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Supporting the Workers' Comp is a Right Campaign

Dear Sisters and Brothers,

As you may know, the Ontario Network of Injured Workers' Groups (ONIWG) has recently launched the Workers' Comp is a Right campaign. It's a province-wide campaign, with injured worker groups from all corners of Ontario organizing around it in their own communities, and making their voices heard.

The same structures of austerity that are threatening our public services and social support programs across the board, are also having a devastating effect in the workers' compensation system. For the past several years, the WSIB has been narrowly focused on cutting its own costs, and it has done so by slashing benefits to injured workers.

Between 2009 and 2015, the WSIB cut injured worker benefits by roughly \$1.16 billion. Ironically, those who need the most support are the ones who have been hurt the worst by these cuts, as close to 50% of people with a permanent disability resulting from their work injury are living at or near the poverty line.

The Workers' Comp is a Right campaign is our way of fighting back as a united front.

The campaign has three specific demands, which are focused on reversing some of the WSIB's primary ways of cutting compensation and forcing injured workers into poverty. The three demands are:

1. No more phantom jobs!
2. Listen to injured workers' treating healthcare professionals!
3. No cuts based on "pre-existing conditions"!

More information about the campaign can be found here:
<http://injuredworkersonline.org/workers-comp-is-a-right-campaign/>.

Since launching the campaign in September, we've collected thousands of petition signatures, met with many MPPs who have read our petition out in the Legislature, received endorsements from labour and community allies, held several public actions at WSIB and government locations, and seen the formation of new injured worker groups.

As the campaign progresses, we want to have a constant and continually growing presence across Ontario, to make our voices heard and demand fairness for injured workers. Right now, there are two main ways you can help with this:

- 1) Endorse the Workers' Comp is a Right campaign
- 2) Help set up MPP meetings during our lobby blitz April 3-6, 2018

Information on endorsing the campaign is enclosed in this package. For the lobby blitz, we are aiming to reach as many MPPs as possible, from all parties, during Constituency Week on April 3-6. Your help setting up meetings would make a huge difference. Wherever possible, we would be happy to get our members to join you at a meeting you're able to set up. If this isn't possible, we have enclosed in this package fact sheets about the campaign, and lobby materials to help with a meeting.

At the end of this package, you'll also find a directory of ONIWG groups and their contact information.

We would be more than happy to come to an upcoming meeting of yours to talk more about Workers' Comp is a Right. Thank you very much in advance, and we look forward to working with you as the campaign grows.

Sincerely,



Willy Noiles
ONIWG President

What would your endorsement mean?

There are lots of ways your endorsement could help the Workers' Comp is a Right campaign. Here are a few ideas – though we recognize that all of these may not be possible for every endorsing group, and that there are many other ways to support as well. We would be happy to discuss all of this with you further at any time.

- **Join us for upcoming events and actions.** As we build the campaign, we will be organizing events and actions throughout the province, and will also have online activities like letter-writing campaigns. We hope you will be able to participate in these, and to circulate information to your members.
- **Arrange a presentation to your membership.** We're happy to come to an upcoming local or membership meeting, to talk to your group about the campaign and how people can help out.
- **Help connect with your injured worker members.** We're looking to get more injured workers involved, either in being part of the campaign organizing, or just coming out to events and actions. If there's any way of circulating information about the campaign to your members, it would be great to talk about that.
- **Financial support.** ONIWG has no core funding and exists solely on donations. We are urgently seeking support to cover the costs of campaign materials, injured worker travel costs, outreach efforts, and other campaign growth opportunities. We appreciate any financial contributions our supporters are able to make.
- **Help collect petition signatures.** We've got a petition to Queen's Park that we're looking to circulate as widely as possible. Signatures from your members would be much appreciated.
- **Meet with MPPs.** We're setting up meetings with as many MPPs as possible across the province. If you would like to help set up and/or attend meetings with your MPPs, let us know.

ONIWG Group Directory

To make the Workers' Comp is a Right campaign a success, we need as many injured workers and supporters as possible to get involved and be part of the movement for change. If you're interested in learning more, you can connect with the local injured worker group in your community – see the list below. If you aren't sure if there is a group in your community, contact workerscompisairight@gmail.com.

Our groups also provide peer support and the opportunity to talk to others who understand what you are dealing with as an injured worker. You are not alone, and we are stronger together. We hope you can join us!

Barrie and District Injured Workers' Group

Email: barriedistrictiwg@yahoo.ca

Phone: 705-818-2065

Brantford Injured Workers' Group

Email: brantfordinjuredworkers@gmail.com

Chatham Injured Workers' Group

Regular meeting dates to be established soon

Email: meg_86@hotmail.com

Hamilton & District Injured Workers' Group

Meetings: Last Wednesday of every month at 1130 Barton Street East

Email: hamiltoninjuredworkers@hdiwg.net

Phone: 905-543-9090

Injured Workers of Wellington & Dufferin Counties

Meetings rotate in communities throughout the counties

Email: paul@iwwd.ca

Website: <http://www.iwwdc.ca/>

London & District Injured Workers' Support Group

Email: wendyknelsen@hotmail.com

Phone: 226-919-7276

Manitoulin & Northshore Injured Workers' Group

Email: garyhrystak841@msn.com

Niagara Injured Workers' Group

Email: Niagara.injured.worker.group@gmail.com

Ottawa & District Injured Workers' Group

Email: odiwg@rogers.com

Phone: 613-567-5872

Peel Injured Workers' Group

Meetings: Second Tuesday of every month at Bramalea Community Health Centre – 40 Finchgate Blvd, Room 109

Email: PeelInjuredWorkers@gmail.com

Thunder Bay & District Injured Workers' Support Group

Meetings: Third Thursday of every month at St. Paul's United Church

Email: tbiwsg@gmail.com

Phone: 807-622-8897

Toronto

Bright Lights Injured Worker Group

Meetings: First Thursday of every month at 10:30am, Injured Workers' Consultants Community Legal Clinic – 815 Danforth Ave, Room 411

Email: macdonald@lao.on.ca

Phone: 416-461-2411

Chinese Injured Worker Group

Meetings: One Saturday per month at 10am, Injured Workers' Consultants Community Legal Clinic – 815 Danforth Ave, Room 411

Email: lokr@lao.on.ca

Phone: 416-461-2411

Injured Workers Action for Justice

Meetings: First Saturday of every month at 10:30am, IAVGO Community Legal Clinic – 55 University Ave, 15th floor

Email: injuredworkersaction4justice@gmail.com

Phone: 416-924-6477

Women of Inspiration Injured Worker Group

Meetings: Third Friday of every month at 10am, Injured Workers' Consultants Community Legal Clinic – 815 Danforth Ave, Room 411

Email: parkesa@lao.on.ca

Phone: 416-461-2411

Windsor Injured Worker Support Group

Meetings: First Thursday of the month at 6:30pm, Unifor Local 195 – 3400 Somme Ave

Email: 195iwsg@gmail.com

**Workers' Comp is a Right –
Talking Points for MPP Meetings**

General info

- The Workers' Comp is a Right campaign was launched because injured workers in Ontario are in a state of crisis. The WSIB is trying to cut its own costs on the backs of injured workers. From 2009 to 2015, they cut \$1.16 billion from injured worker benefits. Close to 50% of injured workers with a permanent disability are living at or near the poverty line.
- The Workers' Comp is a Right campaign is calling for a strong, public compensation system that treats injured workers with dignity and respect, and gives them the support they need to get back on their feet.
- One of the main implications of injured worker poverty is that when the WSIB cuts injured workers off benefits, they get forced onto social assistance programs like OW and ODSP. So the costs of work injuries end up getting downloaded onto taxpayer funded public systems.

Questions to ask MPPs

- Will you read the petitions out in the Legislature?
- Will you write a letter to the Minister of Labour about your support for the campaign and its demands?
- Will you raise the issues in a Caucus meeting?
- Will you endorse the campaign and its demands?

Campaign demand: No more phantom jobs (no deeming)

- Deeming (also called determining) is essentially when the WSIB pretends an injured worker has a job that they do not in fact have in reality. It then pretends that the worker is earning a salary from the non-existent job, and uses the invented salary as a justification to cut their benefits. If a worker is unemployed, the WSIB will still pretend they are working and earning money, and cut their benefits accordingly.
- **Insert your own story about deeming, if you have one. If not, you can use the example below:**
- Jennifer is making \$20/hour when she suffers a permanent back injury and cannot go back to her old job. She receives benefits from the WSIB for a few weeks. The WSIB then “deems” Jennifer able to work as a customer service representative – even though she has limited English skills, has no related work experience, and her doctor says she is not medically able to return to work. The WSIB deems Jennifer to be earning the current minimum wage of \$14/hour as a customer service representative, even though she has not been able to get a job and the WSIB knows she is not actually employed. Her benefits are cut by \$14/hour, and she now only gets about \$140 per week in workers’ compensation benefits.
- Every year thousands of people who have a permanent disability as a result of their work injury are “deemed” to have a phantom job. It is one of the WSIB’s favourite ways of cutting people off benefits.
- When the WSIB pretends people are employed even though the reality is that they are not, it systematically leads to poverty, and creates whole new sets of physical and mental health issues, and affects family and community well-being.
- When the minimum wage went up in January, the WSIB actually used it as a way to cut people’s benefits even more. It pretended that “deemed” injured workers had a wage increase, when the reality is that they had no income at all. It then used the higher pretend wage as an excuse to further cut benefits. We fully support the minimum wage increase, but the WSIB should not be allowed to use it as a way to cut benefits even further.
- We need the WSIB to stop cutting benefits based on phantom jobs. Instead, compensation should be based on actual lost wages.

Campaign demand: Listen to our doctors

- Another huge issue for injured workers across the province is that the WSIB is ignoring medical evidence and opinions from injured workers’ treating healthcare professionals.

- All too often, if a treating doctor says their patient needs a certain kind of treatment or medication, or that they're not yet medically fit to go back to work, the WSIB just disregards it and denies treatment or forces people back to work anyways.
- This can happen in many ways. Sometimes the WSIB sends a worker's file to a medical consultant who just reads our file and makes a determination without ever actually seeing the injured worker. Sometimes a case manager without any medical background just decides on their own to overrule treating doctors.
- Sometimes they send us to their own physiotherapists or other health professionals who are paid more money if they say a worker ready to go to work, and less money if they say the worker need time off and more treatment.
- Again, this is a way of saving themselves money by avoiding paying compensation to people who need it. If they can ignore a doctor's opinion, they can justify making any cuts they want.
- The solution is simple – we need clear legislation that the WSIB should prioritize and respect the evidence from our treating healthcare professionals. Quebec actually already has legislation like this, so it shouldn't be a stretch for Ontario to do the same.

Campaign demand: No cuts based on “pre-existing conditions”

- A third major issue for injured workers is the WSIB's practice of blaming long-term disabilities on “pre-existing conditions,” rather than accepting that they were caused by work injuries.
- In many cases, the “pre-existing conditions” were things that were never diagnosed as problems before the work injury, and never caused any symptoms or issues. People were getting on with their lives and their work just fine, and likely would have continued on with no problems. But they had an injury at work, and the injury changed everything.
- This happens both with physical injuries and mental health conditions. On the physical side, if a worker slips and falls on their back at work, the WSIB will often say their long-term back injury is just because they're old – even if they never had back problems before.
- On the mental health side, the WSIB will mine through our medical history, and any past episode of stress or anxiety – like a family member passing away or parents getting divorced – will become an excuse the WSIB can latch onto, instead of accepting that depression, stress, and anxiety is related to our injury and the fallout from it.

- All of this is different from the WSIB's past policy of only reducing benefits if someone has a "pre-existing impairment," which is actually something that did affect them before the accident. We need the WSIB to go back to this system, and to stop cutting benefits because of things that never caused us any issues before the work injury.

Conclusion

- All of this stems from the WSIB's efforts to reduce its own costs. Those cost reductions have come squarely on the backs of injured workers.
- We need a compensation system that is there to support us, instead of tossing us aside and abandoning us.
- We need you to help stop the use of phantom jobs, get the WSIB to listen to our treating doctors, and stop cutting benefits based on "pre-existing conditions."
- Ask the MPP the questions listed above.



WE DEMAND: NO CUTS BASED ON PHANTOM JOBS

Background: "NO DEEMING"

"Deeming" (also called "determining") refers to a practice used by the WSIB in which they pretend an injured worker has a job that they do not actually have. The Board then uses the "phantom job" as an excuse to cut benefit payments.

For example, a construction worker who permanently injured while making \$20 per hour may receive full wage loss benefits from the WSIB for a while. After a time, the WSIB may agree that the worker cannot return to construction, but may decide they could be a minimum wage cashier, and will reduce benefits by \$11.40 per hour - *even if the worker is not medically able to do the work, or unable to find a job.*

Why is this important?

Deeming reduces injured worker benefits, and systematically leads to poverty. **This forces people onto publicly funded systems like Welfare (OW) and Disability (ODSP)**, instead of receiving the employer funded benefits they are entitled to.

If an injured worker tried to increase their benefits by pretending they were making *less* money than they are, they would be penalized for cheating. But when the WSIB cheats and pretends a worker is earning *more* than they really are, the benefits are reduced and the Board keeps the money. This is unfair and unjust!

In addition, Ontario has just announced a long overdue increase to minimum wage, and while this is an excellent initiative, *the WSIB will use the minimum wage increase to pretend people are earning even higher phantom wages, and cut their benefits even further!*

(See the chart on the next page)

Effects of WSIB's DEEMING policy

Pre-injury Wage Single no dependants	Net Average Earnings - (40 hour work-week avg.)	Loss of Earnings is calculated at 85% of net	Impact of Deeming Min Wage Deducted \$11.40 x 40 hours x 85% + deductions	Impact of Deeming Min Wage Deducted \$15.00 x 40 hours x 85% + deductions	Reliance on Social Support Systems (Municipalities, OW, ODSP) <i>*if eligible</i>	Impact to Injured Worker
\$13.00 per hour	\$520.00 - deductions = \$437.88	85% of \$437.88 = \$372.20	\$372.88 - \$332.26 = \$40.62 Loss Of Earnings paid (weekly)	\$0 Loss Of Earnings paid (weekly)	Worker heavily reliant* on provincial and municipal systems and becomes fully reliant* based on \$15.00 min wage	Esteem plus abject poverty and all ailments and afflictions associated with it.
\$28.00 per hour	\$1120.00 - deductions = \$864.31	85% of \$864.31 = \$734.66	\$734.66 - \$331.57 = \$403.09 Loss Of Earnings paid (weekly)	\$734.66 - \$422.92 = \$311.68 Loss Of Earnings paid (weekly)	Worker may* qualify for some social assistance.	
\$20.00 per hour	\$800.00 - deductions = \$647.02	85% of \$647.02 = \$549.97	\$549.97 - \$331.58 = \$218.39 Loss Of Earnings paid (weekly)	\$549.97 - \$422.99 = \$126.98 Loss Of Earnings paid (weekly)	Worker may* qualify for some social assistance but becomes partially reliant* based on \$15.00 min wage	

As the above chart shows, deeming causes injured worker poverty by reducing or completely eliminating benefits. The WSIB does this by pretending workers are employed or employable when they are not. Poverty creates whole new sets of physical and psychological health issues, and affects family and community well being.

What is the demand?

Injured workers and their allies are demanding the abolishment of the WSIB's unfair practice of deeming. Stop discriminating against injured workers by treating them like liars.

What are the solutions?

- Legislative changes must be introduced to prevent WSIB from “deeming” an injured worker **unless it has documentation to prove that the worker has turned down an offer of suitable work**. This is known as the “tangible indication test,” and it was proposed as the standard for deeming when the system was first introduced. If this test is not met, the WSIB must pay benefits based on actual lost wages.
- Return to one-year support and compensation for job search assistance.** The WSIB must provide permanently disabled injured workers with meaningful assistance in securing suitable work, via supportive vocational rehabilitation counsellors and wage loss benefits while they engage in their job search.



WE DEMAND: LISTEN TO OUR DOCTORS

Background: OUR DOCTORS KNOW US BEST

In 2016 and 2017, a series of reports were released by injured worker groups, labour organizations, and legal clinics that said what injured workers and advocates have long known: There are serious problems with the way that the WSIB considers medical evidence.* These reports highlighted a range of issues, including failing to heed medical advice regarding readiness to return to work, insufficient treatment, blaming 'pre-existing conditions' for injuries clearly caused at work, questionable use of Board funded specialty clinics, using "expected recovery times" to declare a worker healed, purchasing reports from private medical consultants who never meet the worker (also called "paper doctors"), and even simply ignoring the available medical evidence all together.

Why is this important?

When someone is injured or sick, one of the most important relationships they have is with the treating healthcare professionals that are helping them to get better. The doctors, nurses, psychologists, and physiotherapists who are treating injured workers know more about your conditions than anyone else. And yet the WSIB ignores the advice of injured workers' doctors and cuts their benefits or sends them back to work before they are medically ready.

When someone gets sent back to work too early and against their doctor's advice, they risk re-injury. When an injured worker's benefits are cut before they are better, they face poverty and all of the social and medical problems associated with it.

***Further Reading:**

No Evidence: Decisions of the WSIB - by IAVGO Legal Clinic, 2017

Bad Medicine - by IAVGO Legal Clinic and Anthony Singleton, 2017

Prescription Overruled - by ONIWG and Ontario Federation of Labour, 2016

Did You Know...

- *Medical expenses for injured workers are supposed to be paid for by the compensation system, not Ontario's public health insurance plan (OHIP). This means that often when a medical expense for an injured worker is denied by the WSIB, the burden of that cost falls on every taxpayer in the province.*
- *A recent review of just one year of appeals tribunal decisions found hundreds and hundreds of examples of cases in which the WSIB inappropriately ignored medical evidence on file in order to reject a worker's claim.*
- *Some of the fee schedules used by the WSIB to pay healthcare professionals for services offer financial incentives for providers to end care sooner.*

What is the demand?

The WSIB must listen to injured workers' treating health care team.

What are the solutions?

- **Institute clear legislation that prioritizes and respects the evidence put forward by the treating health professionals** who know the injured workers best. Address gaps in information with treating doctors before seeking outside opinions.
- Establish a process **independent of the WSIB** to resolve medical disputes.
- When medical consultants are necessary, the reasoning for this must be quickly and clearly communicated to the worker, and the **doctors should be drawn from a roster maintained by an independent body**. The 'paper doctor' role should be re-imagined as one of supportive case-consultant, rather than end-of-the-road expert opinion.
- Before deciding that a worker has recovered from an injury, **decision-makers should have a report from the worker's treating physician** verifying recovery.
- When it is determined that a worker has a permanent disability, this worker's **"Non-Economic Loss" assessment must be done by a physician in person**, rather than by a WSIB nurse consultant who simply reads the file.



WE DEMAND: STOP CUTTING BENEFITS BASED ON 'PRE-EXISTING CONDITIONS'

Background: PRE-EXISTING CONDITIONS

Around 2012, after hiring a notorious American insurance doctor to give them policy suggestions, the WSIB began a practice of reducing or eliminating injured workers' benefits by aggressively penalizing people who they felt had "pre-existing conditions." This has taken many forms, including reducing the length of time workers receive wage loss and healthcare benefits, cutting the Non-Economic Loss (NEL) awards given for permanent injuries, and more. This differs from the Board's pre 2012 practice of limiting benefits only for "pre-existing impairments."

What's the difference? A *pre-existing impairment* is a condition that has symptoms, and that had previously limited a worker's ability to do their job. What the WSIB now calls *pre-existing conditions* includes things that may have never affected the worker before.

Why is this important?

The WSIB's focus on "pre-existing conditions" is one of its most common methods of cutting people off benefits. If everything can be blamed on a "pre-existing condition" instead of the work injury, the WSIB can avoid paying benefits and save itself money. Many of these "pre-existing conditions" were never diagnosed by a doctor before the work injury, and never caused any symptoms. In fact, the WSIB's interpretation of "pre-existing conditions" is so broad that they include factors that are simply a part of normal aging. Rather than treating injured workers as human beings, they are treated like used cars, with depreciating value as they age.

"It is a change in benefits with no change in legislation. I think we should be ashamed of the system, you have some of the most vulnerable people in our society being victimized by a corporate structure."

-Ron Ellis, former chair of the WSIB's appeals Tribunal (CBC News, Oct 2016)

HOW THIS POLICY WORKS IN PRACTICE:

A worker in her 50s who has spent her lifetime in manual labour - but has never been injured or had any symptoms of spine problems - slips and hurts her back at work. The WSIB may approve benefits for a short time, but after she gets an MRI, the Board sees that she has some “degeneration” in her spinal discs. Even though this degeneration was likely caused by a lifetime of heavy lifting at work, and has never prevented her from doing her job every day for the last 30 years, the Board’s policy dictates that after a few weeks, her ongoing and permanent pain is not caused by her fall at work, and ends her benefits.

The same is true for mental health injuries. Advocates have seen cases of mental stress denied because the worker may have offhandedly reported feeling some depression to their family doctor five years ago. There are even cases where post-injury family breakdown is blamed as a pre-existing condition responsible for an injured worker’s psychological impairment.

There is a long established legal understanding called the “thin skull” principle that is meant to protect all workers. At its most basic, it means that if two people experience a head injury of equal force, and one is more injured because their skull happens to be thinner, the more injured person cannot be penalized simply because of the state of their pre-injury body. In the context of workers’ compensation, it means that each injury must be looked at on the basis of how it affected the injured worker in question, not how it might have affected some imagined “average worker.” The WSIB’s pre-existing conditions policy is creating a system in which only people with perfect bodies and minds can receive full compensation, and this is unfair.

What is the demand?

The WSIB has a responsibility to honour the long legal history of the thin skull principle, and must stop reducing injured workers' benefits because of pre-existing conditions that have never caused the worker any symptoms.

What are the solutions?

- **The WSIB must return to its previous policy and practice of only reducing benefits if a worker had a verifiable pre-existing impairment.** “Pre-existing conditions” that were asymptomatic and undiagnosed prior to the work injury, and that did not affect a worker’s functioning, must not be used to cut or deny benefits.
- **These principles must be codified** in the Workplace Safety & Insurance Act, to prevent the WSIB from attempting to skirt them again in the future.



PETITION TO THE LEGISLATIVE ASSEMBLY OF ONTARIO

WORKERS' COMP IS A RIGHT

Return completed petitions to:
WORKERS COMP IS A RIGHT c/o Injured Workers Consultants
411-815 Danforth Ave.
Toronto, ON M4J 1L2

WHEREAS: About 200 000 - 300 000 people in Ontario are injured on the job every year.

WHEREAS: Over a century ago, workers in Ontario who were injured on the job gave up the right to sue their employers, in exchange for a system that would provide them with just compensation.

WHEREAS: Decades of cost-cutting have pushed injured workers into poverty and onto publicly funded social assistance programs, and have gradually curtailed the rights of injured workers.

WHEREAS: Injured workers have the right to quality and timely medical care, compensation for lost wages, and protection from discrimination.

WE THE UNDERSIGNED petition the Legislative Assembly of Ontario to change the Workplace and Safety and Insurance Act to accomplish the following for injured workers in Ontario:

- Eliminate the practice of “deeming” or “determining,” which bases compensation on phantom jobs that injured workers do not actually have.
- Ensure that the WSIB prioritizes and respects the medical opinions of the health care providers who treat the injured worker directly.
- Prevent compensation from being reduced or denied based on “pre-existing conditions” that never affected the worker’s ability to function prior to the work injury.

Name	Address	City	Postal Code	Signature	Email

Keep me informed