

Before the Supreme Court of Canada
On Appeal from a Judgment of the Quebec Court of Appeal

BETWEEN:

COMMISSION DES NORMES, DE L'ÉQUITÉ, DE LA SANTÉ
ET DE LA SÉCURITÉ DU TRAVAIL (formerly known as the Commission de la santé et de la
sécurité du travail)

Appellant

-and-

ALAIN CARON

Respondent

-and-

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professionnelles), CENTRE MIRIAM, ATTORNEY GENERAL OF QUÉBEC, CONSEIL DU
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GROUPS AND THE INDUSTRIAL ACCIDENT VICTIMS GROUP OF ONTARIO, CENTRALE
DES SYNDICATS DU QUÉBEC, THE CANADIAN UNION OF PUBLIC EMPLOYEES

Interveners

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GROUPS and INDUSTRIAL ACCIDENT VICTIMS' GROUP OF ONTARIO**
(Pursuant to Rule 42 of the *Rules of the Supreme Court of Canada*)

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PART I – OVERVIEW AND FACTS

1. Workers' compensation boards intervene in workers' lives at a crucial and vulnerable time. As they attempt to return to work after suffering a workplace injury or disease, many workers – especially those who are already marginalized – suffer discrimination. And yet, workers' compensation boards often abdicate what should be one of their most important responsibilities: ensuring that injured workers' human rights are respected as they re-enter the workplace.
2. ONIWG and IAVGO, both recognized stakeholders with decades of experience helping Ontario's injured workers, have seen many workers suffer discrimination in their attempts to return to work. Too often, this discrimination cuts workers' ties to the workplace.
3. Workers' compensation decision-makers are best placed to stop discrimination before it severs workers' connection to the workplace and, with it, the dignity and sense of identity that this workplace connection provides. Requiring workers with disabilities to pursue multiple legal proceedings reinforces their already disadvantaged status. It deprives them of a meaningful opportunity to enforce their rights against discrimination. And it reinforces the stigma facing injured workers by sending the message that their rights to non-discriminatory treatment do not matter.
4. ONIWG and IAVGO accept the facts as set out by the Appellant.

PART II – POSITION ON THE QUESTION AT ISSUE

5. ONIWG and IAVGO's position in this appeal is limited to the issues identified above.

PART III - ARGUMENT

A. The Ontario Workplace Safety and Insurance Board is the first adjudicator of an injured worker's return to work.

6. The Workplace Safety and Insurance Board is the first adjudicator of return to work for many injured workers in Ontario:

- As soon as possible after a workplace injury, the worker and employer are required to cooperate in early and safe return to work.¹ Every employer covered under the workers' compensation system must comply with this obligation to cooperate. The cooperation obligation can last for years following a workplace injury.²
 - The WSIB takes an active role to help the workplace parties in the return to work process by mediating disputes, gathering information, and assessing the suitability of proposed jobs.³ The WSIB can offer accommodation assistance to employers.⁴
 - If an employer does not have suitable work or fails to cooperate, the WSIB must decide if the worker needs support to re-train for a new job.⁵
7. Some employers are also subject to a time-limited "obligation to re-employ."⁶ In Ontario, this provision incorporates the duty to accommodate to the point of undue hardship, a standard mirroring the Ontario *Human Rights Code*.⁷ However, the re-employment obligation has limited application. It only applies to workers in workplaces with more than 20 employees and to workers who have been employed continuously for at least one year. It only applies for, at most, two years post-injury. And some decision-makers have stated that the obligation only requires employers to accommodate the work-related injury and pre-existing conditions, not other *Code*-related grounds or injuries.⁸

¹ *Workplace Safety and Insurance Act, 1997*, SO 1997, Sched A, s 40 [WSIA].

² *Ibid*; Ontario Workplace Safety and Insurance Board, *Operational Policy Manual, Responsibilities of the Workplace Parties in Work Reintegration*, Document No 19-02-02 at 1-2 [Policy Manual 19-02-02], Book of Authorities of the Interveners ONIWG and IAVGO ["BOAONIWG"], Tab 24. According to WSIB policy, the injury employer remains a party to return to work until:

1. The worker quits voluntarily;
2. The employer dismisses the worker for reasons unrelated to the injury/disease (and related absences from work), treatment for the injury/disease, or the claim for benefits;
3. The WSIB is satisfied that the employer can offer no suitable employment, or will not be able to offer it in the reasonably foreseeable future; or,
4. The WSIB can no longer review the worker's loss of earnings benefits. [Note: the WSIB usually is unable to review loss of earnings benefits after 72-months post-injury]

³ *Policy Manual 19-02-02*, *supra* note 2 at 11-12; WSIA, *supra* note 1 at ss 40(5), 40(7), 41(3), 42(3).

⁴ Ontario Workplace Safety and Insurance Board, *Operational Policy Manual, Work Reintegration Principles, Concepts, and Definitions* Document No 19-02-01 at 3-4, 7, BOAONIWG, Tab 25 [Policy Manual 19-02-01]; *Policy Manual 19-02-02*, *supra* note 2 at 5-6.

⁵ WSIA, *supra* note 1, s 42.

⁶ *Ibid*, s 41.

⁷ *Ibid*, s 41(6).

⁸ Decision No 872/96, 1997 ONWSIAT 12683 (CanLII) at para 29, BOAONIWG, Tab 4.

8. Because of its limited application to workers with continuous employment in larger workplaces, the re-employment obligation does not protect many of the most vulnerable injured workers: temporary, contract or migrant workers.
9. Although the WSIB return to work policy incorporates the *Code*, in practice the WSIB often fails to step in and enforce the *Code* where the employer is discriminating against the worker. If no re-employment obligation applies, the WSIB often accepts an employer's position that it does not have suitable work without question, leaving many vulnerable workers without *Code* protection during return to work.⁹ The WSIB also often ignores workers' concerns about discriminatory treatment during their return to work.¹⁰

B. The failure to enforce workers' rights undermines the statutory goal of return to work.

i. Failure to enforce human rights frustrates legislative intent to achieve return to work

10. The WSIB's failure to consistently require employers to comply with their *Code* obligations undermines the statutory purpose of return to work.¹¹ In enacting the current statute, the Ontario Legislature explained that they intended the legislation to assist injured workers to "overcome the sense of isolation and disruption that can occur after an accident" and restore them to being "active, contributing members in their communities."¹²
11. For injured workers, return to work is as crucial as monetary compensation. Work and employment are essential elements of human dignity.¹³ As this Honourable Court has

⁹ *Policy Manual 19-02-02*, *supra* note 2 at 5-6. In *Maxwell v Cooper-Standard Automotive Canada Limited*, 2013 HRTO 1482 (CanLII) at paras 18, 38, BOAONIWG, Tab 9, the HRTO explained that expert witness, Gary Newhouse, testified that "In his experience, an employer's analysis is generally accepted if it asserts that it has no suitable work for an injured worker. Mr. Newhouse further testified that a return to work specialist will not engage in a rigorous undue hardship analysis if an employer takes the position that there is nothing it can do to return the injured worker to employment, or the cost would be too expensive." The HRTO concluded at paragraph 38 that the WSIB did not decide whether the employer complied with its *Code* obligations; rather, the WSIB accepted the employer's representation that there was no suitable work without question; see also Decision No 1717/11, 2012 ONWSIAT 1071 (CanLII) at para 35, 67, BOAONIWG, Tab 6; Decision No 837/11, 2011 ONWSIAT 1416 (CanLII) at paras 5-9, 31-32, BOAONIWG, Tab 3; Decision No 1811/13, 2013 ONWSIAT 2203 (CanLII) at paras 50, 59, BOAONIWG, Tab 7.

¹⁰ Decision No 1225/07 2007 ONWSIAT 1749 (CanLII) at paras 26, 30, BOAONIWG, Tab 5.

¹¹ *WSIA*, *supra* note 1, s 1(2).

¹² Ontario, Legislative Assembly, Official Report of Debates (Hansard), 36th Parl, 1st Sess (1 May 1997) (Ted Arnott), BOAONIWG, Tab 27.

¹³ *Nova Scotia (Workers' Compensation Board) v Martin; Nova Scotia (Workers' Compensation Board) v Laseur*, 2003 SCC 54 at para 104, [2003] 2 SCR 504 [*Martin*], Book of Authorities of the Appellant [BOAA], Tab 16. See also *Reference Re Public Service*

recognized, workers' compensation is intended to assist workers "by preserving and improving their dignity by returning to work when possible."¹⁴

ii. Reality of discrimination for injured workers returning to work

12. After a workplace injury, many injured workers face discrimination from employers who refuse to accommodate them.¹⁵ Workers often feel humiliated and excluded during the return to work process.¹⁶ Usually unrepresented,¹⁷ injured workers have a relative lack of power during the return to work process compared to their employers.¹⁸

13. Too often, employers:

- refuse to offer accommodations like reduced production targets or modified equipment;¹⁹
- ask injured workers to return to undignified, unsustainable, and unproductive jobs, such as lying down in the medical room or reading health and safety manuals;²⁰
- refuse to accommodate injured workers' other *Code*-related needs like childcare responsibilities or accommodations for other disabilities; and
- fire injured workers for discriminatory reasons.²¹

14. Injured workers who are women, racialized persons, precariously employed, non-English-speaking or otherwise marginalized suffer discrimination even more acutely and

Employee Relations Act (Alta), [1987] 1 SCR 313 at para 91, 1987 CanLII 88 (SCC) [*Reference Re Public Service Employee Relations Act*]. BOAONIWG, Tab 11.

¹⁴ *Martin*, *supra* note 13 at para 104.

¹⁵ Bonnie Kirsh, Tesha Slack & Carole King, "The Nature and Impact of Stigma Towards Injured Workers" (2012), 22 *Journal of Occupational Rehabilitation* 143 at 150, BOAONIWG, Tab 16.

¹⁶ Katherine Lippel, "Preserving Workers' Dignity in Workers' Compensation Systems: An International Perspective" (2012) *American Journal of Industrial Medicine* 519 at 526 [Lippel, "Workers' dignity"], BOAONIWG, Tab 20.

¹⁷ While the system is often complex and many injured workers eventually hire counsel, in the early stages of a claim where a worker is first considering return to work, most non-unionized injured workers are unrepresented.

¹⁸ Lippel, "Workers' dignity" *supra* note 16 at 523; Ellen MacEachen, Agnieszka Kosny & Sue Ferrier, "The 'Toxic Dose' of System Problems: Why Some Injured Workers Don't Return to Work as Expected" (2010), 20 *Journal of Occupational Rehabilitation* 349 at 355, 363 [MacEachen, Kosny & Ferrier, "Toxic Dose"], BOAONIWG, Tab 17; Stephanie Premji, "Barriers to Return-to-Work for Linguistic Minorities in Ontario: An Analysis of Narratives from Appeal Decisions" 25 *Journal of Occupational Rehabilitation* 357 at 364 [Premji, "Barriers"], BOAONIWG, Tab 31.

¹⁹ Kirsch, Slack & King, *supra* note 15, at 150.

²⁰ MacEachen, Kosny & Ferrier, *supra* note 18, "Toxic Dose" at 354; Institute for Work & Health, "Delicate dances: Immigrant workers' experiences of injury reporting and claim filing" by Agnieszka Kosny et al (Toronto: Institute for Work & Health, 2011) at 22 [Kosny et al, "Delicate dances"], BOAONIWG, Tab 18.

²¹ Sharon Dale Stone, "Workers Without Work: Injured Workers and Well-Being" (2003), 10 *Journal of Occupational Science* 7 at 10.

frequently.²² Researchers have studied how a worker's status as a disabled worker intersects with their race, gender and ethnicity, leading to the intensification of the impact of stigma and "an extreme sense of vulnerability."²³ Racialized workers describe the deep alienation they feel when their long-term employers demean, ignore and dismiss them.²⁴ Injured workers with limited English skills are particularly "vulnerable to abuse by employers and incomprehension and misperception by care providers and adjudicators."²⁵

15. Workers who have suffered psychological injuries also suffer more negative attitudes upon return to work, and are less likely to be offered modified work at all.²⁶

iii. Workers' compensation boards are best placed to address discrimination in real time

16. Workers' compensation boards are on the front-lines of return to work. The WSIB becomes involved in return to work very quickly after a workplace accident and is frequently involved for several years. For many injured workers, including many of the most disadvantaged non-unionized workers, the WSIB is the only adjudicator able to step in to ensure the employer is complying with its *Code* obligations before the employment relationship breaks down.

17. And yet, when employers discriminate against injured workers, the WSIB often does not enforce the *Code*. It does not take steps to prevent and stop discrimination. It does not reprimand or penalize employers who fail to accommodate injured workers. As a result, many injured workers unfairly lose their jobs.

iv. Injured workers often lose their connection to the workforce if they cannot return to work with the accident employer

18. Where the WSIB fails to step in to address and sanction discrimination, workers often lose their tether to the workforce.²⁷ They have no choice but to try to begin a new career.

²² Kirsh, Slack & King, *supra* note 15 at 148; Lee Strunin & Leslie I Boden, "Paths of Reentry: Employment Experiences of Injured Workers" (2000), 38 *American Journal of Industrial Medicine* 373 at 383, BOAONIWG, Tab 22; Kosny *et al*, "Delicate dances", *supra* note 20 at 22-23.

²³ Kirsh, Slack & King, *supra* note 15 at 148.

²⁴ Strunin & Boden, *supra* note 22 at 381.

²⁵ Premji, "Barriers", *supra* note 18 at 364; see also, Kosny *et al*, "Delicate dances", *supra* note 20 at 27-28.

²⁶ "Key differences found in return-to-work process for MSD and psychological claims" (2016), 85 *At work: a quarterly publication of the Institute for Work & Health* 1 at 1, 8, Online, Institute for Work & Health <https://www.iwh.on.ca/at-work/85/key-differences-found-in-return-to-work-process-for-msd-and-psychological-claims>, BOAONIWG, Tab 19.

New obstacles confront them: a long period of unemployment, a disability that may need accommodation, and the stigma of being an injured worker.²⁸

19. More often than not, workers cannot overcome these barriers. Despite retraining and extensive job search efforts, they cannot find a new job.²⁹ The WSIB's current return to work program was created because its success in retraining workers to enter new fields was abysmal, with only five of the 22 workers referred for retraining each day finding a new job at the end of retraining.³⁰ As a result, the WSIB's current return to work program is based on the premise that the most "successful [work reintegration] both in the short- and long-term [is] often best achieved by maximizing opportunities for return to work with the injury employer."³¹
20. When injured workers are forced out of the workforce because of discrimination, they lose the "identity, self-worth and emotional well-being" that came with their employment.³² And many are forced into poverty. Injured workers often must rely on social assistance when their workers' compensation benefits are cut. Many lose their homes, have to rely on food banks, and cannot afford their medications. They feel guilty and ashamed, depending on others when they used to be a provider.³³
21. As this Court has observed, the history of persons with disabilities in Canada is one of exclusion and marginalization.³⁴ This exclusion and marginalization defines the experience of ONIWG and IAVGO's members and clients when they try to re-enter the workforce. It

²⁷ "Delicate Dances", *supra* note 20 at 23; "2010 Injured Workers & Poverty Survey: Preliminary Results", Ontario Network of Injured Workers Groups, online: <http://injuredworkersonline.org/documents/reports-articles-and-papers/ONIWG_20120300_Injured_Workers_PovertySurvey2010_Report.pdf> at 14 ["ONIWG Poverty Survey"], BOAONIWG, Tab 14.

²⁸ Barbara Beardwood, Bonnie Kirsh & Nancy I. Clark, "Victims Twice Over: Perceptions and Experiences of Injured Workers" (2005), 15 *Qualitative Health Research* 30 at 31, 42, BOAONIWG, Tab 15.

²⁹ Premji, "Barriers", *supra* note 18 at 365.

³⁰ Ontario Workplace Safety and Insurance Board, "Work Reintegration Program Background", online: http://www.wsib.on.ca/WSIBPortal/faces/WSIBArticlePage?fGUID=835502100635000346&_afLoop=2051587344652136&_afWindowMode=0&_afWindowId=null#%40%3F_afWindowId%3Dnull%26_afLoop%3D2051587344652136%26_afWindowMode%3D0%26fGUID%3D835502100635000346%26_adf.ctrl-state%3D12c8u6s2p_113, BOAONIWG, Tab 26.

³¹ *Policy Manual 19-02-01*, *supra* note 3.

³² *Reference Re Public Service Employee Relations Act*, *supra* note 13 at para 91.

³³ ONIWG Poverty Survey, *supra* note 27 at 13; Kirsh, Slack & King, *supra* note 15 at 151: during a focus group, an injured worker said, "I wasn't able to work but I had to pay the bills...and then...I didn't have any choice other than going to apply for welfare. So I became a welfare recipient. It was a shame for me, because I never asked anybody for anything, to feed my children or myself. I used to be a proud lady, who used to get everything she wants in life through, through a job."

³⁴ *Eldridge v British Columbia (Attorney General)*, [1997] 3 SCR 624 at para 56, 1997 CanLII 327 (SCC), BOAONIWG, Tab 8.

is layered on top of employment relationships already characterized by significant power imbalances.³⁵

22. Therefore, the role of workers' compensation boards in adjudicating return to work, including the duty to accommodate under the *Code*, is crucial. If a workers' compensation board can effectively intervene when discrimination happens, more vulnerable injured workers may keep their jobs. Fewer workers will be left struggling to begin a new career.

C. Failure to enforce workers' rights undermines access to justice.

23. Upholding the Court of Appeal's decision will increase access to the *Code* for many of the most vulnerable and disadvantaged workers in Ontario. The current system of *Code* enforcement unnecessarily bifurcates and complicates injured workers' access to justice. As this Court has emphasized, applicants to administrative tribunals deserve prompt, final, and binding resolutions for their disputes, including of the human rights issues that arise.³⁶ This is particularly important where vulnerable claimants, like those in *Tranchemontagne*, are compelled to go through a specific forum.³⁷

24. This Honourable Court has stated that the *Code* is the law of the people. It must be given accessible application.³⁸ Like the *Charter*, it is not some holy grail to be applied by select decision-makers.³⁹ The legislature chose not to oust the presumption that workers' compensation boards in Ontario or Quebec should apply the *Code*; therefore, they have jurisdiction over human rights matters.⁴⁰

25. When the WSIB fails to enforce the *Code* rights of injured workers, workers are usually required to start separate legal proceedings in order to defend their rights. These separate proceedings are stressful, expensive and complex. And, while the WSIB may have been able to facilitate and enforce accommodation in real time during return to work

³⁵ *Wallace v United Grain Growers Ltd*, [1997] 3 SCR 701 at para 92, 1997 CanLII 332 (SCC), BOAONIWG, Tab 12.

³⁶ *Tranchemontagne v Ontario (Director, Disability Support Program)*, 2006 SCC 14 at para 48, [2006] 1 SCR 513 [Tranchemontagne], Book of Authorities of the Respondent [BOAR], Tab 28, *Parry Sound (District) Social Services Administration Board v OPSEU, Local 324*, 2003 SCC 42 at paras 50, 52, [2003] 2 SCR 157, BOAA, Tab 17.

³⁷ *Tranchemontagne*, *supra* note 36 at para 48.

³⁸ *Ibid* at para 33.

³⁹ *Cooper v Canada (Human Rights Commission)*, [1996] 3 SCR 854 at para 70, 1996 CanLII 152 (SCC) [Cooper], BOAONIWG, Tab 2.

⁴⁰ *Tranchemontagne*, *supra* note 37 at paras 40-42.

negotiations, applications to other forums are usually heard when the employment relationship is beyond salvaging.

26. The most vulnerable are the most disadvantaged. The re-employment obligation only protects longer-term employees in larger workplaces. So, the WSIB's failure to enforce the duty to accommodate in the absence of the re-employment obligation most affects workers in precarious, contract, temporary or migrant labour. These workers are disproportionately women, immigrants or racialized persons.⁴¹

27. Many of the most vulnerable workers are unable to defend their rights at all.⁴² In studies of the experiences of immigrant workers following workplace injury, researchers have observed that while workers want to pursue their rights, they face many structural barriers to doing so.⁴³ Many of ONIWG and IAVGO's clients and members miss their limitation period to file a claim, cannot find counsel, or simply do not understand their rights or how to enforce them. The barriers they face include:

- lack of English skills and poor access to high-quality interpretation;
- disabling physical and psychological conditions;
- low literacy and education levels, and lack of access to computers;
- lack of knowledge about legal rights and poor access to information; and
- low income and lack of access to low cost or free counsel.⁴⁴

28. Many injured workers also cannot withstand the emotional costs of an adversarial legal claim against their employer. Whereas the return to work process before the WSIB is designed to be cooperative and non-adversarial, a complaint to the Human Rights Tribunal of Ontario or the courts forces injured workers and their employers into the role of

⁴¹ Law Commission of Ontario, *Vulnerable Workers and Precarious Work* (Toronto: December 2012) at 7, online: <http://www.lco-cdo.org/vulnerable-workers-final-report.pdf>, BOAONIWG, Tab 21.

⁴² Ontario, Special Advisors' Interim Report to the Ministry of Labour, *Changing Workplaces Review* (Toronto: July 2016) at 260-263, online: <https://www.labour.gov.on.ca/english/about/pdf/cwr_interim.pdf>, BOAONIWG, Tab 28.

⁴³ Kosny *et al.*, "Delicate dances", *supra* note 20 at 28.

⁴⁴ *AIC Limited v Fischer*, 2013 SCC 69 at para 27, [2013] 3 SCR 949, BOAONIWG, Tab 1; *Changing Workplaces Review*, *supra* note 42 at 14.

adversaries.⁴⁵ Injured workers already feel stigmatized and shamed.⁴⁶ Many injured workers worry about the additional stigma and discrimination they may face if they make a public human rights complaint against their employer.

29. As a result, injured workers often do not defend their *Code* rights. Instead, they and their families bear the personal and financial losses created by discrimination.⁴⁷ This undermines the foundational purpose of the workers' compensation system: to ensure that employers, not workers and their communities, bear the burden of workplace injuries.⁴⁸

D. Failure to enforce workers' rights reinforces the stigma they face.

30. The WSIB's failure to enforce workers' human rights deepens the significant stigma and disadvantage they already face. Following a workplace injury, workers are often excluded from the social and work connections that previously formed the foundation of their identities.⁴⁹ They are torn from their lives as productive workers and thrust into a complex adjudicative regime where they are required to prove the legitimacy of their disability.⁵⁰ Even workers whose claims are accepted can feel like they are treated with suspicion, like criminals.⁵¹
31. Injured workers have explained the devastating effects of being rejected and judged by employers, compensation boards, their families and their friends following workplace injury. One worker told researchers, "It's like becoming a leper ... To an injured person, the stigma is uh, how should I say it now, uh ... you're still un, counter-productive. You're not, you're not producing and you're uh, like dead weight to the system."⁵²
32. If the workers' compensation board steps back when an employer discriminates against an injured worker, this sends the message to workers, employers and the community as a

⁴⁵ The workers' compensation system is designed to provide a non-adversarial forum for workers to receive immediate compensation for workplace injuries; *Pasiechnyk v. Saskatchewan (Workers' Compensation Board)*, [1997] 2 SCR 890, 1997 CanLII 316 (SCC) at para 27, BOAONIWG, Tab 10.

⁴⁶ Lippel, "Workers' dignity", *supra* note 16 at 523-524.

⁴⁷ Kirsch, Slack & King, *supra* note 15 at 150-151; ONIWG Poverty Survey, *supra* note 27 at 18.

⁴⁸ Ontario, *Workmen's Compensation Commission, Final Report on Laws Relating to the Liability of Employers* (Toronto: LK Cameron for The Legislative Assembly of Ontario, 1913), BOAONIWG, Tab 29.

⁴⁹ Stone, *supra* note 21 at 11-12; Ontario Workplace Safety and Insurance Board & Research Action Alliance for the Consequences of Work Injury, "The facts about injured worker stigma" (2010), BOAONIWG, Tab 23.

⁵⁰ Lippel, "Workers' dignity", *supra* note 16 at 523-524.

⁵¹ *Ibid* at 523; Kirsh, Slack & King, *supra* note 15 at 147-149.

⁵² Stone, *supra* note 21 at 12.

whole that injured workers' human rights do not matter. Human rights legislation is the "last protection of the most vulnerable members of society."⁵³ But, vulnerable injured workers see that their *Code* rights do not matter after they are injured on the job. Many conclude their rights do not matter at all. Many give up fighting for accommodation.⁵⁴

33. In abdicating its role to enforce the *Code*, the WSIB has institutionalized a non-rights-based approach to the adjudication of workers' claims. It has "place[d] burdens on the victims of discrimination in their fight for equality."⁵⁵ But, by confirming that workers' compensation boards must apply and enforce human rights during return to work, this Court's decision can send the message that injured workers deserve efficient access to *Code* protections.

PART IV – NATURE OF THE ORDER SOUGHT CONCERNING COSTS

34. ONIWG and IAVGO seek no costs and ask that no costs be awarded against them.

PART V – NATURE OF THE ORDER SOUGHT

35. ONIWG and IAVGO seek to present oral submissions not to exceed 10 minutes.

ALL OF WHICH is respectfully submitted this 21st day of October 2016.

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⁵³ *Zurich Insurance Co. v Ontario (Human Rights Commission)*, [1992] 2 SCR 321 at para 18, [1992] SCJ No 63, BOAONIWG, Tab 13.

⁵⁴ One recent research study noted that injured workers in focus groups in Toronto were frustrated by how they were treated by the WSIB in return to work, feeling like their needs and concerns were being ignored in the hope that the workers would "go away": Kirsh, Slack & King, *supra* note 15 at 140, 152.

⁵⁵ *Cooper*, *supra* note 39 at para 70.

PART VI – TABLE OF AUTHORITIES

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<i>AIC Limited v Fischer</i> , 2013 SCC 69, [2013] 3 SCR 949	27
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PART VII – STATUTES

English

Workplace Safety and Insurance Act, 1997, SO 1997, c 16, Sched A, ss 1(2), 40-42

PART I INTERPRETATION

Purpose

1. The purpose of this Act is to accomplish the following in a financially responsible and accountable manner:

1. To promote health and safety in workplaces.
2. To facilitate the return to work and recovery of workers who sustain personal injury arising out of and in the course of employment or who suffer from an occupational disease.
3. To facilitate the re-entry into the labour market of workers and spouses of deceased workers.
4. To provide compensation and other benefits to workers and to the survivors of deceased workers. 1997, c. 16, Sched. A, s. 1; 1999, c. 6, s. 67 (1); 2005, c. 5, s. 73 (1); 2011, c. 11, s. 19.

[...]

PART V RETURN TO WORK

Duty to co-operate in return to work

40. (1) The employer of an injured worker shall co-operate in the early and safe return to work of the worker by,

- (a) contacting the worker as soon as possible after the injury occurs and maintaining communication throughout the period of the worker's recovery and impairment;
- (b) attempting to provide suitable employment that is available and consistent with the worker's functional abilities and that, when possible, restores the worker's pre-injury earnings;

(c) giving the Board such information as the Board may request concerning the worker's return to work; and

(d) doing such other things as may be prescribed. 1997, c. 16, Sched. A, s. 40 (1).

Same, worker

(2) The worker shall co-operate in his or her early and safe return to work by,

(a) contacting his or her employer as soon as possible after the injury occurs and maintaining communication throughout the period of the worker's recovery and impairment;

(b) assisting the employer, as may be required or requested, to identify suitable employment that is available and consistent with the worker's functional abilities and that, when possible, restores his or her pre-injury earnings;

(c) giving the Board such information as the Board may request concerning the worker's return to work; and

(d) doing such other things as may be prescribed. 1997, c. 16, Sched. A, s. 40 (2).

Same, construction industry

(3) Employers engaged primarily in construction and workers who perform construction work shall co-operate in a worker's early and safe return to work and shall do so in accordance with such requirements as may be prescribed. Subsections (1) and (2) do not apply with respect to those employers and workers. 1997, c. 16, Sched. A, s. 40 (3).

Same, emergency workers

(4) If an emergency worker is injured, the worker's deemed employer is not required to comply with this section. The worker's actual employer, if any, is required to do so. However, the deemed employer is required to pay the costs of the actual employer's compliance with this section. 1997, c. 16, Sched. A, s. 40 (4).

Certain volunteers

(4.1) Subsection (4) applies with respect to a member of a municipal volunteer fire brigade or a volunteer ambulance brigade or an auxiliary member of a police force as though the person were an emergency worker. 2000, c. 26, Sched. I, s. 1 (2); 2002, c. 18, Sched. J, s. 5 (3).

Board assistance, etc.

(5) The Board may contact the employer and the worker to monitor their progress on returning the worker to work, to determine whether they are fulfilling their obligations to co-

operate and to determine whether any assistance is required to facilitate the worker's return to work. 1997, c. 16, Sched. A, s. 40 (5).

Notice of dispute

(6) The employer or the worker shall notify the Board of any difficulty or dispute concerning their co-operation with each other in the worker's early and safe return to work. 1997, c. 16, Sched. A, s. 40 (6).

Resolution of dispute

(7) The Board shall attempt to resolve the dispute through mediation and, if mediation is not successful, shall decide the matter within 60 days after receiving the notice or within such longer period as the Board may determine. 1997, c. 16, Sched. A, s. 40 (7).

Transition, vocational rehabilitation

(8) Until this section applies to an employer and the workers employed by the employer, subsections 53 (1) to (3) of the *Workers' Compensation Act*, as deemed to be amended by this Act, continue to apply with necessary modifications despite their repeal. 1997, c. 16, Sched. A, s. 40 (8).

Section Amendments with date in force (d/m/y)

Obligation to re-employ

41. (1) The employer of a worker who has been unable to work as a result of an injury and who, on the date of the injury, had been employed continuously for at least one year by the employer shall offer to re-employ the worker in accordance with this section. 1997, c. 16, Sched. A, s. 41 (1).

Exception

(2) This section does not apply in respect of employers who regularly employ fewer than 20 workers or such classes of employers as may be prescribed. 1997, c. 16, Sched. A, s. 41 (2).

Determinations re return to work

(3) The Board may determine the following matters on its own initiative or shall determine them if the worker and the employer disagree about the fitness of the worker to return to work:

- I. If the worker has not returned to work with the employer, the Board shall determine whether the worker is medically able to perform the essential duties of his or her pre-injury employment or to perform suitable work.

2. If the Board has previously determined that the worker is medically able to perform suitable work, the Board shall determine whether the worker is medically able to perform the essential duties of the worker's pre-injury employment. 1997, c. 16, Sched. A, s. 41 (3).

Obligation to re-employ

(4) When the worker is medically able to perform the essential duties of his or her pre-injury employment, the employer shall,

(a) offer to re-employ the worker in the position that the worker held on the date of injury; or

(b) offer to provide the worker with alternative employment of a nature and at earnings comparable to the worker's employment on the date of injury. 1997, c. 16, Sched. A, s. 41 (4).

Same

(5) When the worker is medically able to perform suitable work (although he or she is unable to perform the essential duties of his or her pre-injury employment), the employer shall offer the worker the first opportunity to accept suitable employment that may become available with the employer. 1997, c. 16, Sched. A, s. 41 (5).

Duty to accommodate

(6) The employer shall accommodate the work or the workplace for the worker to the extent that the accommodation does not cause the employer undue hardship. 1997, c. 16, Sched. A, s. 41 (6).

Duration of obligation

(7) The employer is obligated under this section until the earliest of,

(a) the second anniversary of the date of injury;

(b) one year after the worker is medically able to perform the essential duties of his or her pre-injury employment; and

(c) the date on which the worker reaches 65 years of age. 1997, c. 16, Sched. A, s. 41 (7); 2000, c. 26, Sched. I, s. 1 (3).

Construction industry requirements

(8) Employers engaged primarily in construction shall comply with such requirements as may be prescribed concerning the re-employment of workers who perform construction work. The

application of this subsection is not contingent on the length of a worker's continuous employment as required under subsection (1). Subsections (2), (4) to (7) and (10) do not apply with respect to those workers and employers. 1997, c. 16, Sched. A, s. 41 (8).

Transition

(9) Until requirements referred to in subsection (8) are prescribed, subsection 54 (9) of the *Workers' Compensation Act* and Ontario Regulation 259/92 continue to apply with necessary modifications to employers and workers referred to in subsection (8) despite the repeal of subsection 54 (9). 1997, c. 16, Sched. A, s. 41 (9).

Effect of termination

(10) If an employer re-employs a worker in accordance with this section and then terminates the employment within six months, the employer is presumed not to have fulfilled the employer's obligations under this section. The employer may rebut the presumption by showing that the termination of the worker's employment was not related to the injury. 1997, c. 16, Sched. A, s. 41 (10).

Determination re compliance

(11) Upon the request of a worker or on its own initiative, the Board shall determine whether the employer has fulfilled the employer's obligations to the worker under this section. 1997, c. 16, Sched. A, s. 41 (11).

Restriction

(12) The Board is not required to consider a request under subsection (11) by a worker who has been re-employed and whose employment is terminated within six months if the request is made more than three months after the date of termination of employment. 1997, c. 16, Sched. A, s. 41 (12).

Failure to comply

(13) If the Board decides that the employer has not fulfilled the employer's obligations to the worker, the Board may,

(a) levy a penalty on the employer not exceeding the amount of the worker's net average earnings for the year preceding the injury; and

(b) make payments to the worker for a maximum of one year as if the worker were entitled to payments under section 43 (loss of earnings). 1997, c. 16, Sched. A, s. 41 (13).

Same

(14) A penalty payable under subsection (13) is an amount owing to the Board. 1997, c. 16, Sched. A, s. 41 (14).

Conflict with collective agreement

(15) If this section conflicts with a collective agreement that is binding upon the employer and if the employer's obligations under this section afford the worker greater re-employment terms than does the collective agreement, this section prevails over the collective agreement. However, this subsection does not operate to displace the seniority provisions of the collective agreement. 1997, c. 16, Sched. A, s. 41 (15).

Emergency workers

(16) If an emergency worker is injured, the worker's deemed employer is not required to comply with this section. The worker's actual employer, if any, is required to do so. However, the deemed employer is required to pay the costs of the actual employer's compliance with subsection (6). 1997, c. 16, Sched. A, s. 41 (16).

Certain volunteers

(17) Subsection (16) applies with respect to a member of a municipal volunteer fire brigade or a volunteer ambulance brigade or an auxiliary member of a police force as though the person were an emergency worker. 2000, c. 26, Sched. I, s. 1 (4); 2002, c. 18, Sched. J, s. 5 (4).

Labour market re-entry**Labour market re-entry assessment**

42. (1) The Board shall provide a worker with a labour market re-entry assessment if any of the following circumstances exist:

1. If it is unlikely that the worker will be re-employed by his or her employer because of the nature of the injury.
2. If the worker's employer has been unable to arrange work for the worker that is consistent with the worker's functional abilities and that restores the worker's pre-injury earnings.
3. If the worker's employer is not co-operating in the early and safe return to work of the worker. 1997, c. 16, Sched. A, s. 42 (1).

Labour market re-entry plan

(2) Based on the results of the assessment, the Board shall decide if a worker requires a labour market re-entry plan in order to enable the worker to re-enter the labour market and reduce or eliminate the loss of earnings that may result from the injury. 1997, c. 16, Sched. A, s. 42 (2).

Suitable employment or business

(3) In deciding whether a plan is required for a worker, the Board shall determine the employment or business that is suitable for the worker and is available. 1997, c. 16, Sched. A, s. 42 (3); 2007, c. 7, Sched. 41, s. 1 (1).

Preparation of plan

(4) The Board shall arrange for a plan to be prepared for a worker if the Board determines that the worker requires a labour market re-entry plan. 1997, c. 16, Sched. A, s. 42 (4).

Consultation required

(5) The labour market re-entry plan shall be prepared in consultation with,

- (a) the worker and, unless the Board considers it inappropriate to do so, the worker's employer; and
- (b) the worker's health practitioners if the Board considers it necessary to do so. 1997, c. 16, Sched. A, s. 42 (5).

Contents of plan

(6) The plan shall contain the steps necessary to enable the worker to re-enter the labour market in the employment or business that is suitable for the worker and is available. 1997, c. 16, Sched. A, s. 42 (6); 2007, c. 7, Sched. 41, s. 1 (2).

Duty to co-operate

(7) The worker shall co-operate in all aspects of the labour market re-entry assessment or plan provided to the worker. 1997, c. 16, Sched. A, s. 42 (7).

Expenses

(8) The Board shall pay such expenses related to the plan as the Board considers appropriate to enable the worker to re-enter the labour market. 1997, c. 16, Sched. A, s. 42 (8).

Français

Loi de 1997 sur la sécurité professionnelle et l'assurance contre les accidents du travail, LO 1997, c 16, Annexe A, ss. 1, 40-42

PARTIE I INTERPRÉTATION

Objet

I. La présente loi a pour objet d'accomplir ce qui suit en pratiquant une saine gestion financière assortie de l'obligation de rendre des comptes :

1. Promouvoir la santé et la sécurité en milieu de travail.
2. Faciliter le retour au travail et le rétablissement des travailleurs qui subissent une lésion corporelle survenant du fait et au cours de l'emploi ou qui souffrent d'une maladie professionnelle.
3. Faciliter la réintégration sur le marché du travail des travailleurs ainsi que des conjoints des travailleurs décédés.
4. Indemniser les travailleurs ainsi que les survivants des travailleurs décédés et leur fournir d'autres prestations. 1997, chap. 16, annexe A, art. 1; 1999, chap. 6, par. 67 (1); 2005, chap. 5, par. 73 (1); 2011, chap. 11, art. 19.

[...]

PARTIE V RETOUR AU TRAVAIL

Obligation de collaborer

40. (1) L'employeur du travailleur blessé collabore au retour au travail rapide et sans danger du travailleur en faisant ce qui suit :

- a) il communique avec le travailleur dès que possible après que la lésion est survenue et reste en contact avec lui pendant toute la période de son rétablissement et de sa déficience;
- b) il tente de trouver pour le travailleur un emploi disponible et approprié qui soit compatible avec son habileté fonctionnelle et qui, si possible, lui permette de toucher les gains qu'il touchait avant de subir la lésion;

c) il donne à la Commission les renseignements qu'elle demande concernant le retour au travail du travailleur;

d) il prend toute autre mesure prescrite. 1997, chap. 16, annexe A, par. 40 (1).

Idem, travailleur

(2) Le travailleur collabore à son retour au travail rapide et sans danger en faisant ce qui suit :

a) il communique avec son employeur dès que possible après que la lésion est survenue et reste en contact avec lui pendant toute la période de son rétablissement et de sa déficience;

b) s'il est tenu ou s'il lui est demandé de le faire, il aide l'employeur à lui trouver un emploi disponible et approprié qui soit compatible avec son habileté fonctionnelle et qui, si possible, lui permette de toucher les gains qu'il touchait avant de subir la lésion;

c) il donne à la Commission les renseignements qu'elle demande concernant son retour au travail;

d) il prend toute autre mesure prescrite. 1997, chap. 16, annexe A, par. 40 (2).

Idem, industrie de la construction

(3) Les employeurs qui oeuvrent principalement dans la construction et les travailleurs qui y travaillent collaborent au retour au travail rapide et sans danger du travailleur conformément aux exigences prescrites. Les paragraphes (1) et (2) ne s'appliquent pas à ces employeurs ni à ces travailleurs. 1997, chap. 16, annexe A, par. 40 (3).

Idem, travailleurs dans une situation d'urgence

(4) Si un travailleur dans une situation d'urgence est blessé, l'employeur réputé être son employeur n'est pas tenu de se conformer au présent article. L'employeur réel du travailleur, le cas échéant, est toutefois tenu de ce faire et l'employeur réputé être l'employeur est tenu d'assumer les frais engagés par l'employeur réel pour se conformer au présent article. 1997, chap. 16, annexe A, par. 40 (4).

Certains auxiliaires

(4.1) Le paragraphe (4) s'applique à l'égard d'un membre d'un corps municipal de pompiers auxiliaires ou d'un corps d'ambulanciers auxiliaires ou d'un membre auxiliaire d'un corps de police comme si la personne était un travailleur dans une situation d'urgence. 2000, chap. 26, annexe I, par. 1 (2); 2002, chap. 18, annexe J, par. 5 (3).

Aide de la Commission

(5) La Commission peut communiquer avec l'employeur et le travailleur pour surveiller leur progrès en vue du retour au travail du travailleur, pour déterminer s'ils respectent leurs obligations en matière de collaboration et pour déterminer s'ils ont besoin d'aide pour faciliter le retour au travail du travailleur. 1997, chap. 16, annexe A, par. 40 (5).

Avis de différend

(6) L'employeur ou le travailleur avise la Commission de toute difficulté ou de tout différend concernant leur collaboration mutuelle au retour au travail rapide et sans danger du travailleur. 1997, chap. 16, annexe A, par. 40 (6).

Règlement du différend

(7) La Commission tente de résoudre le différend par la médiation et, en cas d'échec, décide de la question au plus tard 60 jours après avoir reçu l'avis ou dans le délai plus long qu'elle fixe. 1997, chap. 16, annexe A, par. 40 (7).

Disposition transitoire, réadaptation professionnelle

(8) Jusqu'à ce que le présent article s'applique à l'employeur et aux travailleurs qu'il emploie, les paragraphes 53 (1) à (3) de la *Loi sur les accidents du travail*, tels qu'ils sont réputés modifiés par la présente loi, continuent de s'appliquer, avec les adaptations nécessaires, malgré leur abrogation. 1997, chap. 16, annexe A, par. 40 (8).

Obligation de réemployer

41. (1) L'employeur offre de réemployer conformément au présent article le travailleur qui s'est trouvé dans l'incapacité de travailler en raison d'une lésion et qui, à la date où la lésion est survenue, avait été employé par lui sans interruption pendant au moins un an. 1997, chap. 16, annexe A, par. 41 (1).

Exception

(2) Le présent article ne s'applique pas aux employeurs qui emploient régulièrement moins de 20 travailleurs ni aux catégories d'employeurs qui sont prescrites. 1997, chap. 16, annexe A, par. 41 (2).

Décision quant au retour au travail

(3) La Commission peut décider des questions suivantes de sa propre initiative ou doit le faire si le travailleur et l'employeur ne s'entendent pas sur la capacité du travailleur de retourner au travail :

1. Dans le cas du travailleur qui n'est pas retourné travailler pour l'employeur, la Commission décide si le travailleur est capable, sur le plan médical, de s'acquitter des tâches essentielles de l'emploi qu'il occupait avant que ne survienne la lésion ou d'accomplir un travail approprié.

2. Dans le cas du travailleur au sujet duquel elle a précédemment décidé qu'il était capable, sur le plan médical, d'accomplir un travail approprié, la Commission décide si le travailleur est capable, sur le plan médical, d'accomplir les tâches essentielles de l'emploi qu'il occupait avant que ne survienne la lésion. 1997, chap. 16, annexe A, par. 41 (3).

Obligation de réemployer

(4) Lorsque le travailleur est capable, sur le plan médical, de s'acquitter des tâches essentielles de l'emploi qu'il occupait avant que ne survienne la lésion, l'employeur, selon le cas :

a) offre de réemployer le travailleur dans le poste qu'il occupait à la date où la lésion est survenue;

b) offre de fournir au travailleur un autre emploi dont la nature et les gains sont comparables à ceux de l'emploi qu'il occupait à la date où la lésion est survenue. 1997, chap. 16, annexe A, par. 41 (4).

Idem

(5) Lorsque le travailleur qui est dans l'incapacité de s'acquitter des tâches essentielles de l'emploi qu'il occupait avant que ne survienne la lésion est capable, sur le plan médical, d'accomplir un travail approprié, l'employeur lui offre en priorité l'occasion d'accepter un emploi approprié qui devient disponible auprès de l'employeur. 1997, chap. 16, annexe A, par. 41 (5).

Devoir d'adapter le travail ou le lieu de travail

(6) L'employeur adapte le travail ou le lieu de travail aux besoins du travailleur, dans la mesure où cela ne lui cause aucun préjudice injustifié. 1997, chap. 16, annexe A, par. 41 (6).

Durée de l'obligation

(7) L'obligation qu'impose le présent article à l'employeur prend fin à celle des dates suivantes qui est antérieure aux autres :

a) le deuxième anniversaire de la date où la lésion est survenue;

b) un an après que le travailleur est capable, sur le plan médical, de s'acquitter des tâches essentielles de l'emploi qu'il occupait avant que ne survienne la lésion;

c) la date où le travailleur atteint l'âge de 65 ans. 1997, chap. 16, annexe A, par. 41 (7); 2000, chap. 26, annexe I, par. 1 (3).

Exigences concernant l'industrie de la construction

(8) L'employeur qui oeuvre principalement dans la construction se conforme aux exigences prescrites pour ce qui est du réemploi des travailleurs qui travaillent dans la construction. L'application du présent paragraphe n'est pas subordonnée à la durée de la période pendant laquelle le travailleur avait été employé sans interruption qu'exige le paragraphe (1). Les paragraphes (2), (4) à (7) et (10) ne s'appliquent pas à ces travailleurs et employeurs. 1997, chap. 16, annexe A, par. 41 (8).

Disposition transitoire

(9) Jusqu'à ce que soient prescrites les exigences visées au paragraphe (8), le paragraphe 54 (9) de la *Loi sur les accidents du travail* et le Règlement de l'Ontario 259/92 continuent de s'appliquer, avec les adaptations nécessaires, aux employeurs et travailleurs visés au paragraphe (8), et ce, malgré l'abrogation du paragraphe 54 (9). 1997, chap. 16, annexe A, par. 41 (9).

Effet du licenciement

(10) S'il réemploie un travailleur conformément au présent article, puis le licencie dans les six mois, l'employeur est présumé ne pas avoir rempli les obligations que lui impose le présent article. L'employeur peut réfuter la présomption en démontrant que le licenciement du travailleur n'était pas lié à la lésion. 1997, chap. 16, annexe A, par. 41 (10).

Décision concernant la conformité

(11) À la demande d'un travailleur ou de sa propre initiative, la Commission décide si l'employeur a rempli les obligations que lui impose le présent article à l'égard du travailleur. 1997, chap. 16, annexe A, par. 41 (11).

Restriction

(12) La Commission n'est pas tenue d'étudier une demande faite en vertu du paragraphe (11) par un travailleur qui a été réemployé puis licencié dans les six mois si la demande est faite plus de trois mois après la date du licenciement. 1997, chap. 16, annexe A, par. 41 (12).

Non-conformité

(13) Si elle décide que l'employeur n'a pas rempli ses obligations à l'égard du travailleur, la Commission peut :

a) imposer à l'employeur une pénalité ne dépassant pas le montant des gains moyens nets du travailleur pendant l'année précédant la date où la lésion est survenue;

b) faire des versements au travailleur pendant un an au maximum comme si celui-ci avait droit à des versements aux termes de l'article 43 (perte de gains). 1997, chap. 16, annexe A, par. 41 (13).

Idem

(14) La pénalité payable aux termes du paragraphe (13) est un montant dû à la Commission. 1997, chap. 16, annexe A, par. 41 (14).

Incompatibilité avec une convention collective

(15) Si le présent article est incompatible avec une convention collective qui lie l'employeur et que les obligations que le présent article impose à l'employeur procurent au travailleur de meilleures conditions de réemploi que celles offertes par la convention collective, le présent article l'emporte sur la convention collective. Cependant, le présent paragraphe n'a pas pour effet de remplacer les dispositions de la convention collective qui se rapportent à l'ancienneté. 1997, chap. 16, annexe A, par. 41 (15).

Travailleurs dans une situation d'urgence

(16) Si un travailleur dans une situation d'urgence est blessé, l'employeur qui est réputé être son employeur n'est pas tenu de se conformer au présent article. L'employeur réel du travailleur, le cas échéant, est tenu de ce faire. Cependant, l'employeur qui est réputé être l'employeur est tenu de payer les frais engagés par l'employeur réel pour se conformer au paragraphe (6). 1997, chap. 16, annexe A, par. 41 (16).

Certains auxiliaires

(17) Le paragraphe (16) s'applique à l'égard d'un membre d'un corps municipal de pompiers auxiliaires ou d'un corps d'ambulanciers auxiliaires ou d'un membre auxiliaire d'un corps de police comme si la personne était un travailleur dans une situation d'urgence. 2000, chap. 26, annexe I, par. 1 (4); 2002, chap. 18, annexe J, par. 5 (4).

Réintégration sur le marché du travail

Évaluation des possibilités de réintégration sur le marché du travail

42. (1) La Commission fournit au travailleur une évaluation de ses possibilités de réintégration sur le marché du travail dans l'une ou l'autre des circonstances suivantes :

1. Il est peu probable que le travailleur soit réemployé par son employeur en raison de la nature de la lésion.
2. L'employeur du travailleur n'a pas été en mesure de procurer au travailleur un travail qui soit compatible avec son habileté fonctionnelle et qui lui permette de toucher les gains qu'il touchait avant de subir la lésion.

3. L'employeur du travailleur ne collabore pas au retour au travail rapide et sans danger du travailleur. 1997, chap. 16, annexe A, par. 42 (1).

Programme de réintégration sur le marché du travail

(2) La Commission décide, en se fondant sur les résultats de l'évaluation, si le travailleur a besoin d'un programme de réintégration sur le marché du travail pour lui permettre de réintégrer le marché du travail et pour diminuer ou éliminer toute perte de gains pouvant résulter de sa lésion. 1997, chap. 16, annexe A, par. 42 (2).

Emploi ou entreprise approprié

(3) Lorsqu'elle décide si le travailleur a besoin d'un programme, la Commission détermine l'emploi ou l'entreprise approprié pour lui et disponible. 1997, chap. 16, annexe A, par. 42 (3); 2007, chap. 7, annexe 41, par. 1 (1).

Préparation du programme

(4) La Commission prend des dispositions pour qu'un programme de réintégration sur le marché du travail soit préparé pour le travailleur si elle détermine que le travailleur a besoin d'un tel programme. 1997, chap. 16, annexe A, par. 42 (4).

Consultation obligatoire

(5) Le programme de réintégration sur le marché du travail est préparé en consultation avec les personnes suivantes :

- a) le travailleur et, à moins que la Commission ne l'estime inapproprié, son employeur;
- b) les praticiens de la santé du travailleur si la Commission l'estime nécessaire. 1997, chap. 16, annexe A, par. 42 (5).

Contenu du programme

(6) Le programme comprend les mesures nécessaires pour permettre au travailleur de réintégrer le marché du travail dans l'emploi ou l'entreprise approprié pour lui et disponible. 1997, chap. 16, annexe A, par. 42 (6); 2007, chap. 7, annexe 41, par. 1 (2).

Devoir de collaborer

(7) Le travailleur collabore à tous les aspects de l'évaluation de ses possibilités de réintégration sur le marché du travail ou du programme de réintégration sur le marché du travail qui lui sont fournis. 1997, chap. 16, annexe A, par. 42 (7).

Frais

(8) La Commission acquitte les frais du programme qu'elle estime appropriés pour permettre au travailleur de réintégrer le marché du travail. 1997, chap. 16, annexe A, par. 42 (8).