

## “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.”<sup>[1]</sup>

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.<sup>[2]</sup>

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.<sup>[3]</sup> 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.<sup>[4]</sup> 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.<sup>[5]</sup>

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."

## NOTES

[1] Ellis, S. R. (2017, August 31). Ontario WSIB – NO EVIDENCE Demands a Public Inquiry. Retrieved from Administrative Justice System Reform: <https://administrativejusticereform.ca/ontario-wsib-the-no-evidence-case-for-a-public-inquiry/>

[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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