

Rights

Policy Document

TABLE OF CONTENTS

EXECUTIVE SUMMARY	1
PREAMBLE	2
HUMAN RIGHTS	3
Lesbians, Gay, Bisexuals and Trans-Identified Workers (LGBT)	3
Racism, Racial and Ethnic Discrimination Hurts Everyone.....	5
Racial Discrimination.....	6
Racism.....	6
PAY EQUITY.....	6
Elimination of Pay Equity by Legislative Pen.....	8
VIOLENCE AGAINST WOMEN.....	10
Montreal Massacre, December 6, 1989.....	10
20 Years Later – Are Women Any Safer?	10
Women Helping Women	11
Workplace Violence	13
Changing Laws, Changing Society.....	14
PERSONS WITH DISABILITIES	15
EMPLOYMENT STANDARDS - LABOUR RELATIONS	16
Changing Labour Market	16
<i>Employment Standards Act</i>	17
<i>Labour Relations Act</i>	18
WORKERS' COMPENSATION	20
Cost of Living Allowance (COLA)	20
Coverage	20
Deeming	21
Increase Average Earnings Amount from 85 percent to 90 percent of Net Average Earnings.....	21
Remove Cap on Compensation Benefits.....	21
Remove the Age Cut-off for Future Economic Loss (FEL) and Loss of Earnings (LOE) Benefits	21
Loss of Retirement Income (LRI)	22
Non-Economic Loss (NEL)	22
Employment Benefits	22
Restriction on Entitlement for Mental Stress	22
Time Limits.....	22
Appeals Tribunal.....	23
Independence of the Appeals Tribunal (“Policy Binding” Provision).....	23
Preference for Single Vice-Chairs.....	23
Bipartite Board of Directors	23

Occupational Disease Panel (ODP)	23
Scheduling Diseases	23
Name of the Board	24
Labour Market Re-Entry (LMR)	24
Secondary Victims	24
Valuing the Lives of Workers without Dependents	25
Return to Work (RTW)	25
Return to Work Training Agency	25
Eliminate Experience Rating	26
Eliminate Apportionment	26
Improve Occupational Disease Adjudication	26
Prevent Privatization	26

OCCUPATIONAL HEALTH, SAFETY AND ENVIRONMENT..... 27

Reprisal Protection	27
Labour’s Health and Safety Resources.....	27
Precautionary Principle	28
Scents.....	28
Harassment and Violence.....	28
Sharps	29
Agriculture.....	29
Occupational and Environmental Health.....	29
Coalition Building	29
Clean Production	30
Water is Life.....	30
Environmental Restoration	30
Protecting Food Sources.....	31
Waste	31
Reuse	31
Green Procurement.....	31

RIGHTS

EXECUTIVE SUMMARY

The Ontario labour movement has a long history of fighting for workers' rights. The Ontario Federation of Labour (OFL) and our affiliates have succeeded in winning rights at the bargaining table, in legislation and through the courts.

The Rights policy paper both acknowledges workers' gains and the reality that unions continue to fight for justice around issues concerning labour relations, health and safety, employment and pay equity, violence against women, and discrimination based on gender, age, race, sexual orientation, gender identity, disability and other factors related to their work.

The Rights policy paper emphasizes that as trade unionists, we must never take for granted the fact that the very foundation of so many of our rights and workplace laws were hard fought. We must continue to link with our community partners, educate our members, negotiate and ensure strong enforcement of legislation.

The purpose of this policy paper is to highlight and examine the struggles and wins that have affected workers. This policy paper will also address the challenges that the labour movement will continue to face when fighting for workers rights to be addressed in an equitable way with positive results.

This paper's recommendations will be followed by an intense action plan that will include labour's agenda to advocate for improvements to all workers' rights and changes to public policy to benefit our members and their communities.

The Rights policy paper will cover the following issues:

- Human rights
- Women's rights
- Lesbians, Gay Men, Bisexuals and Trans-Identified peoples' (LGBT) rights
- Aboriginal peoples' rights
- Racialized peoples' rights
- Persons with disabilities rights
- Health and Safety rights
- Labour relations and employment standards
- Workers' compensation

PREAMBLE

The labour movement was founded on the principles of justice, dignity and equality rights for all. We have organized, mobilized and linked with community partners to win legislative rights for human rights in addressing discrimination and to ensure equality protections for all Ontarians. We have won piece by piece human rights legislation, pay equity, health and safety, workers compensation, the right to join a union and basic employment rights.

A right is rarely given. Each right we have today was formed from years of struggle. Many times, as trade unionists, we have had to challenge ourselves to define rights and address systemic discrimination.

We recognize that legal rights do not ensure full dignity and equality. We know that communities have won legal recognition over the years yet continue to face discrimination in our society. Women won the vote in 1918 but still face a 0.29 cent per dollar wage gap compared to men. Aboriginal peoples still fight to enforce treaties and struggle for housing, jobs, health care, water and safety. People of colour and immigrant people are underemployed and underpaid compared to their white neighbours.

Achieving legal rights is not the end of the struggle. Unionized workplaces use legislative rights as a floor to bargaining-up. In non-unionized workplaces, legal rights are a ceiling which is precarious at best. In this recent economic downturn, we see a disturbing new trend of layoffs targeting

pregnant women, new mothers and disabled workers.

The labour movement is keenly aware that no right must be taken for granted. We must continue to educate, negotiate and ensure strong enforcement of legislation.

The OFL's first constituency is the 750,000 Ontario unionized workers whose organizations are affiliated. The labour movement's vision is that every Ontarian has a democratic right to:

- access to Workplace Safety and Insurance Board (WSIB) legislation that entails full coverage;
- a fully democratic and inclusive workplace, society and community;
- a fair, fully accessible workplace and society free from harassment, discrimination, racism and violence against women;
- enforceable health and safety in their workplace and community;
- an environmentally sensitive workplace and society;
- a workplace where employment standards are expanded and fully enforced by the provincial government;
- universal child care;
- access to free, publicly-funded education and training;
- universally accessible, portable and publicly-funded health care;
- join a union, free from employer interference and repercussion;
- affordable housing; and

- access to public, not privatized utilities, i.e. water and electricity.

Above all, women in Ontario have the right to achieve pay equity in their workplace.

Moreover, equity seeking groups have the inherent right to employment equity measures enforced by adequate legislation to remedy systemic discrimination.

The population in Ontario is comprised of every nationality, race, creed and colour. Some have escaped religious persecution, some racial discrimination and others poverty and oppression – but all have cherished the dream of a land where equality and opportunity are valued.

Human rights are workers’ rights. However, human rights issues from the past are still with us. The rights of Aboriginal peoples, women, racialized people, lesbians, gay men, bisexuals, trans-identified people, francophone people and the rights of persons with disabilities, along with other equity seeking groups are being violated or disregarded on a regular basis in the workplace and society as a whole.

Rights and human dignity have not been achieved fully even when we have supportive legislation. Constructive change is achieved by unyielding activism for social change. It is a question of giving substantive meaning to words by taking positive, proactive action. It is time for the labour movement to recognize and acknowledge our past and present achievements and plan concrete future actions. The OFL and its affiliates need to act and act decisively.

The very foundation of the labour movement is legal, economic and social equality. From the hindsight of history, one lesson is very clear – so long as the rights of even one person are abused, reduced or absconded – then the freedom of all is in peril.

<p>HUMAN RIGHTS</p>

Lesbians, Gay, Bisexuals and Trans-Identified Workers (LGBT)

2009 marks the 40th Anniversary of the decriminalization of homosexuality in Canada. Until 1969, it was a crime to be gay in this country.

Over the last 40 years, the LGBT community has made significant progress in Canada. The community has won important protection against discrimination in human rights law and legal recognition of same sex couples and equal marriage.

The labour movement laid the foundation for basic rights at the bargaining table by winning contract language in the areas of anti-harassment and benefits. Our affiliates built upon that foundation through court challenges that won the rights for benefits and pensions. Working with community coalitions, we added to our list of victories with the passage of provincial and federal legislation that provides for legal recognition of same sex relationships and the inclusion of lesbians and gay men in federal hate crimes legislation and marriage rights. Pride Day events occur across the province with ever increasing numbers of union participants.

We know, however, that achieving legal equality is not the end of the struggle. Lesbian, gay, bisexual and trans-identified members of our communities still face the reality of homophobia and transphobia in their daily lives. Gay and trans bashing is still a frequent occurrence.

Trans people have yet to win basic rights in human rights law. They face overt discrimination in the workplace and society. Their right to access necessary medical procedures is precarious at best.

The OFL will continue to stand with these communities in demanding the inclusion of gender identity and gender expression as a prohibited ground under both the *Ontario Human Rights Code* and the *Canadian Human Rights Act*. We are committed to continue our work with the Canadian Labour Congress (CLC) to lobby for inclusion of transgender in the federal Hate Crimes Legislation. Our affiliates are beginning to win bargaining language that includes accommodation and benefits for trans-identified workers.

Lesbian, gay, bisexual and trans-identified youth are among the most vulnerable members of our communities. They face hostility, rejection and violence. Their suicide rate is 14 times higher than other youths. Their experience in schools and society can have a profound negative impact on their well-being. LGBT youth need and deserve an end to homophobia, gay bashing, physical and emotional assault, prejudice and bigotry. School boards must be proactive in their responsibility to ensure the safety and well-being of LGBT youth and children of LGBT parents. Our school curricula must include information about the LGBT community.

There are many LGBT senior citizens in Ontario. Quality elder care is an integral part of equality for lesbians, gay men, bisexuals and trans-identified people. Respect and acknowledgment of those who have suffered through years of oppression and bigotry, and whose struggles for liberation meant the difference between living in the closet and living in freedom, is an essential part of equality.

We recognize that legal rights do not ensure full dignity and equality. We know that other communities have won legal recognition over the years, yet continue to face discrimination in our society. Women won the vote in 1918 but still face a 0.29 cent per dollar wage gap compared to men. Aboriginal peoples still struggle to enforce treaties and struggle for housing, jobs, health care, water and safety. People of colour and immigrant people are underemployed and underpaid compared to their white neighbours.

LGBT people experience oppression and discrimination on the basis of their sexual orientation and gender identity/expression, and on the grounds of their race, ethnicity, sex, linguistic background, ability, economic circumstances or any number of other factors.

Our work towards equality and justice for *all* members of the LGBT communities requires an understanding of the linkages between homophobia and transphobia along with other forms of discrimination such as racism, sexism, ableism and classism. It also requires a commitment to work actively on all equality issues facing members of our communities – alone or in coalition with like-minded equality seeking groups.

As an organization working for equality and justice for lesbian, gay, bisexual and trans-identified people and their families, the Ontario Federation of Labour is committed to recognizing the links between different forms of discrimination and we stand together to challenge discrimination in all its forms.

The Ontario labour movement stands together with our LGBT members, their families and their community organizations to challenge homophobia and transphobia.

We must work together in solidarity against all forms of discrimination because we truly understand that an injury to one is an injury to all.

Racism, Racial and Ethnic Discrimination Hurts Everyone

The Legacy of Racism

During the 18th and 19th centuries, colonial exploitation took place in parts of the African, South American and Asian continents. Historically, there have been racial, ethnic and religious groups who have suffered injustices, including colonialism, slavery and internment. Racist beliefs and attitudes were widespread and served to justify the exploitation of many peoples of colour. These actions and decisions were carried out to contribute to the political, economic and social development of colonies like Canada. Some examples of colonialism in the past and present are:

- The desire by white society to assimilate, displace and segregate Aboriginal peoples, as well as the suppression of their culture, i.e. the formation of residential schools. The last residential school closed in 1996.

- Aboriginals were given the right to vote at Confederation in 1867 but with conditions. They had to give up their treaty rights and Indian status in order to vote.
- Chinese and Indo-Canadians were denied the right to vote until 1947.
- African Canadians were excluded from employment, schools, churches, restaurants, hospitals and public transportation. Many African Canadians lived in segregated communities in Nova Scotia, New Brunswick as well as Ontario. Segregated schools existed in Ontario until 1964.
- Recently, Islamophobia has emerged as the new contemporary form of racism. It is described as stereotypes, bias and acts of hostility towards individual Muslims or followers of Islam in general. This encourages society to ultimately view Muslims as a greater security threat on institutional, systemic or societal level.
- In 2008, 85 First Nation water systems were at high risk and there is no safe access to potable water. There are close to 100 boil water advisories in various communities. The access to safe potable water ensures the protection of the communities' health and well-being. This would not be tolerated in any other community.

Classism affects people not only on an economic level, but also on an emotional level. Classist attitudes cause great pain by dividing people from one another, keeping equity seeking groups from personal fulfillment and the means to survive in society. These horrific injustices have

marginalized groups of people and left permanent scars for generations to come.

Racial Discrimination

There is an overall awareness and understanding that discrimination is a human rights violation. Canada and its provinces have a strong constitutional law and systems in place; however, racism, racial and ethnic discrimination continue to be a persistent problem for peoples of colour and Aboriginal peoples.

The Ontario Human Rights Code (OHRC) offers every Ontarian protection from racial discrimination, specifically in the realms of employment, services, contracts, housing and vocational associations.

The purpose of the Ontario Human Rights Code is to prevent the violation of human dignity and freedom through the imposition of disadvantage, stereotyping or political or social prejudice. While racism is a social phenomenon, it is racial discrimination that is a legally prohibited act (*Policies and Guidelines on Racism and Racial Discrimination – OHRC*).

Racism

Racism operates at several levels: individual, systemic, institutional and societal.

Colour, ethnic origin, place of origin, ancestry and creed are all used as grounds for racial discrimination according to the Ontario Human Rights Code. In addition, race can intersect with other grounds such as sex, disability, sexual orientation, age and family status to create compounded experiences of discrimination.

Racism is different than racial or ethnic discrimination. When discussing racism it is necessary to consider the unearned privileges, i.e. power, that exists for members of the dominant culture. For example, if a non-targeted group wants to rent an apartment they do not have to think about how they look. Will they be denied because of the colour of their skin?

Many workers genuinely feel that racism is something that labour sometimes covers up. Since its first Convention in 1957, the OFL has debated and passed policies on the issues of human rights, racism and ending discrimination. The OFL, the affiliates and labour councils are a collective of trade union activists. By definition, all union activists should be human rights activists. One of the labour movement’s main commitments should be to raise awareness, protect and defend the human rights of all Ontarians.

There is still a definite need to develop analytical skills to deal with instances of discrimination, to learn and respond instinctively and productively to attitudes, behaviours and actions that are evidence of discrimination and to raise awareness of the wide range of potential examples of workplace discrimination, particularly racism.

PAY EQUITY

Pay equity is equal pay for work of equal value. Men and women are concentrated in very different kinds of work. Almost 70 per cent of women workers are in clerical, education, health care, sales, service and administration jobs. While these jobs

are skilled, require high levels of effect, demanding working conditions and often involve heavy responsibilities, they are generally undervalued and low paid. Study after study has shown that when traditional women's work is compared to traditional men's work on these four criteria, women's jobs, with the same value, are underpaid. A cornerstone of workplace equality is the principal that if the value of the jobs is equal, then the jobs should receive equal pay.

Pay equity is the fundamental human right of women workers to be paid wages that are free of systemic gender-based discrimination that values the work of men more than the value of work done by women. This basic human right has been upheld in international commitments, and in federal and Ontario courts.

Accessing pay equity rights can be prevented in a number of ways: weak enforcement; absence of public education on pay equity rights; funding cuts; and a more brutal method – the stroke of a legislative pen.

Pay Equity is the law in Ontario. 2008 marked the 20th Anniversary of *Ontario's Pay Equity Act*. No other single law in Canada has resulted in such concrete results for so many working women right where it counts, in their pay cheques and later, in their pensions. Women who received these adjustments were able to better support themselves, their families and the communities in which they live. Recognition of the value of their work contributed to empowering women and increasing their self-esteem.

Ontario's pay equity law continues to be internationally recognized as one of the world's most effective laws in redressing the wage gap. This is

because of the comprehensiveness of its model which combines legislative, pay equity bargaining, adjudicative and enforcement mechanisms to arrive at an effective equity result.

Unions achieved the greatest successes in redressing the wage gap for women's work under the *Act* in terms of real dollars. This is because the *Act* required employers to negotiate pay equity plans with any bargaining agent; whereas non-organized employers were left on their own to redress the wage gap without any outside control unless an employee filed a complaint. Unions played a particularly important role in negotiating plans to provide for pay equity in the traditionally low-paying female ghettoized service occupations such as hospitals, nursing homes, community services, shelters and home support services.

This is not to say that Ontario's law, its enforcement and pay equity adjustments funding process does not have weaknesses. It is these weaknesses that undermine pay equity rights.

In the last fifteen years, the government or the Pay Equity Commission has not conducted any public awareness campaigns to ensure working women know their right to equal pay. Many Ontario working women are unaware of the right to pay equity and ongoing maintenance of pay equity plans.

Refusal by the government to fund public sector pay equity adjustment obligations erodes economic rights. Pay equity has been achieved for some but not nearly for all women in Ontario. Women workers in the proxy sector – such as child care workers – have not achieved pay equity. These women are still waiting for their full pay equity adjustments to be paid out.

Adjustments are limited to one per cent of annual payroll which can take another 20 or more years.

It is critical to the future successful implementation of pay equity in Ontario to address the needs of non-unionized women. Often disadvantaged not only by gender, but also by race, ethnicity and disability, non-organized women have, for the most part, been unable to effectively access the benefits of the legislation. Supports must be given to non-organized women, such as funding for pay equity legal clinics.

We know that legislative rights are important but equally important is the enforcement of rights. An expert commission and hearings tribunal is essential to effective enforcement. Pay Equity Commission staff provide valuable advice to employers, unions and non-organized employees in ways that helped avoid unnecessary costs, reduce time and promote consistency.

The Harris years saw major cuts to the Pay Equity Commission. The McGuinty government has continued the under-funding and under-staffing.

Pay equity is not a privilege or a frill. It is the law. The rights of those doing “women’s work” to be paid the same as the value of those doing “men’s work” is a fundamental human right which is guaranteed by provincial human rights laws and by international commitments made by Canada to ensure women’s equality in employment. We need legislation expanded to ensure the elimination of wage discrimination based on race, ethnicity and disability. We also need a Pay Equity Commission and Tribunal that has the resources to ensure pay equity is achieved for all women workers in Ontario. We must continue the fight for proxy funding through legal and political action.

The women’s movement, along with the labour movement, under the Equal Pay Coalition, organized and won pro-active pay equity law in Ontario. Thousands of workers in female-dominated jobs saw significant wage increases ending decades of systemic wage discrimination. This law includes an important right to maintain pay equity plans. It is critical that all union bargaining committees make sure that pay equity plans are kept up-to-date and maintained as is our legal obligation under the *Act*. We need to exert the rights we have fought for and won.

Elimination of Pay Equity by Legislative Pen

The Harper government is a clear example of an anti-woman, anti-equality government. They have cut funding to equity groups; cut enforcement of legislation; and, with the stroke of their regressive legislative pen, removed equality rights.

Their latest attack on women’s equity was the “pay equity” bill as part of the 2009 *Budget Implementation Act* (Bill C-10). The budget bill will prevent women in the federal public sector from receiving equal pay for work of equal value.

The *Public Sector Equitable Compensation Act* effectively eliminates women’s ability to pursue pay equity complaints by forcing them to file complaints as individuals. With the resources of their employer (the government) arrayed against them, women will have to fight their way through a one-sided contest that would clearly be a mockery of justice.

PSAC's analysis of the *Public Sector Equitable Compensation Act* undermines pay equity in the following way:

- It transforms pay equity into an “equitable compensation issue” that must be discussed at the bargaining table – even though fundamental human rights should never be negotiable.
- It makes it more difficult to claim pay equity, by changing the definition of a “female predominant” job group to require that women make up 70 per cent of workers in the group.
- It redefines the criteria used to evaluate whether jobs are of “equal” value, leaving pay equity up to the fluctuations of the market and simply reinforcing systemic discrimination.
- It forces individual women to make pay equity claims without any support – in fact, it would impose a \$50,000 fine on any union for encouraging or assisting their own members in filing a pay equity complaint.

Pay equity is a fundamental human right that must not be taken away at a bargaining table where the federal government historically holds the balance of power. The Harper government has already demonstrated its commitment to legislating wage increases and undermining collective agreements.

The *Public Sector Equitable Compensation Act* is a regressive piece of legislation that will make it more difficult to close the income gap between women and men in the federal public sector. And it does nothing to help people who work for Crown

corporations or in other federally-regulated workplaces.

Canadian women and all equity groups are alarmed that workers will lose the right to challenge gender-based wage gaps under Human Rights law. The Public Service Alliance has filed a court challenge on the constitutionality of the *Equitable Compensation Act* for the Harper Government actions to break collective agreements and deny women in the federal public sector the right to pay equity.

Pay Equity advocates know that this new Harper government scheme would make the current system much worse, removing pay equity's status as a human right and opening it up to market forces.

In a thorough report, the Task Force presented the government with over 100 recommendations to improve pay equity. Many of the recommendations are modeled on Ontario's proactive *Pay Equity Act* and are supported by women's groups and labour organizations.

Effective pay equity laws are a critical tool in advancing equality rights for all women and other historically disadvantaged groups. Along with anti-discrimination and employment equity laws, increased minimum wages and community advocacy, pay equity can help achieve real equality for all women in Canada.

The OFL will continue its work with the CLC, the national Pay Equity Network and our affiliates to pressure the federal government to repeal the regressive *Public Sector Equitable Compensation Act* now and to implement the Pay Equity Task Force's recommendations. The government

also must take positive action to eliminate the wage inequities that women, workers of colour, Aboriginal workers and workers with a disability experience in federally regulated workplaces. Canada must have a federal pay equity law as recommended by the Federal Pay equity task force.

VIOLENCE AGAINST WOMEN

Hard economic times are hard for women. In every recession women experience more violence in their homes and at work.

Across Ontario domestic abuse services are noting an increase in women needing their services. Region after region report increases in domestic violence calls to police. More women and children are trying to access shelters and second stage housing.

- Durham Region, east of Toronto, showed a 24 per cent increase in appeals from women.
- Brockville police have seen a 100 per cent increase in domestic violence calls.
- The Ottawa Carlton Sexual Assault and Partner Abuse Care Program has seen a marked rise in requests for medical treatment.
- The London area services are also reporting increases in requests for help and services.

While the need for services will continue to rise, there are also many women who cannot leave abusive homes or are forced to return to them. A woman who lives on a single income,

or has lost her job, or is under threat of losing her job, has limited options. She is forced by her circumstances to return to an abusive situation. Studies have found that women leave shelters and return to abusive partners because of a lack of housing and poor economic circumstances which prevent them from meeting their children's basic needs.

Women experiencing workplace violence and harassment are often forced to remain silent for fear of losing their jobs.

Violence against women is an equal rights issue. Understanding this is essential. It is the foundation for *ending* male violence against women.

Montreal Massacre, December 6, 1989

December 6, 2009, will mark the 20th Anniversary of the tragic murders of 14 young women at the École Polytechnique in Montreal because of their gender. École Polytechnique is a college. Two CUPE sisters working there were among the murdered women. The brutal murders at the École Polytechnique jolted Canadians into acknowledging that physical, psychological and emotional violence is a daily reality for women and children.

20 Years Later - Are Women Any Safer?

Why 20 years after those murders is violence still a daily experience for women and children? Why is the need for shelters increasing? Why are women still forced to stay in abusive relationships or return to them?

Why are some of our sons, fathers, brothers, male co-workers and neighbours still abusing women and children?

Gender inequality is deeply rooted in our society. It grows into all of our “systems”: family, law, education, health, government, social programs, employment, business and religion. Women experience this inequality in their home, at school, at work and in their neighbourhoods.

A change in attitude – the way women are perceived and treated – would be an important benefit. But equality is not just about attitude. It is also about the reality of where and how women live and whether they are free to make the best choices for themselves.

Keep a woman poor and you deprive her of the freedom of choice.

Pay her less on the job. Make her responsible for the major share of child care. Make it hard for her to get an education and job training. And, if she’s managed to get them, keep her out of ‘good-paying’ jobs or any job at all.

These are the challenges facing women in Ontario and the rest of Canada. Poverty and fewer economic opportunities for women guarantee that they will continue to be seen as being worth less than men. These conditions also guarantee that escaping from an abusive relationship or fighting back against sexual or racial harassment at work is harder for women.

Another way to keep women ‘in their place’ is to provide them with little or no public support and resources. When governments refuse to offer women programs such as adequate social assistance, childcare, quality housing, education and legal aid or do not offer

enough of these programs, they indirectly support inequality and male violence.

When the immigration process requires that wives be “sponsored” by their husbands; governments are creating the condition for some men to control their partners through threats of deportation.

Women Helping Women

All progressive work to end violence against women can be traced back to the women who built the shelters, rape crisis centres, second stage housing programs, crisis lines, women’s centres and neighbourhood groups dedicated to equality.

None of these initiatives grew out of the inspiration of politicians, policy works, academic authorities or professional experts. All of them came from women working with and for women.

Shelters, rape crisis centres, second stage programs, crisis lines, women’s centres and neighbourhood groups evolved naturally from the larger women’s movement on its march to equality. Women in the movement saw it as their duty to challenge an unfair system by drawing society’s attention to the direct relation between a woman’s experiences of injustice and violence and the material conditions of her life. But right now all of this amazing and creative work, which has rescued many women from violence, is under threat:

- Women’s grassroots frontline services and groups are poorly funded everywhere in Ontario. These services and groups have to engage in fundraising to keep operating. Unfortunately, it is not easy to raise funds for such vital work.

- Women's services are not funded within an equity framework. Aboriginal women's shelters on reserves do not receive the same funding as other shelters.
 - There are funding discrepancies between Northern and Southern Ontario, rural and urban services, French language and other services, etc.
 - The women's provincial anti-violence policy and program networks, which are organized by shelters, rape crisis centres, second stage programs, Francophone women's agencies, women with disabilities, women's centres and women's equity groups, are provided with occasional grants or nothing at all. For example, the DisAbled Women's Network of Ontario has no funding and no staff.
 - Governments provide funding (however inadequate) for managing the damage done by violence against women, but refuse to fund the public advocacy and social justice work necessary to stop it.
 - Funding is not readily available for women with disabled children and for women with disabilities, including those who are deaf. When funding is provided, it is seen as an 'add on' and does not cover all the needs of a project. This means that agencies often have to pay for accommodations out of their existing grants, reducing the funds available for other services.
 - In spite of a lack of funding, women advocates still contribute to provincial, regional and local government training and development projects.
 - Successive governments have missed opportunities and implemented misguided policies in relation to violence against women because they have not consulted grassroots women's groups which have a lot of knowledge on this issue.
 - Current government policy disperses resources based on the idea of "shared responsibility". What this means is that programs which are not women-controlled also receive funding. Many of these programs have no understanding of the issue of violence against women or expertise in dealing with it and do not provide inclusive services, which are anti-racist and anti-oppressive.
 - Support of gender-neutral language and policy, which merely pays lip service to "women's equality", is undermining the work of grassroots women's groups.
 - Local service system coordination and management mechanisms are funded while women's efforts to work with each other are largely denied resources.
 - The Government refuses to implement pay equity for women's agencies. As a result, wages in these agencies are either low or frozen at levels which are below those paid within community systems.
- Ending violence against women is a responsibility of our entire society. But to achieve this result, society must be guided by the expertise and leadership of the women's movement, which has the best knowledge and experience on this issue.

To this end, governments should provide women's grassroots policy groups and women's services with ongoing, stable and adequate resources. Further, women's advocates and survivors of violence should be included in all policy and program planning.

If the McGuinty government wants to end violence against women, it must stop diminishing the importance of women's shelters, rape crisis centres, second stage programs, neighbourhood women's groups, second stage housing programs, women's centres and women's provincial policy organizations.

The OFL has already joined the struggle to end violence against women. It is a member of the "Step It Up" campaign, a coalition of anti-violence, women's equality, poverty and labour organizations. The "Step It Up" campaign focuses on putting political pressure on all levels of government. It continues to lobby for funding and measures to end violence against women and raises this issue in federal and provincial elections. The campaign also investigates and analyzes the barriers faced by advocates who support this issue.

Workplace Violence

There is a direct link between violence in the home and its effect on women in the workplace. Not surprisingly, women who experience violence in their homes have trouble getting, keeping or performing a job. In June 2000, Gillian Hadley was murdered in her home by the husband from whom she was separated. The inquest into her murder identified a direct link between domestic violence and its impact on a woman's working life.

Women who leave abusive men are especially vulnerable at work. An abuser knows that he can always find his victim in her workplace. It is all too common for women to be stalked, harassed and, in extreme cases, injured or killed at work. Their abusers are not always employed in the same location as they are. But in some cases they are. Lori Dupont, a nurse at Hôtel-Dieu Grace Hospital in Windsor, was murdered in her workplace on November 12, 2005 by her ex-boyfriend who also worked in the same hospital as a doctor.

Unions have bargained language into collective agreements to support working women who want to escape violence. This language provides for legal plans; leaves to go to court; help in finding new housing; child care; help to heal without fear of being disciplined; the right to alternative work; to be accommodated if stalked by a violent partner; workplace women's safety audits and Employee Assistance Programs. Many union brothers participate in groups such as Men Against Male Violence.

However, working women not covered by a collective agreement must seek protection from the *Employment Standards Act* to ensure they do not lose their jobs or are not disciplined and, when needed, the right to change their work schedule or location to avoid an abusive partner.

Workplace harassment is a form of violence. Harassment in the workplace is not always sexual in purpose. It can also focus on a woman's colour, her Aboriginal status, the fact that she is a lesbian, has a disability or is trans-identified. Women who pass under any of these titles are subjected on the job to prejudicial words, actions and attitudes which reinforce the

oppression they experience outside the workplace. Such harassment can make the workplace a dangerous and even lethal place for these women.

On June 2, 1996, Theresa Vince was shot to death by her harasser in the Chatham Sears store where she had worked for 25 years. The inquest into her murder called for immediate action on workplace harassment.

In economic recessions violence in the workplace escalates. Corporate greed to maximize profits imposes heavy stress on workers, particularly on women in jobs where they have to provide services to angry or frustrated members of the public. Women who are social workers, service providers, receptionists, nurses and teachers are especially at risk.

Changing Laws, Changing Society

For over a decade, the OFL, unions and women's groups have called for legislative rights to protect women in the workplace. We have lobbied, appeared at inquests into workplace deaths, launched public campaigns and worked with the Ontario NDP to draft private member's Bills.

Finally, on April 20, 2009, we won the fight for legislative reform. The Minister of Labour announced amendments to the *Occupational Health and Safety Act* to help protect employees from workplace violence and harassment, including domestic violence.

Bill 168, amending Ontario's *Occupational Health and Safety Act*, while a significant opportunity, at the time of writing, the Bill needs amendments to make it helpful to protect women subjected to violence in the workplace. But it is only a part of the rights working women need.

Further reforms are still necessary, such as the following:

- *Employment Standards Act* leave provisions which will allow a woman to keep her job while looking for new housing, dealing with custody, divorce and other legal issues or while taking the time to heal;
- workers' compensation coverage for chronic stress due to harassment or verbal and emotional abuse;
- the Ontario government, in collaboration with the OFL and women's groups must launch a comprehensive public education anti-violence campaign.

Unions have faced the challenge to end violence against women both inside and outside the workplace. But we in the labour movement must also review our own structures, views and priorities to deepen our understanding of how gender violence intersects with racism, ableism, homophobia and poverty, all of which marginalize women and make it more difficult for them to escape violence.

Violence is a major obstacle to women's equality and well-being. It affects not only its direct victim but also the victim's family, friends, neighbours and co-workers. The effects of violence spread like a virus, infecting all of society.

To protect our society we must continue to bargain and strengthen collective agreements, work in coalitions with women's equality-seeking groups for effective government action and to increase workers' education.

We must keep before us a vision of equality which embraces the whole world and provides all girls and women safety in their homes, schools, workplaces and in the streets of our cities and towns. We must believe in this vision and make it real.

PERSONS WITH DISABILITIES

A primary source of information regarding persons with disabilities is the *Participation and Activity Limitation Survey (PALS)*, which is funded by Human Resources and Social Development Canada and carried out by Statistics Canada.

The PALS latest survey for 2006 notes that there were 2,457,350 people with activity limitations in Canada between the ages of 15 and 64 who potentially could have participated in the labour force. Of this group, 1,259,980 (51.3%) were employed, 119,340 (4.9%) were unemployed, and 1,078,020 (43.9%) were not in the labour force.

The national disability rate increased 1.9% from its level of 12.4% in 2001 to 14.3% in 2006. Between 2001 and 2006, disability rates increased in all provinces.

In 2006, the unemployment rate for all people with disabilities between the ages of 15 to 64 was 10.4%, higher than the non-disabled population at 6.8%. People with hearing issues had the lowest unemployment level of 10.4%.

Many Ontarians with disabilities are suffering in lives of poverty because they have not had the opportunity to enter and stay in the paid labour market.

The challenge for many workers with disabilities is to get into the paid labour market. The challenges facing workers attempting to return to the paid labour market are addressed separately in the section of this paper dealing with Workers Compensation. The actual costs of accommodating workers with disabilities in the workplace are quite reasonable.

Several years ago, the Canadian Abilities Foundation put the cost under \$1,500.00 for almost all workers with disabilities. The barriers facing these workers are systemic and attitudinal rather than physical.

Ontarians with disabilities are facing a variety of challenges to protect their rights and to play a full role in the economic and social activities of our province.

The *Ontario Human Rights Code* has been in force since 1962. However, it was in 1982, that there were legislative amendments to ensure a legal ban on discrimination in the workplace and access to goods and services for Ontarians with disabilities. Ontarians with disabilities were also guaranteed that their rights would be protected by a public investigation, prosecuted – when needed, by a public law enforcement agency – the Human Rights Tribunal.

The promise behind the *Accessibility for Ontarians with Disabilities Act* in 2006 was to build on and not replace the rights protected under the *Ontario Human Rights Code*. A broken promise when the McGuinty government forced through *An Act to Amend the Human Rights Code, Bill 107*, legislation which sought to privatize the human rights enforcement process in this province. The Ontario Federation of Labour opposed *Bill 107*. Unfortunately, the concerns raised by the OFL and other groups are coming true as the OFL pointed out in a brief to the Standing Committee on Government Agencies in February 2009, when that body was examining the Human Rights Tribunal of Ontario.

The Accessibility for Ontarians with Disabilities Act became law in 2006. The goal of this law is to have accessibility for all Ontarians by the year 2025. One of the tools found in this legislation is to establish committees involving a diverse group of Ontarians to develop standards to implement the goal of this legislation. The Ontario Federation of Labour and its affiliated unions have been involved in many of these standard development processes. The criticism of many Ontarians with disabilities is that the standards must be more robust in pushing Ontario towards accessibility. The Minister should be encouraged to build on the work already accomplished, and listen to the disabilities communities for their recommendations to improve the proposed standards.

Ontarians with disabilities would benefit from Employment Equity legislation. They would also benefit, if the government talked to and more importantly listened to them on what is needed to effectively protect their human rights as Ontarians.

**EMPLOYMENT STANDARDS
LABOUR RELATIONS**

Changing Labour Market

The structure of the labour market has continued to shift. Private sector unionization rates have dropped from about 30 percent in the 1970s to 19.2 percent in 1997 and to 16.6 percent in 2007. There has been a considerable rise in part-time, contract, and temporary work – what is often called precarious work. Hopes for a full-time, unionized good job for our working life, and retiring with a defined benefit pension have been shattered for many older workers. That hope seems out of reach for many young workers. Fewer Ontarians are working full-time in full year jobs, and fewer still in unionized workplaces that provide protections, good wages and benefits.

Even before the current economic crisis, Ontarians were working more hours for less money.¹ Low-wage workers, especially women, immigrant and racialized workers are increasingly working in temporary, contract and part-time work, and juggling two or three jobs without employment benefits or workplace protections.² The impact of these working conditions does not end at the workplace or the pay cheque. You cannot spend enough time with your kids, and you cannot participate fully in your community juggling this kind of work.

There is a gendered and racialized dimension to this inequality. 40 percent of employed Canadian women hold precarious jobs.³ The gap in earnings between recent immigrants and Canadian-born workers continues to widen. In 1980, men who had recently immigrated to Canada earned 85 cents

for every dollar earned by Canadian-born men. By 2005, that had dropped to 63 cents. The gap is even wider for women who have recently immigrated to Canada, dropping in 2005 to 56 cents for every dollar earned by Canadian born women — from 85 cents in 1980.⁴

Employment Standards Act

The *Employment Standards Act* (ESA) has a crucial role for all workers in Ontario. For unionized workers, it is the floor from which we bargain improvements in working conditions, pay and rights. For workers without the protection of a union, the ESA has a crucial role in protecting their rights. However, the ESA is failing in this crucial role. This legislation has not been updated enough to keep up with changes in the structure of the labour market. And, existing rights in the legislation are not being adequately enforced.

The ESA has not kept up with the changes in the structure of the labour market. Many employers have moved work beyond the reach of regulation. Work that used to be done in-house and that is considered 'low skill' or 'labour intensive' is now outsourced by companies. Employers are hiring indirectly through intermediaries such as nominal subcontractors and temporary employment agencies. Workers are misclassified as independent contractors to bypass labour laws. These work arrangements allow employers to shift more business costs onto workers who have little power to refuse.⁵

As trade unionists, we know that rights have no meaning unless they are enforced. Enforcement of the ESA needs to be shored up. Just 20 Employment Standards Officers (ESOs) are responsible for enforcing the law in 350,000 Ontario workplaces.⁶

As a result, many workers in Ontario are in a labour market without regulation and protection. Violations of basic standards, such as overtime pay and the right to take a day off when sick, have become the norm rather than the exception in many workplaces. This daily reality of employment standard violations normalizes them. These violations are almost expected and accepted in sectors where there are large numbers of new immigrants, racialized, women and low-waged workers.⁷ This lawlessness makes it very difficult to organize. If workers cannot count on their basic employment rights being protected, they will have little faith in legal protections for involvement in an organizing drive.

The ESA is also an important vehicle for political mobilizing and engagement. In recent years, the labour movement has been involved in coalitions that have had two major victories with respect to the ESA.

The first of these was the minimum wage campaign. After the 2003 election, and 8 years of the minimum wage being frozen, the Liberal government committed to an increase of only 30 cents an hour each year. The labour movement responded with a demand for a minimum wage of \$10 an hour.

The coalition working on this campaign included New Democrat MPPs, social justice groups, labour groups, youth groups, and academics. The campaign spread across the province, using traditional media, the internet and grass roots community organizing. It connected union activists with communities and non-union low-wage workers. After a concerted effort, the campaign met with success.

In the 2007 budget, the Liberal government committed to increase the minimum from \$8 an hour to \$10.25 an hour in 2010.⁸

The second victory involved changes to the ESA with respect to temporary workers, and for an increase in the number of Employment Standards Officers. This was the result of a concerted and lengthy campaign by temporary workers themselves, working through vital community organizations such as the Workers Action Centre. The fight for this legislation did not end with its introduction into the legislature. Hundreds of community members, labour unions, immigrant organizations and allies organized town halls in their communities, and distributed postcards and information about the legislation when it was introduced, and about the changes that needed to be made to it. Through this campaign, some key amendments were won.

The new law is a good start in improving protection for temporary agency workers. The legislation will: end fees charged to workers by temporary assignment agencies; reduce barriers to permanent work for temporary agency workers; ensure public holiday pay for all temporary agency workers; require agencies to give workers information about assignments

and employment standards rights; ensure temporary agency workers get the same termination and severance protections as other workers; and, require that both the agency and client company are legally responsible when a worker is penalized for trying to enforce their rights.⁹ In the 2009 budget, the government announced an increase of \$4.5 million per year for funding Employment Standards Officers.¹⁰

The labour movement is continuing to work with our allies to push for more comprehensive changes to update the ESA. This included working with NDP MPP Cheri DiNovo who introduced a private Members Bill in May 2009 that would expand rights for precarious workers and increase enforcement powers of Employment Standards Officers.¹¹

Labour Relations Act

There have been a number of landmark recent developments with respect to labour relations. The first of these was the BC Health Services decision, where the Supreme Court of Canada ruled that the freedom of association guarantee in the Charter protects the rights of workers to bargain together collectively.¹² In this decision, the Court overturned previous rulings in which the Court had found no such protection for collective bargaining. In reversing itself, the Court stated that collective bargaining has become part of the Canadian social, political and historic fabric. The Court concluded that collective bargaining rights are incorporated into the *Charter* as a result of Canada being signatory to international treaties and conventions that recognize those rights.

The second development was a decision by the Ontario Court of Appeal with respect to the rights of agricultural workers to organize. The Court agreed with the UFCW's challenge that the *Agricultural Employees Protection Act*, brought in by the Harris government, did not provide enough protection to the Charter rights of workers. The decision stated that "Without a statutory duty to bargain in good faith, there can be no meaningful collective bargaining process...In keeping with that goal, legislation dealing with collective bargaining must provide a mechanism for resolving bargaining impasses."¹³

This was a major victory for farm workers in Ontario. However, instead of respecting the decisions of the Courts, the ILO, and the rights of farmworkers, the Ontario government is appealing this decision to the Supreme Court.

The third development was an advance outside of the court room. In the fall of 2008, legislation permitting part-time workers at colleges to unionize was passed. This legislation, while flawed, was the result of a successful four year campaign by part-time college workers supported by OPSEU to win the right to be represented by a union.¹⁴

These developments provide further recognition of the right to organize and the right to bargain. They also show the different routes to these successes both through the courts and through political mobilization. The trade union movement needs to use this legitimization from the courts and legislation to engage the public in a discussion about the importance of right to organize.

Despite these victories, the need for *Labour Relations Act* reforms remains pressing. While union density has remained stable in the public sector, private sector unionization rates haven't fallen sharply.

The combination of weaknesses in the legislation and enforcement, the changing labour market and the economic crisis has resulted in a decrease in the number of unionizing drives, and a decrease in the number of new workers unionizing. The last year that data is available shows there were only 422 certifications in 2007-08 as compared to 829 in 1993-94. The share of applications that were successful was 51 percent as compared to 73 percent in 1993-94.

ACCESS TO UNIONIZATION IN ONTARIO			
Fiscal Year	# of Certifications	% of Successful Applications	# of Workers
1993-94	829	73%	25,798
1994-95	762	77%	32,116
1995-96	510	67%	20,564
1996-97	387	59%	21,496
1997-98	424	64%	21,049
1998-99	415	62%	27,299
1999-00	313	55%	19,763
2000-01	521	56%	36,901
2001-02	307	45%	16,255
2002-03	318	51%	14,026
2003-04	301	52%	12,173
2004-05	428	53%	11,610
2005-06	352	53%	14,461
2006-07	420	59%	11,158
2007-08	422	51%	13,617
Source: Ontario Labour Relations Board Annual Reports 1993-94 to 2007-08			

NOTES:	
1993-94	(Bill 40: Reforms implemented)
1995-96	(Bill 7: Restricts organizing, mandatory votes, etc.)
2000-01	(Minus SEIU/CAW displacements total is: 24,206)
2005-06	(Bill 144: Reforms implemented)
* Each year there are a number of “displacements” from one union to another. Exempted here is only the major “displacement” of SEIU and the CAW which totalled approximately 12,695 in the OLRB fiscal year of 2000-01. This leaves a new certification total of 24,206 in that year.	
* Percentage of successful applications are calculated as the number of certifications granted as a percentage of total certifications disposed of by the OLRB.	

For the past year and a half, the OFL has been working with the 25 in 5 Network for Poverty Reduction. The Network has taken on and taken up the importance of labour market policies in reducing poverty. They have put forward the following demands to the government with respect to labour law reform:

- Re-establishing successor rights for unionized workers whose employers are contractors.
- Re-establishing card-based certification for all workers in Ontario.
- Provide more protection for workers from reprisals and intimidation because of their union activities by increasing the penalties for unfair labour practices to levels equivalent to those of the proposed *Employee Free Choice Act* in the United States.

This success in having a broad-based coalition endorse our demands is significant. The labour movement will increase success in its advocacy

campaigns with more support from the broader community.

The current recession and its aftermath increases workers’ needs for the support and protection of being unionized. The changes to the labour market structure outlined above will likely be even more pronounced. Our approaches to organizing will have to continue to evolve to reflect these new structures. We will continue to need to work for political change to support our demands. And, we will continue to build public support by working with the community and non-unionized workers.

WORKERS’ COMPENSATION

Cost of Living Allowance (COLA)

Employers have received a windfall benefit in the form of a 24.7 percent rollback in their costs for workers’ compensation coverage since 1995, while injured workers are forced to live in poverty because their compensation is not adjusted for inflation. In the same period, injured workers have seen their benefits reduced 19.5 percent due to inflation despite the 7.5 percent increase given to them under Bill 187, which gave them a 2.5 percent increase on July 1, 2007 and another 2.5 percent on January 1, 2008 and January 1, 2009. Injured workers deserve full inflation protection now.

Coverage

In a report prepared for the Workplace Safety & Insurance Board (WSIB) it was reported that 35 percent of workers in the province of Ontario are not covered by the workers’ compensation system. While the report recommended full

coverage for all workers the government has refused to implement its recommendations. Adding independent operators and the service sector, including banks and insurance companies, would provide the system with a steady income when the economy fluctuates. All workers, regardless of where they work or how they earn a living, should be covered by the *Workplace Safety & Insurance Act (WSIA)*.

Deeming

Section 43 of the *WSIA* 1997 allows the Board to deem a worker to have earnings related to a suitable employment or business and to set the worker's loss of earnings benefits based on such deemed earnings regardless of whether the worker has actually secured employment after suffering a workplace injury.

Although deeming was introduced to the system by the 1989 amendments to the *Workers' Compensation Act (WCA)*, the current system allows for a level of deeming that disentitles a far greater number of workers than under the previous system. This is especially so for permanently impaired workers. Deeming in effect transfers the cost of many workplace injuries to other provincial and federal social programs and thus to the taxpayers of Ontario and Canada.

The Liberal government introduced Bill 187 on July 1, 2007 which the Minister stated would eliminate deeming. The WSIB developed new policies that actually made deeming worse. The *Act* should be amended to eliminate deeming to ensure that the basis for wage loss is calculated on the actual wage loss incurred after an injury.

Increase Average Earnings Amount from 85 percent to 90 percent of Net Average Earnings.

Another important way in which injured workers' benefits were affected by the *WSIA* is the reduction from 90 to 85 percent of net average earnings as the basis for wage loss benefits. This is a reduction which significantly impacts an injured workers' ability to maintain their pre-injury standard of living, especially for workers affected by the COLA provisions discussed above and the cap on benefits discussed below. The average earnings amount should be restored to 90 percent of net average earnings.

Remove Cap on Compensation Benefits

For workers with relatively high incomes at the time of injury, the requirement that wage loss benefits be capped at a maximum on 175 percent of the average industrial wage can have a significant negative impact on an injured worker and his or her family. The legislation must be amended to remove the cap on wage loss benefits.

Remove the Age Cut-off for Future Economic Loss (FEL) and Loss of Earnings (LOE) Benefits

The Ontario government has introduced legislation to end mandatory retirement and the discrimination it entailed for workers over age 65. However, it has allowed the provisions of the *WCA* and *WSIA* that allow wage loss benefits to be cut-off based on a worker's age to remain in place. The age cut-off for FEL and LOE benefits allows for older workers who become permanently disabled due to a workplace injury to be discriminated against on the basis of their age. The legislation must be amended to remove the age cut-offs in the *Act*.

Loss of Retirement Income (LRI)

Yet another reduction in the amount of benefits for workers brought in by the *WSIA* is the reduction in the amount put aside from a worker's LOE benefits to make up for the LRI. For workers injured between 1990 and 1998, an additional 10 percent of the worker's FEL benefits is automatically put aside until age 65. For workers injured after 1998 (i.e. those whose benefits are determined under the *WSIA*), only 5 percent is put aside unless the worker opts to contribute an additional 5 percent out of their own benefit payments. If a wage loss system is continued, restore LRI amount to 10 percent.

Non-Economic Loss (NEL)

The monetary awards allowed for under the NEL provisions are meant to compensate injured workers for the pain and suffering caused by their workplace injuries. However, the amounts awarded are very small compared to the pain and suffering endured by injured workers who become permanently impaired as a result of a workplace accident.

These small awards are often interpreted by injured workers as an affront to their dignity and sense of self-worth and are thought by many to "add insult to injury". If the dual award system is retained, the base amounts for NEL awards should be substantially increased.

Employment Benefits

Injured workers who have an employee benefits plan when working only continue to receive those benefits for a maximum of one year post-injury. The employer's responsibility ends at that point. The Board takes no account of the impact of the loss of benefits, nor

does it provide compensation or any alternative benefit plans. This adversely affects all injured workers and their families. Obviously the more severely injured a worker is, the greater the adverse impact. The *Act* should be amended to include a Board sponsored benefits plan for all injured workers and their families.

Restriction on Entitlement for Mental Stress

The *WSIA* restriction on entitlement for mental stress is one of the ways that some workers with work-related disabilities are kept entirely out of the system. This is arguably a violation of the equality provisions of the *Charter* and the *Human Rights Code* in that it discriminates against mentally disabled workers based on the nature of their disability. As yet, this provision has not been successfully challenged. However, it is most definitely open to challenge, and, while it remains in effect, it discriminates against an extremely vulnerable group of mentally disabled workers. The *Act* should be amended to remove the restriction on mental stress.

Time Limits

The introduction of time limits in the system in 1998 has had a profound and negative impact on the system as a whole. Time limits are especially problematic for the most vulnerable in the system and those with the most to lose: permanently injured workers who face barriers in addition to their compensable injuries (i.e. language, literacy, physical and mental disability).

Time limits add complexity to the system by generating more appeals and more bureaucratic rules. They have made the system more formal and legalistic and therefore less accessible to injured workers. Time limits have

arguably added administrative costs related to the greater number of appeals and the procedures created to administer the system in the context of time limits. In 2005 close to 10 percent of Workplace Safety & Insurance Appeals Tribunal's (WSIAT) decisions were time limit decisions (287 out of a total of 2,969 for 2005).

For all agencies in the system it diverts resources away from the main reason they exist, which is to ensure that injured workers receive the benefits and services they are entitled to after suffering a workplace injury or disease.

To the extent that the introduction of time limits has saved the system money, it is at the expense of injured workers who have been cut out of the system for missing a time limit to establish a claim or to appeal a negative decision. The legislation must be amended to remove time limits for workers' claims and appeals from the system entirely.

Appeals Tribunal

There were a number of significant changes brought in by the *WSIA* that affect the independence, accessibility and fairness of the Appeals Tribunal. These are set out with recommendations below.

Independence of the Appeals Tribunal ("Policy Binding" Provision)

A significant restriction on the Tribunal's jurisdiction and independence was introduced in 1998 in what has been referred to as the "policy binding" provision: s. 126 of the *WSIA*. This provision requires the Tribunal to apply Board policy in its decision making and only allows it to deviate from Board policy under limited circumstances. This provision undermines the independence of the

Tribunal, further complicates the system and leaves this aspect of the legislation, and at least some Tribunal decisions, open to challenge in the courts. The *Act* must be amended to remove the "policy binding" provision and restore the independence of the Tribunal.

Preference for Single Vice-Chairs

The *WSIA* also significantly affected the tripartite nature of the Tribunal by creating a preference for single vice-chairs sitting alone. This dilutes the quality of decision making at the Tribunal, by leaving it up to one decision-maker alone without the benefit of the experienced worker and employer side-members contributions. The tripartite mandate to the Appeals Tribunal must be returned and funded accordingly.

Bipartite Board of Directors

A bipartite Board of Directors must be established with half the members selected by organized workers and half selected by employers. The bipartite board selects the Board's Chairperson and would hire the Chief Administrative Officer. Both positions must be responsible to the workplace parties.

Occupational Disease Panel (ODP)

In the area of occupational disease research and the creation of adjudication support material for occupational disease claims, the system suffered a significant loss when the ODP was eliminated. The *Act* must be amended to re-establish and properly fund the ODP.

Scheduling Diseases

Though the Occupational Disease Advisory Panel (ODAP) Report did a good job of outlining the legal principles that must be applied in adjudicating

occupational disease claims, it would be significantly more helpful to workers and their survivors if more occupational diseases were included in the Schedules. The *Act* must be amended to require regular review and updating of Schedules 3 and 4.

Name of the Board

It is an important symbolic issue for the worker community that the name of the *Act*, Board and Tribunal be restored to their previous forms, i.e. *Workers' Compensation Act*, *Workers' Compensation Board*, *Workers' Compensation Appeals Tribunal*. This would recognize one of the key purposes of the system, which is to provide compensation to workers who are injured or made ill by their work. It would also signify the government's commitment to the founding principle of providing fair compensation. The legislation must be amended to change the name of the *Act*, Board and Tribunal back to the *Workers' Compensation Act*, *Workers' Compensation Board*, *Workers' Compensation Appeals Tribunal*, respectively.

Labour Market Re-Entry (LMR)

There are a number of significant problems with the current LMR system. This part of the system primarily affects permanently impaired workers and is in critical need of reform. LMR in its current form is designed to get workers in and out of the system as quickly and cheaply as possible, with little regard to what happens to them when they complete LMR.

The most significant problem relates to the fact that the goal of LMR is only to get workers back into the general labour market and not to ensure that they actually manage to secure employment when they have completed

LMR. In addition, workers are simply "deemed" to have the wages related to the suitable employment or business (SEB) chosen during the LMR process, regardless of what their actual post-LMR earnings are. This is true even where a permanently impaired worker is never able to work again.

Further, in choosing a SEB for the worker, there is no requirement that the worker's personal and vocational characteristics be taken into consideration. There is also no provision allowing a worker time to do a job search before their benefits will be cut-off.

Finally, there are significant problems related to the quality of for-profit primary and secondary service providers, many of which have arisen since the privatization of LMR (previously vocational rehabilitation) function.

The responsibility for the "vocational rehabilitation" (VR) of injured workers should be returned to the Board. Clear rules need to be set out in the legislation that requires a worker's personal and vocational characteristics and job availability be taken into consideration in determining appropriate VR services.

The *Act* should also be amended to allow the Board to provide assistance and payment of benefits for job search.

Secondary Victims

In addition to the many workers who develop occupational diseases due to exposures to hazardous substances at work, there are the secondary victims (family members and those in close association to these workers) who develop the same or related diseases due to their exposures from the worker

or the worker's clothing. A particularly poignant and devastating example of such a secondary victim is when the child of a worker develops mesothelioma from being exposed to asbestos from his or her parent's clothes. The *Act* should be amended to allow for compensation benefits and services to be provided to secondary victims who contract an occupationally-related disease due to exposure to hazardous substances brought about by close contact with an exposed worker. In 2000, NDP MPP Peter Kormos introduced a Private Member's Bill titled Lynn Henderson's Law that would provide compensation to secondary victims.

Valuing the Lives of Workers without Dependents

Currently, survivor benefits are tied to economic dependency. Family members who were not financially dependent on their loved one who died as a result of a workplace injury are left feeling that the worker's life is not valued by the compensation system or society. This is frequently the case when a young injured worker loses his or her life.

There is an extremely poignant sense of loss when a young worker dies, but the emotional dependency of the family members is not recognized or valued.

The *Act* should be amended to allow, in the cases where there is no relative who was financially dependent upon the injured worker, for one lump sum payment to one from a list of specified relatives (i.e. parents, sibling or grandparents).

Return to Work (RTW)

The re-employment obligation and Early and Safe Return to Work (ESRTW) provisions were two important steps in recognition of returning injured workers to safe, suitable and productive employment. The historical practice of shifting injured workers and managing their claim costs has not improved RTW outcomes. To affect significant changes and improve outcomes, the Board must promote Disability Prevention principles. The focus of an effective return to work should be removing barriers that cause functional limitation by providing assistive devices and the re-organization of work tasks and environment using proven ergonomic strategies and therapeutic methods.

Joint RTW committees need to be legislated in all workplaces. The union must be formally recognized as a workplace party by the Board and the employer. Minimum training needs to be mandated by the *Act*. Workplaces must be provided comprehensive and inexpensive training regarding RTW strategies and principles.

Return to Work Training Agency

Funding needs to be provided to the central labour body to develop and deliver comprehensive training regarding disability prevention principles and therapeutic RTW practices.

The OFL's Occupational Disability Response Team has a proven track record in this area. The funding agreement must include a long term commitment and not be subject to political whims.

Funding should be provided under s.7 of the *Act* so that the Agency is a designated entity.

Eliminate Experience Rating

Experience rating for Schedule 1 employers has been voluntary since 1953 and mandatory since 1995. Yet there is no empirical evidence that experience rating promotes investment in prevention or RTW strategies. In fact, experience rating promotes bad practices, as strategic and dubious practices lead an employer to financial rewards faster than with proper commitment and investment in health and safety and accommodation. The labour movement has called for the elimination of experience rating for years.

Eliminate Apportionment

The Act provides that, where an injury or disease has been contributed to by more than one workplace, the costs of workers' compensation benefits can be apportioned between responsible employers. The legislation does not give express or implicit authority to apportion worker entitlement. Apportionment practices contradict common law principles. Yet the Board and the Tribunal continue to apply these practices on a case-by-case basis or systematically by policy. The practice of apportioning benefits is unlawful and must be eliminated.

Improve Occupational Disease Adjudication

Victims of occupational disease are stricken with the impact (functionally and psychologically) of the disease and then are forced to endure ridiculously long periods of adjudication. There is no justifiable excuse why workers and their families have to wait as long as two years for an initial decision from the Board.

The Board must develop the capacity to expedite complicated entitlement issues in a timely manner. The Board must adopt formal adjudicative practices that are consistent with the legal principles of causation. Imported criteria cannot be used to suppress entitlement. Much of the exposure criteria contained in current policy is arbitrary and not scientifically supported.

For example, the Noise Induced Hearing Policy requires five years exposure at 90dB over an eight-hour period or the equivalent. Yet it is well recognized that hearing can be damaged by prolonged noise exposure at much lower levels. Most other jurisdictions in Canada have the exposure criteria at 85dB and the World Health Organization states that hearing damage can occur in individuals with as little as 70dB exposure.

Significant resources must be dedicated in the research of work exposures and their contribution to disease. More diseases must be scheduled.

Presumptive legislation for the construction trades is the next logical progression. In the future most occupations should be covered under presumptive legislation. This would eliminate much of the time associated with gathering and determining historical exposure profiles.

Prevent Privatization

The current strategy of the Board is to eliminate the unfunded liability by the year 2014. Once the unfunded liability is eliminated, the compensation system will be attractive to private insurance companies.

The government has made no secret of their desire to sell off portions or even the entire compensation system. We must begin mobilization now to defend the privatization of our system. It must remain publicly delivered and accountable to the citizens of this province.

**OCCUPATIONAL HEALTH,
SAFETY AND ENVIRONMENT**

After a long struggle, workers gained the right to refuse work, to know about hazards in the workplace or participate in the workplace on issues that impacted their health or safety. The struggle to have employers respect these rights continues.

Reprisal Protection

Labour continues to fight for meaningful protection from reprisals for workers who exercise those rights.

Labour's Health and Safety Resources

Over 25 years ago the labour movement recognized that workers and their unions needed to have trusted resources and support to enforce their health and safety rights and address hazards in the workplace. We were able to gain sustained funding first for the Workers Health and Safety Centre (WHSC), then the Occupational Health Clinics for Ontario Workers (OHCOW).

The WHSC provides training and information so workers and their representatives can act with confidence and competence on their legal rights and responsibilities as provided by Ontario's occupational health and safety law.

The five OHCOW clinics provide a range of occupational health services to workers, joint health and safety committees and many others. This includes the services of occupational physicians, nurses, hygienists, ergonomists and other professionals.

OHCOW has helped unions deal with large clusters of occupational disease, major ergonomic problems and many specific health and safety problems.

Both these institutions are governed by labour representatives and funded by WSIB. Together they have provided this much needed support for Ontario workers and their representatives for many years.

These worker oriented institutions are being undermined by the WSIB and the Ministry of Labour (MOL). The budgets of both organizations have been flatlined for most of the past 10 years. This has reduced resources which are vital to workers and to the labour movement. Adding to this is the Ministry of Labour's unwillingness to enforce the training requirements under WHMIS and the certification training for joint health and safety committee representatives. The WSIB has acknowledged that 60 percent of Ontario workplaces are not meeting the certification training requirements under the law.

Labour's ongoing efforts to gain recognition and improved prevention for occupational disease has demonstrated the need to establish new OHCOW clinics in Northwestern and Eastern Ontario and other underserved areas. It has also shown the need for additional support from the WSIB on vital issues such as exit interventions for workers when their workplaces are closing down, identifying hazardous exposures

and investigating clusters of occupational diseases.

Issues such as ergonomics, workplace violence prevention and linking return to work and prevention increase the need for effective training and professional services provided by the institutions labour has fought to establish and maintain.

Precautionary Principle

The precautionary principle is recognized as a means to advance worker rights to safe and healthy workplaces and, by extension, healthier communities.

It was also recognized by the SARS Commission and was listed in the first three recommendations. This principle provides for more meaningful involvement of workers in decisions which affect their health and safety. It shifts the burden so that emerging hazards such as nanomaterials would have to be addressed before they are introduced into the workplace, workers' bodies and the air we breathe, water we drink and food we eat. It would require a greater respect for workers' health and their role in the workplace and community.

Scents

Increasingly, workers are becoming sensitized to chemicals in the environment. Synthetic compounds used to manufacture perfumes and other scented products are a chemical soup of toxic industrial substances. Many are listed on the Registry of Toxic Effects of Chemical Substances with the Center for Disease Control in the U.S. as toxic substances. Some substances used in perfumes are known irritants or sensitizers.

Substances that are sensitizers can cause a person to become allergic to the chemical as a result of repeated exposures or even from one large exposure such as a chemical spill. Once sensitized an individual need only be exposed to a very small amount to have a serious reaction. These reactions can range from eye and respiratory irritation to nausea and dizziness up to serious breathing difficulties.

Although immediate consequences of exposure to many fragrances are known for those who are sensitized to the chemicals, there has been little testing of chemicals used in perfumes and other scented products as to the long term health consequences for users and others exposed in the environment.

Organizations are beginning to recognize that a scent free working environment is needed to help protect the health of sensitized individuals.

Harassment and Violence

It appears that issues of harassment and violence in the workplace are finally being recognized by the Ontario government. After a long struggle, the Ontario government introduced legislative changes to the *Occupational Health and Safety Act* which, if passed, would recognize harassment and violence as workplace hazards that employers must address. The government has also acknowledged that domestic violence brought into the workplace is a health and safety issue for the workers in that workplace. These proposed changes represent progress but significant amendments are needed to adequately protect workers from harassment, bullying and violence in all its forms and from all sources.

It will be an ongoing struggle to ensure employers recognize and respect a worker's right to harassment and violence free workplaces.

Sharps

Action is also being taken to protect workers from the biological exposures caused by hollow bore needles used in health care. The protection needs to be expanded to include these requirements for all other medical sharps in all workplaces where there is a risk of exposing workers to dangerous biological hazards.

Agriculture

Many of the factory farming operations in Ontario are now covered under the *Occupational Health and Safety Act* but the government broke their promise to bring about sector regulations to address hazards specific to the sector.

Occupational and Environmental Health

Labour understands that workplaces are not disconnected from the community, toxic substances and emissions cross property and political boundaries; stress travels with the worker both ways. Advancing worker health and environmental health go hand in hand. If workers are not healthy then it is a sign that the community is not healthy.

Workers need an occupational health registry to track exposures at work and the illnesses that result.

Construction workers have little of the occupational health protection provided to other workers in Ontario. Sometimes construction work takes place next to an air pollution source. In these cases this pollution source becomes their occupational exposure.

In Dryden construction workers working at an operating paper mill found themselves working in the plume of the mill's stack resulting in acute and lasting health effects.

Labour's vision for a healthy environment has been founded on sustainability. By this we mean a sustainable economy, sustainable employment, sustainable production and the public services that support a just and sustainable society.

Sustainability involves reducing our reliance on toxic substances in the workplace through toxic use reduction, substitution strategies and extended producer responsibility requirements. Labour understands that some jobs will be lost in a move towards sustainable work. A meaningful Just Transition program for workers and communities affected must be a legal right if workers and communities are to be spared the devastation that comes with the loss of good paying union jobs.

The Precautionary Principle needs to become integrated in the primary decision-making process dealing with public and private proposals that could impact the environment. It also needs to be integrated into a worker's environmental rights. Just as workers need meaningful reprisal protection in workplace health and safety issues, workers need reprisal protection when they refuse to pollute or report their employer for violations of environmental legislation.

Coalition Building

A number of unions recognize the importance of reaching out to other organizations and building coalitions. Labour needs to work at strengthening coalitions and community connections

between labour and environmental groups.

Examples of this include Blue Green Canada and Great Lakes United. Blue Green Canada is an alliance between the United Steelworkers and Environmental Defence working in partnership to support the development of good green jobs as part of a new green economy. Great Lakes United is an international coalition dedicated to preserving and restoring the Great Lakes-St. Lawrence River ecosystem whose members include environmental groups, unions, labour councils and others.

Clean Production

Ontario needs a public institute to deal with issues of toxic use reduction and green chemistry, so we can move forward on clean production. The principles of clean production involve:

- Preventative Approach
- Right to Know
- Right to Participate in Decisions Affecting Public
- Occupation, and Environmental Health
- Precautionary Approach
- Extended Producer Responsibility
- Citizen Responsibility for Sustainable Consumption

Water is Life

The right to clean drinking water in the workplace was a fight that unions, in a number of sectors, had to take on for their members. Today, in some communities, the water coming out of

the tap in their homes is not fit to drink. A lack of proper sewage treatment facilities, agricultural animal waste and toxins leaking into the water table from dump sites or agricultural runoff are some of the ways that water can be made unfit to drink. Water is life but governments refuse to recognize access to clean drinking water as a fundamental human right. Rural communities and First Nation communities understand firsthand the value of the clean drinking water most others don't even consider when they turn on their taps.

Conservation of clean water needs to go hand-in-hand with conservation of energy. Retrofitting to reduce water use can be done while retrofitting to reduce energy consumption.

More than 40 million people live in the Great Lakes Basin which holds 20 percent of the world's fresh water. It seems a limitless supply, yet 99 percent of the water was deposited there when the glaciers melted – just one percent comes from rain and snow melt.

What goes into the Great Lakes, stays in the Great Lakes. Toxic chemicals, invasive species, global warming and consumption demands are some of the major threats to the health of the waters that 40 million people and many jobs depend upon.

Environmental Restoration

Environmental restoration of our lands, water, wetlands and forests would mean a reinvestment in public services to research the solutions and co-ordinate the work. The land, through which rivers and creeks run, needs trees to shade them and reduce the water temperature in the summer so that native species of fish can return. Wetlands are natural filters and

breeding grounds or nurseries for many native fish, birds and other wildlife. Forests need to be replanted as diversified ecosystems that support wildlife rather than single species of trees planted for easy harvest. These are silent forests devoid of the wildlife that once lived there. These forests are also very vulnerable to invasive insects because without the predators found in diversified forests the insect population explodes and can soon destroy entire swaths of forest.

Protecting Food Sources

Some work has been done to protect farm land in southern Ontario from the urban sprawl of the Greater Toronto Area; but farmland in other parts of the province is under threat.

In urban centres there are often small parcels of land that could be used for food crops. There needs to be support and encouragement for municipalities to establish community gardens for tenants to enable them to grow some of their own vegetables.

Protecting our food involves more than just protecting our farm land. The demand for ethanol, to reduce our dependence on oil-based fuels, is resulting in farmland being used to grow the crops to create ethanol. There needs to be a shift in how ethanol is produced from food crops such as corn to other sources such as agricultural waste.

Waste

The government is redefining what is considered “renewable”. They are currently trying to define household garbage as a renewable energy source and garbage incinerators as renewable energy generators. Incinerators by any name spew toxins into the air and what goes up eventually comes back down.

The greatest source of mercury contamination in the Great Lakes today comes from the sky. Coal fired generators and incinerators release mercury into the air which then falls with the rain.

As the government moves to ban the incandescent light bulbs made in Ontario in favour of the florescent lighting tubes and Compact Florescent Lights, concern is growing about the impact from the mercury they contain. The lights are still part of the household waste stream. Recycling is possible. However, the facilities to handle the volume being purchased do not yet exist.

Reuse

Reuse stores which sell secondhand building products and construction materials reclaimed following building renovations, are becoming popular. Reclaiming these materials is currently done on a small scale. Financial support and incentives or minimum requirements for the reuse of construction materials following renovations could expand this sector.

Green Procurement

Procurement programs for domestic content could also have a green component to help drive the demand for green jobs.

The establishment of an Environmental Ventures Fund could provide capital for manufacturing capacity for environmentally friendly products and seed funds for environmentally friendly services.

Green tax reform by a reduced provincial tax on specific environmentally friendly products or products with post-consumer recycled content would help to offset any increased purchase price for greener products.

A procurement program for government, provincial crown agencies and “MUSH” (municipalities, universities, school boards, hospitals) sectors needs to go beyond where the product is made. Some products are simply no longer made in Canada. Suppliers and importers should be able to certify products for minimum standards around fair wage, environment and workplace health and safety before public funds are used to make these purchases.

Cope343

Endnotes

Employment Standards -- Labour Relations Section

-
- ¹ Yalnizyan, Armine. (2007, May). Ontario's Growing Gap: Time for Leadership. *Canadian Centre for Policy Alternatives*. Toronto: Author. p.12
 - ² Workers' Action Centre. (2007). *Working on the Edge*. Toronto, Ontario: Author. Retrieved from <http://www.workersactioncentre.org/Documents/pdfs%20policy/Working%20on%20the%20Edge-May%202007.pdf>. p.6
 - ³ International Metalworkers' Federation (IMF). (2007). Global Action against Precarious Work.
 - ⁴ Statistics Canada. (2006). Earnings and Incomes of Canadians over the past Quarter Century. Retrieved from <http://www12.statcan.ca/english/census06/analysis/income/eicopqc36.cfm>.
 - ⁵ Workers' Action Centre. (2007). *Working on the Edge*. Toronto, Ontario: Author. Retrieved from <http://www.workersactioncentre.org/Documents/pdfs%20policy/Working%20on%20the%20Edge-May%202007.pdf>. p.5
 - ⁶ OPSEU. (2009) Weathering the Storm [Campaign]. Retrieved from <http://www.opseu.org/campaign/weatheringthestorm/WeatheringtheStormMar2409.pdf>
 - ⁷ Workers' Action Centre. (2007). *Working on the Edge*. Toronto, Ontario: Author. Retrieved from <http://www.workersactioncentre.org/Documents/pdfs%20policy/Working%20on%20the%20Edge-May%202007.pdf>. p.5
 - ⁸ Schwartz, K. (2008). A Million Reasons! The Victory of the \$10 Minimum Wage Campaign. Toronto: Toronto and York Region Labour Council.
 - ⁹ Workers' Action Centre. (2009). New Protection for Temp Agency Workers Passed by Ontario Legislature! Retrieved from <http://www.workersactioncentre.org/>
 - ¹⁰ Ministry of Finance. (2009). 2009 Ontario Budget Sector Highlights: Poverty Reduction Strategy. Retrieved from: <http://www.fin.gov.on.ca/english/budget/ontariobudgets/2009/sectors/povertysh.html>
 - ¹¹ NDP Ontario (2009, May 29) NDP proposes sweeping employment standards changes <http://ontariondp.com/ndp-proposes-sweeping-employment-standards-changes>
 - ¹² Centre for Constitutional Studies (2007, June 8). *Health Services and Support - Facilities Subsector Bargaining Assn v. British Columbia*. Retrieved from: <http://www.law.ualberta.ca/centres/ccs/rulings/facilityessubsectorbargainingassn.php>
 - ¹³ UFCW. (2008, November 17). Ontario Court of Appeal rules Ontario law excluding agriculture workers from collective bargaining violates Charter of Rights and Freedoms. Retrieved from <http://www.ufcw.ca/Default.aspx?SectionId=af80f8cf-ddd2-4b12-9f41-641ea94d4fa4&LanguageId=1&ItemId=de67f14c-925d-4b7c-bf52-accb7a6c2ac8>
 - ¹⁴ OPSECAAT. (2008, June 12). Part-timers and Sessionals win hard-fought victory at Queen's Park [Newsletter]. *The Part-Time Times*. Retrieved from <http://www.opseu.org/caat/parttime/PartTimeTimesJun1208.pdf>