

June 16 2009

Submission to the Canadian Museum for Human Rights
Public Consultation Process

From: The Canadian Injured Workers Society

Email: [removed for archive](#)

<http://www.ciws.ca>

The Canadian Injured Workers Society contends that the workers compensation system in Canada is dysfunctional and its failure is a major human rights disgrace and one of the major, if not *the* major, contributor to poverty Canada-wide.

The Basic Problem:

Routine denials of legitimate workplace injury claims, claim delays, premature cut-offs of payment or inadequate payment levels by workers compensation boards (WCBs) across Canada are causing widespread poverty, child poverty, homelessness and suffering.

This is not because of a lack of money. For example, in 2006, WorkSafeBC reported surpluses over \$2.2 billion at the same time that the food banks were reporting overwork and increasing numbers of injured workers accessing food. http://www.ciws.ca/articles_bc_food_banks.htm

Poverty and Homelessness:

A study called "Failing the Homeless" investigated homeless people with disabilities in Toronto. They found that:

"... All project participants eventually became homeless because they could not secure an adequate income through the following public programs:

7.2 Failure of Workers Safety and Insurance Board (WSIB)

... Workplace injuries played a role in becoming disabled for 57% of participants who worked and 46% had received worker's compensation benefits at some time. However, none of the study participants who had WSIB benefits were able to maintain ongoing benefits.

... WSIB did not help to ensure that participants had another adequate source of income before cutting off their WSIB benefits."

See Full Report by Streethealth at:

<http://www.streethealth.ca/Downloads/FailFull.pdf>

The Horror Stories:

The details of the human rights abuses and suffering caused by the failure of the Canadian WCB system are numerous and easily accessed everywhere on the internet for those who wish to do so. Some places to start would be:

- The Canadian Injured Workers Society list of excerpts from their documented cases at

http://www.ciws.ca/workers_compensation_injured_workers.htm

- and the CIWS petition calling for a federal inquiry into WCB wrongdoing where hundreds of signatures from across Canada reveal details about individual cases

<http://www.gopetition.com/online/19942/signatures.html>

How workers compensation is *supposed* to work:

- 1.) corporations pay into the fund
- 2.) corporations are protected from lawsuit when a worker gets injured
- 3.) workers give up their right to sue employers (in exchange for):
- 4.) prompt, fair compensation for any workplace injury without an adversarial process and with the benefit of the doubt going to the worker

How workers compensation *really* works:

In actual practice the last item on the above list has been effectively erased. Workers disabled by occupation are now put through an extremely adversarial, antagonistic, degrading and damaging process. Their presumptive status (benefit of the doubt) has been effectively erased. Workers are now forced to prove causation at a time when they are physically, mentally and financially vulnerable.

This particular point of presumption is important here. Workers compensation boards are clearly acting against the law in this regard. They are using this to deny such occupational diseases as chemical toxicity exposure, etc. These are long term diseases that are still not totally understood even by the medical community. Yet the injured worker with, for example, cancer, who is struggling just to breathe, is expected to prove the cause of his cancer even when the medical community can't. If the worker can't prove it, they are denied compensation. This is illegal, yet is routine practice at WCBs.

Why Has This Happened?

This has happened because the basic structure of the Workers Compensation Board system is flawed.

1. The Corporate Lobby and the Lack of Accountability:

The only stakeholders in the WCB system are the corporations because they are the only ones who pay into the system. (It is not paid for by taxpayers or by employee deductions). Over the years, the corporate lobby for lower WCB fees has resulted in decreased services to disabled workers.

2. Human Rights Abuses and Illegal Decisions By WCBs Go Unchallenged (the conflict of interest):

Although provincial governments are aware of the illegalities, deficiencies and human rights abuses in the system, the experience of injured workers has been that provinces turn a blind eye to these injustices. Provinces are in a conflict of interest because they are more concerned with keeping WCB fees low to attract businesses to their province. The plight of workers' families has not been on their agenda.

Another conflict of interest occurs when employees of the provincial government itself (such as teachers and nurses) are injured and are denied justice or recourse. One particular example of this is the nurse who sustains a chronic stress injury (such as diagnosed depression) from overwork. It benefits the province to ignore this discrimination against the mentally injured worker. Yet the cause can be related to government understaffing of provincial workplaces.

3. The Flawed Legal Structure:

Each province has a separate WCB Act that legislates their WCB system. It is administered by an "arm's length" board that has quasi-judicial legal status, i.e., it has the powers and duties of a court. No WCB can be taken to court by a claimant for any bad faith decisions it makes. Appeals go through an Appeals Tribunal. The Appeal Tribunal can send the case back to WCB for re-evaluation. Dissatisfied claimants can then further take their case to an outside judicial review, *however*, it cannot award damages but can only send the case back to the WCB for re-evaluation. If the claimant is still not satisfied, there is no legal recourse. This essentially negates the injured worker's access to fundamental justice and natural law because the case always ends up at the discretion of the WCB. Basically, the WCB has too much power.

4. Corruption Goes Unaddressed:

There are several areas of corruption that go uninvestigated because of the excessive power given to the WCBs. Examples are:

- 'hired gun' independent medical doctors who give false diagnoses in favour of the WCB and against the worker (often with never even seeing the patient)
- WCB lay-workers overruling doctors reports if they are in favour of the worker
- "deeming" - sending the worker to cookie-cutter, valueless 'training programs'. Once the training is completed, the WCB 'deems' the worker employable and cuts off the claim regardless of actual employment status
- falsifying overpayments to injured workers, then terminating the injured worker for fraud when the injured worker never received any of these so-called 'overpayments'
- rewarding case managers in a 'bonus system' for saving money and clearing away cases by specific deadlines.
- paying dividends to employers from surplus funds as injured workers and their families are forced to go to food banks, etc.
- paying safety bonuses to corporations that had workplace deaths (the Toronto Star just won an award for its investigation into this practice
(see http://www3.thestar.com/static/PDF/080405_workplace_victims.pdf
and http://www.ciws.ca/articles_ontario_wsib_rebate_probe_star.htm and
<http://www.thestar.com/article/639133>)
- violation of presumptive status (explained above)
- withholding, tampering with and falsifying medical evidence
- Discrimination - denying compensation for certain occupational diseases (This is despite the WCB's duty and responsibility as a quasi-judicial entity to uphold the Constitution and the Charter of Rights)
- reporting false workplace injury statistics by reporting only "accepted" claims

- psychological profiling and mental damage of claimants (see http://www.ciws.ca/workers_compensation_law_legislation.htm#psychological_profiling_mental_damage)

5. The Insurance Industry Influence:

Canadian WCBs have been influenced by the for-profit insurance industry and have taken on similar business practices (such as the denial of claims). Many WCBs hire insurance industry specialists who bring their private industry experience to the table. The 'profitability' of the WCB becomes more important than the social safety net function of the WCB. (They have even started changing their names from "compensation" boards to "insurance" boards.

The essential fact that is being missed here, though, is that claimants can sue insurance companies for damages, whereas, they cannot sue WCBs (because of the quasi-judicial administrative status of the WCB) (more here http://www.ciws.ca/workers_compensation_identity_insurance_administrative.htm)

The result of this is an out-of-control insurance company that is totally unaccountable to anyone, including the law.

The Resulting Social Impact:

The resulting impact is that workers who are disabled by a workplace injury, *particularly the more expensive, more serious, long term claims*, get forced into an abusive, adversarial system that does anything it can to avoid paying compensation. Many families face poverty, bankruptcy, loss of homes, divorces, mental health issues (caused by the adversarial system itself) and even suicide.

The CIWS estimates that there are, *at minimum*, hundreds of thousands of families seriously adversely affected across Canada.

http://www.ciws.ca/ontario_wsib_1996_2005_stats.htm

There is widespread poverty, downloading onto other social safety nets, social upheaval, crime, homelessness, child poverty, mental health issues, poor nutrition, poor health, etc.

The ultimate result is that the safety net we *thought* was there, is not.

The Solution:

There are very few groups or individuals who have been able to advocate on these issues to effect real social policy change. To effect such change, an honest assessment and portrayal of institutionally entrenched causes of poverty, stigma and discrimination emanating from such important health and social safety nets as workers compensation schemes must be identified, brought out of the shadows, articulated, and honestly critiqued.

Unhealthy social policies and poorly structured programs and institutions in Canada must be realistically appraised, deconstructed and restructured from the bottom up to help create healthy initiatives and public policy that works at the ground level.

Simple 'reforms' will not work with the WCBs. These have been tried countless times over the years and reviews, reports and royal commissions have failed because of the force of the corporate lobby.

It is the structure of the WCB system itself that is flawed. It must be fundamentally re-thought and then reconstructed on more solid ground.

Some other peer groups of the disabled worker community such as some 'injured worker' groups and some academic researchers have been constrained from addressing the basic poverty/health crisis of disabled workers because it was seen as being too 'political' and conflicted with many of these groups' funding models. (Many are funded by WCBs.) This has constrained these groups to certain 'accepted' issues such as '*advocacy within the system*', '*workplace safety*' or other '*occupational health and safety*' issues not related to treatment and benefits post-injury or systemic abuses by the workers compensation boards themselves.

These funding models have also resulted in the funnelling of these groups and academics into long time-line research projects that avoid direct action on the real health and poverty crisis that exists right now at ground level.

The Human Rights Museum would be doing disabled workers a disservice if they either:

- ignored the issue, or
- trivialized the issue by focusing on 'safety' and 'prevention' of accidents in the workplace.

While these are important, they have been exposed by injured workers groups as a 'bait and switch' tactic used by WCBs and politicians to divert the debate away from human rights abuses perpetrated by the WCBs themselves against injured workers.

The new Canadian Museum for Human Rights has the platform and the opportunity now to open the ugly reality of our workers compensation system to public view and to start a dialogue on the immediate and constructive restructuring of the system. It is the hope of the CIWS that this museum will be instrumental in creating a national initiative in the restructuring of the workers compensation system in Canada based on sound population health fundamentals. The impoverished families of disabled workers are a vulnerable group whose voice has never been adequately heard and whose poverty and health issues have never been adequately addressed.

We hope that the Canadian Museum for Human Rights will see the workers compensation issue as the human rights crisis that it really is.

The CIWS is calling for a federal public judicial inquiry into wrongdoing by workers compensation boards across Canada. <http://www.gopetition.com/online/19942.html> and suggests this as a possible starting point for change.