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ONTARIO FEDERATION OF LABOUR
CONVENTION 2015

13TH BIENNIAL CONVENTION
TORONTO • NOVEMBER 23-27, 2015

CONVENTION REPORT

HEALTH & SAFETY /
WORKERS' COMPENSATION



ONTARIO
FEDERATION OF
LABOUR



CONVENTION REPORT: HEALTH & SAFETY / WORKERS' COMPENSATION

13th OFL Biennial Convention • November 23-27, 2015 • 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.

OCCUPATIONAL HEALTH & SAFETY REPORT: INTRODUCTION

“Working together with advocates and allies, labour is advancing a broad range of health and safety issues.”

The Committee has continued to work on a broad range of issues in the health and safety field. It has worked to keep the affiliates up-to-date on these issues, as well as the concerns of the Committee. The Committee has met with the Ministry of Labour staff and those from the Prevention Office of the Ministry of Labour to discuss issues of concern to affiliates.

The Committee has three sub-committees. One deals with Behaviour-Based Safety Programs. This sub-committee developed proposed changes to the *Occupational Health and Safety Act (OHSA)* and the *Workplace Safety and Insurance Act (WSIA)*. These changes would help to protect workers from bad employer behaviour resulting from the use of these programs. A copy of the proposed changes was presented to the Minister of Labour.

A second sub-committee looks at health and safety issues specific to the education sector. A third sub-committee prepared a number of suggested resolutions for this convention.

Committee members assisted in preparing the OFL response on the It's Never Okay: An Action Plan to Stop Sexual Violence and Harassment. The document was presented to the Legislative Assembly's Select Committee on Sexual Violence and Harassment on May 20, 2015.

The Committee has also been reviewing the issue of reprisals under the *Occupational Health and Safety Act*.

The Committee continues to network with the Workers Health and Safety Centre, the Occupational Health Clinics for Ontario Workers and the Toronto Workers Health and Safety Legal Clinic.

January 2014

TORONTO STAR ECHOES OFL DEMAND FOR PUBLIC ATTENTION TO WORKPLACE FATALITIES

In a feature story by *Toronto Star* columnist Jim Coyle, OFL President Sid Ryan issued an urgent call for public recognition of every worker who falls victim to a workplace fatality.

Launching his column from the perspective of Christopher Crawford, a Kitchener welder who died tragically in mid-January when the roof of a Target store collapsed, Coyle lamented the shocking lack of public attention for the fallen worker.

According to Ontario's Workplace Safety and Insurance Board (WSIB) statistics, roughly 80 workers are killed each year in workplace accidents. Counting those workers succumbing to long-term occupational diseases acquired on the job, the annual total is usually around 400 lives lost. Along with nearly 250,000 workplace injuries every year, the OFL has been sounding the alarm about this epidemic of workplace tragedies, many of which are preventable or caused by employer negligence.

OFL President Sid Ryan called on the Government of Ontario to bring much needed attention to this issue by holding public ceremonies to commemorate April 28 as the Day of Mourning for Ontario workers killed on the job.

"We have to break the silence about workers who are killed on the job," said OFL President Sid Ryan. "When a police officer falls in the line of duty, there is an outpouring of public sympathy. We need to bring this level of public attention to the many Ontario workers whose lives are sacrificed in the line of duty."

APRIL 2014

APRIL 28 DAY OF MOURNING FOR WORKERS KILLED AND INJURED ON THE JOB

Every year on April 28, OFL, Labour Councils and affiliates honour those that died at work, or from work, and those whose lives have been turned upside down by work-related injuries and illnesses. To some extent, the 2012 statistics on the opposite page tell a story. But numbers cannot begin to describe the reality created for families and loved ones left behind; nor can a number speak about what it's like living without an eye or a hand. For others, the simple acts of breathing or moving are fraught with difficulty as a result of needless exposure to dangerous chemicals and processes. If a number really could tell its story, governments and careless employers would face nothing less than an open rebellion. That's because we each would see ourselves in the tragedies they convey. It could be any one of us, anyone who goes to work for a living - our child, mother, father or friend.

OCTOBER 2014

HEALTH AND SAFETY

In our meetings with the Minister of Labour, health and safety was raised as an important priority for the labour movement. It has been over four years since the tragic accident that resulted in the deaths of four construction workers on a Metron Construction site in West Toronto and over three years since the Tony Dean Expert Advisory Panel released its report on Occupational Health and Safety. However, only a fraction of the recommendations have been acted upon. We urged the government to follow up on the work of the Prevention Office and explore ways to ensure it moves along faster in the coming months. With the Minister of Labour, we also raised the need for sector-specific health and safety regulation in the education sector and concerns about the underlying approach of behaviour-based safety programs.

BRAMPTON BOSSES GET JAIL TIME FOR WORKER'S DEATH: OFL CALLS FOR CRIMINAL CHARGES

The OFL applauded the mid-January Ontario Court conviction against furniture retailer, New Mex Canada Inc., for a 2013 workplace tragedy that claimed the life of a worker. The conviction saw a \$250,000 fine levied against the company for Occupational Health and Safety Act violations, but Justice Jill Fletcher took it one step further when she slapped two of the company's directors with 25-day prison sentences. However, the OFL said there must also be criminal consequences.

"For years now, the OFL has been demanding jail time for employers convicted for putting workers' lives at risk, so yesterday's prison sentence is music to my ears," said OFL President Sid Ryan. "Workplace fatalities have risen 36 percent over the past five years and the only way to stop this carnage in the workplace is to put negligent bosses behind bars."

This conviction follows an OFL "Kill a Worker, Go to Jail" campaign, launched shortly after the Christmas Eve tragedy in 2009 that shocked workers across the country. The collapse of a swing stage at a west Toronto high-rise resulted in four workers plunging 13 stories to their deaths and a fifth was seriously injured. In 2012, Metron Construction received Ontario's first criminal conviction for workplace negligence and a fine of \$750,000.

However, no Ontario employer has ever been sentenced to serve jail time for such a criminal conviction. The OFL will continue to campaign for killer bosses to go to jail.

APRIL 2015

JAIL TIME HANGS IN THE BALANCE IN NEW METRON TRIAL

Five years after the terrible 2009 Christmas Eve tragedy, in which five workers plunged 13 stories from a West Toronto high rise, the OFL continues to fight for justice. Immediately following the incident, OFL President Sid Ryan launched the “Kill a Worker, Go to Jail” campaign that resulted in the 2012 criminal conviction of Metron Construction, the first of its kind in Ontario’s history. The company was fined \$750,000 by the criminal court but, Metron owner Joel Swartz escaped criminal prosecution by pleading guilty to a \$90,000 fine for health and safety violations. However, the courts have continued to pursue charges against other players in the disaster.

In 2014, the Ministry of Labour convicted a third party contractor, Swing ‘N Scaff, who built and supplied the faulty swing stage, levelling a \$350,000 fine against the company and \$50,000 against the owner. This year, a separate criminal trial got underway against the Metron Project Manager, Vadim Kazenelson, which gave the workers and their families a second chance at justice.

OFL Health and Safety Director, Vern Edwards, attended most of the five week trial and reported that the testimony of Metron owner Joel Swartz attempted to lay full blame for the fatalities at the doorstep of Kazenelson. Now that all of the evidence has been presented to the court, a verdict is expected later in April.

The OFL remains hopeful that a prison term could finally be awarded to an Ontario employer for a workplace fatality.

Whatever the verdict in this case, it has already set a new precedent in workplace justice, putting a chill on employers and, hopefully, causing them to think twice about putting profit ahead of worker safety.

The court has scheduled June 26 to announce a verdict in the Kazenelson case. If he is convicted, he could face sentencing in late summer.

HYDRAULIC SCAFFOLD COLLAPSE KILLS TWO TORONTO BRICKLAYERS

It was a scene of twisted steel and carnage. Two bricklayers were killed after a hydraulic scaffold collapsed while they worked on a condo project in the west end of Toronto, leaving construction workers at the site in a state of shock.

The incident was eerily reminiscent of the Etobicoke swing stage collapse in 2009 that left four dead and one with life-altering injuries. It was this tragedy that gave rise to the OFL’s “Kill a Worker, Go to Jail” campaign.

In late morning on March 27, a hydraulic scaffold – sometimes called a mastclimber – catastrophically malfunctioned and plunged to the ground along with unharnessed workers. One man fell five stories to his death and a second was rushed to the hospital before he succumbed to life-threatening injuries.

As dramatic as the incident was, it is by no means a rare occurrence. An average of 80 workers lose their lives each year in traumatic on the job incidents, another 200 die from occupational disease and over 200,000 are injured at work. Between 2008 and 2013, there was a 36 percent increase in workplace fatalities.

While it is too early to speculate as to the cause of the disaster, the OFL called on Toronto Police to join Minister of Labour investigators at the scene in order to determine whether criminal negligence could have contributed to the tragedy.

“All too often the police leave the scene as soon as the Ministry investigators arrive. We are seeking to change that,” said OFL President Sid Ryan. “If employer negligence results in a worker’s death, it is a crime, not an accident. We want to see negligent bosses behind bars.”

ONTARIO ADOPTS NEW WORKING FROM HEIGHTS TRAINING STANDARDS

This Toronto tragedy came just days before the Ontario government imposed strict new industry guidelines for all workers who use high platforms, a common and risky line of work amid the province’s condo tower boom.

As of April 1, 2015, employers must ensure that certain workers complete a Working at Heights Training Program that has been approved by the Chief Prevention Officer and delivered by an approved training provider before they can work at heights.

The training requirement is for workers on construction projects who use any of the following methods of fall protection:

- Travel restraint systems
- Fall restricting systems
- Fall arrest systems
- Safety nets
- Work belts or safety belts

Construction workers will have two years to meet the province’s new fall protection training requirements.

“It is time to put a stop to shady employers who are handing out safety certificates to workers who have never been properly trained,” said OFL President Sid Ryan. “New training requirements and government oversight will only be effective if resources are put into investigation and enforcement.”

JUNE 2015

OPP TO GIVE WORKPLACE FATALITY A SECOND LOOK

An OFL request to the Ontario Provincial Police (OPP) detachment in Almaguin Highlands, north of Orillia, has the potential to give new life to a two-year-old workplace fatality file.

On May 12, a Parry Sound court fined GRC Contracting \$90,000 for Occupational Health and Safety Act violations that led directly to the 2013 death of 29-year-old Justin Wilson, who fell through a roof while wearing a body harness that was not attached to a fall arrest system. In its ruling, the court found that “three days prior to the incident, GRC had been warned by the constructor about ensuring fall arrest was worn by workers.”

In light of this evidence, OFL President Sid Ryan wrote to OPP Staff Sergeant Stacey Whaley to ask the force to take a second look at the case through the lens of Bill C-45 amendments to the Criminal Code that allow employers to be held criminally liable for negligence causing workplace deaths. Two weeks later, Whaley responded to say that a new detective had been assigned to the file.

“We are very pleased that the OPP have agreed to give this case a second look, but we need a radical shift in perspective from police and crown attorneys across the province,” said Ryan. “After all, when criminal negligence results in a worker’s death, it is a crime, not an accident, and those responsible should be put behind bars.”

WSIB COVERS UP 1,150 WORKPLACE DEATHS

On April 28, the Day of Mourning for Workers Killed or Injured on the Job, the OFL blew the whistle on a shameful ploy on the part of the Workplace Safety and Insurance Board (WSIB) to cover up 1,150 fatalities, a third of all the lives lost over a nine-year period.

Just days before workers and family members gathered to recognize the lives lost at work, the WSIB released a revised set of death and injury statistics, dating back 10 years, that under-report workplace fatalities by an average of 128 each year. Prior to 2013, the WSIB provided death and injury statistics in a consistent manner through a “Monthly Monitor” report. Those reports demonstrated that between 2004 and 2012, a total of 3,375 workers had died due to occupational disease or traumatic on-the-job accidents. However, the WSIB changed their data reporting practices in 2013 and issued new statistics this year claiming that only 2,225 workers had died over the same nine-year period.

“Every one of the 1,150 fallen workers who have been scrubbed from the WSIB spreadsheets is a real person with a real spouse, real children, real friends and real colleagues,” said Ryan. “No amount of statistical gerrymandering can conceal an alarming trend in workers being killed while trying to provide for their families.”

The WSIB brushed off the change as nothing more than “data maturity and [changing] definitions”, but failed to justify how and why 1,150 fallen workers, who had been counted in every previous WSIB report, had suddenly disappeared. The OFL is continuing to work with the Ministry of Labour to get answers from the WSIB.

OFL SAYS SEXUAL VIOLENCE IS AN ISSUE OF WORKPLACE SAFETY

On May 20, Secretary-Treasurer Nancy Hutchison presented an OFL Submission to the Select Committee on Sexual Violence and Harassment. The OFL and many affiliates responded to Ontario's "Action Plan to Stop Sexual Violence and Harassment" with cautious optimism.

The OFL's submission to the government focused on the role of the workplace in the government's action plan and placed particular emphasis on changes needed to the Occupational Health and Safety Act. Among the changes sought by the labour movement are provisions to target bullying, harassment and abuse in the workplace.

The OFL drew attention to the unique vulnerabilities of precarious workers, in particular temporary foreign workers, and called for specific protections dedicated to that category of workers.

October 2015

METRON SUPERVISOR FACES SENTENCING

The sentencing hearing for Mr. Kazenelson took place on October 16, 2015. Under the *Criminal Code* the sentence can be life for a death and 10 years for the injury.

At the hearing both sides made arguments for sentencing. No sentence was handed down by the judge. He wants to consider the arguments. He did make it clear that there will be jail time.

The defense made submissions for a 12 month sentence but also made suggestions for community service and a fine similar to the owner of Swing N' Scaff who received \$50,000.00. He also argued contributory negligence as a mitigating factor. This was blaming the workers and the swing stage manufacturer so his client should get a reduced sentence.

Surprisingly, the Crown only asked for 5 years in a Federal Penitentiary.

Both sides argued case law. The judge shot down a lot of what the defense was putting forward. The judge said there is no case law to guide him on this case because there has never been a case like this.

The judge wanted time to think about this and what would be the appropriate sentence that would provide general deterrence for other employers.

The next court date for delivering a final sentence has been set for January 11, 2016.

Vision for the Future

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 we know that every workplace death is investigated by the police through a C-45 lens and we start to see negligent employers sent to jail for killing workers.

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.

BEHAVIOUR-BASED SAFETY PROGRAMS

The OFL will continue to work with the affiliates on strategies to combat Behaviour-Based Safety programs.

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.

GENERAL

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, occupational disease prevention, and proper enforcement of the law will continue to occupy the department and committee.

OFL OFL OCCUPATIONAL HEALTH & SAFETY COMMITTEE MEMBERS

Members of the OFL Occupational Health and Safety Committee over the last two years have been:

- Andrea Babbington, UNITE-HERE 75
- Sylvia Boyce, USW
- Andréane Chénier, CUPE
- Mike Dix, IRONWORKERS
- Angela Fairweather, PSAC
- Keith McMillan, UNIFOR
- Blain Morin, CUPE
- John Pecsénye, OECTA
- Keith Rattai, IFPTE 160
- Dave Romanowicz, IFPTE 160
- Sari Sairanen, UNIFOR
- Rick Sansom, IAM
- Pearl Sawyer, UFCW, Co-Chair
- Mark Scott, PSAC
- Eddie Ste. Marie, CLC
- Jane Ste. Marie, OSSTF
- Valence Young, ETFO

OFL OFFICER AND STAFF

- Nancy Hutchison, OFL Officer
- Vern Edwards, OFL Staff

AD HOC MEMBERS

- John Bartolomeo, TWHSLC Alec Farquhar, OHCOW
- Heather Kelley, IAM
- Janice Klenot, UFCW 175-633
- John Nock, UFCW 12R24
- Tom Parkin, WHSC
- Anthony Pizzino, OHCOW
- Dave Trumble, PWU/CUPE 1000
- Linda Vannucci, TWHSLC

2.

WORKERS' COMPENSATION REPORT:

WORKPLACE SAFETY AND INSURANCE BOARD'S (WSIB) NEW BENEFIT POLICIES

The WSIB has introduced new benefit policies that came into effect on November 1, 2014.

Overall, the new benefit policies are extremely troubling for the fairness of the workers' compensation system. The new benefit policies:

1. Are consistently to the detriment of workers. None of the changes benefit injured workers and most will negatively affect the fairness of adjudication and compensation for injured workers.
2. Are only cosmetically improved over the draft version. While the final policies somewhat better reflect established legal principles, their negative effects on injured workers are unchanged.
3. Failed to abide by the Board's stated commitment to create policies that provide "clear direction" to stakeholders. Even for legal experts, the policies are difficult to understand.

The most significant element of the new policies is a focus on the effect of pre-existing conditions on ongoing impairment. For the first time, the WSIB has introduced a stand-alone policy about the effect of pre-existing conditions on entitlement. The policy, Pre-Existing Conditions, provides as its overview statement that "entitlement for a work-related injury will not be denied due to the existence of a pre-existing condition". However, it also says that, once initial entitlement is established, the "decision-maker considers the impact, if any, of pre-existing conditions on the worker's ongoing impairment." The policies also allow the Board to apportion permanent impairment benefits where workers have asymptomatic pre-existing conditions.

The Board has already changed how it adjudicates asymptomatic pre-existing conditions, and its new policies will entrench these changes. In the past few years, the Board has regularly denied ongoing entitlement where workers have not recovered from a strain or musculoskeletal injury and test results show the presence of any degenerative findings. The Board also, contrary to its policies at the time, started regularly reducing NEL awards to reflect the presumed contribution of asymptomatic pre-existing conditions like age-related degeneration.

These policies were pushed through with considerable outcry from the labour and injured worker movements. The Board ensured the Minister of Labour that the labour and injured worker community would be pleased with the new policies. A large contingent of seasoned WCB representatives met with the Minister to show him how these policies would hurt injured workers. The Minister seemed truly shocked by our outrage and anger and asked the OFL to bring a smaller working group to him to "put pen to paper" to show him what these policies should look like to be fair to injured workers. A small group met with senior Ministry staff arriving with re-drafted policies. The Ministry then suggested we request a meeting of senior Board officials and senior Ministry officials. At the time of writing this report we are awaiting meeting dates from the WSIB.

WSIB CEO LOSES \$400K BONUS

Under significant pressure from the OFL and the Ontario Network of Injured Workers' Groups (ONIWG), the Ontario Government stripped Workplace Safety and Insurance Board (WSIB) President and Chief Executive Officer David Marshall of his \$400,000 contract bonus when he was reappointed this January. The Board's decision to cut Marshall's contract from five to two years, freeze his pay and cancel his bonus came after a sustained campaign by ONIWG and the OFL to expose Marshall's five-year track record of scandals and explicit attacks on injured workers.

The OFL thrust the WSIB back into the spotlight with the release of new data demonstrating that under Marshall's watch at the WSIB, workplace fatalities had spiked by 36 percent and reached a five-year high.

Against this backdrop of scandal, the Wynne government's re-appointment of Marshall came as a blow to injured workers, who had learned only a few weeks earlier that their benefits were slated for a meager Cost-of-Living adjustment of only 0.5 percent.

The Wynne government has turned its back on injured workers by re-appointing the head of the administration that has trampled on their rights for the past five years.

Despite this deep-seated sense of betrayal, injured workers can take some solace in knowing that their efforts contributed to the loss of Marshall's contract bonus and job security.

REWARDING OFFENDERS

In November, the OFL released a bombshell report uncovering millions of dollars in WSIB rebates being awarded each year to companies that had been found guilty of offences that resulted in workers being killed in on-the-job accidents. The report was the lead story in the *Toronto Star* and sent shock waves throughout the media that put the WSIB communications department into a tailspin.

The WSIB is re-victimizing workers and their families by handing offending corporations millions of dollars in premium rebates. These CEOs shouldn't be receiving rebates – they should be going to jail.

The OFL report, "Rewarding Offenders: Report on How Ontario's Workplace Safety System Rewards Employers Despite Workplace Deaths and Injuries," documented a shocking pattern of WSIB payments and served up an indictment of the WSIB's much maligned "experience rating" system. Authored by labour lawyer Joel Schwartz, the report demonstrated that over the three year period between 2011 and 2013, 135 employers who had been convicted of offences under the *Occupational Health and Safety Act (OHS)* were granted rebates on their premiums by the WSIB. Astonishingly, 78 of the 135 (almost 58 percent) received nearly \$15 million in rebates in the very same year they had committed their offences.

In one case, a 57-year old electrician employed by Goldcorp Canada Ltd. was killed in a workplace accident in 2011. The company was fined \$350,000 after pleading guilty to not implementing proper safety procedures, but the next year it received a \$2.7 million WSIB premium rebate, an astounding amount - seven times higher than the fine for killing the worker.

In full damage control mode, the WSIB quickly countered that a handful of the rebates had been reversed since the OFL accessed the Board's files through a Freedom of Information request, but it could offer no defence or explanation about the scores of other rebates that had been granted.

These scandalous rebates were made through the WSIB's controversial "experience rating" programs, which are intended to provide a financial incentive to employers for improving worker's health and safety. Instead, the program provides incentives for companies to suppress claims. The OFL used the evidence exposed in the report to bolster demands for the WSIB to "scrap its experience rating system in all its forms" and reinvest the resulting savings into workplace health and safety, as well as compensation for injured workers and their families.

INJURED WORKERS' DAY RALLY AND WCB CONFERENCE

On Monday, June 1, 2015 the Ontario Network of Injured Workers' Groups (ONIWG) and the Ontario Federation of Labour (OFL) marked the 33rd annual Injured Workers' Day with a rally at Queen's Park, followed by a march to the Ministry of Labour. The rally was followed by a joint ONIWG/OFL compensation conference that celebrated 100 years of Workers Compensation in Ontario.

The rally was opened by injured worker activists Richard Hudon and Peter Page who cycled from Ottawa to Toronto to draw attention to the poverty and hardship facing injured workers under the current workers' compensation system. Their 600 km ride stopped in Cornwall, Brockville, Belleville, Kingston, Cobourg and Oshawa, drawing media attention and public support along the way.

Hundreds of injured workers, labour allies and family members assembled on the steps of the Legislature to demand better compensation for those who survive workplace accidents.

Our workers' compensation system is in a state of crisis. Just like we are seeing with social programs and public services struggling with cuts across the board, a regime of extreme austerity reigns at the WSIB and this has meant a full-fledged assault on people who have been injured or made ill at work.

Emotional speeches from injured workers and advocates alike underscored the desperate plight of injured workers living on Workplace Safety and Insurance Board (WSIB) benefits that have shrunk by 6.8 percent due to lack of protection against the climbing cost of living. They called on the Wynne government to take immediate action to alleviate the grinding poverty forced on working people who, through no fault of their own, have suffered serious workplace injuries and health impairments.

Cuts to benefits and changes to policy have thrust injured workers and their families into poverty and hardship. It is time for Ontario's compensation system to serve the very people it is designed to protect.

When the march reached the Ministry of Labour, Minister Kevin Flynn addressed the crowd to recommit his promise to fully index WSIB compensation for all injured workers. Making it clear that this change was only “a few months away,” he went on to announce other changes that had been put before the legislature to address concerns that had been raised by ONIWG and the OFL.

Among them were:

- A change to the calculation of survivor benefits to prevent spousal benefits from being dramatically reduced;
- Measures to protect injured workers from employer intimidation or retribution in an effort to suppress injury or illness claims; and
- Increased maximum corporate penalties from \$100,000 to \$500,000 for convictions under the *Workplace Safety & Insurance Act*.

Minister Flynn also affirmed the effective lobby efforts of the Ontario Network of Injured Workers Groups (ONIWG) and the OFL by announcing that his office had heeded the advice of injured workers and rejected an employer-backed appeal to remove the 72-month-lock-in for injured workers receiving Loss of Earnings benefits.

While Flynn’s announcements were welcomed by the crowd, the activists present were inspired to keep the pressure on the government and the WSIB to deliver just, fair and adequate benefits to every injured worker.

After the rally, 120 injured workers and advocates packed the Toronto Steelworker Hall for the two-day compensation conference. Participants developed a plan for an intensive lobby campaign targeting retroactive cost of living increases and the elimination of the controversial practices of experience rating and deeming.

After the WSIB shamefully denied funding to cover conference costs, generous monetary and in-kind donations from the OFL and unions enabled participation from across the province.

COMPENSATION FOR VICTIMS OF OCCUPATIONAL DISEASE AND SURVIVORS

Four years ago, the widows of miners in Sudbury became the victims of targeted claw-backs of WSIB survivor benefits. Since then, the Steelworkers and Firefighters have been backed by the OFL and NDP in pushing the government to close a loophole that denies loss of earnings and survivor benefits to the victims of occupational disease and their families. A four-year campaign for justice that spanned four labour ministers finally delivered a major victory for victims when the Ontario government included provisions to close this loophole in their omnibus legislation, Bill 109, *Employment and Labour Statute Law Amendment Act, 2015*.

After United Steelworkers Local 6500 members raised concerns about this legal technicality to claw-back WSIB benefits from widows, the OFL weighed in by lobbying the Premier directly. Since then, four Labour Ministers have acknowledged the problem, but no action was taken until May 7, 2015, when Jennifer French Oshawa MPP tabled Bill 98, her first Private Member’s Bill, the *Protecting Victims of Occupational Disease Act*.

Three short weeks later, the government tabled legislation that would incorporate the portion of French's Bill that pertains to survivor payments.

For survivors it can mean the difference between receiving \$2,000 and \$700 a month. While miners and firefighters are among the most frequent victims, the issue could affect surviving spouses of any of the hundreds of workers who die every year from exposure to harmful chemicals at work.

French's Bill 98 will be debated in the fall. She is hoping that the Legislature will pass her bill in its entirety since the government has so far ignored the need to reinstate loss of earnings benefits for workers who are diagnosed with occupational diseases after retirement.

The situation is unconscionable and that is why the NDP and the labour movement have worked so hard to put a stop to it. The OFL and affiliates must push the government to pass Bill 98 which goes much further than the Bill introduced by the Liberal government

INJURED WORKER CLOTHING ALLOWANCE OMBUDSMAN COMPLAINT

In 1996 the Board decided that it would cut the clothing allowance to injured workers that required an elastic back support with steel stays by 50 percent. There was no evidence to support the reduction of benefits. In 2006, the Board restored the allowance to 100 percent thanks to lobbying by the injured worker movement. Workers appealed to have full coverage for the ten years the benefit was cut. The appeals of five workers were heard together as leading cases by the Tribunal and full benefits for the ten year period was restored. It is our position that it would be unfair and contrary to the merits and justice of each worker's situation to navigate the appeals system when the nature of the issue does not turn on disputed facts. It is simply a matter of identifying workers who had their benefits cut for ten years and then restoring them.

We are asking the Ombudsman to examine the fairness of forcing 5,000 appeals when the Tribunal conducted a thorough assessment of the legality of the decision and has already issued five concurrent identical decisions on point. That means 5,000 wronged workers will enter an appeals system that already has over 9,000 cases the Tribunal's active inventory.

There is also the question of fairness to other injured workers: as of the end of 2014, the number of appeals at Tribunal has already created long delays. The addition of these appeals would have a disastrous effect on Tribunal and appeals system. As documented in the Ombudsman's 2014-2015 Annual Report, the Office of the Ombudsman received 99 complaints about the Tribunal, predominantly about delays. The Annual Report specifically cites the increase in Board decisions and the loss of Vice-Chairs as reasons for the delays seen by workers. We are therefore greatly concerned what effect the clothing allowance appeals would have on the entire system. Just as Ombudsman staff reminded Tribunal and Ministry staff, we make this complaint precisely because of the human impact of these delays and we ask for a better solution.

The Board has already refused to apply the decisions to all workers who had their benefits cut. The request was refused both in writing and verbally. At a recent Labour Injured Worker Advisory Committee meeting, the Board made it clear that it had neither the intention nor the desire to be

fair to similarly situated workers. Board staff think it just that 5,000 workers be identified, make appeals, and patiently traverse an already over-burdened appeals system.

COMPENSATION FOR CHRONIC STRESS

In the ground-breaking *Decision No. 2157/09*, a Panel of the Workplace Safety and Insurance Appeals Tribunal refused to apply statutory and policy limitations on mental stress entitlement. The Panel held that the limitations – which state that compensation will only be paid for mental stress injuries that are an acute reaction to a sudden and unexpected traumatic event at work - infringe the equality protections in Section 15 of the *Canadian Charter of Rights and Freedoms*.

Section 13(1) of the *Workplace Safety and Insurance Act, 1997* provides benefits for workers who sustain “personal injury by accident arising out of and in the course of his or her employment.”

However, the provision is qualified for workers who develop mental stress. Sections 13(4) and (5) provide that a worker is not entitled to benefits for mental stress except for “an acute reaction to a sudden and unexpected traumatic event arising out of and in the course of his or her employment.” Section 13(5) also states that the worker is not entitled to benefits for mental stress “caused by his or her employer’s decisions or actions relating to the worker’s employment, including a decision to change the work to be performed or the working conditions, to discipline the worker or to terminate the employment.”

In *Decision No. 2157/09*, a Panel of the Tribunal refused to apply the statutory and policy limitations on mental stress entitlement. The Panel held that the limitations infringe the equality protections of the Charter. The Panel clarified that its decision only addressed the limitation requiring a sudden and unexpected traumatic event. Its decision did not consider the constitutionality of prohibiting mental stress entitlement caused by the employer’s employment-related decisions.

The Panel focused its analysis on Sections 13(4) and (5) of the *WSIA* rather than the Board’s policy, finding that if the impugned statutory provisions contravene Section 15, the Board policy will also violate the Charter.

In addressing the first part of the test, the Panel decided the appropriate comparator is workers with claims for physical injuries. In some cases, this may be further refined as the group of workers with claims for gradual-onset physical injuries. The Panel concluded that the impugned sections create a distinction based on the enumerated ground of mental disability. Workers with physical injuries or conditions can pursue entitlement for any injury from an accident. A worker with a back strain, for example, is not required to show that the injury was caused by a traumatic physical injury such as a fall from a height.

The Panel rejected the idea that Sections 13(4) and (5) further the purpose of compensating only for workplace-related conditions. It rejected the Attorney General’s argument - who had intervenor status in the case - that the exclusions create an “objective proxy” for causation in mental stress cases. Since there is no “gold standard” for determining whether either physical or mental injuries are work-related, there was no reason to discriminate against those with certain kinds of injuries.

The Panel reviewed case law on the significant contributing factor test, including recent cases clarifying that the workplace contribution must generally be a “necessary” contributing cause to be a material or significant cause, as well as the thin skull and crumbling skull principles. The Panel briefly addressed the “average worker test” which was used by the Attorney General to justify having a different approach to mental stress claims. The Panel stated that the application of the average worker test is not intended to create a different standard for entitlement for mental stress claims and “does not create an exclusion for non-traumatic mental stress claims independent from a review of the worker’s individual circumstances.”

The Panel stated that, in essence, section 13(4) and (5) requires workers to meet a “gold standard” that is near scientific certainty. This is because the development of PTSD in reaction to sudden and unexpected traumatic events is very solidly established in the scientific literature.

But the Panel noted that the association between job strain and mental disorder is at least as strong as for many occupational diseases. In such cases, workers can still be granted entitlement if, for example, there was greater than average exposure to a toxic substance. Excluding workers with mental disorders from such adjudication did not correspond to the actual needs and circumstances of the claimant group.

The Attorney General’s office has stated that it is not planning to judicially review *Decision No. 2157/09*. The Government has not made any announcements regarding statutory reform. Therefore, the status of mental stress cases at the WSIB and Tribunal is far from clear.

Even after the release of *Decision No. 2157/09*, the Tribunal has released decisions applying Sections 13(4) and (5) and the traumatic mental stress policy (where workers had not challenged the law as discriminatory). It appears that workers and representatives must continue to raise the *Charter* issue, including following the proper procedures for notifying the Attorney General, whenever Sections 13(4) and (5) might bar a claim.

It is not clear whether representatives will need to make the same arguments and provide the same evidence in outstanding or future *Charter* challenges at the Tribunal. Some direction from the Tribunal would be of great assistance to workers and representatives moving forward.

The OFL and affiliates have been lobbying the Minister of Labour to ensure the legislation is reformed to ensure that workers who suffer mental stress caused by a toxic work environment, bullying, harassment and sexual harassment are fairly compensated.

ODRT PROJECT (FORMERLY OFL/WCB TRAINING PROJECT)

Retaliation against the labour movement has put the core funding of this 25-year-old injured worker advocacy program in danger. A project with a proud history that has trained over 20,000 injured worker advocates, who in turn have recuperated millions of dollars in benefits for their members. As well, have assisted their members in safe and timely return to work with dignity and job security.

The Conservative Party of Ontario and the Workplace Safety Insurance Board (WSIB) are waging a double-barreled attack against the ODRT. Earlier this year, the OFL received word from the WSIB that our annual training grant for the project is going to be axed, a decision they have staunchly refused to reverse despite several meetings with the OFL and express support for the project from the Minister of Labour, Honourable Kevin Flynn.

As payback for the OFL's hugely successful *#StopHudak* campaign, Ontario Conservative Labour Critic, Randy Hillier, launched an aggressive media campaign against the ODRT. On March 25, 2015, Hillier rose in the Legislature to open up a new attack on injured workers across the province. In his inflammatory remarks during the morning Question Period, Hillier called on the government to scrap funding for the ODRT, a program he characterized as nothing more than a "slush fund" for labour.

We believe this action by Hillier emboldened WSIB's CEO, David Marshall, to move against ODRT funding. The ODRT and OFL were already in WSIB's cross hairs because last year, we exposed the WSIB for giving millions of dollars in rebates to corporations in the same year they pled guilty to negligence causing the death of workers. Recently, the OFL exposed the WSIB for actively suppressing workplace death statistics by 1,150 fatalities. The WSIB should not be able to leverage their funding as a tool for curtailing labour's advocacy for injured workers.

As a smokescreen for their true intentions, the WSIB is saying that they are holding back funding over concerns related to OFL finances. It would appear that WSIB leadership believes that a handful of unions withholding per capita payments from the OFL presents an "unacceptable" risk to WSIB monies sent to the OFL for ODRT. This position holds no merit, first, because there is no mixing of ODRT and OFL monies and, secondly, the ODRT has provided the WSIB with copies of their audited financial statements showing a healthy state of affairs. There is no justifiable reason for compromising this vital support for injured workers.

We have put the WSIB on notice that the labour movement will not sit idly by while they take an axe to the ODRT. Over two and a half decades, the ODRT has earned a reputation for training over 20,000 advocates to assist injured workers in navigating the complicated WSIB system of claims and appeals.

CONTINUING OUR WORK

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

Justice for injured workers means implementing the following changes to the workers compensation system:

- Rename the WSIB to Workers' Compensation Board;
- Replace President/CEO with a fair, credible person with the confidence of both stakeholder communities;
- Publicly administered;
- Collective employer liability;
- Primary purpose to compensate injured workers and survivors;
- Recognizes and compensates all work-related occupational injuries and diseases;
- Inclusive no-fault coverage of all workers;
- Eliminate experience rating; and
- Full cost of living allowance for injured workers.

OFL COMPENSATION COMMITTEE MEMBERS: OFL OFFICER AND STAFF

- Pearl Sawyer, UFCW
- Eddie Ste. Marie, CLC
- David Chezzi, CUPE
- Peter Denley, CUPW
- Derek Morgan, IAM
- Sari Sairanen, UNIFOR
- Barry Fowlie, UNITE HERE
- James St. John, Ironworkers
- George Redmond, SEIU Local 2
- Gino DiCiocco, OECTA
- Jane Ste. Marie, OSSTF
- Angela Fairweather, PSAC
- Sherree Backus, UFCW
- Scott McILmoyle, UNIFOR
- Jim Pasel, USW
- Nancy Hutchison, OFL Secretary-Treasurer
- Laurie Hardwick, OFL Director of Organization Services

