

**12<sup>TH</sup> OFL BIENNIAL CONVENTION  
NOVEMBER 25-29, 2013  
TORONTO, ON**

**OFL CONVENTION REPORT**

***HEALTH & SAFETY /  
WORKERS' COMPENSATION***

**RISING  
TOGETHER**



**ONTARIO FEDERATION OF LABOUR**



**Convention Report: Health & Safety / Workers' Compensation  
November 25, 2013 • Ontario Federation of Labour (OFL)**

The Ontario Federation of Labour (OFL) represents 54 unions and one million workers.  
It is Canada's largest provincial labour federation.

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# 1.

## HEALTH & SAFETY COMMITTEE

### KILL A WORKER, GO TO JAIL

The horrifying 2009 Christmas Eve tragedy in which four workers fell to their deaths and a fifth was terribly injured when their scaffold collapsed, continues to have a significant impact on the work of the Ontario Federation of Labour (OFL).

This tragic event inspired the OFL's Kill a Worker, Go to Jail campaign and played an instrumental part in the creation of the Expert Panel on Occupational Health and Safety. The resulting legislation, Bill 160, which amended the *Occupational Law Amendment Act*, established a permanent Prevention Council and improved health and safety standards for all workers. On August 30, 2011 the Ontario government appointed George Gritziotis as the province's first Chief Prevention Officer (CPO).

Using every avenue available, including legal, legislative, the collective power of the labour movement and the mass media, 'Kill a Worker, Go to Jail' continues to call for the use of the Bill C-45 *Criminal Code* of Canada provisions. Not just corporations, but also their directors and officers face large fines and imprisonment for failing to protect the health and safety of their employees or the public if they are convicted. The OFL has called on the province, the courts and the police to ensure that all possible tools are being utilized to reduce workplace deaths and injuries.

Known as the "Westray Bill," C-45 was passed in 2003 following 12 years of lobbying by the United Steelworkers. It was prompted by the deaths of 26 men in the Westray coal mine explosion in 1992 in Pictou County, Nova Scotia. In the six years prior to the Kill a Worker campaign, Bill C-45 was never used in Ontario, yet more than 400 workers had been killed on the job and nearly two million injured.

For the first time, Bill C-45 prosecutions have taken place in Ontario. Joel Swartz, the CEO of Metron Construction, the company responsible for the four workers' deaths, and others associated with the scaffolding collapse were charged. Facing four counts of criminal negligence causing death and one count of criminal negligence causing bodily harm, the charges against the owner and the company were separated the charges facing the supervisor.

However, on July 13, 2012 workers' hopes for justice plummeted when Swartz signed a plea bargain that protected him from criminal conviction. As part of the deal, the court levelled a meager fine of \$200,000 for criminal negligence in the death of the four workers and serious injury of a fifth. An additional fine of \$90,000 was meted out for an *Occupational Health and Safety Act* violation against Swartz, but it was the leniency of the criminal conviction that led the OFL to call on the Crown to appeal the sentence.

The verdict captured incredible media attention because it marked the first time that an Ontario company had been convicted in a criminal court for a workplace death since the *Criminal Code* of Canada was amended in response to the 1992 Westray Mine disaster.

On August 21, 2012 the OFL applauded the Ontario Attorney General's appeal of the Metron sentence on the grounds that it was "manifestly unfit" and based on an erroneous sentencing assessment.

While workers are waiting for the appeal to get underway, a preliminary trial decision issued on January 10, 2013 has breathed new hope into the call for justice. The presiding judge found sufficient evidence to force Metron's Project Manager Vadim Kazenelson to stand for criminal trial and face a potential conviction that could result in imprisonment for failing to ensure safety protocols at the work site. The trial is expected in the late fall of 2013.

The criminalization of negligence is a powerful deterrent and the OFL continues to push for its routine consideration every time a worker is killed on the job.

Since the campaign was launched, the OFL has issued public letters to Ontario's Premier and Attorney General, held meetings with government officials and launched numerous Bill C-45 media initiatives. The OFL has repeatedly called for a meeting with the Minister of Community Safety and Correctional Services to discuss the steps the Ministry has taken to inform and educate the police with respect to conducting investigations with Bill C-45 provisions in mind and in order to complement the work Ministry of Labour (MOL) inspectors. A succession of Ministers has declined to meet with the OFL.

The OFL has had more success with the Attorney General. In February of 2012, the OFL met with the Director of the Criminal Policy Branch of the Ministry of the Attorney General to discuss the training of Crown Attorneys on *Criminal Code* prosecutions of negligent employers.

Ministry officials agreed to update Bill C-45 materials for Crown Attorneys in time for the 20th anniversary of the Westray Mine disaster. They also promised to collaborate with the OFL to educate Crown Attorneys on Bill C-45 provisions. The Ministry invited the OFL to assist with summer and fall training programs for Crown Attorneys. They also promised to provide contact information regarding police colleges.

Staff changes at the Ministry delayed some of this work but the OFL has connected with the new staff and the Ontario Police College to push for better training for both the Crown Attorneys and police. The OFL has also met with senior officials of the MOL and pushed for more integrated investigations with their inspectors and the police.

In the meantime, most of the work of educating police departments has been left to the labour movement. The OFL's package of Bill C-45 educational materials is sent to police immediately upon learning of a worker's death. A major roadblock is the lack of public information. We only know about a death if it is in the media or flagged by unions or labour councils. To date, the OFL has contacted 25 police forces, often on numerous occasions, to alert and educate them on the *Criminal Code* provision and urge its use. We have also contacted Police Associations speaking union to union to educate them on this issue.

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### **EXPERT PANEL ON OCCUPATIONAL HEALTH AND SAFETY**

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The prominence of the Kill a Worker, Go to Jail campaign led to the government's January 2010 announcement of its Expert Panel on Workplace Health and Safety. The panel consumed thousands of hours of our efforts to achieve the strongest recommendations possible. Its final report, released December 2010, contained 46 recommendations dealing with structural, operational and policy improvements to Ontario's health and safety system.

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## **BILL 160: REVAMPING WORKPLACE HEALTH & SAFETY**

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When the enabling legislation for the priority recommendations was finally introduced through Bill 160, numerous recommendations were not in keeping with the spirit and intent of the Expert Panel.

The OFL called affiliates to a full and frank meeting with Labour Minister Charles Sousa to enumerate six major areas of concern and noted that without changes, the labour movement would not support the legislation. The OFL also helped to establish a meeting between OPSEU and the Ministry of Labour which successfully reversed the Ministry's attempts to tie the hands of health and safety inspectors and to make them "not competent" to be witnesses at hearings on reprisal protection.

In addition to highlighting the obstacles for health and safety inspectors, we drew attention to the following:

- The politicization of health and safety by investing the Minister of the day with powers that were meant for the Chief Prevention Officer;
- The need for specific provisions to designate and fund both the Occupational Health Clinics for Ontario Workers (OHCOW) and the Workers Health and Safety Centre (WHSC);
- Administrative barriers to Joint Health and Safety Committee recommendations to the employer; and
- Insufficient worker protection from reprisals by employers.

Bill 160 was passed unanimously in May 2011. Many important changes did not come into effect until the spring of 2012. Some recommendations could not be acted upon until these changes came into effect. We will need to remain vigilant to ensure the government fulfills its obligations and live up to the Expert Panel recommendations.

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## **PREVENTION COUNCIL**

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On August 10, 2012 the Ontario government finally unveiled the province's first Prevention Council on Occupational Health and Safety. Included in the announcement was the appointment of

OFL Secretary-Treasurer Nancy Hutchison and four other worker representatives to advise the government on measures to protect workers across the province.

Labour representatives on the Council are Patrick Dillon (Provincial Building and Construction Trades Council of Ontario), Colin Grieve (Ontario Professional Fire Fighters' Association), Bryan Neath (United Food and Commercial Workers Canada) and Linda Vannucci (Toronto Workers' Health and Safety Legal Clinic). Three years after the tragic and unnecessary deaths of four Toronto construction workers and the critical injury of another, the families of the victims are still waiting for a negligent employer to face jail time.

Acting on recommendations from the 2010 expert advisory panel, Ontario's newly minted prevention office announced plans to develop its first province-wide occupational health and safety strategy to establish a clear vision, goals and priorities for the years ahead. The Ministry of Labour released a consultation document in March 2013 to generate discussion and collect feedback and ideas for developing the strategy.



The document specifically prioritizes the needs of vulnerable workers who have an increased risk of exposure to conditions that are hazardous to their health or safety and, through socio-economic circumstance, are unable to move from those conditions. Young workers, recent immigrants, aboriginal peoples, older workers, new workers, temporary foreign workers, temp agency workers and those holding multiple part-time or low-paying jobs are identified as particularly vulnerable.

These workers are put at risk by employers who are not committed to safety, by a lack of experience, training, and knowledge of their rights, and by a fear of deportation or reprisal for exercising their rights. However, the government has also identified difficulty in reaching out to these workers due to cynicism towards government, language limitations and working within the underground economy.

To better address these vulnerable populations, the OFL arranged for a special meeting of the Ontario Common Front with the Ministry's Chief Prevention Officer George Gritzotis and staff. This unique meeting provided for the first time an opportunity for the many marginal voices to be heard by the government.

The OFL's Health and Safety Committee also participated in the consultation during a special meeting with the Ministry on April 16, 2013.

Early this spring, the Ontario Ministry of Labour released a consultation paper on the development of a province-wide occupational health and safety strategy. The document specifically prioritizes the needs of vulnerable workers who have an increased risk of exposure to conditions that are hazardous to their health and safety.

The OFL weighed in on the consultation with a substantive submission and by bringing the voices of vulnerable workers directly to the Ministry's Prevention Council through the Ontario Common Front.

In its submission, the OFL called for the elimination of Behaviour Based Safety (BBS) practices, the imposition of a "precautionary principle" approach in Ontario workplaces, an emphasis on workplace inspection, greater safety enforcement and a comprehensive strategy for occupational disease prevention.

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## **PRECAUTIONARY PRINCIPLE**

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It has now been over seven years since Justice Archie Campbell's ground-breaking report on what went wrong in Ontario's response to the SARS crisis, but there is still no action on its major recommendation: the Precautionary Principle. Campbell called it "the take home message" of the report. In the meantime, new communicable diseases and drug-resistant superbugs are finding their way into hospitals and scores of new chemicals, processes, nano-materials and other hazards are introduced to manufacturing plants and classrooms. The OFL and affiliates need to redouble efforts to ensure the principle is incorporated into the *Occupational Health and Safety Act* and the many other standards, statutes and regulations specified in Campbell's report.

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## HAMPSTEAD TRAGEDY

A tragic head-on collision near Hampstead, Ontario claimed the lives of 11 people on February 6, 2012 and left three survivors in critical condition. The tragic accident occurred when a cargo van carrying migrant farm workers collided with a flatbed truck. The tragedy mirrored recent fatal accidents elsewhere in Canada. However, the Hampstead tragedy claimed the greatest number of workers' lives in a single event since the Westray Mine explosion that killed 26 workers just over 20 years ago.

The OFL moved quickly to respond to the tragedy and President Sid Ryan secured confirmation from the Workplace Safety & Insurance Board (WSIB) Chair Steve Mahoney that the victims would receive workers' compensation and family survivor benefits.

The OFL took a number of additional actions:

- Called upon the province to guarantee a Coroner's inquest into the incident and ensure that all levels of government work together to prevent similar catastrophes in the future;
- Called for a full investigation into the tragic accident; and
- Called for a prohibition on the use of similar vehicles to transport people.

On February 6, 2013, the eve of the anniversary of the tragedy, the Coroner's Office announced that no inquest would be held.

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## USW INVESTIGATES VALE FAULT IN MINING DEATHS

In June 2011, two workers at the Stobie Mine near Sudbury, owned by multi-national mining company Vale Canada, were killed when a "run of muck" came crashing down and engulfed them. Within days of the tragedy, the OFL called on the Sudbury

Chief of Police to conduct an investigation based on the Bill C-45 *Criminal Code* provisions.

The OFL also supported the USW's call for a public inquiry into the safety of Stobie and other Ontario mines and for a ministerial committee to review current Health and Safety legislation and enforcement.

In a plea deal the USW referred to as a "betrayal" the company pled guilty to three violations of the *Occupational Health and Safety Act* and received a fine of \$350,000 for each count. This was far short of the \$500,000 they could have received for each count.

No criminal charges were brought by police despite the evidence exposed by the USW investigation that the company willfully violated the legislation and ordered protective barriers be removed from the mine. In letters sent in September to Ontario's Attorney General (AG) and Minister of Community Safety and Correctional Services (MCSCS), the OFL demanded answers as to why the Canadian managers of Brazilian mining giant Vale were not criminally charged for the deaths of the two miners.

The OFL called on the MCSCS to use the powers under the *Police Services Act* to issue a directive to all Ontario Police Services to establish policies and procedures to investigate workplace deaths and serious injuries through the Bill C-45 amendments to the *Criminal Code*.



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## **BAD GAS CAMPAIGN**

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On September 15, 2012, Toronto gas station attendant Jayesh Prajapati was run over and killed during pursuit of an SUV driver who stole \$112 worth of gas from the Shell gas station where he worked. Allegations quickly surfaced about franchise owners illegally docking workers' wages to pay for stolen gas.

The OFL immediately sent letters to the Toronto Police Service and the Minister of Labour calling for full investigation into the policies of Shell Canada and the possible role they played in the tragedy.

On September 18, the OFL launched the Bad Gas Rip-Off Hotline so that gas station attendants and late night retail attendants could report employers who were illegally docking their wages to cover the cost of customer theft. Announcing the hotline publicly in several mainstream radio, television and print media outlets, the OFL further promoted the toll-free number through nearly 1,500 faxes sent to local gas stations and 3,000 automated voice messages to workers.

Dozens of current and former gas attendants, and even a former Toronto police officer, called in to report illegal or unfair corporate policies, demonstrating that the problem is widespread across the province and oil companies.

The OFL enlisted the help of labour councils to distribute 20,000 business-sized cards telling local gas attendants to call the OFL if the employer deducted their wages.

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## **BEHAVIOUR BASED SAFETY**

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Concerns have been raised by affiliates that the focus by too many employers is that workplace health and safety is only the worker's responsibility. Employers are putting the burden for health and safety on workers. Committee members are reporting a growing trend in the workplace to "blame the worker" and use discipline for health and safety issues rather than addressing the root cause or eliminating the hazards. This is even worse when it happens in workplaces with a lot of vulnerable and non-union workers. We have heard some terrible stories from Committee members about Behaviour Based Safety (BBS) initiatives in workplaces and the immense pressure on workers to agree to a BBS approach. Sadly, it is also gradually leading to some workers accepting that this is just the way things are.

There are many workers who feel pressure to accept what should be unacceptable working conditions – especially public servants – due to their role in society, such as education workers, health care workers, and too many others.

The BBS practices by employers have negative impacts on union solidarity and is a union busting tactic. These practices also distort the statistics of true injury/accident rates with the non-reporting which comes from fear of reprisals. The fraudulent injury statistics are then used by government to determine the allocation of enforcement and other resources for the protection of workers.

These practices are being used by employers around the world making this a worldwide issue for labour. It is a divide and conquer approach which attempts to eliminate any involvement of joint health and safety committees, health and safety representatives and unions.



BBS is in conflict with the more modern and realistic prevention strategy of the hierarchy of control principle which calls first for controls at the source, such as elimination of the hazard, the use of engineering controls, substitution of toxic materials, etc; then controls along the path such as local ventilation; then using personal protective equipment and administrative controls as a last resort.

The OFL has been working with affiliates to develop strategies and a campaign to combat BBS programs. This includes proposals for legislative change, collective bargaining language workplace, awareness tools and education of the membership.

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### **CAMPAIGN FOR EDUCATION SECTOR REGULATIONS**

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Education environments face a huge regulatory gap when it comes to the protection of education workers.

In addition to having the same hazards as virtually every sector of the Ontario economy, (but no regulatory protection other than the general duty clause); the education sector faces unique hazards and situations which an education-specific regulation could address.

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### **VISION FOR THE FUTURE**

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The OFL Health and Safety Committee continues to work on a broad range of issues in the health and safety field. It has worked to keep affiliates up-to-date on those issues as well as the concerns of the Committee. The Committee has met with

Ministry of Labour staff including those from the newly created Prevention Office to discuss issues of concern to affiliates. Issues discussed have included enforcement of the legislation, Ministry policies and procedures as well as lobbying efforts around BBS and education sector regulations.

The OFL Health and Safety Committee continues to network with the Workers Health and Safety Centre (WHSC), the Occupational Health Clinics for Ontario Workers (OHCOW) and the Toronto Workers' Health and Safety Legal Clinic.

### **Kill a Worker Go to Jail**

We need to keep the pressure on employers to take their occupational health and safety responsibilities seriously and understand that if they kill a worker they could go to jail. The campaign cannot stop until every workplace death is investigated by the police through a Bill C-45 lens and negligent employers are sent to jail for killing workers.

### **Behaviour Based Safety**

The OFL will continue to work with affiliates to combat Behaviour Based Safety programs.

## Expert Panel

Labour will need to continue to be vigilant to ensure the government lives up to its promises to ensure that the Review Panel's recommendations are implemented. The Prevention Council will be dealing with a number of the recommendations on training and research. The OFL and affiliates will be working to drive these issues in the right direction for workers.

## Education Sector

Education environments face a huge regulatory gap when it comes to the protection of education workers. The OFL and affiliates will continue to push for sector regulations and the establishment of a Section 21 committee to advise the Minister of Labour on recommendations for better prevention in this sector.

## Psychological Hazards

Current legislation does not do enough to ensure workers are protected from psychological hazards in the workplace. There is a significant gap that needs to be filled through regulation that will better protect workers from violence, harassment, bullying and other issues that can result in mental injury.

The Ontario Federation of Labour, in co-operation with its affiliates and social partners, will continue to work to advance health and safety principles to protect all workers. Issues such as ergonomics, engineered nano-materials, health and safety in the agricultural sector and occupational disease prevention will continue to occupy the department and committee.

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## HEALTH & SAFETY COMMITTEE MEMBERS

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- Eddie Ste. Marie (CLC)
- Blain Morin (CUPE)
- Valence Young (ETFO)
- Rick Sansom (IAMAW)
- Keith Rattai (IFPTE)
- Mike Dix (Ironworkers)
- John Pecsenye (OECTA)
- Jane Ste. Marie (OSSTF)
- Mark Scott (PSAC)
- Jim Wright (UFCW)
- Keith McMillan (Unifor)
- Sari Sairanen (Unifor)
- Andrea Babbington (UNITE HERE)
- Sylvia Boyce (USW)

### OFL Officer & Executive Board Members:

- Nancy Hutchison, OFL Secretary-Treasurer
- Pearl Sawyer, OFL VP-UFCW

### OFL Staff:

- Vern Edwards, OFL Health & Safety Director

The Committee would like to thank all those who participated since the last convention.

## 2.

# WORKERS' COMPENSATION COMMITTEE

## WSIB FUNDING REVIEW

The Funding Review of the Workplace Safety and Insurance Board (WSIB) conducted by Professor Emeritus Harry Arthurs, former Dean of Osgood Hall Law School at York University, held public consultations across Ontario to hear from unions, legal clinics, injured worker groups, individual injured workers and employers. The OFL made a presentation before the panel, raising concerns about deeming, universal coverage, cost-of-living indexing of benefits and experience rating. Other labour organizations also made presentations, including CAW National and Locals 112, 636 and 707, CUPE Ontario and Local 1750, ETFO, ONA, OSSTF District 9, UFCW Local 1000A, USW District 6 and Local 6500, Sudbury and District Labour Council, Thunder Bay and District Labour Council. Professor Arthurs also heard from ONIWG, legal clinics that specialize in workers compensation and the Office of the Worker Advisor (OWA). Most raised concern with the scope of the funding review, which excluded the 38 percent of workers currently not covered by the system. If all employers paid into WSIB, it is estimated that an additional \$500 million in revenue would be realized.

Professor Harry Arthurs met with all stakeholders and announced that he was considering recommendations from the OFL and injured worker groups to deal with full indexing of injured workers' benefits going forward, as well as a more flexible approach to WSIB funding. He noted that the WSIB's experience rating program needed to be reconfigured to put "health and safety" and "return-to-work" at the forefront. In order to achieve this goal, rigorous study would be required and initiatives must be subject to a sunset clause to evaluate the work and ensure that the objectives are met.

Four months after receiving Professor Arthurs' final report on the Workplace Safety & Insurance Board (WSIB) finances, the Ministry of Labour finally released it to the public in late May of 2012. The reason for the delay is not hard to imagine. At a time when WSIB senior management has launched an unprecedented attack on injured workers in the name of fighting the Board's unfunded liability, the "Funding Fairness" report is a rare attempt at genuine even handedness. Arthurs' investigation uncovered vital facts about the nature and scope of the injustices facing injured workers, even if some of the recommendations are more modest than were hoped. However, with the report in hand, the challenge facing injured worker activists is to press the government and newly appointed WSIB Chair Elizabeth Witmer to take action to resolve the unfairnesses Arthurs has exposed.

For decades, the Board's unfunded liability has been a cudgel in the hands of employers and right-wing politicians. Playing on negative views towards government debt and deficits, it has been argued that injured workers must accept less until the WSIB's finances are fixed. However, when benefits have been cut, the resulting "savings" have gone to premium holidays for employers rather than eliminating the unfunded liability. The Arthurs Report cut through the alarmism by distinguishing between a debt and a deficit and making the point that future liabilities can be funded by future revenues. While recommending that the Board strive for full funding within 20 years, Arthurs strongly argued against squeezing injured workers to meet that goal. Despite pegging the current unfunded liability at \$14.5 billion, he maintained that administrative investments and compensation enhancements for injured workers should not be sacrificed.

Arthurs' most important recommendation is that the government should reinstate annual inflation adjustments equal to 100 percent of the change in the Consumer Price Index (CPI) and help workers affected by past cuts. Under the formula in place since 1995, these workers have not received any inflation adjustments except when inflation exceeds the Bank of Canada's two percent target rate. The impact of frozen benefits cannot be over stated. For workers injured before the year 2000, benefit cheques have experienced a real dollar cut of 20 percent.

While Arthurs, does not recommend the full redress for this shortfall, he does propose full inflation indexing for all injured workers going forward and catch-up funding to reduce the current losses by 40 to 45 percent for affected workers. This recommendation follows years of activism by the labour and injured worker movements, but the battle is far from won.

Despite the modesty of the recommendations, the Ministry of Labour media release that accompanied the Arthurs Report offered a meagre 0.5 percent adjustment for 2013 and 2014. Another important conclusion of the Report is that the WSIB's experience rating programs must either be redesigned to eliminate employer abuses or be terminated. Arthurs found that the years of abuse amounts to "moral crisis" for the WSIB. The Board's experience rating programs calculate premium rebates and surcharges based on reported accident frequency and benefit costs. Although presented as promoting healthy workplaces and return-to-work for injured workers, they also encourage employers to suppress claims and obstruct the payment of benefits. Arthurs recommended that unless and until experience rating can be significantly redesigned, with worker involvement to guarantee healthy workplaces and return-to-work, the program should be scrapped. In the interim, however, he calls on the Board to take decisive action to stop employer abuse by the end of 2012.

Although the Report's recommendations do not reflect all of the demands that the OFL and injured worker activists made during the consultation process, the findings represent a vital step forward. With the knowledge gained through the review process and the findings contained in the final report, the labour movement has strong tools to lobby politicians and bureaucrats to take action to deliver justice to injured workers. The OFL, affiliates and partners in the injured worker community will continue to keep pressing for change, but activist support has never been more crucial.

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## **WSIB POLICY CONSULTATION**

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In late fall of 2011, the Workplace Safety and Insurance Board (WSIB) announced that it was preceding with a policy consultation agenda that appeared to be based on the KPMG Value for Money Audit. This resulted in a push-back by affiliates.

The OFL and members of the WSIB's Labour Injured Worker Advisory Committee to the Chair (LIWAC) met with senior officials at the Board and was successful in changing the course of the consultation process. The Board has agreed to establish a Consultation Secretariat to oversee the process and hire an arms-length chair who is respected by the workplace parties. The Secretariat will involve stakeholders in developing discussion papers and identifying key facts, data and information, including jurisprudence from the Tribunal and policies from other jurisdictions. This included a proposal to review some key longstanding policies such as aggravation of pre-existing

disabilities, recurrences, permanent impairment and work disruptions. Jim Thomas, former NDP Deputy Minister of Labour, was hired to carry out this role. Thomas developed a green paper for discussion in June and held a technical session in July of 2012, based on the approach taken by Harry Arthurs. Public hearings on the four policies, as well as the Second Injury Enhancement Fund (SIEF), were carried out in the fall of 2012. The OFL held workshops across the province in September to prepare affiliates for the consultations.

In June 2013, the WSIB released the final report of the Benefits Policy Review Consultation chaired by Jim Thomas. The report is more modest and less clear than many had hoped, but, with the exception of a few areas of concern, most of the recommendations help to set the stage for a new policy consultation that should result in better policies than those initially proposed by the Board.

One of the most important recommendations to the Board is that Benefit policy reviews should focus on work-relatedness, not cost. Chair Thomas explained: "... the starting point should be to assume that a benefits policy that has been in place for many years most likely is drawing the line roughly in the right place. ... Most stakeholders felt the policies as written were "just fine." ... If the WSIB believes that the work-relatedness line is being drawn in the wrong place, the WSIB needs to make the case for moving the line. And when the WSIB does make the case for re-drawing the line, it should be for work-related and not cost reasons. Entitlement to benefits is established through causation provisions in the *Act* ... None of those provisions includes the WSIB's ability to pay as a factor in deciding where to draw the line."

Chair Thomas' final recommendations address the process the WSIB should employ in the future to consult with stakeholders. In this section, Chair Thomas reflects what stakeholders reported about their reaction to WSIB adjudicative changes in the past few years. Stakeholders said that the WSIB was already drawing a narrower work-relatedness line than in the past, and that these changes appeared to be financially motivated.

In response to these concerns, Chair Thomas notes, "whatever the motivation, it is difficult to avoid the conclusion that the way the changes occurred did not foster a positive environment for this consultation process." He recommends that, in the future, if the WSIB believes it needs to re-draw the work-relatedness line, it should provide stakeholders with a discussion paper explaining its reasons – and those reasons should not be based on cost.

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## **NO MORE CAP IN HAND!**

Hundreds of injured workers brought their message to Queen's Park on June 1 to mark Injured Worker's Day with music, performances, heart-breaking stories and hard-hitting political messages. The OFL proudly lent its support to the Toronto Injured Workers Advocacy Group (TIWAG) and the Ontario Network of Injured Worker Groups (ONIWG) who dedicated the day's events to the poverty facing injured workers in Ontario. The OFL released a backgrounder on workers' compensation that drew attention to the fact that roughly 28 percent of employers in Ontario get a free ride from the Ontario government by not paying into the province's workplace health and safety prevention and enforcement systems. The nearly 38 percent of

workers left out of Workplace Safety and Insurance Board (WSIB) benefits, are forced to turn to taxpayer funded social programs for support when they are injured on the job.

The OFL called on the government to:

- Put an end to the poverty facing injured workers;
- Extend mandatory WSIB coverage for all workers, in all sectors;
- Restore injured workers benefits to the full cost of living;
- Eliminate experience rating; and
- Eliminate “deeming” and practices that limit injured workers’ post-injury benefits.

June 1, 2013 marked the 30<sup>th</sup> Anniversary of Injured Workers’ Day. All three OFL officers joined over 150 injured workers and advocates who brought their demand for justice to Queen’s Park. Since 1996, the amount employers pay into the Workplace Safety and Insurance Board (WSIB) has dropped from \$3.20 per \$100 of payroll to \$2.26. The WSIB released a KPMG report aimed at further slashing this important program. Since that report’s release, the WSIB has increased the denial of new claims by nearly 50 percent, decreased the average benefit at final review by nearly 30 percent, cut the number of injured workers who receive a permanent impairment assessment by about 30 percent and laid off more than 300 WSIB staff.

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## **COMPENSATION FOR OCCUPATIONAL DISEASE**

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In June, the OFL sent a letter to Premier McGuinty to advocate for the victims and survivors of occupational disease. After an employer-led lobby campaign in 2009, the Workplace Safety and Insurance Board (WSIB) changed its operational practice of paying loss of earnings (LOE) benefits when a worker is no longer in the workforce and no longer has earnings to lose. Previously, the WSIB had paid loss of earnings benefits for new occupational disease claims that were diagnosed well after the worker had retired from the workforce. LOE benefits were also paid when a worker underwent surgery after retirement, even when retirement was voluntarily. The Workplace Safety and Insurance Appeals Tribunal (WSIAT) concluded that the WSIB did not have the statutory authority under Section 43 of the *Workplace Safety and Insurance Act, 1997* to award LOE benefits where the worker had no loss of earnings. The WSIB has since rejected the claims of many victims and survivors of occupational disease. However, this issue does not blur the facts that in occupational disease claims, if the evidence proves on a balance of probabilities that the workplace exposure significantly contributed to the disease the worker should be compensated. The OFL’s letter called for the repeal of this policy on the basis that it ignores the significant latency period that often follows harmful exposure and the development of disease. It reminded the Premier of the “historic compromise” of 1914 in which workers gave up their right to sue employers for workplace injury or disease in exchange for fair compensation. The OFL met with the Minister in October to discuss strategies for restoring compensation to victims of occupational disease and their survivors.



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## **WSIB CALLED TO STANDING COMMITTEE ON GOVERNMENT AGENCIES**

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On July 4 of this year the Workplace Safety and Insurance Board (WSIB) was called before the Standing Committee on Government Agencies where the OFL, several affiliates and the Ontario Network of Injured Worker Groups (ONIWG) presented strong calls for reform. In its submission, the OFL called for:

- Stronger responsibility for the WSIB Board of Directors in strategic policy decisions;
- The full indexation of benefits for all injured workers to the cost of living;
- The establishment of clear timelines for consultation and implementation of the other key recommendations from the Arthurs Report;
- Full coverage of all workers and sectors in the province, including all independent operators and other individuals carrying out front line work in covered sectors;
- An end to the discriminatory practice of “deeming,” which reduces benefits based on hypothetical earnings from jobs injured workers may not have;
- Full compensation to injured workers for their actual loss of earnings; and
- The restoration of benefits to victims and survivors of occupational diseases diagnosed or treated after the worker retired or passed away.

The OFL also expressed concern about the Board’s plan to implement a new objection and appeals system that will discourage workers from pursuing claims. The OFL called for the WSIB to commit to fulfilling its investigative mandate and devote the necessary resources to deal with the backlog of nearly 5,000 appeals in a reasonable time. It is likely that the WSIB will be called back before the Standing Committee later in the fall.

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## **WITMER MEETS WITH OFL COMPENSATION COMMITTEE**

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On April 3, the Workplace Safety and Insurance Board (WSIB) Chair Elizabeth Witmer attended a round table meeting with the OFL Workers’ Compensation Committee and injured worker activists. The well attended meeting gave the Committee an opportunity to raise concerns about the current direction of the WSIB.

At the meeting, OFL representatives, affiliates and partners in the advocacy and injured worker community raised concerns on a number of issues related to benefit restrictions and reductions to loss of earnings entitlements, including those based on degenerative conditions which were asymptomatic prior to occupational injury. Objection was also raised to the discretionary powers of WSIB claims managers in querying the opinions of treating physicians and reconsidering previous claim decisions without just cause. The priority in all claims assessments must be on protecting the claimant from unnecessary privacy violations and ensuring stability in support. For injured workers and their families who are relying on WSIB support for their own financial well-being, respect for the claimant must be paramount.

Some of the strongest criticism of the board focused on restrictions and limitations that have been placed on the appeals process precisely at a time when workers need access to a thorough and



objective review of operating level decisions. The OFL called for improvements to the appeals process to provide greater flexibility, relaxed timelines and more user-friendly online functionality in order to maximise ease of access and make the appeal process less intimidating. In order to assess the effectiveness of the appeal system and identify areas for improvement, the OFL strongly recommended the collection and publication of data on the nature, frequency and outcome of appeals of oral and written hearings.

The OFL called upon Witmer to implement all of Professor Harry Arthurs' recommendations on experience rating and develop an implementation plan. The only viable and fair alternative would be to immediately abandon the experience rating program altogether.

This meeting lead to another meeting at the OFL with WSIB President/CEO David Marshall and ten senior Board officials on June 21 of this year. The OFL Workers' Compensation Committee addressed a key number of priority issues where unions are having difficulty with the adjudication of claims. David Marshall committed to the OFL to re-establish the Best Practices Working Group. This group meets with senior board staff to identify inconsistencies and problem adjudication areas and develops adjudicative advice documents. These documents are posted on the Board's website and allow representatives to ensure that claims are being adjudicated in a proper manner.

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## **CONTINUING OUR WORK**

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The struggle to fight for justice for injured workers continues. In Ontario, we need a workers' compensations system that fully compensates and supports those suffering a workplace injury or illness, helps workers in returning to employment with dignity and effectively promotes workplace safety.

Justice for injured workers means implementing the following changes:

### **Workers' Compensation System**

- Rename the WSIB Board "Workers' Compensation Board";
- Publicly administered;
- Collective employer liability;
- Primary purpose to compensate injured workers and survivors;
- Recognize and compensate all work-related occupational injuries and diseases;
- Inclusive no-fault coverage of all workers;
- Eliminate experience rating; and
- Regular public review of the *Act*.

## **Adjudication**

- Timely and less bureaucratic;
- Accessible and responsive to injured workers;
- Provided by trained and compassionate adjudicators;
- In the language of the injured worker;
- Provide written clear information to workers about the system and their claim; and
- Penalize non-reporting and under-reporting of claims by employers.

## **Compensation**

- Full coverage that reflects full income loss into retirement and loss to quality of life;
- Continue benefits by employer or established minimum provided by WCB;
- Eliminate deeming;
- Establish a minimum wage loss benefit;
- Full cost of living;
- Protect injured workers' right to CPP and eliminate CPP deduction from benefits;
- Improve benefits and support for survivors of workers who die from occupational injury or disease, including non-dependent survivors; and
- Benefits for secondary victims of occupational disease.

## **Health Care**

- The same as for all Canadians;
- Provide time to heal;
- Worker right to choose health care provider and alternative treatment;
- No employer medical exams;
- Respect workers' doctors; and
- Board doctors and nurse case managers to have no role in adjudication.

## **Vocational and Social Rehabilitation**

- Comprehensive and consultative with injured worker;
- Recognize and compensate for injured workers' limitations;
- Hands-on by WSIB locating opportunities and providing accommodations for suitable employment;
- Joint return-to-work committees in unionized workplaces;
- Penalties for employers who refuse to continue to employ or provide phoney or unsafe work;
- Return-to-work;
- Quality public rehabilitation service; and
- Provide for English as a Second Language training.

## Access to Justice

- The WSIB will not act on an adversarial basis;
- Cases based on merit and benefit of doubt being applied;
- Eliminate time limits for worker appeals;
- Employer right to appeal limited to initial entitlement and return-to-work;
- Full disclosure of all documents and information related to claim to Injured Worker;
- Restricted employer information on claim access; and
- An independent tripartite Tribunal not bound by Board policy with sufficient funding.

## Funded Arms Length Programmes

- Sufficient funding for free representation programs such as the Office of the Worker Adviser (OWA), community legal clinics and legal aid certificates; and
- Proper funding for support systems such as the Occupational Health Clinics for Ontario Workers (OHCOW), Workers Health and Safety Centre (WHSC) and the OFL's Occupational Disability Response Team (ODRT).

In order to accomplish these goals the OFL and affiliates must work closely with the Ontario Network of Injured Worker Groups (ONIWG) to make the plight of injured workers public in order to force the WSIB Board to develop policies and practices that are in line with the original principles of the workers compensation system.

Other changes will require legislative amendments which will take education through conferences, workshops and extensive lobbying efforts by advocates and injured workers.

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## WORKERS' COMPENSATION COMMITTEE MEMBERS

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- |                                |                                 |
|--------------------------------|---------------------------------|
| • Eddie Ste. Marie (CLC)       | • Sherree Backus (UFCW)         |
| • Peter Denley (CUPW)          | • Scott McLmoyle (Unifor)       |
| • James Wood (IAMAW)           | • Denise Norman (Unifor)        |
| • James St. John (Ironworkers) | • Sari Sairanen (Unifor)        |
| • Gino DiCiocco (OECTA)        | • Jim Pasel (USW)               |
| • David Russell (OSSTF)        | • Kathy Yamich (Workers United) |
| • Angela Fairweather (PSAC)    |                                 |

OFL Officer & Executive Board Members:

- Nancy Hutchison, OFL Secretary-Treasurer
- Pearl Sawyer, OFL VP-UFCW

OFL Staff:

- Laurie Hardwick, OFL Organizational Services Director

The Committee would like to thank all those who participated since the last convention.



