

WORKERS' COMPENSATION ISSUES IN THE PROVINCIAL ELECTION



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**WORKERS' COMP
IS A RIGHT**

WORKERS' COMPENSATION ISSUES IN THE PROVINCIAL ELECTION

The Ontario Network of Injured Workers Groups (**ONIWG**) is the provincial umbrella organization of local injured worker groups across the province. It is an unfunded volunteer organization with no staff and no website, but much of its work is reported on the injured worker community website: www.injuredworkersonline.org

ONIWG's long term law reform goals are set out in its Workers Comp Is A Right (WCIAR) campaign:

- End the practice of deeming injured workers
- Listen to injured workers' treating healthcare professionals
- Stop cutting benefits based on "pre-existing conditions"

Additional workers compensation issues have emerged in the media recently:

- Seniors deserve workplace injury benefits
- The Occupational Disease Reform Alliance
- Why injured workers say they're losing out as the cost-of-living increases
- Restoring wage-loss benefits to pre-1998 levels

With the provincial elections around the corner, we prepared the following chart that contains the **ONIWG's** law reform goals, as well as additional workers' compensation issues with suggested questions to ask politicians.

ISSUE: END THE PRACTICE OF DEEMING INJURED WORKERS

CONTEXT

The current law allows the WSIB to reduce wage loss benefits based on deemed earnings from a job the injured worker does not have

ADDITIONAL FACTS

In a Trent University study of permanently injured workers, 46% of them lived in or close to the Low Income Measure poverty line and nearly one in ten lived in deep poverty. The study is titled "*Poverty status of worker compensation claimants with permanent impairments*"

PROPOSED SOLUTION

A private members bill by NDP MPP Wayne Gates proposed that the WSIB could not reduce wage loss benefits based on work they do not actually have unless the worker refused employment in bad faith (Bill 119).

SUGGESTED QUESTION TO ASK POLITICIANS

[Read out context, and end with]:

Will your political party commit to ending the practice of deeming?

ISSUE: LISTEN TO HEALTHCARE PROFESSIONALS TREATING INJURED WORKERS'

CONTEXT	<p>There are serious problems with the way that the WSIB considers medical evidence. There are a range of issues, including:</p> <ul style="list-style-type: none">• 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") <p>And even simply ignoring the available medical evidence all together</p>
ADDITIONAL FACTS	<p>A legal clinic study of 425 Workplace Safety and Insurance Appeals Tribunal (WSIAT) decisions about unfair WSIB decision making practices over one year uncovered:</p> <ul style="list-style-type: none">- 110 cases where the Board wrongly failed to respect the medical advice of the worker's treating physicians about return to work;- 175 cases where the Board's decision was contrary to all, or all discussed, medical evidence: <u>No Evidence</u>
PROPOSED SOLUTION	<ul style="list-style-type: none">• 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.• Before deciding that a worker has recovered from an injury, decision-makers should have a report from the worker's treating physician verifying recovery. <i><u>See "Listen to our doctors" for more suggestions</u></i>
SUGGESTED QUESTION TO ASK POLITICIANS	<p><i>[Read out context, and end with]:</i></p> <p>Will your political party commit to passing legislation which prioritizes the evidence of an injured workers treating health professional and seeks to address gaps in information with them first?</p>

ISSUE: STOP CUTTING BENEFITS BASED ON “PRE-EXISTING CONDITIONS”

CONTEXT

Many injured workers find that the WSIB refuses to accept the full impact of their injury, alleging that the worker has recovered from the workplace injury and alleging ongoing limitations are the result of ‘pre-existing’ conditions, although they were able to work until the workplace injury.

ADDITIONAL FACTS

Around 2012, after declaring a financial crisis, the WSIB began a practice of reducing or eliminating injured workers’ benefits by aggressively reducing benefits of people who the WSIB claimed had “pre-existing conditions.” The WSIB was forced by legal action and political pressure to stop and return to its pre 2012 policy of limiting benefits only for “pre-existing impairments, meaning a condition that has symptoms that previously limited a worker’s ability to do their job. However in practice what the WSIB now calls pre-existing conditions still includes asymptomatic or unknown conditions that may have never affected the worker before

PROPOSED SOLUTION

- The WSIB must put into practice what it preaches in its policy and stop denying or reducing benefits of an injured worker because of an unknown condition that did not affect the worker’s functioning prior to the work injury
- These principles must be codified in the Workplace Safety & Insurance Act, to prevent the WSIB from ignoring them again in the future

SUGGESTED QUESTION TO ASK POLITICIANS

[Read out context, and end with]:

Will your political party commit to passing legislation which will only reduce workers’ compensation benefits if a worker had a verifiable, symptomatic impairment?

ISSUE: WORKPLACE INJURY BENEFITS FOR SENIORS

CONTEXT

Seniors deserve workplace injury benefits. The law currently only allows injured workers to receive wage loss benefits until age 65, or for a maximum of two years if they were injured on the job when they were 63 years or older. In contrast, workers over the age of 65 can participate in other employment related benefit schemes such as Employment Insurance and the Canada Pension Plan

ADDITIONAL FACTS

More Canadians are staying in the workforce past age 65, in part because they can't afford to retire. The WSIB's own data bears out this trend. From 2002 to 2020, the number of workers' compensation claims for workers age 65 or older has increased by more than 500 per cent. The number of low-income seniors has also increased in recent years.

PROPOSED SOLUTION

British Columbia and Alberta's workers' compensation systems have been able to decide when wage loss benefits will end based on an injured workers' individual retirement plans if a worker can show that they intended to keep working past the age of 65

SUGGESTED QUESTION TO ASK POLITICIANS

[Read out context, and end with]:

Will your political party commit to amending workers' compensation legislation to allow workers so show that they intended to keep working past the age of 65 to maintain benefits, as is the case in BC & Alberta? How will you support senior injured workers?

ISSUE: THE OCCUPATIONAL DISEASE REFORM ALLIANCE

CONTEXT

In order to compensate occupational disease claims, the WSIB wants a degree of scientific evidence that is not available to widows and survivors.

ADDITIONAL FACTS

The Occupational Disease Reform Alliance (ODRA) is made up of clusters of workers experiencing work-related illnesses after their workplace shut down, leaving a legacy of occupational disease clusters across the province.

PROPOSED SOLUTION

The ODRA is calling on the Ontario government to address flaws in the way it adjudicates disease claims :

- Compensate occupational disease claims when workplace patterns exceed the community level;
- Use the proper legal standard; not scientific certainty;
- Expand the list of communicable diseases presumed work-related;
- Accept that multiple exposures combine to cause diseases.
- MPP Wayne Gates has proposed a private member bill to implement these changes: Justice for Victims of Occupational Disease Act

SUGGESTED QUESTION TO ASK POLITICIANS

[Read out context, and end with]:

Will your political party commit to implementing the recommendations of the Occupational Disease Reform Alliance, as proposed in private members bill Justice for Victims of Occupational Disease Act?

ISSUE: WHY INJURED WORKERS SAY THEY'RE LOSING OUT AS THE COST-OF-LIVING INCREASES

CONTEXT

Ontario law requires the workers' compensation board to adjust wage loss benefits annually, in line with changes to the Consumer Price Index.

ADDITIONAL FACTS

The CPI increased by 4.7% last year, but this year injured workers will get a 2.7 % increase. The calculation is not set out in the legislation and the WSIB has chosen a complicated formula of monthly averaging.

PROPOSED SOLUTION

Injured workers are calling on the Ontario government to use a fair formula, meaning one which will reflect the actual inflation rate of 4.7%

SUGGESTED QUESTION TO ASK POLITICIANS

[Read out context, and end with]:

Will your political party agree to adjust injured workers wage loss benefits to reflect the Consumer Price Index rate of 4.7% rather than a lower, averaged rate which short changes injured workers?

ISSUE: RESTORING WAGE-LOSS BENEFITS TO PRE-1998 LEVELS

CONTEXT

The Harris government reduced WSIB Loss of Earning benefit levels from 90% to 85% of net earnings based due to an alleged WCB financial crisis.

ADDITIONAL FACTS

This year the WSIB announced it was \$3 billion overfunded and gave \$1.5 billion back to employers. The Ford government has announced that after the election it will ask the WSIB to explore raising workers compensation rates. The government has not stated whether this will apply to all permanently injured workers or just future injuries.

PROPOSED SOLUTION

Immediately raise Loss of Earning benefit level to at least 90%

SUGGESTED QUESTION TO ASK POLITICIANS

[Read out context, and end with]:

The WSIB has a \$3b surplus. Will your political party commit to immediately raising Loss of Earnings benefits to 90% for all injured workers as they were until 1998?