and obligation than we do. We are not denied basic human rights, we are not denied health care. They are seen as disposable and temporary," Ramsaroop says.

Issue on government's agenda

This week, politicians will be looking at the Seasonal Agricultural Worker Program, which falls under the umbrella of the Temporary Foreign Worker Program.

The standing committee on human resources, skills and social development and the status of persons with disabilities will examine changes to the TFWP made by the Conservative government in 2014 after [a series of Go Public stories](#).

The committee's recommendations will help guide the Liberals on changes required to the TFWP, the government has said it wants to make in the fall.

After Go Public brought Sheldon McKenzie's case to the attention of the Minister of Employment, Workforce Development and Labour MaryAnn Mihychuk, who promised to make the Seasonal Agricultural Worker Program part of the review.

"It's shocking. You asked the question how many foreign temporary workers have died on Canadian soil? It was surprising to learn that the Canadian government doesn't keep track ... It's clearly a lack of communication and awareness of what's happening ... It's definitely something we should be looking at," Mihychuk says.

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With files from Manjula Dufresne





Ontario migrant worker who sliced his neck takes on the WSIB

Sara Mojtehdzadeh

Hamilton Spectator | Mar 21, 2016

A Jamaican farm hand who was rushed to a Hamilton hospital in life-threatening condition after hurting himself on the job has filed a human rights complaint against Ontario's workplace compensation board, alleging "systemic" discrimination against migrant workers.

The claim, to be submitted Monday at the Human Rights Tribunal of Ontario, says WSIB failed to ensure Robert Sulph, 51, would have proper access to care when he returned to Jamaica after he sliced his neck open while working on a London-area tobacco farm — even though he was entitled to full and fair compensation for his injuries under provincial law.

According to the complaint, Sulph — who had worked seasonally in Canada for almost 24 years — had to give up seeking treatment because he could no longer afford the cost. Despite almost dying, Sulph was cut off WSIB benefits after 12 weeks, and the board refused to pay his medical expenses upfront — making it near-impossible for the low-wage farmer to access care, the claim says.

"The WSIB's treatment made me feel that I am not an equal member of society who deserves to be invested in or treated with dignity and respect. And I know I am not alone," Sulph said in his complaint.

The worker's compensation board has 35 days to file a response.

"When workers get injured there's this idea that they're disposable and they can be discarded because they're in Canada temporarily," said community legal worker Jessica Ponting, of Industrial Accident Victims Group, a Toronto legal clinic for injured workers.

According to the claim, Sulph was working for minimum wage in Ontario under the Seasonal Agricultural Workers Program in August 2013, when he was cutting some metal near his workplace's barn. As he cut, a blade broke and flew off — slicing his neck and left arm. He was airlifted to Hamilton Health Sciences Centre, where doctors told him he would have died had his artery been cut by 5 per cent more. He spent six days intubated and ventilated in the hospital's intensive care unit, Sulph's complaint says.

Upon his release, a doctor from a WSIB-sponsored evaluation centre told him he should start physical therapy immediately with gradual return to work, and that he would recover in three months. Since there was no modified work available for him at his employer, Sulph returned home to his wife and three children.

But the claim says WSIB did not investigate whether Sulph would be able to get the care he was entitled to in Jamaica. Sulph, who lives on a yam farm in a rural part of the island, did not have access to treatment nearby and had to pay hundreds of dollars up front for transportation, appointments, physiotherapy, a CT scan and medications.

Although WSIB had agreed to reimburse his costs, Sulph's complaint says he repeatedly told WSIB he was having trouble paying out of pocket — purchasing international phone cards to place calls to the board that were never returned. Had he remained in Ontario, Sulph would have benefited from arrangements WSIB maintains with taxi companies, OHIP and pharmacies, which directly bill the board rather than charging injured workers.

Instead, Sulph was forced to borrow money from friends, cut down on his recommended number of physiotherapy sessions, and in one case, sacrifice his child's school fees to pay for his medical expenses — evidence, the complaint says, of the board's inequitable treatment of migrant workers.

"It is really hard for me to talk about this because it opens up a lot of wounds," Sulph says in his complaint.

Sulph was also cut off of loss-of-earning benefits after 12 weeks because the board said the yam farmer could return to work as a cashier.

"Noting this, I am unable to allow further loss of earnings benefits in your claim as you are deemed capable of working within your suitable occupation," a document from his case manager reads.

"I only have a Grade 7 education so I do not think anyone will hire me for an office-type job," Sulph's complaint says. "I came to work in Canada because of the limited job opportunities in Jamaica, even for a fully abled person."



Robert Sulph, a seasonal farm worker who worked in Canada for 24 years before slicing his neck open on the job, says WSIB failed to ensure he would receive the proper treatment he was entitled to when he returned to Jamaica

Sulph is now seeking \$40,000 from WSIB for "the loss of the right to be free from discrimination," a \$1,500-a-month health stipend to cover his expenses, and changes to WSIB's policies on migrant workers.

His lawyer, Ponting, said she has seen a high volume of cases similar to Sulph's.

"WSIB has a responsibility to provide health care. That is their job," she said.

CHANGING WSIB POLICY

Robert Sulph's human rights complaint seeks a so-called public interest remedy, which would ask WSIB to include the following changes in its policies toward migrant workers:

WSIB-funded medical investigations inside and outside Ontario to ensure injured workers can access appropriate medical care.

WSIB pays upfront for all medical expenses directly to migrant workers' health-care providers, prior to services being delivered where necessary.

Require WSIB to pay transportation expenses so that workers do not have to pay these expenses up-front in their home countries.

Assist migrant workers to remain in Ontario for medical care where necessary.

Torstar News Service



GUEST COLUMN

System failed injured worker who left country

Case against WSIB taken to Human Rights Tribunal of Ontario

STUART RUDNER, SPECIAL TO THE TORONTO SUN

FIRST POSTED: MONDAY, MARCH 21, 2016 07:58 PM EDT | UPDATED: MONDAY, MARCH 21, 2016 08:07 PM EDT



While we are used to seeing human rights complaints against employers and landlords, human rights legislation applies to all organizations, including the government itself.

In the case of Robert Sulph, 51, the allegations that have been made, which we must remember have not yet been proven, suggest that there is a “double standard” in the context of the provision of medical care to individuals that were injured in the course of employment.

More specifically, it appears that while the Workplace Safety and Insurance Board (WSIB) has systems and provisions in place to provide for treatment, and access to treatment, for those within Canada, people who leave for other countries are effectively left to fend for themselves.

Sulph, who worked in Ontario for 24 years as a migrant farm worker, suffered life threatening injuries in 2013 when a malfunctioning saw sliced his neck and carotid artery.

According to the IAVGO Community Legal Clinic and other supporters, the WSIB, which closed his file in 2015, knew Sulph was returning to Jamaica but did not create a plan for his care.

In Jamaica, Sulph has not been able to get the health care he needs to recover and fallen into poverty. His case has been taken to the Human Rights Tribunal of Ontario.

Sulph was apparently unable to obtain the necessary treatment because WSIB would not advance funds to him so that he would be able to pay for things like transportation to and from his medical appointments. Given his meager economic resources, he was forced to cut back on medical treatment, as well as to use money that was supposed to be applied towards his children’s education.

Of course, discrimination in and of itself is not a breach of human rights legislation. In order to be a breach, the discrimination must be based upon a protected ground. As I often advise clients and students, a company could adopt a policy that they will not hire people who wear blue shirts to interviews. While that may be poor HR policy, it is not a breach of human rights legislation as it does not relate to any of the protected grounds.

In this case, it is arguable that the termination does relate to a protected ground, but not clear-cut.

Our workplace safety and insurance system is designed to provide protection for workers and also to ensure that injured workers receive the treatment and care that they need. In this case, it appears that the system failed Sulph due to the fact that he chose to return to his native country rather than remain in Canada.



h the WSIB was fully aware of his plans, they did not make him aware of the fact that by returning to Jamaica, he would face these obstacles. Given that our human rights legislation prohibits discrimination based upon grounds that include place of origin, citizenship, race, ethnicity, and disability, then there may well be a legitimate argument to be made that the system is in breach of the applicable human rights legislation.

Even if that were not the case, the system should be fixed so that situations such as those encountered by Sulph are not repeated.

— ***Rudner is a founding partner of Rudner MacDonald LLP, which specializes in Canadian employment law.***

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Investigate workers' complaints: Editorial

Doctors join injured workers to demand fair compensation.



Acting Ontario ombudsman Barbara Finlay has received a 200-page submission on the Workplace Safety and Insurance Board from a network of groups.

Sun., Jan. 31, 2016

Ontario's [Workplace Safety and Insurance Board](#), the provincial agency that provides compensation for workers injured on the job, has been a lightning rod since it was set up in 1914.

Workers accuse it of skimping on benefits, cutting short their medical treatment and forcing them back to work. Employers, whose premiums finance the board, accuse it of coddling malingerers.

This time, the WSIB is facing more than a protest or routine complaint. More than 20 doctors have joined the [Ontario Network of Injured Workers' Groups](#) and the [Ontario Federation of Labour](#) in demanding that the province's ombudsman investigate the 4,400-person bureaucracy. They allege the board's employees "systematically ignore the advice of medical professionals" in their decisions.

"The compensation system has been in retreat since the 1990s," they contend in their 200-page submission to [acting ombudsman](#) Barbara Finlay. "Persons with worked-induced disabilities are vulnerable. They frequently suffer mental health consequences and at heightened risk of poverty."

The group's lawyers have compiled case after case in which the board overruled the advice provided by claimant's doctor and clawed back the individual's benefits, leaving him or her with little choice but to return to work in pain, on heavy medications or suffering from clinical depression.

The coalition is not demanding that Labour Minister [Kevin Flynn](#) intervene in the board's decision-making. It is not asking that [Elizabeth Witmer](#), chair of the WSIB, be called on the carpet. It is not proposing that Ontario's Workplace Safety Act be rewritten. It is not challenging the board's right to seek a second medical opinion.

It merely wants the provincial ombudsman, whose job is look into complaints about government services, to investigate the treatment of injured workers. That seems reasonable.

The request comes at an opportune time. A new president is about to take over. Last month the Liberal government named [Thomas Teahen](#), an employment and labour

lawyer who served as chief of staff to Premier Kathleen Wynne, as head of the WSIB. His five-year term begins in February.

Balancing the needs of Ontarians hurt or disabled on the job against the need to manage the agency's caseload will always be a challenge, one that requires a compassion, hard-headedness, consistency and fairness.

If there is convincing evidence that the WSIB is erring on the side of financial discipline at the expense of injured workers who need support, its incoming president, the labour minister and the premier need to know about it.

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Ontario watchdog urged to investigate WSIB

Injured workers unfairly kicked off benefits are falling into desperate poverty, according to evidence submitted to Ontario's ombudsman.



Marvin Mulder, who injured his back in 2010, is fighting the WSIB after having his benefits cut off. (PETER POWER / FOR THE TORONTO STAR)

By [SARA MOJTEHEDZADEH](#) Work and Wealth reporter

Fri., Jan. 29, 2016

Citing “systematic disregard” for professional medical assessments of injured workers, advocates have asked Ontario’s government watchdog to launch an investigation into the province’s Workplace Safety and Insurance Board.

The 200-page submission made Friday to the provincial ombudsman by health professionals, workers, lawyers and labour groups blasts WSIB for ignoring the medical advice provided by doctors treating injured workers, in favour of so-called “paper doctors” who have not met patients directly.

The resulting claw-backs in medical benefits are having a “devastating effect,” the submission says, leaving workers with severe physical and mental problems stranded in poverty.

“That’s why the complaint is being filed today,” said Chris Buckley, president of the Ontario Federation of Labour. “Injured workers and their advocates have been sounding the alarm for well over 20 years about workers’ compensation that ignores the advice of treating physicians and kicks desperate injured workers off their benefits.”

“It’s a regular occurrence that you send medical evidence that is never acknowledged,” added psychologist Dr. Giorgio Ilacqua, who has worked in the field since 1985 — including a stint as a consultant for WSIB, formerly known as the Workmen’s Compensation Board.

The Star has previously reported on [allegations](#) that WSIB fired a doctor for refusing to reverse her medical assessment of an injured patient.

In response to those allegations and an ensuing [report](#) by the Ontario Federation of Labour about WSIB ignoring medical advice, the board said in a November statement that it “values the relationships it has with thousands of health care practitioners across the province and relies on their professionalism and expertise.”

More than 20 medical professionals contributed evidence to Friday’s submission to the provincial ombudsman, drawing on 41 case studies involving injured patients.

Marvin Mulder, 46, is one such worker. He says his doctor's medical advice to WSIB was ignored after the former mover from Hamilton severely injured his back on the job in 2010.

Mulder underwent six spinal injections and two failed back surgeries in an effort to recover. He says WSIB asked him to participate in its work transition program almost immediately after his accident, giving him the option to retrain as either a millwright or an office assistant — even though his injuries prevent him from sitting or standing for prolonged periods of time.

Mulder says persistent health problems — including being rushed to the emergency room several times — prevented him from completing the retraining program. His specialist wrote to the board to say he was physically unable to continue. In response, Mulder says, WSIB deemed him “non-co-operative” and drastically reduced his benefits last year.

“It's devastated me and my family,” he told the Star.

He now relies on disability support and Canada Pension Plan benefits to survive. He says CPP has approved him for benefits available to workers with a demonstrable “severe and prolonged disability” even though WSIB clawed them back.

“The overall effect is that the injured workers are being re-victimized by the very system that was actually created to help them,” said Aidan MacDonald, of the Injured Workers' Consultants legal clinic.

The submission to the province's government watchdog argues that reduced coverage through employer-funded workplace insurance means workers often have little choice but to rely on publicly funded health care and social assistance programs.

“It's a huge strain on those programs, which at this point is needless. WSIB was designed to be a safety net. For far too long, employers are getting off the hook,” Buckley said.

“We're hoping a systemic investigation and consequences from the ombudsman can start to shift the system back to an actual compensation system that treats injured workers with dignity and respect,” MacDonald added.

-

CONCERNS IN THE REPORT

The report submitted to Ontario's Ombudsman alleges the following problems with WSIB's current practice:

- Disregard for the medical opinion of doctors treating injured workers;

- Examples of the board forcing workers back to work against the advice of their physician or psychologist;
- Overemphasis on injured workers' pre-existing conditions for the purpose of rejecting, limiting, or prematurely cutting off workers' claims;
- Approval for medical services taking months;
- Insufficient physiological or physiotherapy sessions for injured workers approved for benefits.

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Ontario psychologist 'alarmed by what's happening to WSIB claimants'

Group says WSIB unfairly denying patient claims, ignoring recommendations from health care providers

CBC News Posted: Nov 05, 2015 10:01 PM ET Last Updated: Nov 05, 2015 10:01 PM ET

The Workplace Safety and Insurance Board of Ontario (WSIB) has "become a service whose prime objective is simply to not serve," a Sudbury psychologist says.

Dr. Keith Klaasen, who has been working with people who have suffered brain injuries and post-traumatic stress disorder for the last 22 years, is part of a group of Ontario psychologists who claim their patients are being unfairly denied compensation.

In a report, *Prescription Over-Ruled*, unveiled at Queen's Park Thursday, the group decried what it calls "the primitive practice of deeming injured workers eligible to resume work when physicians have clearly stated the opposite."

- **Ontario psychologists claim WSIB unfairly denying patient claims**
- **Northern Ontario workers stay longer on disability: study**

At the news conference, Nancy Hutchison, secretary-treasurer of the Ontario Federation of Labour (OFL), said the report confirms "that the WSIB is more interested in clearing the caseload than supporting workers who have been seriously injured on the job and who require the benefits they are entitled to."

Hutchison alleged injured workers are being ordered back to work against the advice of their treating physicians, "receiving insufficient treatment because of being cut off too early, and their injuries are being blamed on pre-existing conditions in order to deny their claims."

"WSIB impossible to work with,' doctor claims

Klaasen said that over the last five years "the WSIB has been impossible to work with."

"We send out treatment plans and we do not hear back, we call and we're told things are in process and we do not hear back," he said.

"After many months, we simply give up. When it is our opinion that someone cannot work we write detailed reports outlining why. Despite this, our clients get telephone calls stating they're going to be developing a return-to-work plan and they need to show up in a few weeks."

Klaasen claimed that when injured workers inform the WSIB their doctors "don't think they can work, they're often told that the WSIB worker hasn't looked at those reports and that they don't really matter."

In a statement issued Thursday, the WSIB denied the OFL's allegations.

It said it registers over 200,000 claims each year and takes its responsibility to injured workers very seriously.

"When an injury occurs or an illness is diagnosed, the WSIB acts quickly to ensure workers receive

timely, specialized medical care," the statement said. "A worker injured on the job receives medical care that is significantly beyond what Ontario Health Insurance Plan (OHIP) would cover for someone not injured at work."

The WSIB said "92 per cent of injured workers are back at work within one year of their injury at full wages. Fewer than two per cent of claims are appealed, and in 2015, we have received the fewest number of appeals since 1989."

Klaasen said "silence is not an ethical option" for him.

"Just as with any other abuse of process, we are asking that WSIB be formally investigated by a body other than itself," he said.

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MD claims WSIB fired her over medical opinion

Lawsuit claims employer and insurance board wanted doctor to 'participate in a fraud' regarding worker's injuries.



Dr. Brenda Steinnagel, photographed at her home in Ontario on Sept. 22, is suing her former clinic and the WSIB for wrongful dismissal, alleging the WSIB pressured her employer into firing her when she refused to provide a medical opinion on a claimant that the WSIB would agree with. (PETER POWER / FOR THE TORONTO STAR)

By **JACQUES GALLANT** Staff Reporter

Wed., Sept. 23, 2015

A Hamilton-area physician is suing the Workplace Safety and Insurance Board and her former employer for \$3.2 million, claiming she was fired when she wouldn't deliver a medical opinion that suited the WSIB.

Dr. Brenda Steinnagel, 50, is alleging in her statement of claim that she was terminated last April after the WSIB repeatedly demanded that her employer, Vaughan-based Workplace Health and Cost Solutions, change the medical opinion she authored on a hospital worker who was claiming benefits after suffering head injuries while trying to restrain a patient.

Steinnagel had concluded in late 2014 that the worker's emotional issues could be related to his workplace accident, according to the statement of claim. Within two weeks of delivering her opinion, she alleges the WSIB requested clarification.

After further review, which included speaking with the worker's family doctor, Steinnagel says she reached the same result in her medical opinion, but "the WSIB continued to resist her conclusion," according to the statement, filed in Toronto Superior Court in July.

"The defendants WSIB and WHCS tried to force Dr. Steinnagel to participate in a fraud upon the public," the statement alleges.

"In a desperate effort to reduce claims paid out, WSIB and WHCS have been conspiring to deny legitimate claims in a shocking display of arrogance and corruption. They pressured Dr. Steinnagel over a period of months to reverse her medical opinion on a high-cost case. When she refused, she was fired."

None of the allegations has been proven in court. WSIB and WHCS have not yet filed statements of defence, but both told the Star they deny any wrongdoing and will be moving to strike much of Steinnagel's claim in court on Oct. 26.

“The claims she has made about improper conduct are without merit,” said WHCS lawyer Greg McGinnis, calling Steinnagel “an apparently disgruntled former employee.”

WSIB spokeswoman Christine Arnott told the Star that “there is no truth to Dr. Steinnagel’s allegations and we deny acting wrongfully in any way. The WSIB will vigorously defend the lawsuit.”

Steinnagel, a married mother of a 3-year-old daughter, began working at WHCS in September 2012 as an external medical consultant to the WSIB, according to her statement of claim. Before that, she had been doing much of the same work within the WSIB since 2003, where she says in her statement she received promotions for her “excellent work.”

During her time at WHCS, where she went to work after her maternity leave ended, the company had a contract with the WSIB to provide medical consultants to assess workers claiming benefits for workplace injuries.

Steinnagel says in her statement that she received a positive performance review while working at WHCS, and was even asked to do quality-assurance checks on other medical consultants at the company.

But she alleges things became tense in early 2015 when the WSIB continued to refuse her medical opinion on the hospital worker, who isn’t named in the statement of claim. She alleges that at one point, WHCS’s medical director authored a different opinion with her name on it, and that she was “coerced” into signing it, but she refused.

She alleges one superior questioned whether she “valued the WSIB contract,” according to the statement, while another asked a human resources representative to “put pressure” on Steinnagel to reverse her opinion.

“Throughout January and February 2015, WSIB and WHCS continued to try different tactics to get Dr. Steinnagel to change her opinion about the hospital worker,” the statement alleges. “It was a relentless campaign to question every aspect of Dr. Steinnagel’s work and challenge her entire approach to the case.”

The statement alleges that WHCS ultimately provided a medical opinion to the WSIB from a different doctor that arrived at the opposite conclusion reached by Steinnagel, “thereby providing WSIB with the false and fraudulent opinion it needed to deny the hospital worker his benefits.”

Steinnagel further alleges that she was suddenly told she had to do more work on site, though she said her superiors knew she had a young daughter at home, as well as to work more closely with the medical director.

In an email apparently sent by WHCS president Yvonne Chan on April 2 — a copy of which was sent to the Star by Steinnagel's lawyer — Steinnagel is informed that a WSIB official verbally confirmed that "WHCS would suffer the consequence of the contract being taken away if we do not remove you from our roster."

The email further says: "As a result, WHCS has no choice but to abide by WSIB's request and thus the termination of your employment with WHCS."

The copy of Chan's email includes an email apparently sent to her by Dr. Dybesh Regmi at the WSIB on March 26, saying the WSIB had expected Steinnagel would not be reviewing any more files.

"And again now we are here with another issue," the email says. "Until this issue is resolved we may have to stop allowing WHCS to take on any more files."

Speaking to the Star this week, Steinnagel said: "The right thing needs to be done. I think to be asked to take an opposing stance in the face of that being my medical opinion is a challenge, and I don't think that does anyone any favours."

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REAL HEALTH CARE FOR INJURED WORKERS

1. Campaign backgrounder
2. Media coverage
3. Other urgent calls for change: calls for public inquiry, Ombudsman investigation and Workers Comp Is A Right campaign
4. Stakeholder letters to WSIB

NO EVIDENCE

A CLARION CALL FOR A PUBLIC INQUIRY

INTRODUCTION

IAVGO Community Legal Clinic recently released its 86-page report, “NO EVIDENCE”.¹

The report is a game-changer. It is a game-changer because it proves, on the basis of unimpeachable evidence, that, under its post-2009 management regime, Ontario’s Workplace Safety and Insurance Board’s adjudicative factual findings are routinely not “evidence-based”.

With this report on the table, a public inquiry into the Board’s post-2009 conversion of its adjudicative culture to a culture of pro-active denial has become a necessity.

CONTEXT

THE WSIB’s TRIAL-COURT FUNCTION

The WSIB has two distinct functions in Ontario’s workers’ compensation system. It is, of course, the system’s administrator but it is also the system’s trial court – the institution in which claims of entitlement to compensation benefits are heard and adjudicated.

In its role as the system’s trial court, the Board is exercising a judicial function. It is not, however, the traditional judicial function exercised by courts in common law jurisdictions; it is an inquisitorial judicial function. (This is evidenced by, amongst other things, the fact that the Board is directed by its statute to make its decisions based on the “merits and justice” of the case – WSIA, s. 119(1) – and by its unlimited, statutory powers of investigation.)

However, the fact that an adjudicative function is “inquisitorial” does not detract from the judicial nature of that function.²

¹ *NO EVIDENCE* was written by Maryth Yachnin, IAVGO staff lawyer, and the extensive review of WSIAT’s 2016 decisions on which it is based was accomplished with the help of Pro Bono Students Canada and eight volunteer law students. The final report (86 pages) may be found at: <http://iavgo.org/wp-content/uploads/2013/11/No-Evidence-Final-Report.pdf>, and the 234 page Chart of all the cases reviewed (with quotations from the decisions) may be found at: <http://iavgo.org/wp-content/uploads/2013/11/IAVGO-March-10-2017-WSIAT-2016-review-chart.pdf>

² *Charkaoui v. Canada (Citizenship and Immigration)*, [2007] 1 SCR 350, at paras. 50-51 (“there are two types of judicial systems ...”).

EVIDENCE-BASED ADJUDICATION

In its traditional common-law formulation, a judicial function may be described as the application of applicable law (interpreted in accordance with the established principles of statutory interpretation) to findings of facts made on the basis of the impartial weighing of the relevant evidence presented by the parties, against appropriate standards of proof, and all in a fair hearing.

The difference when the judicial function is an inquisitorial function is that the adjudicator cannot depend solely on the evidence presented by the parties. The burden of proof is ultimately on the adjudicator, not on the parties.

Thus, in its exercise of its trial-court function, the WSIB is duty-bound to ensure that its factual *findings* extend to *all* pertinent facts and that those findings are based on evidence that is not only relevant (and not irrelevant) but also *sufficient*; that its findings of fact (including of medical facts) are based on evidence that is sufficient to actually satisfy the Board's adjudicators that each pertinent fact has been proven – or not – as judged against the correct standard of proof.

But while the Board is responsible for ensuring that the evidence is sufficient, it does not follow that the evidence presented by the parties is not of central importance. Evidence presented by the parties is an integral part of the evidence package the Board in its trial-court function must consider. Board adjudicators are not entitled to ignore, or to arbitrarily discount, any relevant evidence that comes to their attention, including especially evidence presented by an injured worker (or by his or her employer).

If the decision-making in the exercise of the Board's trial-court function is not "evidence-based", it is not lawful. And it is not evidence-based if it is not grounded in findings of *all* pertinent facts based on the impartial weighing of *sufficient*, relevant – and not irrelevant – evidence, including the evidence presented by the parties.

THE CONFLICT OF INTEREST INHERENT IN THE BOARD'S DESIGN

A central conundrum in the design of the Board's structure is the egregious conflict of interest that exists between the Board's role as the system's trial court and its role as the system's administrator. As the trial court it generates the costs which as the administrator it must pay.

THE ENHANCED CONFLICT OF INTEREST POST-2009

It is a conflict that was greatly exacerbated when the Auditor General reported in 2009 that the WSIB's costs had so outstripped its revenues that it had accumulated an unfunded liability which was threatening to collapse the system. In that report, the Auditor General warned the government that unless urgent steps were taken to bring the unfunded liability under control, the government would have to add that liability (then about 12 billion dollars and rising) to the general liability of the province.

The government's response was to appoint David Marshall to a five-year term as the new President and CEO with marching orders to master the unfunded liability; marching orders that were underscored by the grant to him of an annual bonus in the amount of 20% of his \$400,000 annual salary. Each of these annual bonuses was conditional on the approval of the Minister of Labour and thus conditional, presumably, on the Minister being satisfied that the Board's performance was satisfying the government's need for improved performance on the financial front.

THE POST-2009 TRANSFORMATION OF BOARD FINANCES

Since the regime change in the WSIB's management that began with Mr. Marshall's arrival at the Board on January 1, 2010, there has, in fact, been a remarkable turn-around of the Board's financial position.

At a surprisingly quick pace (in a series of speeches to Employer organizations, in the spring of 2014, Mr. Marshall was already claiming victory), the Board has reduced its unfunded liability by nearly 11 billion dollars (since its high of 14.2 billion in 2011), and has saved another 2.3 billion dollars which it holds in reserve against future liability for occupational health claims. It was also able to voluntarily reduce its revenue stream (the premiums paid by employers) by 6.2% in 2017, with the Board projecting further reductions reaching 50% in three years.³

The Board acknowledges that these achievements are due mainly to its success in dramatically reducing its benefit costs. It has reduced the amount it pays in benefits each year by 1.2 billion dollars; cut the amount of NEL benefits each year by a third; reduced the number of 100% loss-of-earnings pensions that are locked-in each year by 80% – to mention only a few of the cost-cutting highlights.

HOW WAS IT DONE?

In his 2013 report on the WSIB's Benefits Policy Review Consultation Process in 2012/2013⁴, Jim Thomas, the independent chair of that Consultation process, advised the Board's new management that in his opinion the "appropriate vehicle" for addressing changes in entitlement "substantial enough to impact the cost structure" would be legislative amendments to the law.⁵ But there have been no cost-reducing amendments to the law. The Board has achieved this

³ I have relied for the analysis of the Board's financial data on the work of Carmine Tiano, Ontario Building Trades, in his paper "Hard Times for Injured Workers: WSIB by the Numbers 2009-2015" and the work of the law firm Fink and Bornstein as reported in its August, 2017 Newsletter.

⁴ WSIB Benefits Policy Review Consultation Process, Report to the President and CEO of the WSIB, Jim Thomas, Independent Chair, May 2013.

⁵ Ibid, page 7.

complete turn-around of its desperate financial position without the benefit of any change in the law's definition of benefit entitlement and, indeed, while at the same time absorbing the cost of some legislated, add-on benefits.

Thus, the question fairly arises: how was it done?

The Board itself attributes its dramatic financial success mainly to the historic improvements that it claims to have achieved in the proportion of injured workers who return to work and in the timing of those returns.

But based on their own daily experience in dealing with the Board since 2010, injured workers and their advocates have long believed that the Board's financial miracle is mainly the result of the Board's enlistment of its adjudicative function in aid of its cost-cutting mission – of the conversion of the culture of its trial-court function from one of reasonable impartiality and fairness to a culture of pro-active denial.

The game-changing nature of *IAVGO's NO EVIDENCE* report is to be found in the fact that it proves the latter belief to be justified.

THE EVIDENCE BEFORE *NO EVIDENCE*

The evidence that a culture of pro-active denial has been the dominating influence in the Board's trial-court function, beginning in 2010, has been accumulating.

Of course, experienced workers' compensation advocates consider that the most important of that evidence is to be found in the egregious, unwarranted denials littering their clients' files.

But, in terms of accessible evidence, the accumulating evidence is to be found in the November 2015, Ontario Federation of Labour (OFL)/Ontario Network of Injured Workers Groups (ONIWG) report, *Prescription Overruled*, and the subsequent, January 2016, *Submissions to the Ontario Ombudsman* by the same organizations based on supplements to *Prescription Overruled*; in IAVGO's earlier, 2017 report *BAD MEDICINE*; in the work of the Toronto Star's investigative journalist, Sara Mojtahedzaden; in the *Castrillo* class action; and in the recently launched court action by Injured Workers' Consultants Community Legal Clinic, ONIWG, and others, in which the Board's obstinate refusal to apply the law concerning the constitutional invalidity of WSIA chronic stress provisions is being challenged.

THE EVIDENCE AFTER *NO EVIDENCE*

The *NO EVIDENCE* report is the clincher in that accumulating evidence.

The culture of pro-active denial to be found in the Board's exercise of its trial court function materializes in a number of cost-avoiding strategies. These include the deliberate application of

bad law (the negation of the thin-skull doctrine is one prominent example; the persistence in applying constitutionally invalid chronic stress statutory provisions is another), and the application of standards of proof higher than specified by the Act, to name only two of those strategies.

But the strategy on which *NO EVIDENCE* is principally focused is the Board's abandonment of evidence-based fact finding.

And the report is the game-changer – the capper – because, as was said at the outset of this paper, *on the basis of unimpeachable evidence* it confirms that the WSIB's decisions in the exercise of its trial-court function are *routinely* not “evidence-based”.

NO EVIDENCE does not rely on anecdotal evidence – does not depend on stories told by individual injured workers or by their advocates whose self-interest and evident partisanship are always grounds for doubt. Instead, it relies on the objective views of the Workplace Safety and Insurance Appeals Tribunal as those are found in appeal after appeal, after appeal.

NO EVIDENCE records the results of IAVGO's in-depth review of all the appeals decisions published by WSIAT in 2016.

These are appeals in which, in the course of a full hearing, the Tribunal has had the opportunity of assessing the Board adjudicative decisions in light of the evidence available to the Board's adjudicators. In these appeal decisions, the Tribunal has published fully reasoned conclusions concerning the merit and appropriateness of those adjudicative decisions, and *NO EVIDENCE* tells us what those conclusions are.

And the point of overriding importance is that no one can doubt the reliability of those conclusions.

The Tribunal's independence, expertise, and competence, and its reputation for impartial judgments are widely acknowledged. So when, after a full hearing, the Tribunal concludes, for instance, that a Board adjudicator in a particular case has denied a worker's entitlement to benefits on the basis of no evidence, or on the basis of arbitrarily disregarding relevant evidence, that is a decision one can take to the bank. If the Tribunal has found that that happened, then that happened.

NO EVIDENCE reports that, in the appeals the Appeals Tribunal decided and published in 2016, the Tribunal found 629 occasions when, in fact, that, or something like that, happened; 629 instances of Board entitlement decisions that were not evidence-based.

Thus, there is now unchallengeable evidence that the Board's relentless push for cost reductions – its creation of an adjudicative culture of pro-active denial – has at the very least corrupted its fact-finding function on over six hundred occasions.

Moreover, as shocking as that number alone is, it is, of course, clearly evidence of something much larger.

It is well known, for instance, that, by far, most of the Board's entitlement denials are not appealed. Appeals require financial and emotional support and a rights-awareness that not all injured workers have. Accordingly, what the Appeals Tribunal discovers in the appeals it hears is always only a small part of the actual story. Moreover, 629 is only the number of non-evidence-based Board decisions discovered by the Appeals Tribunal in one year of its work.

Because of backlogs at the Appeals Tribunal and procedural hurdles at the Board, one knows that appeals decided by the Tribunal in 2016 will have involved entitlement decisions the Board made in the period roughly from 2013 to 2014. And there is no reason not to expect that the Board was making the same proportion of non-evidenced-based decisions throughout the six-year period from, say, 2011 (by which time the cost-cutting mission's influence on the Board's trial-court function would presumably have taken hold) through 2016. If that were true, then one would expect to find that the appeal decisions the Tribunal will publish in 2017 and 2018, and those that it has already published in, say, 2013, 2014 and 2015, will identify in each of those years approximately the same proportion of non-evidenced-based Board decisions as were identified in its appeal decisions in 2016.

It is a hypothesis that could be tested by anyone with the resources required to have experienced counsel read and assess and categorize the appeal decisions published by the Tribunal in each of 2013, 2014, and 2015 and in 2017 and 2018 (and 2019 if the situation were allowed to persist that long) – resources that, incidentally, could be brought to bear by a Public Inquiry.

Given, then, the implications of the typically small proportion of Board denials that are appealed all the way to the Appeals Tribunal, and the likelihood that a similar level of non-evidence-based decisions would be found in Appeals Tribunal decisions published in six other years, the 629 adjudicative decisions the Appeals Tribunals found not to have been evidence-based in the appeals it heard in 2016 may be reasonably taken as showing the existence during the period 2011 to 2016 of non-evidence-based Board decisions numbering in the thousands.

Moreover, there is no reason to think that the Board's non-evidence-based adjudicative strategies will not continue until the government intervenes. Thus, until the results of a public inquiry require the Board to revert to a culture of impartial adjudication, *NO EVIDENCE* projects large numbers of non-evidenced-based decisions every year going forward.

As was said at the outset, *NO EVIDENCE* is, indeed, a game changer. It presents a clarion call for a Public Inquiry that cannot be responsibly ignored.

Ron Ellis
Toronto, Ontario
August

PRESCRIPTION OVER-RULED

REPORT ON HOW ONTARIO'S WORKPLACE
SAFETY AND INSURANCE BOARD SYSTEMATICALLY
IGNORES THE ADVICE OF MEDICAL PROFESSIONALS



**ONTARIO
FEDERATION OF
LABOUR**

ONTARIO NETWORK
of
INJURED WORKERS' GROUPS



Prescription Over-Ruled: Report on How Ontario's Workplace Safety and Insurance Board Systematically Ignores the Advice of Medical Professionals

November 5, 2015 • Ontario Federation of Labour (OFL) & The Ontario Network of Injured Workers' Groups (ONIWG)

The Ontario Federation of Labour (OFL) represents 54 unions and one million workers. It is Canada's largest provincial labour federation.

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This document was proudly produced with unionized labour.

The contents of this report are opinions based on the experience, input and narrative of health professionals, injured workers and their advocates.



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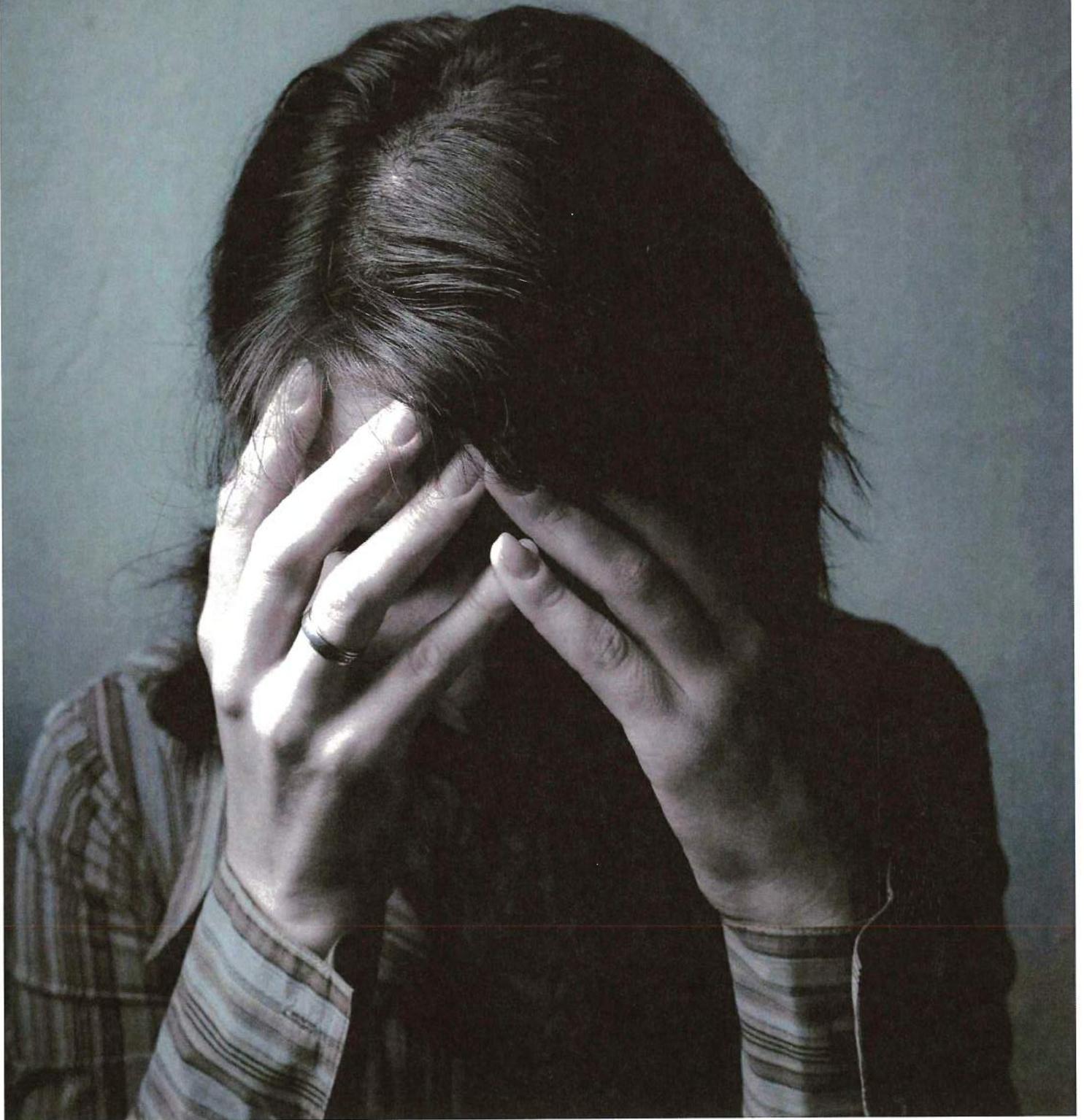
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“ Injured patients find themselves re-victimized by the very system that is mandated to compensate and protect them. ”



INTRODUCTION

In September of this year, Dr. Brenda Steinnagel filed a lawsuit against her employer and the Workplace Safety and Insurance Board (WSIB), alleging that she was fired by the clinic she worked for at the behest of the WSIB, because she refused to change her medical opinion to the one that the Board wanted to hear.

While her accusations are no doubt shocking to the general public, for injured workers – as well as their advocates and health care providers – the lawsuit confirms what has long been suspected: The WSIB’s inappropriate regulation of medical care is hurting patients with work injuries.¹

Long before Dr. Steinnagel came forward with her lawsuit, health care workers in this province were raising red flags about the ways in which the province’s compensation system treats their patients. Recently, more than a dozen concerned medical professionals approached the Ontario Federation of Labour and the Ontario Network of Injured Workers’ Groups to address mounting concerns with WSIB interference in medical care. This report hopes to shed light on some of these concerns and their implications for workers’ health.

“In a desperate effort to reduce claims paid out, WSIB [has] been conspiring to deny legitimate claims in a shocking display of arrogance and corruption.”

**- Statement of claim of
Dr. Brenda Steinnagel**

The stories told in this report illustrate some of the ways the WSIB’s management of medical care and medical evidence harms patients. This includes failing to heed medical advice regarding readiness to return to work, insufficient treatment, blaming ‘pre-existing’ conditions for ongoing illness, or using independent medical reviews which proclaim patients to be healed, despite the evidence of treating practitioners. When these things happen, the injured patients find themselves re-victimized by the very system that is mandated to compensate and protect them.

¹ Hamilton Spectator (Jaques Gallant), *Fired Hamilton doctor sues WSIB over ‘fraud upon the public,’* 31 October 2014. <http://www.thespec.com/news-story/5928759-fired-hamilton-doctor-sues-wsib-over-fraud-upon-the-public/>.

FRANCOIS' STORY

Francois* worked as a millwright with the same company for almost 35 years when he suffered an electrical injury. He was healthy before this accident - he had previously lost a finger at work but had gone right back to work after it healed.

Francois was electrocuted by 600 volts from improperly wired equipment. He heard himself screaming, saw blinding white light, felt his muscles spasm throughout his body, and felt excruciating chest pain that he thought was a heart attack. He thought he was going to die.

Despite this trauma and ongoing pain, Francois tried to persevere and returned to work for his next scheduled shift. He managed to keep working for almost a year, all the while he became increasingly withdrawn and anxious, unable to tolerate noise and fearful of machines. He was managing to sleep only 2-3 hours per night and turned to alcohol.

Since he was back at work, the WSIB did not offer him any treatment. Without treatment he continued to deteriorate and began missing more and more time from work until he was let go.

At his wife's insistence, the WSIB finally agreed to specialized treatment almost a year-and-a-half later. The speciality clinic for electrical burns diagnosed Francois with post-traumatic stress disorder and severe depression. He began receiving some

psychological treatment in his community.

Francois' problems with the WSIB were only beginning though. First, his WSIB case manager threatened to cut off his benefits if he did not attend a return to work meeting at his workplace. His doctors felt that being in the workplace would be harmful to Francois, who was highly fearful of electrical equipment and not well enough to work. Francois became more distressed and the meeting was finally cancelled after the WSIB's own specialty clinic intervened.

The WSIB then sent Francois to a doctor of its own choosing. Francois' psychologist had asked for this assessment because he feared that Francois may have cognitive issues from the electrocution. Unfortunately, the WSIB doctor's report did more harm than good. The WSIB doctor tried to discredit the opinion of his treating psychologist, including his opinion about Francois' readiness to return to work and work restrictions. After seeing Francois once, the WSIB doctor recommended an immediate return to work plan.

Francois' psychologist will think twice before accepting any WSIB patients again. She is frustrated by the WSIB's ongoing requests for progress reports that it refuses to pay for and its ultimate disregard for her opinion on treatment.

** Not the injured worker's real name.*

BACKGROUND

Ontario's compensation system is mandated to provide wage loss benefits and health care benefits to workers who are injured on the job. By law, injured workers are barred from commencing lawsuits for their work injuries and must instead seek benefits from the WSIB. Legally, workers are entitled to treatment from the healthcare provider of their own choosing. Section 33 of the *Workplace Safety and Insurance Act* states that:

A worker who sustains an injury is entitled to such health care as may be necessary, appropriate and sufficient as a result of the injury and is entitled to make the initial choice of health professional for the purposes of this section.²

The Act goes on to state that “The Board shall pay for the worker’s health care.”³

When the Board refuses to cover health care costs, one of two things happens. If the health care service is not funded by OHIP, the cost is shifted to the injured worker, who must pay out of pocket if possible. However, many patients who are unable to work as a result of their injuries, are often unable to pay. If the worker cannot afford the treatment, he or she simply goes without the needed prescription medication, physiotherapy, psychotherapy, health care aides and other services.

On the other hand, if the necessary treatment is covered by OHIP, the cost shifts from the employer-funded WSIB to the publicly funded health care system. This means that every tax payer in the province ends up footing the bill to

care for people who are injured in the course of employment, instead of the business-funded system that is supposed to be covering the costs. The Canadian Medical Association, as far back as 2007, has raised concerns about workplace injury-related costs being shifted to the public system.⁴ In contrast, WSIB President and CEO David Marshall has bragged openly about how he has spent less money providing healthcare to injured workers than his predecessors. The WSIB, he boasts, now pays for “results” and not “process.”⁵

Similarly, when the WSIB deems an injured worker recovered and refuses to provide wage-loss benefits, the tax payer ends up paying the tab. Many people who can no longer work because of their injuries end up on the Ontario Disability Support Program, again shifting the costs from an employer-funded system to the taxpayers of Ontario.

2 *Workplace Safety and Insurance Act*, Section 33(1). <http://www.ontario.ca/laws/statute/97w16#BK36>

3 *Workplace Safety and Insurance Act*, Section 33(2).

4 Thompson, Aaron, *The Consequences of underreporting workers' compensation claims*. Canadian Medical Association Journal, 30 January 2007. 176(3) 343.

5 The Liversidge E-letter, 6 February 2014. <http://aliversidge.com/Portals/0/eLetters/The%20Liversidge%20e-Letter%2020140206%20WSIB%20Chair%20at%20Board%20of%20Trade.pdf>

KAREN'S STORY

Karen* was an active young woman with an exceptional employment record when an accident at a mine seriously injured her shoulder and head. In the years since, it has been a constant struggle to acquire the physical and psychological therapy her medical team says she needs, and the wage loss benefits she should be entitled to.

Before her accident, Karen was active in a number of sports and hobbies. She enjoyed horseback riding every week, and was involved in training dogs for competition. She was also part of a competitive mine rescue team, a very grueling sport that requires intense mental and physical stamina. Her coworkers and supervisors have often noted that having her on the crew is good for morale, and she says she has received positive letters of recommendation from every employer she's ever worked for.

In June of 2013, Karen was driving a truck in the mine. As she was stepping out, her overalls got caught on one of the steps, causing her to lose her grip and fall, landing hard on her head and her shoulder.

After her accident, Karen developed nausea, headaches, dizziness, muscle strain, anxiety, and depression. She has been diagnosed with a number of conditions, including traumatic head injury, cervical strain, neck and shoulder injury and "concussion-related mental impairments." A whole range of treatments were suggested by her health care team, including medication, physio, massage and therapy with a psychologist. It was suggested she would benefit most from a gradual, WSIB-sponsored return to her pre-accident job. When many of these treatments were not offered, she did the only thing she

could and tried to return to work. Her attempt to go back was short lived, though, as she was unable to successfully complete the tasks she was assigned, and many of her symptoms began to worsen. Still, the WSIB interpreted her effort to return as a sign that she was capable of employment, and cut off her wage loss benefits, even though several health care professionals had indicated she should not be working due to dizziness and muscle damage.

Karen has had two previous head injuries, but had recovered from both and was living a normal life when her mine accident happened. Even though the evidence shows that her current symptoms arose only after the newest injury, the WSIB claims that her diagnosed symptoms are the result of a "pre-existing condition." In response to requests from her psychologist, the Board said they began reviewing Karen's file in April 2014. Despite multiple requests from her medical team and seven letters written by her legal aid lawyer (none of which received a response), no decisions have been made. The fact that no decisions have been made means that Karen cannot move through the appeal process. Karen is therefore stuck in limbo, and has been forced onto social assistance.

Based on evidence provided by her health care team, a number of other agencies (such as Employment Insurance and Canada Pension Plan) have agreed that Karen is unable to work because of her workplace injuries. Her health care team is frustrated that their professional opinions are not being valued by the Board.

** Not the injured worker's real name.*

THE NATURE OF THE PROBLEM?

The psychologists, physiotherapists, and other health care providers that have come forward to tell their stories here have raised a number of serious issues that they say are preventing them from being able to provide adequate care to their patients. The list of complaints put forward by practitioners is substantial, and many of them are chronicled in the stories contained within this report. The complaints are summarized below.

A. Inadequate services:

- Approval for services can take months, when patients' needs are often immediate.
- Treating physicians' referrals for psychological therapy are often denied, even in dire situations.
- The WSIB will refer an injury claimant to a specialist but will not fund sufficient time for a proper assessment and report. The WSIB also demands frequent progress reports that it will not pay for and the recommendations of which are frequently ignored.
- The treatment allowed is often too narrow, such as not covering activities related to brain injury rehabilitation; or occupational therapy.
- In cases where the WSIB does provide funding for psychological treatment, for example, the sessions are often cut off before the treating psychologist determines that healing is complete. Some health care professionals report that when they ask why funding for services has been discontinued, they are simply told that the Board is not required to provide explanations to care providers.
- If the psychologist feels that their patient is still struggling at the time that care is cut off, they are forced to either abandon a patient in need or provide services for free.
- Physiotherapists report that when ongoing treatments ("maintenance treatments") are denied, injured workers' conditions can degrade. This often leads to increase use of pain medication, loss of function, or self medicating with drugs and alcohol, all of which comes with significantly more side effects than proper physical treatment.

B. Ignoring the opinions of treating medical professionals (when those opinions are not what the WSIB wants to hear)

- The WSIB refers injured workers to medical professionals for assessment, and then fails to follow the professionals' recommendations.
- Despite medical opinions to the contrary, the WSIB often attributes illness or injury to "pre-existing conditions," and refuses to fund benefits or care.
- The WSIB will often seek second opinions from so-called "paper doctors," who simply review the file without ever meeting the patient. Dr. Brenda Steinnagel has alleged that the WSIB inappropriately pressures these doctors to deliver dishonest reports so that they can avoid paying benefits.
- The WSIB pressures workers to return to work even when their treating doctors recommend more time to heal.
- Injured workers' well-meaning attempts to return to work are being used against them as evidence that they are employable and healed, even when these attempts fail, resulting in loss of benefits.
- The WSIB actively tries to discredit the opinions of treating health care professionals when those opinions are likely to lead to increase benefit costs.

CONSEQUENCES

As the stories contained in this report show, there are drastic human consequences to the problems described above. Injured workers' physical and mental health, as well as their social well-being is profoundly affected by the WSIB's improper interference with medical care and bad faith decision-making.

Persons with work-induced disabilities are vulnerable. They frequently suffer mental health consequences and are at heightened risk of poverty. Recent research has shown that mental health problems in injured workers are elevated after their injury, and that the stress of dealing with the Board can actually make things worse.⁶

Even injured workers who receive benefits tend to experience higher levels of poverty than is found in society at large,⁷ and those who do not receive benefits are even worse off. A 2010 survey of people who self-identified as injured workers revealed that work injury has devastating effects on things like personal and romantic relationships, housing status, car

ownership, nutrition and substance abuse.⁸ These things are all tied to physical and mental health and well-being, yet for workers whose own health care teams testify to their need for treatment, proper care often remains out of their grasp.

Increased depression, including suicidal tendencies, loss of sustenance and deteriorating physical health are all consequences that have been witnessed by the health professionals involved in this report.

As a further complication, many health professionals now refuse to take on WSIB claimants as patients. The problem has become so bad that some clinics are hesitant to take patients who are connected to the WSIB, since experience shows them that their advice will simply be ignored, and they will be unable to provide the care that they know their patients will need.

6 O'Hagan, Fergal, et. al., Mental Health Status of Ontario Injured Workers With Permanent Impairments. *Canadian Public Health Association Journal*, July/August 2014. 103(4) e303. <http://journal.cpha.ca/index.php/cjph/article/view/3036>

7 Ballantyne, Peri, et. al., Poverty status of worker compensation claimants with permanent impairments. *Critical Public Health*, 17 March 2015. <http://www.tandfonline.com/doi/full/10.1080/09581596.2015.1010485>

8 Ontario Network of Injured Workers' Groups, *Many Losses, Much Hardship*, March 2012. http://injuredworkersonline.org/documents/reports-articles-and-papers/ONIWG_20120300_Injured_Workers_PovertySurvey2010_Report.pdf

TOM'S STORY

When Tom* was only in high school, his head was crushed between a transport truck and a loading dock ramp. That was ten years ago, and while he experiences significant psychological trauma, the WSIB refuses to pay his psychologist, but won't say why.

As a young man, Tom was working on a loading dock when a truck that lacked a reverse alarm pinned his head against the edge of the dock. The blow left him unconscious. At the hospital, he was found to have endured a serious skull fracture and a lot of bleeding in his brain. He had to have a piece of his skull removed for three months, during which time he was required to wear a helmet.

With the help of a team of rehabilitation health professionals, Tom was able to complete high school, but he still faces a number of serious barriers relating to his brain injury. He has very severe troubles with stress and overstimulation. He has a short temper, and struggles to understand other people's point of view. He tried attending college but had difficulty organizing information, memorizing and being flexible. To this day he has trouble holding down employment because he either quits or is let go due to his trouble tolerating the stimulation and speed of the job, his high level of irritability, or his difficulty managing stress.

In 2013, an emergency room physician who was extremely concerned about

Tom's panic experiences referred him back to the psychologist who had been on his rehabilitation team. While the WSIB funded some initial sessions, they were cut off in October 2014, despite the fact that according to his medical team, more treatment was needed. Obviously concerned for his patient's well-being, Tom's psychologist asked for justification for why the Board would reject sessions that were very strongly recommended by the injured worker's medical team, and was told that the "WSIB is not required to provide the grounds for their decision to health care providers."

Tom has a son, and is separated. At times, he has had to live in a room above his parents' garage so they could care for him when he had no other supports. He experiences severe depression, and readily admits that if he did not have a child to care for he would have killed himself a long time ago.

Tom's psychologist (whose level of concern for the injured worker has led him to provide treatment for free) says that "as a result of his accident Tom clearly requires ongoing rehabilitation, support, and a realistic vocational and supported work re-entry plan, but since 2014 all services have stopped," adding that due to "a lack of rehabilitation and support, this individual's life is now simply in ruins."

** Not the injured worker's real name.*



SOLUTIONS

The system isn't working, but that doesn't mean it can't. The Ontario Federation of Labour, the Ontario Network of Injured Workers' Groups, and the health care professionals involved in this report have a number of recommendations that we believe could solve the issues that have been presented here.

“Injured workers and their advocates are hopeful that many of Marshall’s regressive changes can be reversed.”

The compensation system in Ontario has been in retreat since the 1990s, but the changes that negatively affect workers have accelerated rapidly since David Marshall became president and CEO of the WSIB in January, 2010. The cuts made under Mr. Marshall's watch have produced or exacerbated many of the negative effects described in this report. Mr. Marshall is leaving that position at the end of this year, and the group of people who are presenting this report believe this is an opportunity for renewal. Soon, a new president will take over. Injured workers and their advocates are hopeful that many of Marshall's regressive changes can be reversed, and that the WSIB will take steps towards providing the services it was created to provide.

Recommendations:

1. Have Ontario's Ombudsman launch a formal investigation into the WSIB's treatment of medical advice. Particularly the way in which health care providers' professional advice is often not considered and the lack of explanation offered.
2. Collect and make public statistics on how often injured workers' health care providers' advice is disregarded.
3. Create a protocol that regulates rapid response times for requests from injured workers' health care team. For example, requiring a decision within 48 hours when an urgent request for care is submitted to the Board.
4. Eliminate the use of so-called “paper doctors,” who render decisions about care without ever meeting the patient.
5. Give proper weight to the opinions of the medical professionals who know the injured worker best – their own health care team.

KEITH'S STORY

Keith* suffered a brain injury and serious spinal injury when he fell eight feet and landed on his head. Despite immediate and ongoing physical and psychological distress, receiving treatment remains a constant struggle for this injured worker.

Keith was working underground at the time of the accident. Unfortunately, his helmet came off during the fall and offered him no protection. When his head struck rock, witnesses say that they thought he was dead.

In contrast to what Keith's medical team has advised, the Board has decided that he does not have a permanent injury. Even though Keith has a solid and consistent work history, and even though he sustained three spinal compression fractures from the fall, they are calling his ongoing pain "pre-existing."

While the Board originally funded some physiotherapy, they ultimately turned down the physiotherapist's strongly worded request for ongoing treatments to manage Keith's continuing chronic pain. His condition has continued to degrade, and requests for more therapy – at the recommendation of a health care professional – continue to be denied. Now, he is on so many medications related to this pain that his doctor has ordered him not to drive and functioning day to day is a struggle.

But Keith is suffering from more than physical pain. Shortly after the injury, Keith's doctor became concerned about his depression and poor sleep due to a possible brain injury. As his treating physician, he suggested Keith see a psychologist. The WSIB denied this request. When his depression reached what his doctor called "profound levels" he again requested psychological support for his patient. He was again denied. Some two years and many requests later, Keith was finally granted limited sessions, though any activities related to brain injury rehabilitation or occupational therapy (both of which the psychologist has strongly recommended) have been flatly turned down.

While Keith's mental health has been improving, his psychologist remains concerned that he struggles with severe depression, a lack of purpose and is at risk of suicide. Their funded sessions together are now complete. His psychologist doesn't anticipate receiving approval for more, but even if they do, it will take months.

Every medical professional in Keith's life agrees that he needs continued physical and psychological support in order to regain and retain some quality of life. The WSIB – who are not doctors and who have never met Keith – have ignored the recommendations and requests of all of them.

** Not the injured worker's real name.*

ACKNOWLEDGMENTS

The Ontario Federation of Labour and the Ontario Network of Injured Worker Groups would like to thank the following health care providers for having the courage to come forward and raise concerns about the well-being of their patients as a result of treatment by the Workplace Safety and Insurance Board:

Dr. Ed Bassis, Registered Psychologist

Dr. Lorraine Champaigne, Registered Psychologist

Dr. Trevor Deck, Registered Psychologist

Dr. Keith Klassen, Registered Psychologist

Dr. Giorgio Ilacqua, Registered Psychologist

Dr. Carol Parrott, Registered Psychologist

They have given confidence to many other medical professionals from a variety of disciplines to come forward to share similar experiences.

The OFL and ONIWG would also like to thank the patients who allowed their doctors to share their painful experiences with us in order to fight for changes that will ensure that other workers do not have to face the harm they have been through.

Finally, we would like to thank the team of advocates at the Injured Workers' Consultants Community Legal Clinic for helping with this project and, in particular, David Newberry and Laura Lunansky for their hard work in compiling this report.





WE DEMAND: LISTEN TO OUR DOCTORS

Background: OUR DOCTORS KNOW US BEST

In 2016 and 2017, a series of reports were released by injured worker groups, labour organizations, and legal clinics that said what injured workers and advocates have long known: There are serious problems with the way that the WSIB considers medical evidence.* These reports highlighted a range of issues, including failing to heed medical advice regarding readiness to return to work, insufficient treatment, blaming 'pre-existing conditions' for injuries clearly caused at work, questionable use of Board funded specialty clinics, using "expected recovery times" to declare a worker healed, purchasing reports from private medical consultants who never meet the worker (also called "paper doctors"), and even simply ignoring the available medical evidence all together.

Why is this important?

When someone is injured or sick, one of the most important relationships they have is with the treating healthcare professionals that are helping them to get better. The doctors, nurses, psychologists, and physiotherapists who are treating injured workers know more about your conditions than anyone else. And yet the WSIB ignores the advice of injured workers' doctors and cuts their benefits or sends them back to work before they are medically ready.

When someone gets sent back to work too early and against their doctor's advice, they risk re-injury. When an injured worker's benefits are cut before they are better, they face poverty and all of the social and medical problems associated with it.

***Further Reading:**

No Evidence: Decisions of the WSIB - by IAVGO Legal Clinic, 2017

Bad Medicine - by IAVGO Legal Clinic and Anthony Singleton, 2017

Prescription Overruled - by ONIWG and Ontario Federation of Labour, 2016

Did You Know...

- ***Medical expenses for injured workers are supposed to be paid for by the compensation system, not Ontario's public health insurance plan (OHIP). This means that often when a medical expense for an injured worker is denied by the WSIB, the burden of that cost falls on every taxpayer in the province.***
- ***A recent review of just one year of appeals tribunal decisions found hundreds and hundreds of examples of cases in which the WSIB inappropriately ignored medical evidence on file in order to reject a worker's claim.***
- ***Some of the fee schedules used by the WSIB to pay healthcare professionals for services offer financial incentives for providers to end care sooner.***

What is the demand?

The WSIB must listen to injured workers' treating health care team.

What are the solutions?

- **Institute clear legislation that prioritizes and respects the evidence put forward by the treating health professionals** who know the injured workers best. Address gaps in information with treating doctors before seeking outside opinions.
- Establish a process **independent of the WSIB** to resolve medical disputes.
- When medical consultants are necessary, the reasoning for this must be quickly and clearly communicated to the worker, and the **doctors should be drawn from a roster maintained by an independent body**. The 'paper doctor' role should be re-imagined as one of supportive case-consultant, rather than end-of-the-road expert opinion.
- Before deciding that a worker has recovered from an injury, **decision-makers should have a report from the worker's treating physician** verifying recovery.
- When it is determined that a worker has a permanent disability, this worker's **"Non-Economic Loss" assessment must be done by a physician in person**, rather than by a WSIB nurse consultant who simply reads the file.



WE DEMAND: **STOP CUTTING BENEFITS** **BASED ON** **'PRE-EXISTING CONDITIONS'**

Background: PRE-EXISTING CONDITIONS

Around 2012, after hiring a notorious American insurance doctor to give them policy suggestions, the WSIB began a practice of reducing or eliminating injured workers' benefits by aggressively penalizing people who they felt had "pre-existing conditions." This has taken many forms, including reducing the length of time workers receive wage loss and healthcare benefits, cutting the Non-Economic Loss (NEL) awards given for permanent injuries, and more. This differs from the Board's pre 2012 practice of limiting benefits only for "pre-existing impairments."

What's the difference? A *pre-existing impairment* is a condition that has symptoms, and that had previously limited a worker's ability to do their job. What the WSIB now calls *pre-existing conditions* includes things that may have never affected the worker before.

Why is this important?

The WSIB's focus on "pre-existing conditions" is one of its most common methods of cutting people off benefits. If everything can be blamed on a "pre-existing condition" instead of the work injury, the WSIB can avoid paying benefits and save itself money. Many of these "pre-existing conditions" were never diagnosed by a doctor before the work injury, and never caused any symptoms. In fact, the WSIB's interpretation of "pre-existing conditions" is so broad that they include factors that are simply a part of normal aging. Rather than treating injured workers as human beings, they are treated like used cars, with depreciating value as they age.

"It is a change in benefits with no change in legislation. I think we should be ashamed of the system, you have some of the most vulnerable people in our society being victimized by a corporate structure."

-Ron Ellis, former chair of the WSIB's appeals Tribunal (CBC News, Oct 2016)

HOW THIS POLICY WORKS IN PRACTICE:

A worker in her 50s who has spent her lifetime in manual labour - but has never been injured or had any symptoms of spine problems - slips and hurts her back at work. The WSIB may approve benefits for a short time, but after she gets an MRI, the Board sees that she has some "degeneration" in her spinal discs. Even though this degeneration was likely caused by a lifetime of heavy lifting at work, and has never prevented her from doing her job every day for the last 30 years, the Board's policy dictates that after a few weeks, her ongoing and permanent pain is not caused by her fall at work, and ends her benefits.

The same is true for mental health injuries. Advocates have seen cases of mental stress denied because the worker may have offhandedly reported feeling some depression to their family doctor five years ago. There are even cases where post-injury family breakdown is blamed as a pre-existing condition responsible for an injured worker's psychological impairment.

There is a long established legal understanding called the "thin skull" principle that is meant to protect all workers. At its most basic, it means that if two people experience a head injury of equal force, and one is more injured because their skull happens to be thinner, the more injured person cannot be penalized simply because of the state of their pre-injury body. In the context of workers' compensation, it means that each injury must be looked at on the basis of how it affected the injured worker in question, not how it might have affected some imagined "average worker." The WSIB's pre-existing conditions policy is creating a system in which only people with perfect bodies and minds can receive full compensation, and this is unfair.

What is the demand?

The WSIB has a responsibility to honour the long legal history of the thin skull principle, and must stop reducing injured workers' benefits because of pre-existing conditions that have never caused the worker any symptoms.

What are the solutions?

- **The WSIB must return to its previous policy and practice of only reducing benefits if a worker had a verifiable pre-existing impairment.** "Pre-existing conditions" that were asymptomatic and undiagnosed prior to the work injury, and that did not affect a worker's functioning, must not be used to cut or deny benefits.
- **These principles must be codified** in the Workplace Safety & Insurance Act, to prevent the WSIB from attempting to skirt them again in the future.



WE DEMAND: NO CUTS BASED ON PHANTOM JOBS

Background: "NO DEEMING"

"Deeming" (also called "determining") refers to a practice used by the WSIB in which they pretend an injured worker has a job that they do not actually have. The Board then uses the "phantom job" as an excuse to cut benefit payments.

For example, a construction worker who permanently injured while making \$20 per hour may receive full wage loss benefits from the WSIB for a while. After a time, the WSIB may agree that the worker cannot return to construction, but may decide they could be a minimum wage cashier, and will reduce benefits by \$11.40 per hour - *even if the worker is not medically able to do the work, or unable to find a job.*

Why is this important?

Deeming reduces injured worker benefits, and systematically leads to poverty. **This forces people onto publicly funded systems like Welfare (OW) and Disability (ODSP)**, instead of receiving the employer funded benefits they are entitled to.

If an injured worker tried to increase their benefits by pretending they were making *less* money than they are, they would be penalized for cheating. But when the WSIB cheats and pretends a worker is earning *more* than they really are, the benefits are reduced and the Board keeps the money. This is unfair and unjust!

In addition, Ontario has just announced a long overdue increase to minimum wage, and while this is an excellent initiative, *the WSIB will use the minimum wage increase to pretend people are earning even higher phantom wages, and cut their benefits even further!*

(See the chart on the next page)

Effects of WSIB's DEEMING policy

Pre-injury Wage Single no dependants	Net Average Earnings - (40 hour work-week avg.)	Loss of Earnings is calculated at 85% of net	Impact of Deeming Min Wage Deducted \$11.40 x 40 hours x 85% + deductions	Impact of Deeming Min Wage Deducted \$15.00 x 40 hours x 85% + deductions	Reliance on Social Support Systems (Municipalities, OW, ODSP) <i>*if eligible</i>	Impact to Injured Worker
\$13.00 per hour	\$520.00 - deductions = \$437.88	85% of \$437.88 = \$372.20	\$372.88 - \$332.26 = \$40.62 Loss Of Earnings paid (weekly)	\$0 Loss Of Earnings paid (weekly)	Worker heavily reliant* on provincial and municipal systems and becomes fully reliant* based on \$15.00 min wage	Esteem plus abject poverty and all ailments and afflictions associated with it.
\$28.00 per hour	\$1120.00 - deductions = \$864.31	85% of \$864.31 = \$734.66	\$734.66 - \$331.57 = \$403.09 Loss Of Earnings paid (weekly)	\$734.66 - \$422.92 = \$311.68 Loss Of Earnings paid (weekly)	Worker may* qualify for some social assistance.	
\$20.00 per hour	\$800.00 - deductions = \$647.02	85% of \$647.02 = \$549.97	\$549.97 - \$331.58 = \$218.39 Loss Of Earnings paid (weekly)	\$549.97 - \$422.99 = \$126.98 Loss Of Earnings paid (weekly)	Worker may* qualify for some social assistance but becomes partially reliant* based on \$15.00 min wage	

As the above chart shows, deeming causes injured worker poverty by reducing or completely eliminating benefits. The WSIB does this by pretending workers are employed or employable when they are not. Poverty creates whole new sets of physical and psychological health issues, and affects family and community well being.

What is the demand?

Injured workers and their allies are demanding the abolishment of the WSIB's unfair practice of deeming. Stop discriminating against injured workers by treating them like liars.

What are the solutions?

- Legislative changes must be introduced to prevent WSIB from “deeming” an injured worker **unless it has documentation to prove that the worker has turned down an offer of suitable work**. This is known as the “tangible indication test,” and it was proposed as the standard for deeming when the system was first introduced. If this test is not met, the WSIB must pay benefits based on actual lost wages.
- **Return to one-year support and compensation for job search assistance.** The WSIB must provide permanently disabled injured workers with meaningful assistance in securing suitable work, via supportive vocational rehabilitation counsellors and wage loss benefits while they engage in their job search.

REAL HEALTH CARE FOR INJURED WORKERS

1. Campaign backgrounder
2. Media coverage
3. Other urgent calls for change: calls for public inquiry, Ombudsman investigation and Workers Comp Is A Right campaign
4. Stakeholder letters to WSIB

June 10, 2016

TO:

Tom Teahen
President and CEO
Workplace Safety and Insurance Board

Kathleen Wynne
Premier of Ontario

Kevin Flynn
Minister of Labour

Members of the Provincial Legislature

Dear Mr. Teahen and Honourable Members of the Legislature,

We the undersigned are writing to express our concerns about how the Workplace Safety and Insurance Board (WSIB) has shifted the way it funds healthcare to the 200,000 workers who are injured every year in this province. We are deeply concerned that injured workers are unable to get the treatment that their doctors recommend and that the WSIB is taking patient care out of the hands of treating doctors.

The WSIB is moving to direct patient care itself with the goal of managing claim costs. From 2005 to 2014, the WSIB more than doubled its spending on “specialized clinical services and programs”.¹ Workers and their advocates tell us that these programs often push injured workers to return to work prematurely and predict recovery dates, which WSIB adjudicators frequently use to end claims without any follow up with the worker or their physician. Meanwhile, in the same 2005-2014 time period, the WSIB cut spending by more than 40% on: physiotherapy, chiropractic and other non-physician treatment services (which include psychological treatment).² And, since 2009, the WSIB has cut its spending on drug benefits by close to 30%.³

Rather than moving to direct patient care themselves, WSIB should be: listening to injured workers’ doctors and paying for proper treatment in the workers’ community, providing psychological support, providing compensation to injured workers whose

¹ Source: WSIB By the Numbers 2014, <http://www.wsibstatistics.ca/s1benefit-payment/s1health-care-payments/>, March 17, 2016 Data Request information provided to IAVGO by WSIB.

² *ibid.*

³ *ibid.*

doctors recommend time away from work, and collecting needed medical information rather than asking the worker to do it.

The WSIB's actions are having a devastating impact on injured workers, especially those who are already marginalized. In addition to workers who lack private health plans and unions to help protect modified jobs after the WSIB closes claims, one group that faces some of the WSIB's harshest healthcare-related adjudicative practices are injured migrant workers.

In 2013, the Canadian Medical Association Journal reported that from 2001 to 2011 approximately 800 migrant workers were medically repatriated for injuries and illnesses sustained while working in Ontario.⁴ Upon return to their home countries, the WSIB requires migrant workers to pay upfront for transportation, medical services, tests and prescriptions. As highlighted in the launch of a recent human rights case, these medical costs are often prohibitive.⁵

As organizations and individuals that advocate with injured workers for reforms, we call on the Provincial Government and the Workplace Safety Insurance Board (WSIB) to undertake the following reforms:

- Heed the advice of injured workers' treating doctors and psychologists
- Promptly pay for all healthcare expenses including physiotherapy, medication, assistive devices and mental health supports that treating doctors recommend for workplace injuries
- Collect medical information that is needed to adjudicate a claim, while respecting the privacy of injured workers, rather than asking workers to collect reports
- Recognize the impact of workplace injuries on mental health and grant the appropriate WSIB entitlements so workers can be treated for these conditions
- Offer accommodation expenses to injured migrant workers so they have the option of remaining in Ontario for healthcare

We urge you to take action immediately to address the concerns raised by injured workers so that they can live with dignity.

Yours Truly,

Aaraón Díaz Mendiburo

Abeer Majeed, Primary Care Physician Toronto

⁴ Source: Medical repatriation of migrant farm workers in Ontario: a descriptive analysis, <http://cmajopen.ca/content/2/3/E192>.

⁵ Source: Migrant worker launches discrimination complaint against WSIB, <https://www.thestar.com/news/gta/2016/03/21/migrant-farm-worker-launches-discrimination-complaint-against-wsib.html>

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Bill Fallis

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Colombia Action Solidarity Alliance

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Community Legal Clinic - Brant, Haldimand, Norfolk

Community Legal Clinic - Simcoe, Haliburton, Kawartha Lakes

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Income Security Advocacy Centre (ISAC)

Injured and Ill Workers of Ottawa

Injured Workers Action for Justice

Injured Workers Consultants (IWC)

International Association of Machinists

International Association of Machinists Local Lodge 905

International Migration Research Centre

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Jessica Lyons Registered Nurse

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Juan Jose Ariza

Judy Rebick

Justicia/Justice for Migrant Workers (J4MW)

Kevin Partridge, President, CUPE 4600

Latin American and Caribbean Solidarity Network (LACSN)

Legal Assistance of Windsor

Lesley Wood, Associate Professor, York University

Leslie Fauvelle

London & District Injured Workers Group

London & District Labour Council

Luin Goldring, PH.D Professor Sociology York University

Maggie's - Toronto Sex Workers Action Project

Manitoulin and North Shore Injured Workers Group

Manitoulin Legal Clinic

Marcella Jones

Maroussia Hajdukowski-Ahmed, French, Gender Studies and Feminist Research

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Melanie Spence, Registered Nurse, Toronto

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Migrant Worker Health Project

Migrante Ontario

Migrant Workers Rights - Canada

Min Sook Lee

Mississauga Community Legal Services

Najib Safieddine MD, FRCSC, Assistant Professor, University of Toronto

Nandita Sharma, Director, International Cultural Studies Program and
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Nanky Rai, MPH, MD

National Union of Public and General Employees

Neighbourhood Legal Service London and Middlesex

Nicolai Popov

Nipissing Community Legal Clinic

No One is Illegal - Toronto

Ontario Coalition Against Poverty

Ontario Council of Agencies Serving Immigrants

Ontario Federation of Labour

Ontario Network of Injured Workers' Groups (ONIWG)

Ontario Public Service Employees Union

Ontario Secondary School Teachers' Federation

OPIRG Guelph

Parastou Saberi, Cupe 3902 and a sessional lecturer at University of Toronto,

Scarborough

Parkdale Community Legal Services

Paul Chislett President, Windsor Workers' Education Centre

Peel Injured Workers

Peter Rosenthal

Pike Krpan, Hamilton, Ontario, Postdoctoral Fellow, Professor, Disability Studies

PSAC-Ontario

Put Food in the Budget, Queen's University, Kingston, On

Radical Action for Migrant Workers in Agriculture (RAMA) BC

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Rexdale Community Legal Clinic

Ricky Esguerra

Ritika Goel

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Scarborough Community Legal Services

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South Asian Community Legal Clinic of Ontario

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Tanya Titchkosky, Professor, Disability Studies Dept. of Social Justice Education,

The HIV & AIDS Legal Clinic Ontario (HALCO)

Timothy Chung

Toronto Workers' Health and Safety Legal Clinic

Thunder Bay and District Injured Workers Support Group

UNIFOR Canada

Unison Health and Community Services

United Food and Commercial Workers Canada

Urban Alliance for Race Relations

Vasanthi Venkatesh, Chair, Board of IAVGO

Wendy Glauser, Health Journalist, Toronto, ON

West Scarborough Community Legal Services

Wilfrid Laurier University

Winnie Ng, PhD CAW Sam Gindin Chair in Social Justice and Democracy at

Ryerson University

Workers United Canada Council

Yu Kyung Cho

Prescription Over-Ruled Group

October 4, 2016

Tom Teahen
President and CEO
Workplace Safety and Insurance Board
200 Front Street W
Toronto ON M5V 3J1

Dear Mr. Teahen,

The signatories on this letter are Ontario health care providers who have experience in assessing and treating injured workers. We are deeply concerned and frustrated with our communication and experiences with the WSIB, particularly in recent years, that negatively impact our clients' mental and physical health and well-being. As you are aware, a number of us have been involved with the joint efforts of the Ontario Federation of Labour and the Ontario Network of Injured Workers' Groups, in identifying and articulating these concerns, and have documented our direct experiences with numerous case examples which were included in the submission "Prescription Over-ruled".

While we, as representatives of the health care community who work with injured workers, appreciate the intention behind the efforts of WSIB to date to address some of the concerns, for example willingness to meet with various parties and WSIB's internal review of their use of medical consultants, we do not yet see the transparency, the collaboration and concrete progress in identifying and implementing solutions.

Therefore, we have formulated a number of solutions which we believe would substantially impact the issues which have been raised, and which would have benefits for all stakeholders, WSIB, injured workers and health care providers.

We would welcome the opportunity to meet with you to discuss and elaborate on these proposals.

Thank you for your time and attention to this matter. We look forward to meeting with you in the near future.

Sincerely,

Dr. Carol Parrott, PhD, C.Psych

Dr. Ed Bassis, PhD, C.Psych

Dr. Keith Klassen, PhD, C.Psych

Dr. Giorgio Ilacqua, Ed.D, C.Psych

Prescription Over-Ruled Group

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Dr. Conchita Fonseca, MD CCFP-EM

Dr. Ritika Goel, MD MPH CCFP, Family Physician

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Ms. Jessica Lyons, Registered Nurse

Dr. Marsha Rothstein, Ed.D, C.Psych

Unison Health & Community Services

Prescription Over-Ruled Group

Possible Solutions

1. Return to the 2005 Adjudicative Advice Document on the weighing of medical evidence and escalation protocol for obtaining outstanding medical evidence. The WSIB should return to its investigative mandate and give proper weight to the opinion of the health care professionals who treat the worker.
2. In order to provide injured workers full access to timely and high quality treatment and rehabilitation services, ideally provided in their own community if available, WSIB needs to engage community based health professionals in a collaborative, respectful partnership.
3. WSIB should preferentially deal with treating health professionals. When there are gaps in health care information or questions about treatment, WSIB should address these first with the treating professional and only turn to other health professionals when there is strong reason to do so. In order to support this goal, the system for requesting and collecting health care/medical information from treating health professionals must be revised to make it clearer, more efficient, discipline specific and sufficiently flexible to address patients with more complex challenges, i.e. multiple injuries, gradual onset or complex illnesses, chronic pain and mental health conditions.
4. All health care disciplines should be compensated for providing the required reports/documentation. Currently, physicians, chiropractors and physiotherapists are the only disciplines that have a fee schedule for completion of reports beyond the initial assessment. Psychologists, Social Workers, Occupational Therapists, Massage Therapists, Speech and Language Pathologists are denied separate billing for preparation of required documentation beyond the initial assessment, such as progress and discharge reports. These health professionals are expected to either provide these services pro bono or take time away from already limited treatment hours, which deprives the injured worker.
5. WSIB policies and practices should direct adjudicators to gather written evidence from the worker's treating health care provider(s) that a recovery has taken place before entitlement is terminated.
6. The WSIB should only use outside consultants on an exceptional basis. These consultants should have a high standard of qualification and experience and there should be review and input by stakeholder committee on the roster of these consultants. Adjudicators should provide clear and ample reasons when deciding to prefer the opinion of a medical consultant who has not seen the worker over the advice of the worker's treating medical professional. Only medical consultants who have regulated complaint procedures can be used and they must be identified along with their professional certification.
7. WSIB should develop a protocol for proactively identifying psychological issues after a workplace injury and providing mental health treatment. The protocol should require early communication with injured workers advising that it is very common to experience depression and anxiety after a workplace accident, and advise workers that if they are experiencing psychological symptoms, they should talk to their family doctor. Treatment recommendations should be promptly assessed and payment for

Prescription Over-Ruled Group

treatment covered by the WSIB. The WSIB should address psychological problems effectively and early, well before the injuries compound and the psychological injury worsens.

The protocol for addressing psychological issues should also recognize that the future course of some psychological disorders can be chronic or recurrent , therefore there may be a need for treatment after Maximum Medical Recovery has been reached and Return To Work has occurred. Maintenance treatment, currently denied by decision-makers, or timely detection and rapid response to relapses or exacerbations is appropriate in the care of injured workers with such psychological disorders as Posttraumatic Stress Disorder, Major Depressive Disorder, Recurrent and complex Phobias.

October 12, 2017

Kathleen Wynne, Premier
Legislative Building
Queen's Park
Toronto ON M7A 1A1

Dear Premier Wynne:

Re: WSIB's Discrimination Against Workers with Mental Injuries

We write to you in alarm.

On Friday, October 6, 2017, during Canada's Mental Health Illness Awareness Week, the Workplace Safety and Insurance Board released a new policy that discriminates against and excludes workers who suffer mental injuries at work.

The WSIB's new policy will reverse all of the good the legislature intended to do by revoking the statutory barriers to entitlement for mental stress injuries. In fact, the new policy will put workers with mental injuries in Ontario in a worse position than they have ever been. We are confident it will be found illegal and unconstitutional. It discriminates against the most vulnerable.

Your government has licensed the WSIB to continue to exclude workers through arbitrary and discriminatory entitlement criteria.

Workers with mental injuries already shoulder a serious burden of stigma and social disapproval.¹ In its new policy, the WSIB places additional burdens on them that they

¹ The government that has publicly recognized the importance of eliminating the stigma associated with mental illness
http://www.health.gov.on.ca/en/common/ministry/publications/reports/mental_health2011/mentalhealth_rep2011.pdf at p. 12.

cannot withstand. As a result, they will be denied compensation. They will be denied return to work support. They will be denied the health care they need.

We ask you to take action to finally denounce and end the government's discrimination against workers with mental injuries.

Our coalition

We are a coalition of injured workers, community legal clinics, private bar lawyers, and doctors. We have decades of direct experience in the workers' compensation system in Ontario and with workers with mental health disabilities.

Our members and clients, many of whom are low-income, precariously employed, non-unionized, racialized, or living in rural areas, are among those likely to be most negatively affected by the Board's regressive new policy about workers with mental injuries.

The history of discrimination against injured workers with mental injuries

For 20 years, the government has excluded by statute workers with mental injuries from the protections of workers' compensation. This exclusion continued even after the Workplace Safety and Insurance Appeals Tribunal said, back in 2014, that this

The WSIB's new policy will put workers with mental injuries in Ontario in a worse position than they have ever been.

differential treatment violated workers' *Charter* rights.²

Earlier this year, the

² Decision No. 2157/09, 2014 ONWSIAT 938 (CanLII); Decision No. 1945/10, 2015 ONWSIAT 223 (CanLII); and Decision No. 665/10, 2016 ONWSIAT 997 (CanLII).

government announced it had finally decided to end this discrimination. The legislature removed the discriminatory exclusion of workers with mental stress injuries from the *Workplace Safety and Insurance Act*.

We thought and hoped that the government was committed to improving the mental health of Ontario's injured workers.

The government gave the WSIB the license to discriminate

Then, in May 2017, the government gave the WSIB a license to imbed discrimination into its policies. The WSIB promptly used this power to discriminate against workers with mental injuries. It intends to continue the long history of exclusion of workers with mental illnesses.

When the government proposed this unprecedented new power, we wrote to your government and expressed serious concern. We explained that such a power could allow and invite the WSIB to introduce by policy the same or similar limits on mental injuries that the legislature decided to repeal.

In fact, exactly that has happened. The impact is even worse than we anticipated.

The WSIB's new policy excludes and dismisses those with mental injuries

The WSIB's new mental stress policy requires workers with workplace mental injuries to meet rigorous legal and medical tests that many of them won't be able to meet. As a result, many of them won't be able to access workers' compensation support in their return to work and recovery.

Your government has licensed the WSIB to discriminate against many of the most vulnerable workers, those in distress because of workplace mental illnesses. The

WSIB's policy includes barriers that will make access to workers' compensation worse than it has even been for workers with mental injuries. You have licensed the WSIB to require these workers to:

1. Prove that the workplace events were the "primary or main cause" (predominant cause) of their mental illness to get initial recognition of their injuries.
 - No other workers have to meet this test. The firmly established test for entitlement, based in tort law, is that the workplace factors were one significant contributing cause to the injuries.
 - This new test directly discriminates against workers with mental injuries. Workers who are the most vulnerable will be most seriously affected because they will be told that the workplace wasn't the "main" cause of their injury. So, refugees, people from disadvantaged backgrounds, racialized workers, workers who have experienced abuse or domestic violence, and otherwise vulnerable workers will be excluded.
2. Prove that the workplace events remain the "primary or main cause" of their mental illness at every stage of their workers' compensation claim. This requirement will make access to ongoing benefits for mental injuries more restrictive than it has ever been. Workers currently only need to establish entitlement based on arbitrary and discriminatory criteria one time. Now, workers will have to meet an arbitrary and discriminatory test for entitlement over and over again.
 - This is an especially offensive requirement because of the multiple life events the WSIB can wrongly use as an excuse to end entitlement. A nurse who is harassed mercilessly at work, and develops depression. One year later, she gets divorced. The WSIB will decide that her depression is now related more to her divorce than the harassment. Her health care, recovery and return to work support will end.

3. Prove that the work-related stressor was substantial; in other words, that the stressor was “excessive in intensity and/or duration” such that it would have caused a mental injury to an “average worker”.
 - This requirement adds to the Board’s discrimination against workers with mental injuries. There is already sufficient rigour in workers’ compensation adjudication to properly adjudicate claims for mental injuries without a second arbitrary test that does not apply to workers with physical injuries. This imposes an even greater burden on vulnerable workers to adduce evidence to meet this new, vaguely defined requirement.
4. Provide a diagnosis under the *Diagnostic and Statistical Manual of Mental Disorders* (DSM) in every case, before the WSIB will even consider entitlement.
 - The Supreme Court of Canada has very recently said that arbitrary requirements like the requirement for a DSM diagnosis are unacceptable. These arbitrary requirements disadvantage people who suffer mental injuries.³
 - Many of the most vulnerable workers have no or poor access to specialist medical care or even family physicians. Certainly, many will be unable to get the DSM diagnosis required to even get their case decided.

Many workers with mental injuries, especially the workers we represent, won’t be able to meet these strict criteria. They and their families will be shut out of the compensation system.

The WSIB’s new policy will be found illegal and unconstitutional

The Board’s new policy denies workers suffering from work-related injuries their *Charter* right to equal protection and equal benefit of the law without discrimination.

³ *Saadati v. Moorhead*, 2017 SCC 28 (CanLII), <http://canlii.ca/t/h4zpw>.

This policy cannot survive constitutional scrutiny. The Supreme Court of Canada, and the Workplace Safety and Insurance Appeals Tribunal, have rejected the wrongheaded notion that mental injuries are less real, more subjective and more suspect than physical ones.⁴ The courts and tribunals have said time and again that there is no justification for arbitrary and discriminatory tests that limit entitlement to workers with mental injuries. As the Supreme Court of Canada said this year, arbitrary requirements for people with psychological injuries are steeped in “dubious perceptions of, and postures towards, psychiatry and mental illness in general: that mental illness is “subjective” or otherwise easily feigned or exaggerated”. The Supreme Court stated that “no cogent basis has been offered to this Court for erecting distinct rules which operate to preclude liability in cases of mental injury,

but not in cases of physical injury”.⁵

The new policy obstructs the improvements to access to health support, recovery and return to work for worker with mental injuries that this government intended to achieve.

The WSIB’s differential treatment of workers with mental stress reinforces the stigma surrounding mental injury. Imposing a more restrictive standard for

mental injury entitlement sends a message that workers claiming entitlement for these conditions are a greater risk for fraud or that their conditions are “all in their head.”

⁴ *Saadati v. Moorhead*, *ibid*; *Nova Scotia (Workers' Compensation Board) v. Martin*; *Nova Scotia (Workers' Compensation Board) v. Laseur*, [2003] 2 SCR 504, 2003 SCC 54 (CanLII); Decision No. 2157/09, 2014 ONWSIAT 938 (CanLII)

⁵ *Saadati v. Moorhead*, *ibid*, para. 35.

You are allowing the WSIB to make injured workers and their families bear the costs of workplace illnesses

While we believe that the WSIB's new policy will eventually be declared illegal, we cannot abide the reality that the most vulnerable injured workers will shoulder the burden of workplace disease until this happens.

This new WSIB policy obstructs the improvements to access to health care support, recovery and return to work for workers with mental injuries that this government intended to achieve.

We ask you to take action to stop this discrimination

You need to step in to correct this injustice to injured workers before it further pushes workers with mental injuries to the margins of society.

You should do the following:

- Revoke s. 159 of the *Workplace Safety and Insurance Act*, the recently introduced provision that allows the WSIB to impose different standards through policy for chronic mental stress claims;
- Amend s. 13, the chronic mental stress provision, to confirm that the same legal principles should be used to adjudicate these claims as all other claims; and
- Meet with our Coalition and other key stakeholders **before** the WSIB policy and changes to the Act will be in force (January 1st, 2018).

We look forward to your reply.

Yours truly,

Antony Singleton

ARCH Disability Law
Centre

Ellen Lipés

Gary Newhouse

Hamilton Community
Legal Clinic

Health Professionals
for Injured Workers

IAVGO Community
Legal Clinic

Injured Workers'
Consultants

Ontario Network of
Injured Workers'
Groups

Peter Bird

Renfrew County Legal
Clinic

West Toronto
Community Legal
Services

cc. Minister of Labour Kevin Flynn

Coalition Members

Antony Singleton is a lawyer in private practice who represents injured workers in their WSIB claims and appeals. He has been practicing workers' compensation law for over a decade.

ARCH Disability Law Centre (ARCH) is a specialty legal clinic, funded primarily by Legal Aid Ontario, dedicated to defending and advancing the equality rights of persons with disabilities across Ontario. For over 35 years, ARCH has provided legal services to help Ontarians with disabilities live with dignity and participate fully in our communities. ARCH provides summary legal advice and referrals to Ontarians with disabilities; represents persons with disabilities and disability organizations in test case litigation; conducts law reform and policy work; provides public legal education to disability communities and continuing legal education to the legal community; and supports community development initiatives. ARCH has a longstanding history of representing parties and interveners before courts and tribunals in matters that raise systemic human rights and disability rights issues. ARCH lawyers have appeared before the Canadian Human Rights Commission, the Canadian Human Rights Tribunal, the Human Rights Tribunal of Ontario, and all levels of court including the Supreme Court of Canada. More information about our work is available on our website: www.archdisabilitylaw.ca.

Ellen Lipes is a lawyer who has been representing injured workers in all facets of their cases for over 30 years. She was a staff lawyer at IAVGO for over 10 years where she participated in public legal education activities including the IAVGO Reporting Service, IAVGO Reporting Service Newsletter and the practice manual Workers' Compensation: A Manual for Workers' Advocates, both as a writer and editor. She has been in private practice since 1998.

Gary Newhouse is a lawyer in private practice since 1981 and is a very experienced practitioner of workers' compensation law for the worker side. He is the co-author of "Butterworths Workers' Compensation In Ontario Service" and the LexisNexis "Ontario Workplace Safety and Insurance Act & Commentary". He is well known as a speaker and educator in the workers' compensation field.

Hamilton Community Legal Clinic is a community legal clinic funded by Legal Aid Ontario and provides free legal services to the people of the City of Hamilton. It is an amalgamation of three Hamilton legal clinics some of which have been serving the Hamilton Community for over 30 years. During this time we have represented hundreds of injured workers in their individual cases at all levels of appeal. In addition to case by case representation of individuals, our mandate includes public legal education and community development. We also work with the members of provincial parliament and senior bureaucrats to seek improvements in law and policy affecting the people of Hamilton. As part of this we have represented the Hamilton and District Injured Workers' Group and the Ontario Network of Injured Workers' Group in their legal cases and law reform efforts to improve Workers' Compensation law for injured

workers. Our experience with respect Workers' Compensation and the plight of injured workers is extensive.

Health Care Professionals for Injured Workers (HPIW) is a group of dedicated health professionals from across the province who work with injured workers. They are joining together to speak out about their concerns with the workers' compensation system and the negative impact on their injured worker patients. HPIW is advocating for positive change and reform.

IAVGO Community Legal Clinic is a non-profit community legal aid clinic funded by Legal Aid Ontario. We have provided legal advice, advocacy and representation to injured workers for over 30 years.

Injured Workers Action for Justice is a group of injured workers and their supporters who have fought for fair compensation from the WSIB since 2010. Many of our members are losing their families, livelihoods and physical and emotional health as a result of WSIB's failure to protect us. We envision a workers' compensation system where the WSIB provides fair compensation to all injured workers in a manner that is respectful and reflective of our dignity and shared humanity.

Injured Workers Consultants is a non-profit community legal clinic providing free legal advice and representation to injured workers since 1969. We work with injured worker and community organizations seeking improvements to the workers' compensation system.

Michael S. Green has represented injured workers with their claims and appeals for over 30 years. He represented the Union of Injured Workers in the Appeals Tribunal's Pension Leading Case. He has spoken and written widely on the topic and made submissions to legislative committees and law reform studies throughout his career. He sat on the Board of Directors of the Industrial Accident Victims Group of Ontario and was a member of the Law Society of Upper Canada's Specialty Committee on Workers' Compensation.

Ontario Network of Injured Workers Groups, founded in 1991, is the provincial voice for workers who have been injured or made sick on the job. We have first-hand experience of the WCB/WSIB system, know it needs improvements and take United action to see that this happens.

Peter Bird has been representing injured workers since 1979, originally as a law student at the Union of Injured Workers Legal Clinic, and since 1984 as a lawyer in private practice. He is also the long time Chair of the Board of Injured Workers' Consultants Community Legal Clinic.

Renfrew County Legal Clinic is an independent non-profit corporation run by a Board of Directors made up of people who work or live in Renfrew County. Our mission is to promote

SINGLETON · ARCH · LIPES · NEWHOUSE · HAMILTON CLC · HPIW · IAVGO · IWA4J · IWC · GREEN · ONIWG · BIRD ·
RENFREW CLC · WTCLS

access to justice for low income people of Renfrew County with the aim of promoting a just society. Much of our practice is in workers' compensation law. We serve many injured workers whose experience with the WSIB has been poor and who are face additional marginalization due to their rural and remote locations.

West Toronto Community Legal Services (WTCLS) is a non-profit community legal clinic and housing help service for low income people in Toronto's west end. WTCLS has been providing legal and other support services to low-income people in West Toronto since 1997.

IAVGO Community Legal Clinic

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October 16, 2017

Tom Teahen, President and CEO
Workplace Safety and Insurance Board
200 Front Street W
Toronto, ON
M5V 3J1

Dear Mr. Teahen,

I am writing to you about our reports, *No Evidence* and *Bad Medicine*, enclosed. These reports prove what workers have been saying since 2010: the WSIB is prioritizing its financial position over its statutory duties to injured workers.

We are asking you to stop merely defending the WSIB's work in the face of this stark evidence of its failures. Instead, we are asking you to implement the reasonable and practical solutions the worker community has proposed. These solutions would start restoring the confidence of the workers you are mandated to serve.

The Reports

No Evidence

On June 28, 2017, IAVGO published *No Evidence: The decisions of the Workplace Safety and Insurance Board*. *No Evidence* highlights hundreds of WSIB decisions that the Workplace Safety and Insurance Appeals Tribunal overturned because they ran counter to the evidence or were based on no evidence at all.

The Appeals Tribunal decision-makers commented that the WSIB's decisions were "unreasonable" in ignoring the "unanimous opinions" of doctors, were based on "not a single word of medical or other reliable evidence", and would have placed the worker at "medical risk".

There were close to 200 decisions where the Tribunal found that the WSIB's decision was contrary to all, or all discussed medical evidence; and over a hundred where the Tribunal found that the WSIB failed to respect the medical advice of the worker's treating physicians about return to work.

Ron Ellis, former chair of the Workplace Safety and Insurance Appeals Tribunal, [says that](#), "on the basis of unimpeachable evidence, the (*No Evidence*) report confirms that the WSIB's decisions in the exercise of its trial court function are routinely not "evidence based". He attributes the WSIB's non-evidence-based adjudication to "an adjudicative culture of pro-active denial".¹

Ron Ellis calls for a public inquiry into the WSIB based on the findings in *No Evidence*.

Bad Medicine

On May 24, 2017, IAVGO published *Bad Medicine: A report on the WSIB's transformation of its health care spending*. *Bad Medicine* shows that the WSIB has significantly cut health care benefits to injured workers. Rather than improving health care as it claims, the WSIB has prioritized services that are structured to drive down the cost of benefits paid to injured workers.

Bad Medicine proves that the primary measures the WSIB uses as evidence of improved health outcomes – the reduction in the incidence and severity of permanent impairments – are the result of changes to the WSIB's adjudication practices. They constitute a cut in benefits themselves, rather than a reflection of improved health care

¹ Ron Ellis, "No Evidence: A Clarion Call for a Public Inquiry", <https://administrativejusticereform.ca/ontario-wsib-the-no-evidence-case-for-a-public-inquiry/>.

The Reasonable Steps the WSIB Needs to Take

Injured workers and their allies are telling you they are in crisis because of the WSIB's decisions. They are telling you that you are failing to compensate them. They are telling you that you are failing to help them recover.

On June 10, 2016, 150 injured workers groups, labour organizations, health care providers, immigrant rights groups, academics and community members wrote to you about the crisis facing injured workers. They called on the WSIB to:

- pay for treatment that injured workers' doctors recommend
- respect the advice of treating doctors in the adjudication of claims, and
- better protect marginalized workers

Since that time, Injured Workers Action for Justice and our legal clinic have met and corresponded with you on numerous occasions.

We have told you the concrete steps that the WSIB must take to re-balance the system so that injured workers are not left without the health care they desperately need. Injured workers' groups from across the province have told you that these concrete measures are critical.

To date, the WSIB has sought to justify its position instead of taking any steps to change. Instead of helping workers, it has reduced premiums to employers.

We ask you to reconsider taking some initial, reasonable steps to assure the public that the WSIB is committed to providing proper health care to injured workers and that it is committed to impartial, evidence-based decision making. These steps include:

- 1. Obtaining Proof of Recovery:** The WSIB amend its policies and practices to direct adjudicators to gather written evidence from the worker's treating health care provider(s) that a recovery has taken place *before* it

terminates entitlement. This must be a mandatory requirement in every case.

- 2. Proof that a Pre-Existing Condition Overshadows the Significance of the Workplace Accident Before Denying Initial or Ongoing Entitlement:** The WSIB amend its policies and practices to direct adjudicators to gather written evidence from the worker's treating health care provider that the pre-existing condition overwhelms the significance of a workplace accident before denying initial or ongoing entitlement.
- 3. Psychological Treatment:** The WSIB - implement a universal, accessible protocol for proactively identifying psychological illness after a workplace injury and providing mental health treatment. This protocol should include:
 - Advise all workers that it is very common to experience depression and anxiety after a workplace accident;
 - Advise all workers that if they are experiencing psychological symptoms, they should talk to their family doctor; and
 - Offer workers treatment sessions with registered psychologists of their choosing to assess how they are doing and to see if more counselling is needed.
- 4. Better Protections for Migrant Workers:** The WSIB must assess the accessibility and affordability of healthcare available to injured workers in their home countries. If the cost or method of health care is prohibitive, the WSIB must offer accommodation expenses to injured migrant workers so they have the option of remaining in Ontario for health care. In addition, the WSIB must not deem repatriated migrant workers as though they able to do jobs in Ontario.
- 5. Recognize Time to Heal:** The WSIB automatically provide FLOE for up to 4 weeks following a workplace injury if the treating physician indicates on a Form 8 or FAF that the worker is unable to return to work.
- 6. Reform Medication Reviews:** End the annual / biannual medication renewal process for permanently injured workers.

Mr. Teahen, the time to act is now. The WSIB's drive to reduce benefits at any cost is undermining public faith in the WSIB as an institution. The WSIB is increasingly seen as an organization that causes trauma to the very workers it was founded to protect. The communities we work with are tired of the WSIB spouting well-worn talking points that are not based on evidence and do nothing to address the crisis that injured workers are in.

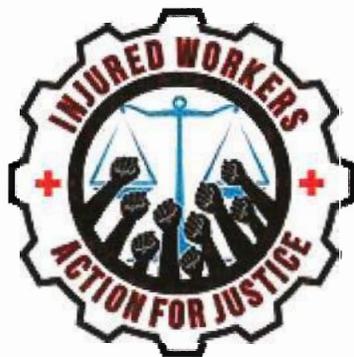
We will be posting this letter online as well as circulating them through our networks. We have also mailed this letter and the reports to the Ombudsman, the Ontario Human Rights Commission and all MPPs in Ontario and are requesting their support.

Regards,
IAVGO Community Legal Clinic

A handwritten signature in black ink, appearing to read 'J. Ponting', with a long horizontal stroke extending to the right and a vertical line ending in a hook.

Per. Jessica Ponting

c.c.: Members of Provincial Parliament
Mr. Paul Dubé, Ontario Ombudsman
Ms. Renu Mandhane, Chief Commissioner, Ontario Human Rights
Commission



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Clinic