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EXECUTIVE SUMMARY

Since the founding convention in March 1957, one of the Ontario Federation of Labour's (OFL) primary mandates has been to assist workers in strengthening their capacity to represent, organize and protect all Ontarians at work, in the union and in society at large.

The OFL has a long history of fighting for workers' rights. Yet, workers continue to fight for justice around issues concerning labour relations, health and safety, employment and pay equity and discrimination based on gender, age, race, sexual orientation, disability and other factors related to their work. The OFL has active and engaged standing committees whose members are appointed by the affiliates. These committees collectively address all issues concerning the rights of workers.

The Rights policy paper emphasizes the many facts that as trade unionists, we must never take for granted the fact that the very foundation of so many of our rights and workplace laws were hard fought by those who went before us.

Human rights and pay equity legislation, paid holidays, workplace safety laws, Workplace Safety & Insurance Board [WSIB) advances, health care, unemployment insurance, union wages and even "the weekend" cannot be taken for granted. The Rights policy paper acknowledges the thousands of unsung heroes and heroines who fought so hard to ensure that workers' rights are not overlooked.

The purpose of this policy paper is to highlight and examine the struggles and wins that have affected workers and their rights throughout the OFL's 50 years of existence. This policy paper will also address the challenges that the labour movement will continue to face when fighting for workers rights to be addressed in an equitable way with positive results. This policy paper's recommendations will be followed by an intense action plan that will include labour's agenda to advocate for improvements to all workers' rights and changes to public policy to benefit our members and their communities.

The Rights policy paper will cover the following issues:

- Human rights
- Women's rights
- Lesbians, Gay Men, Bisexuals and Trans-Identified people's (LGBT) rights
- Aboriginal peoples' rights
- Racialized people's rights
- Persons with disabilities rights
- Workers under 30 rights
- Health and safety rights
- Labour relations and employment standards
- Workers' compensation

Rights

Preamble

Since the founding Convention in March 1957, the major role of the Ontario Federation of Labour (OFL) has been to speak out for and to act on behalf of all the working people, their families and community partners in Ontario.

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

- access to Workplace Safety & Insurance Board (WSIB) legislation that entails full coverage;
- a fully democratic and inclusive workplace, society and community;
- a fair, fully accessible workplace and society free from harassment, discrimination, racism and violence against women;
- enforceable health and safety in their workplace and community;
- an environmentally sensitive workplace and society;
- a workplace where employment standards are upgraded and fully enforced by the provincial government;
- universal child care;
- access to free, publicly funded education and training;
- universally accessible, portable and publicly funded health care;
- join a union, free from employer interference and repercussions;
- affordable housing;
- access to public, not privatized utilities, i.e. water and electricity.

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

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

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

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

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

From the hindsight of history, one lesson is very clear – so long as the rights of even one person are abused, reduced or absconded – then the freedom of all is in peril.

Human Rights

Trade Unions: Fighting Racism and Discrimination

As early as 1935, trade unionists in Ontario were organizing against racism and discrimination. Among some of the earliest activists were Sid Blum, Donna Hill, Kalman Kaplansky of the Jewish Labour Committee and Harry Gairey and Stan Grizzle from the Brotherhood of Sleeping Car Porters.

The labour movement continued to lobby and advocate for better laws and was instrumental in the establishment of the Ontario Human Rights Commission in the 1960s. The *Ontario Human Rights Code* (the "*Code*") is for everyone.

It is a provincial law that gives everybody equal rights and opportunities without discrimination in specific areas such as jobs, housing and services.

The *Code*'s goal is to prevent discrimination and harassment because of race, colour, sex, handicap and age, to name some of the sixteen grounds.

The *Code* was one of the first laws of its kind in Canada. Before 1962, various laws dealt with different kinds of discrimination. The *Code* brought them together into one law and added some new protections. The Ontario Human Rights Commission (the "Commission") administers and enforces the *Code*. However, an independent body separate from the Commission, called a Board of Inquiry, makes the ultimate decision in a complaint.

Since the 1980s, the OFL has been responsible for the following initiatives:

1981 Anti-Racism Campaign which developed information materials and educational tools for labour activists

1981 Statement on Racism Hurts Everyone
Statement of the Disabled

1982 Statement on Women and Affirmative Action

1983 Second phase Anti-Racism Campaign to help affiliates and labour councils to organize effective campaigns around eliminating racism

1983 Making Up the Difference Campaign which focused on awareness building around the problem of discrimination against women in the workforce

1985 Statement on Equal Pay for Work of Equal Value

1985 Third Phase Anti-Racism Campaign to assist affiliates in forming human rights committees

1985 Pay Equity Campaign where draft legislation and briefs were presented and lobbied the government for one piece of legislation to cover both the private and public sectors

1986 Statement on Racism and Discrimination

1987 Statement on Equal Action in Employment

1987 Kids not Cash Child Care Campaign

1989 Statement on Still a Long Way from Equality

1989 One Million Denied Pay Equity Campaign

1989 The Launch of the video "No Foot in the Door" at the OFL Convention along with an educator's kit

In 1982, the OFL designated five affirmative action seats on the OFL Executive Board followed in 1987 by expanding Board seats by two and one of those positions was to be held by a racialized person. After 30 years in existence, a woman was elected as one of the top three full-time Officers in 1986.

In 1990, the OFL designated six equity seats to the Board: two racialized vice-presidents, an Aboriginal vice-president, LGBT vice-president, a vice-president representing persons with disabilities and a vice-president representing workers under 30.

In 1995, the OFL and its affiliates were instrumental in bringing employment equity legislation to Ontario.

In 2000, the OFL held an Anti-Racism/Human Rights Conference. The Conference highlighted the erosion of human rights in Ontario and the inadequacy of existing remedies against discriminations. Strategies to lobby the provincial government will be developed.

The OFL continues to initiate campaigns and lobby on behalf of working people for equity and justice in the workplace and society.

Racism: Is it a reality in 2007?

According to Statistics Canada, by the time Canada celebrates its 150th anniversary in 2017, more than half of Torontonians and Vancouverites will likely be racialized people.

Across Canada, one out of every five people or between 6.3 million and 8.5 million could be a racialized person.

Changing conditions of working life are having a profound impact on unions. Restructuring of the workforce is leading to rapid changes in the age, gender, cultural and social profile of union members. Tensions around diversity and equality are becoming central concerns in both workplace and union life, with vast implications for both formal and informal elements of union-based education.

> *Unions have failed to strategically promote and market their anti-racism and human rights courses and workshops. Aboriginal members and members of colour interpret this situation as yet another sign that unions are not placing a high enough priority on their issues…there is a need for union educational materials to reflect anti-racism principles...our educational materials have been written with a Euro-centric analysis, which ignores the diversity within union memberships.*
>
> *Canadian Labour Congress (1997:12)*

If we are serious about addressing racism, we must be compelled to act on the injustice and indignity of discrimination, as well as to look to our own everyday experiences, and be ready to admit that racism exists in our society.

The myth that Canada is a land where people's human rights have always been protected and respected is so deeply ingrained in the minds of Canadians that there is often a refusal to acknowledge that Canada has a racist history. Racism feeds on beliefs that promote one group of people to the detriment of other groups on the basis of false assumptions that are unacceptable. Racism divides workers and weakens our unions to the detriment of all workers.

We can begin with the First Nations people. The *Indian Act* of 1876, as well as subsequent legislation and treaties, introduced institutionalized racism that continues to flourish to this day. Aboriginal peoples have been segregated into reserves, forced to relocate, sent to residential schools and denied the right to vote. Their children have been taken away from them, their governments, traditions, beliefs and ceremonies have been regulated and banned and above all Aboriginal peoples were prohibited from purchasing land and denied their inherent land claims repeatedly as we see in the current land claim crisis in Caledonia.

There are many stories of the genocide of Aboriginal peoples. In April 2007, **for the first time in history, the Canadian government has been publicly forced to acknowledge the deaths of children in Indian residential schools**. This is a great breakthrough and a vindication of the years of effort by our Truth Commission into genocide in Canada. Regardless of the outcome, we must maintain pressure on the government and the churches for a full disclosure of the crimes that caused these deaths, and for a repatriation of the remains of the children who died in Indian residential schools and hospitals across Canada.

There were many other immigrant groups who faced discrimination including white European immigrants. Signs saying "No Irish need apply" were common before the First World War.

Black Canadians have been subjected to racist policies since their arrival in Canada. Until recently, White Canadians used to glamourize slavery in Ontario by acknowledging that their ancestors were allies to fugitives escaping slavery from the United States. In our everyday lives, we invoke the metaphors of slavery.

For example, if you feel you are being exploited, you might say "I am being treated like a slave." Yet few people actually know about the slavery that they constantly refer to – the trans-atlantic trade in enslaved Africans. There is still a real silence around the topic. When the issue of the slave trade surfaces, people suddenly become

uncomfortable. One is often asked to "forget the past" or "not to bring up that ancient history" or "stop playing the race card." The slave trade and slavery in western society is still by and large an invisible history. Canada, itself, was part of the wider phenomenon of the Atlantic slave trade and slavery.

First, Canada was a colony of France and Britain, the two largest slave traffickers.

Second, because the Atlantic slave trading activities connected diverse economies, for much of the slavery period there was a brisk trade between the capitalists of eastern Canada and the slaveholders of the Caribbean. West Indian slaves were also bought by Canadian slaveholders and merchants.

Third, recent research has discovered that at least 60 of the slave ships used in the British slave trade were built in Canada.

Most importantly, enslavement of Africans itself was institutionalized in Canada. The enslavement of black people existed from at least 1628 to 1834 when it was abolished by imperial fiat.

The OFL and its affiliates will be working closely with this government to ensure that the commemoration of the Bicentenary of the Abolition of the Slave Trade will give all Ontarians an opportunity to better appreciate the horrific legacy of slavery in Ontario, to honour those who suffered and died as a result of slavery and the heroes who fought for its abolition. This project will shed light on a shameful part of our history.

The challenge for trade unionists is to sustain our efforts and develop a common approach to combat racism and discrimination.

By encouraging dialogue on these issues in our unions, we can identify specific issues and develop collective strategies and concrete actions to overcome them not only in our workplaces but also in our unions and communities.

Silence is complicity. The labour movement needs to move out of the box and begin to think critically in a local, regional, national and global context about how racism and discrimination affect workers economically and socially.

The labour movement not only has to **talk** about advocating for the rights of workers but also not to hesitate to "**walk the walk**" against racism and discrimination.

The Right to be Who We Are – Lesbian, Gay, Bisexual and Trans-Identified (LGBT) Communities

The OFL is proud of the role we have played in furthering the struggle for equality rights for lesbians, gay men, bisexuals and trans-identified (LGBT) people and their families. The labour movement has clearly shown that we will fight for the rights of our members who are part of these communities at the bargaining table, in the courts and in the legislature.

In 1969 the Federation, along with the Canadian Labour Congress (CLC), supported the decriminalization of homosexuality in Canada. Prior to this legislative change, lesbians and gay men were charged and sometimes sentenced to jail for loving a person of the same gender.

Throughout the 1980s we stood with the LGBT community demanding that sexual orientation be added as a prohibited ground under the *Ontario Human Rights Code* and the *Canadian Human Rights Act*. In the years before 1986, lesbians and gays could legally be refused housing, services and employment.

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

Delegates at the Federation's 1997 Convention took historic action with a constitutional change creating an equity vice-president position representing gay, lesbian and bisexual members. In September of 1999, the Federation sponsored its first conference on lesbian and gay issues with over 250 participants. The Federation's Positive Space Campaign is an overwhelming success with requests for material received regularly. Each year, in communities across Ontario, labour plays an increasing role in Pride Day events. We are seeing the growth of lesbian, gay and bisexual committees throughout the labour movement.

Over the past decades the lesbian, gay and bisexual communities won major victories concerning individual rights and relationship recognition. These have been enshrined in laws and judgments affirming the right to full equality.

However, the struggle for equality for people who identify as transgender, transsexual or intersex still remains. The OFL will continue to stand with these communities in demanding the inclusion of gender identity and gender expression as a prohibited ground under both the *Ontario Human Rights Code* and the *Canadian Human Rights Act*.

In Ontario, the OFL will continue our strong opposition to the delisting of sex reassignment surgery and support human rights complainants in their struggle for justice to have the cost covered by OHIP. We are committed to continue our work with the CLC to lobby for inclusion of transgender in the federal Hate Crimes legislation. Our affiliates are beginning to win bargaining language that includes accommodation and benefits for trans-identified workers.

Despite the legal gains made in the past several years, prejudice still exists in the day-to-day lives of many lesbians, gay men, bisexuals, and trans-identified people and their families. Homophobic behaviour is any expression of a negative attitude towards lesbian, gay or bisexual people. Transphobic behaviour is directed at trans-identified people. Governments, at both the provincial and federal levels, must launch an ongoing public education campaign about human rights, focusing on anti-harassment, anti-violence and anti-discrimination. Police forces must work with the LGBT communities to reach mutual understanding and support. They must provide training and education to assist police officers to do this work.

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

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

Accessing Rights

In its first year as government, the Harper Tories have implemented measures to limit our ability to access our rights. One of Harper's actions was to eliminate the federal Court Challenges Program.

The Court Challenges Program of Canada (CCP) provided access to justice in language and equality rights constitutional test cases.

The Canadian Constitution establishes important constitutional rights. These include the rights of official language, the rights of minority groups to education and government services in their primary language, the rights of everyone to equality before and under the law, and to equal protection and equal benefit of the law without discrimination. However, these rights are only paper guarantees unless the individuals and groups they are designed to protect have the means to access the courts in order to enforce their rights. Without this key program, Canada's constitutional rights are real only for the wealthy.

To be meaningful, rights have to be exercised. But many individuals and groups cannot access the courts without financial assistance. Without the CCP in place to provide this assistance, the interpretation and application of constitutional rights will only be available to those with deep pockets. Unequal access to constitutional rights adjudication must be a concern for all.

Canadian courts have long recognized that it would be practically "perverse" to expect governments to simultaneously enforce and challenge legislation. As a result, our justice system has recognized and accommodated public interest litigation to fill this void. The CCP played an important role in facilitating public interest litigation.

Since its inception, the CCP has funded parties or interveners in many significant cases. In some cases, there were victories for official language minorities or for disadvantaged groups. In all cases, groups and individuals, funded by the CCP made a significant contribution to the understanding and further clarification of rights in Canada, bringing voices into Canadian court rooms that would not otherwise be heard.

In a constitutional democracy like Canada, constitutional rights litigation is an essential part of democratic dialogue and the exercise of citizenship.

Constitutional test cases examine the meaning of rights and their limits. As a society, we suffer when constitutional wrongs go unchecked. The Ontario Federation of Labour will continue its work with the Canadian Labour Congress and equality seeking groups to demand that this critical program be reinstated.

Racial Profiling

Racial profiling has been a major concern for members of racialized communities. There has been an ongoing public debate on whether racial profiling exists in Ontario, who engages in it, who is targeted, whether it is a legitimate practice, what can be done to prevent it and the effect that racial profiling has on those directly impacted and on Ontario society as a whole.

Racial profiling is defined as **any action** undertaken for reasons of **safety, security or public protection** that relies on **stereotypes** about race, colour, ethnicity, ancestry, religion, or place of origin rather than on reasonable suspicion, to single out an individual for greater scrutiny or different treatment. Racial profiling can occur because of a combination of the above factors and that age and/or gender can influence the experience of profiling. Racial profiling is primarily a **mindset**. At its heart, profiling is about stereotyping people based on preconceived ideas about a person's character. Its practice is not limited to any one group of people or particular institution. Profiling can occur in many contexts involving safety, security and public protection issues. A few examples of profiling are:

- a law enforcement official assumes someone is more likely to have committed a crime because he/she is an African Canadian;
- school personnel treat a Latino child's behaviour as an infraction of its zero tolerance policy while the same action by another child might be seen as normal "kid's play";
- an employer wants a stricter security clearance for a Muslim employee after September 11;
- a bar refuses to serve Aboriginal patrons because of an assumption that they will get drunk and rowdy;
- a criminal justice system official refuses bail to a Latin American person because of a belief that people from his/her country are violent; and
- a landlord asks a Chinese student to move out because he/she believes that the tenant will expose him/her to Severe Acute Respiratory Syndrome (SARS) even though the tenant has not been to any hospitals, facilities or countries associated with a high risk of SARS.

Although anyone can experience profiling, racialized people are primarily affected. Stereotyping can be described as a process by which people use social categories (e.g. race, ethnic origin, place of origin, religion) in acquiring, processing and recalling information about others. In some cases, it may be natural for people to engage in stereotyping. It is nevertheless wrong.

Moreover, it is a significant concern when people act on their stereotypical views in a way that affects others. This is what leads to profiling.

In the absence of proactive measures to ensure that profiling does not take place in Ontario, there is no reasonable basis to assume that we are immune to the problem.

Stephen Lewis' 1992 *Report to the Premier on Racism in Ontario* on the issue of police/racialized people relations concluded that racialized people, particularly African Canadians, experienced discrimination in policing and the criminal justice system. Stephen Lewis recommended that the Task Force on Race Relations and Policing be reconstituted owing to perceived inadequacies with the implementation of the 57 recommendations in its 1989 report. A second report of the Task Force was published in November 1992 which examined the status of the implementation of the recommendations from the 1989 report and offered additional recommendations.

In 1992, the Ontario government also established the Commission on Systemic Racism in the Ontario criminal justice system. This Commission studied all facets of criminal justice and in December 1995 issued a 450 page report with recommendations.

To date, this is the most comprehensive report on the issue of systemic racism in the Ontario criminal justice system. The review confirmed the perception of racialized groups that they are not treated equally by criminal justice institutions. Moreover, the findings also showed that the concern was not limited to police.

In addition to the various task forces, social scientists, criminologists and other academics have studied racial profiling using different social science research methods. Some have used qualitative research techniques and field observations while others have employed quantitative research and examined official records. Regardless of the method used, these studies have consistently showed that law enforcement agents profiled racialized people.

To those who have not experienced racial profiling or do not know someone who has, it may seem to be nothing more than a mere inconvenience. However, racial profiling is much more than a hassle or an annoyance. It has real and direct consequences. Those who experience profiling pay the price emotionally, psychologically, mentally and in some cases even financially and physically.

The future well-being and prosperity of all Ontarians depends on our children and youth. The Ontario Human Rights Commission's racial profiling inquiry learned that one of the most significant and potentially long-lasting impacts of racial profiling is its effect on children and youth.

Zero tolerance policies were cited as being of significant concern to racialized communities. There is a strong perception that the *Safe Schools Act* and school board policies applying the *Act* are having a disproportionate impact on racialized students. The *Safe Schools Act* and zero tolerance policies made by school boards appear to be having a broad negative impact not only on students, but also on their families, communities and society at large. The most commonly identified impacts are:

- loss of education and educational opportunities;
- negative psychological impact;
- increased criminalization of children often for conduct that does not threaten the safety of others; and
- promotion of anti-social behaviours.

THE IMPACT

Members of racialized communities in Ontario are living in a state of crisis due to the effects of racism.

As illustrated in this report, racial profiling, among other things, compromises our future through its impact on our children and youth. It creates mistrust in our institutions, impacts our communities' sense of belonging and level of civic participation and impacts on human dignity. Therefore, social inclusion is no doubt undermined by racial profiling at a high economic cost to Ontario society.

Aboriginal peoples have a long history of documented economic, social and historical disadvantage in Canada. Approximately 20% of Canada's Aboriginal population is located in Ontario and the majority of these individuals live off reserve in urban areas. Human rights issues affecting Aboriginal peoples are, therefore, real and present in Ontario and fall within provincial jurisdiction.

In 1996, the Royal Commission on Aboriginal Peoples released its final report. It contains a comprehensive history of disadvantage and systemic bias that has been generally recognized for many years. Many of these issues are evident both on and off reserve. Aboriginal peoples in urban areas suffer from the cumulative and aggravated effects of poverty, lower education level and discrimination.

For members of the Aboriginal community, the experience of racial profiling has many significant differences from that of any other racialized communities. Aboriginal peoples have their origins in North America. They have no other home. Many of the issues they face result from centuries of colonialism, much of which continues to the present.

As a result, all too frequently, the impact of racial profiling further blocks them from full participation in the many benefits of Canada and Ontario. Furthermore, Aboriginal peoples find themselves at an intersection of racial, cultural, economic, educational and social disadvantage. That makes the experience entirely unique to them.

The OFL and its affiliates have a role to play in ending racial profiling. The time has come to act, the human cost of racial profiling is too great – our society is paying the price.

Pay Equity

In the early 1950s, delegates at the then Ontario Provincial Federation of Labour called on the Ontario government to implement "equal pay for equal work" legislation. This would prohibit the practice of paying different wages to men and women who were performing the same or substantially similar work. Legislation was enacted in 1952.

In the early 1970s, women's groups began to mobilize for economic equality based on the value of women's work and began to lobby for legislation that would also allow redress where the work was not substantially the same, but where the woman's job was of "equal value" to the man's job (equal pay for work of equal value). Our affiliated unions began to address this issue at the bargaining table.

In 1988, Ontario enacted the most far-reaching pay equity laws in North America. This critical equality step was won after a decade of public education, government lobbying, collective bargaining and political action by the labour movement and the Ontario Equal Pay Coalition. The legislation came about due to the NDP in their Accord with the Liberal government of the day. In unionized workplaces, the union must be involved in the pay equity process.

Unlike federal measures, Ontario activists were able to win proactive legislation that has the explicit purpose "to redress systemic discrimination in compensation." The *Act* covers all non-federal public sector employers in Ontario and all private sector employers with 10 or more workers.

Unions developed a strategic plan to ensure that the first cases before the Pay Equity Tribunal established strong pro-active equity principles. An example of which was the Haldimand−Norfolk decision on definition of employer brought forward by the Ontario Nurses' Association which expanded the definition of employer beyond the traditional labour relations model.

In 1993, the NDP government amended the *Act* to provide a "proxy method" of comparison which extended the legislation to cover an additional 100,000 workers in mostly female workplaces.

The NDP government also recognized the inability of community-based programs such as child care and women's shelters to fund pay equity adjustments, and introduced government funding to assist programs to meet their pay equity obligations. Funding was provided for an initial wage increase of 3% of payroll, and an additional 1% of payroll each year after that until pay equity is achieved.

In 1995, the Harris Tory government was elected in Ontario. They immediately capped public sector pay equity funding and ended it altogether in 1999.
In 1996, the Harris Tory government abolished the proxy pay equity method and eliminated the obligation for proxy employers to pay beyond the initial 3% of payroll. The Service Employees International Union (SEIU) launched a Charter of Rights challenge and won reinstatement of proxy in the *Act*.

In 1998, the Harris government refused to continue to fund public service agencies for proxy pay equity increases. After paying about one-third of what was due ($250 million), the Harris government announced that proxy pay equity funding would be the individual employer's responsibility and not the government's. Five unions launched a Charter challenge to overturn the government's decision: the Canadian Union of Public Employees, the Ontario Nurses' Association, the Ontario Public Service Employees Union, the Service Employees International Union and the United Steelworkers.

In 2003, a landmark pay equity settlement was announced, amounting to $414 million and affecting 100,000 women in predominantly female, public sector workplaces. The settlement – although a victory – did not cover the full cost of proxy pay equity adjustments. Payouts of the settlement were completed in December 2006. The McGuinty Liberal government refuses to provide any additional pay equity monies. The Federation, our affiliates and the Equal Pay Coalition continue our work to obtain government funding in this sector.

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

Ontario's pay equity law continues to be internationally recognized as one of the world's most effective laws in redressing the wage gap. This is because of the comprehensiveness of its model which combines legislative, collective bargaining, adjudicative and enforcement mechanisms to arrive at an effective equity result.

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

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

Pay equity has been achieved for some but not nearly for all women in Ontario. Women workers in the proxy sector – such as child care workers – have not achieved pay equity. These women are still waiting for their full pay equity adjustments to be paid out. Adjustments are limited to 1% of annual payroll which can take another 20 or more years.

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

We know that legislative rights are important but equally important is the enforcement of rights. An expert commission and hearings tribunal is essential to effective enforcement. Pay Equity Commission staff provide valuable advice to employers, unions and non-organized employees in ways that helped avoid unnecessary costs, reduce time and promote consistency. The Harris years saw major cuts to the Pay Equity Commission. The McGuinty government has continued the under-funding and under-staffing.

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

The Federal Experience

In 1977 – over 30 years ago – Section II of the *Canadian Human Rights Act* came into effect. This legislation prohibits wage discrimination between male and female workers employed in the same establishment and performing work of equal value. The law applies to employees in the federal public sector and businesses under the federal jurisdiction, such as banks, CN Rail, Bell Canada and Canada Post. The *Act* relies on a complaint-based enforcement system.

The federal pay equity law does not work. It is only activated if someone complains. Proactive laws require the employer to take action to ensure that all employees receive equal pay for work of equal value.

Currently, to win equal pay an employee must bring forward a pay equity complaint to the Canadian Human Rights Commission (CHRC). The Commission investigates and if it cannot solve the problem, decides whether or not to refer the file to the Canadian Human Rights Tribunal for adjudication.

This process takes an enormous amount of time and resources which individual women do not have. The entire process is too long, too costly and extremely frustrating, especially for non-unionized women. Unions have tried to use this process to win pay equity and have faced employers who are prepared to spend years in court fighting about unclear terms in the legislation, such as establishment or occupational group rather than focusing on the merits of the case.

One of the many examples of the shortfalls of the pay equity system is the case of unionized clerical workers at Canada Post. These employees have now waited over 21 years to have their complaint settled by the Canadian Human Rights Tribunal. The Public Service Alliance of Canada (PSAC) fought for 15 years to win pay equity for their members in the federal civil service. The Canadian Energy and Paperworkers (CEP) also fought Bell Canada for 14 years before reaching a pay equity settlement for their members who worked as telephone operators.

The responsibility to make pay equity work effectively is unfairly placed on the shoulders of the more vulnerable party – individual women workers – rather than on employers or independent agencies.

The current legislation is not clear about the nature of employers' obligations and consequences of non-compliance with the pay equity obligations. It does not provide enough guidance on acceptable standards and methods for achieving pay equity. Instead, vague legislation encourages and prolongs costly litigation which women, especially non-unionized women, women of colour and poor women simply cannot afford. Consequently, the model fails to ensure that the average woman worker will see her pay equity complaint resolved and actually be paid equal pay for work of equal value.

In fact, our current national pay equity system is so weak that the United Nations Committee on the Elimination of Discrimination Against Women has called on the Canadian government to take appropriate action and accelerate the implementation of equal pay for work of equal value.

Women's groups and trade unions have pushed for years for the government to improve the federal pay equity system. The Canadian Women's March 2000, led by 23 national women's organizations demanded that the federal government adopt proactive pay

equity legislation as part of a comprehensive strategy to end poverty and violence against women.

The federal government finally recognized the need to take action. In June 2001, the Task Force on Pay Equity, under the direction of the Minister of Justice and the Minister of Labour, was appointed. The Task Force was to review the current pay equity framework and make recommendations to improve the system. The Task Force consulted stakeholders including employees, employers, trade unions, researchers and pay equity experts. Extensive consultations took place across the country to collect information about what pay equity initiatives were needed and to identify new approaches.

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

Prime Minister Harper refuses to have his government address economic equality for women. He has refused to make any moves to introduce proactive pay equity legislation contrary to the recommendations of the Federal Task Force in 2004.

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

The OFL will continue our work with the CLC, the national Pay Equity Network and our affiliates to pressure the federal government to act now to implement the Pay Equity Task Force's recommendations. The government must take positive action to eliminate the wage inequities that women, workers of colour, Aboriginal workers and workers with a disability experience in federally regulated workplaces.

Employment Equity

Employment Equity History

Issues surrounding employment equity became prominent in Canadian public policy discussions during the late 1970s and early 1980s. In 1983, Canada's official response was the establishment of the Royal Commission on Equality in Employment, with Judge Rosalie Abella as Commissioner. The Abella Report was released in 1984 and it is the definitive statement on the principles and practice of employment equity.

This report resulted from a major research initiative carried out in 1983. The Commissioner sent letters to nearly 3,000 individuals and organizations, and received 274 written submissions in response. She held 137 meetings attended by more than 1,000 people, including 92 meetings in 17 cities across Canada, as well as meetings with designated group members, government officials, union and business representatives, and employees and officials from 11 Crown corporations. 39 substantial research reports were commissioned on topics including education, child care, racism and pay equity.

The Abella Report has influenced subsequent legislation and practice profoundly. It defines equality as "...at the very least, freedom from adverse

discrimination" and sets the goal of equality as ensuring that "the vestiges of ... arbitrary restrictive assumptions do not continue to play a role in our society" (Abella 1984:1). "It is based on discriminatory practices or attitudes that have, whether by design or impact, the effect of limiting an individual's or a group's right to the opportunities generally available because of attributed rather than actual characteristics" (Abella 1984:2). Employment inequity, therefore, is based on history.

The Ontario government's *Act* to provide employment equity for Aboriginal peoples, persons with disabilities, racialized people and women passed third reading in December 1993 in a provincial legislature governed by a majority New Democratic Party (NDP). It became law in early 1994. This legislation was debated extensively between supporters and opponents of employment equity.

Though the *Act* suffered an early death after less than two years on the books, the formal process leading up to its enactment began in November 1990. In its first Speech from the Throne, the newly elected NDP government identified employment equity as a provincial priority.

Alternatively, the Ontario Tories under Mike Harris came to Queen's Park committed to a "common sense revolution" with a leadership particularly intent on removing employment equity legislation. Alternatively, the *Act* repealing the employment equity legislation was grounded in the position that equity demanded an end to such special measures. It was argued that where there were cases of discrimination, the *Ontario Human Rights Code* operated as a protection and, therefore, employment equity law was not only unnecessary but also inappropriate and unfair.

What is Employment Equity?

Employment equity is a process that cuts across all levels and departments of an organization both at the provincial and federal levels. Over time it will involve significant quantitative and qualitative changes to the workplace.

Quantitative because employment equity is about ensuring the full representation of designated groups: women, racialized people, Aboriginal peoples and persons with disabilities in the workplace: a workplace as a whole, in different occupations, and at different levels in the organization. It may involve opening doors to skilled people who have never worked.

Qualitative because employment equity is also about changing the workplace so that:

- it is free of discriminatory barriers;
- through supportive, positive and accommodation measures, designated groups members can participate equitably;
- all workers are treated fairly;
- employment equity will ultimately affect every employment decision, including how employees are recruited and trained.

To accomplish all of these the labour movement needs to examine its assumptions and values. They need to reassess traditional practices, i.e. the way things have been done or standard procedures and change some long standing practices.

Employment equity is all about fairer approaches, removing barriers, communicating openly and integrating new people into different kinds of jobs. It means establishing new policies and practices to meet the demands of a diverse workforce.

Labour's Role

The OFL has championed the cause of equity since the earliest days of its mandate.

In the early 1960s, delegates at Convention passed a resolution calling for legislation to address barriers to employment. In 1983 the OFL Constitution was amended at Convention to establish six affirmative action seats for women on the OFL Executive Board. Further Constitutional updates established seats for Aboriginal peoples, persons with disabilities, lesbians, gay men, bisexuals and trans-identified people, racialized people and workers under 30.

In 2005, statistics consistently show that women, racialized people, persons with disabilities and Aboriginals are entering the workforce in larger numbers than ever before, and studies continue to show that they experience discrimination in employment opportunities.

The goal of employment equity means unions must strive for a representative workforce that reflects society. Employment equity initiatives must identify and eliminate existing discrimination and remove the barriers faced by equity groups.

Federal and provincial employment equity legislation must be strengthened in order to achieve its objective – equity in employment – and unions must have the ability to participate fully in the development and monitoring of employment equity plans even if there is no provincial legislation.

Inside our own unions, we must convince our members that strong, enforceable legislation is needed to remedy the discrimination that exists. We must debunk the myth that equity groups will have access to jobs and promotions that they are not qualified for and that equity in the workplace will undermine collective agreements and seniority. Whenever systemic action is being taken against sexism, racism, and ableism, action against heterosexism and homophobia must be added.

Workers and their unions must join in solidarity, alongside our Aboriginal brothers and sisters and restore humanity, hope, opportunity, dignity and respect for the people who made up 100 percent of our population just 600 years ago.

Persons with Disabilities

Statistics Canada reports that there are approximately 1.5 million Ontarians with a disability. Many Ontarians with disabilities are suffering in lives of poverty because they have not had the opportunity to enter and stay in the paid labour market.

The cost of accommodating workers with disabilities is quite reasonable. A recent estimate by the Canadian Abilities Foundation puts the cost at under $1,500 for almost all workers with disabilities. Cost has often been used by employers as the reason for not hiring workers with disabilities. The barriers which challenge these workers are systemic and attitudinal more than physical.

It is clear that changing demographics should be of critical importance to the labour movement. Persons with disabilities also frame "access to work" around the assistance they need to get to work, i.e. transportation, personal attendants, etc.

Unions bring unprecedented experience and expertise in workplace issues as well as important insights and longstanding commitment to equity issues. The OFL and its affiliated unions will continue to educate, inform, lobby, negotiate, and lead by example – never losing sight of the goal of equity in employment. They will continue to develop mentoring programs within affiliates, their locals and equity groups. They will make a concerted effort to develop employment equity programs that will include the inclusion of equity groups on staff that reflect the membership. The OFL and its affiliates will lobby the McGuinty government to reintroduce employment equity legislation to ensure equality in the workplace.

Racialized People

Racialized people's availability in the workforce is one of the lowest levels of representation of all the designated groups. In 1998, they represented 5.1% of the public service compared to 10.4% of the workforce (PSAC 1998). This figure is explained only partially by the fact that because of immigration patterns, the proportion of racialized people in Canadian society has increased significantly over the last decade, while that of the other designated groups has remained relatively constant. If current immigration trends continue, racialized people's proportion of the Canadian population will continue to rise, while their proportion of the workforce will rise at a somewhat higher rate as the population ages and larger numbers enter the workforce. Racialized people work in sectors like agriculture and garment work where jobs are low wage and temporary in many instances.

Racialized women fall slightly below men in representation (5.0% vs. 5.3%). Racialized people are also disadvantaged in terms of their public service distribution, strongly under-represented in the executive category (2.8%), somewhat over-represented in administrative support (5.3%) and operational (5.1%) categories, and strongly over-represented in the scientific and professional category (10.1%). The latter situation resulted in a recent Canadian Human Rights Commission Tribunal finding that racialized people at Health Canada are not being promoted at a rate that is commensurate with qualifications and experience.

A fact that stands out clearly in all jurisdictions, however, is that racialized members have the lowest proportional representation compared to work force availability, especially in British Columbia, Manitoba, Ontario and Quebec, all of which show representation at less than 50 percent of availability.

Aboriginal Peoples and Employment Equity

Over the past several years, the labour movement has grappled with the complex set of equity issues relating to Aboriginal peoples. Patiently and persistently, it has addressed the barriers to Aboriginal employment and recommended solutions to facilitate the development of a workforce representative of the Aboriginal population in this country. The OFL and its affiliates have continued their efforts to ensure that the Aboriginal equality issues are addressed at every level of the union. The fundamental premise behind building a strong and positive relationship between Aboriginal

peoples, including their own representative organizations and the labour moment, would be best served by an enhanced collective understanding.

The labour movement has long realized that Canadian society as a whole should make accommodations for the special needs of Aboriginal peoples. Labour leadership has consciously and effectively worked with the Aboriginal community to create a representative workforce.

In keeping with the profound demographic and economic changes that are reshaping this country, the labour movement also realizes while both organized labour and Aboriginal peoples have had their differences in the past, the negative impact of economic and global restructuring on both of their members will be very profound. Moreover, many of the social and economic policy interests of both groups are common ones and working in cooperation with each other would comprise a formidable political force.

Change has come because the strong, influential voices of Aboriginal labour and community activists have talked about fairness, justice and inclusion for their people. Labour has followed suit by demanding for Aboriginal inclusion in the mainstream workforce. Compensatory interventions to overcome labour force barriers, such as special employment subsidies or employment equity programs have been lobbied for by some unions at different levels of government.

For unions as a social justice movement, there is reason for us to push employment equity. Unions have begun to develop much needed initiatives designed to achieve a representative workforce by developing employment equity plans specific for the Aboriginal population. They are also developing special language and provisions in the collective bargaining process to enhance Aboriginal accessibility to the workforce.

By improving wages and working conditions for workers generally, organized labour has improved the wages and working conditions of a small percentage of Aboriginal workers employed in the mainstream market. It has not only been a positive force for the urban Aboriginals but for some Aboriginal peoples living in rural, remote and isolated areas as well.

In 1998, the partnership agreement between the Canadian Labour Congress and the Congress of Aboriginal Peoples outlines labour's commitment to support Aboriginal rights and work with affiliates to address workplace systemic barriers and the under representation of Aboriginal peoples through the collective bargaining process in order to address high unemployment, poverty, racism and racial profiling, accessibility and the impact of technological change. For solidarity to occur, it is necessary for the non-Aboriginal population to discover their own reasons for fighting capitalism and oppression and reshaping Canadian society in ways that would also benefit Aboriginal peoples. No single group in society can alter the right wing agenda by acting as a silo.

Unions have a great deal of work to accomplish around equity. The OFL has to participate in campaigns and actions in partnership with Aboriginal organizations that represent the views of the Aboriginal peoples. The OFL needs to lobby for greater Aboriginal labour representation and participation in the face of fairly consistent resistance and systemic barriers. Aboriginal workers are the fastest growing segment of the workforce. The Aboriginal population is young and

growing at a rate almost twice that of the Canadian population.

An example of building partnerships between the labour moment and Aboriginal peoples was at a joint historic conference in 2002 organized by the unions representing the forestry industry and First Nations. At this conference the union and the First Nations people had the opportunity to have open discussions in order to better understand each other's diverse culture, histories and relationships to Canada's forestry industry. We need to push for this kind of dialogue in other unions in order to educate and dispel myths and build on common goals.

Lesbians, Gay Men, Bisexuals and Trans-Identified Workers

The inclusion of lesbians, gay men, bisexuals and trans-identified people (LGBT) as a 5th designated group under employment equity is strongly supported by labour and equity advocates.

Harassment or the threat of harassment is a day-to-day reality for many LGBT workers. To be openly LGBT at work can be unsafe, thus the employment equity requirement of numerical representation, at present, is not a demand of this group.

However, it is strongly supported that lesbians, gay men, bisexuals and trans-identified people be counted as a designated group for the purpose of workplace environment measures. Whenever systemic action is being taken against sexism, racism, and ableism, action against heterosexism and homophobia must be included.

Women

The past two decades have witnessed dramatic growth in the participation of women in the labour force. In 2003, 58% of women worked – up from 42% in 1976. Despite this dramatic increase, the road to equality remains full of obstacles for all women. After over two decades of voluntary workplace equity programs the barriers of workplace harassment, violence, lack of training, promotions and lack of affordable quality child care are still very real.

Studies continue to show that the employment gap is wider for a worker who is a woman, a person of colour, or is under 30. Most women with disabilities and Aboriginal women cannot even get in the workplace door. Harassment and discrimination remain a day-to-day reality for many working women.

The wage gap has been slowly closing, in part because of pay equity legislation, and in part because of falling wages for many men. However, women working full-time earn on average 71% of what a man working full-time earns. The pay gap is much wider for Aboriginal women (46%) and women of colour (64%).

The characteristics of women's work have not changed significantly. Women still experience widespread employment inequality in the labour market. The majority of employed women continue to work in occupations in which women have traditionally been concentrated. In 2003, 70% of employed women were working in education, health occupations, clerical or other administrative positions, or sales and service occupations. This represents a very small decline (4%) from 1987 where 74% of women worked in these sectors.

There has been very little movement in women employed in non-traditional sectors. In 2003, 29% of workers in manufacturing were women. Women made up just 7% of workers in transportation, trades and construction work.

Many working women have experienced loss of employment mobility after a decade of job cuts, pay freezes or roll-backs of many of the relatively "good jobs" for working women in government, health, education and social services.

Also in the 1990s, the process of women in the labour force has also been thrown into reverse by the massive "casualization" of private sector service employment. Pay in most of these jobs has been flat or falling and insecurity of hours and work has been increasing.

In Ontario, there are two key pieces of legislation to redress workplace discrimination – the *Ontario Human Rights Code* and the *Ontario Pay Equity Act*. However, a decade of severe budgetary restrictions and limited governmental support have been experienced by both the Human Rights and Pay Equity Commissions. In particular, equity advocates express frustration with the ability of the Human Rights Commission to adequately pursue and support measures of redress. This is a result of both declining infrastructural support and the complaints-driven and individualized process that underlies the mandate of the *Ontario Human Rights Code* and its Commission.

Since the repeal of Ontario's *Employment Equity Act*, women have not made employment equity gains throughout the labour force. The majority of employed women continue to work in occupations in which women have traditionally been concentrated. Both public and private sector employers' movement to downsize, privatize and casualize jobs have had a profound impact on women workers.

In all of the studies on women and work over the past two decades there is **one** area of positive outcome – unionization. Women's unionization rate has increased to 30% in 2004 from 10% in 1977. For the first time in our history, women's rate of unionization was higher than men's.

This is no accident. Unions have been in the forefront of the struggle for women's equality. We have supported equality in the workplace, at the bargaining table, in government policies and legislation. We have engaged – with community partners – in campaigns to protect public services and the creation of other new services.

A 2004 Statistics Canada report shows that unionized women earn on average 92% of male income. For non-unionized women the gap is 80%. Unionized women have more access to paid family leave, pensions, better benefits, training, better vacation leaves, protection from harassment and greater protection from job cuts or cut backs than non-unionized women.

If the labour movement is to continue to grow we must tap into the need for working women to unionize. We must continue to support working women's rights to employment free from discrimination, and barrier free workplaces.

Violence Against Women

Women's Right to be Safe in Our Lives

Violence is an issue that is central to women's equality and well-being. It affects everyone who has been a direct victim of violence, their families, friends, neighbours, co-workers and society as a whole.

Ontario saw the founding of the first rape crisis centres and shelters for battered women in the early 1970s. By the end of the decade, union women were raising the issues of rape, domestic violence and workplace harassment and violence through convention resolutions. In their unions, women developed demands for collective bargaining language and the need for union education. Unions began working with the community coalitions lobbing for government actions to end violence against women, and government support for resources for women and children escaping violent situations.

In 1984, the federal legislature erupted in laughter when NDP, MP Margaret Mitchell, raised the issue of wife battering in the House of Commons. Women and labour organizations mobilized to express outrage to this response and worked within our communities to educate and lobby for actions.

On December 6, 1989, 14 young women were murdered at the École Polytechnique in Montreal because of their gender. These brutal murders jolted Canadians into acknowledging that physical, psychological and emotional violence is a daily reality for women and children. The federal NDP tabled a Private Member's Bill (which was passed) to recognize December 6 as a National Day of Remembrance and Action on Violence Against Women. Each year leading to December 6, labour and community groups organize and mobilize to remember women and children who have died because of violence and to call for government action to end the violence.

In October 2004, Amnesty International released its report *Stolen Sisters: A Human Rights Response to Discrimination and Violence Against Indigenous Women in Canada (2004)*. The report states that over 500 Aboriginal women were missing across Canada, many believed murdered with little action by governments. According to Canadian government statistics, young Indigenous women in Canada are at least five times more likely than all other women to die as a result of violence. The report questions the role of non-action by the police and governments.

In April 2007, the OFL supported the work of the Media Violence Coalition to add protection of women and girls in the criminal law under hate crimes.

The OFL and its affiliated unions work in coalition with the Ontario's women's equality-seeking groups, shelters, rape crisis centres, unions, anti-poverty groups and community groups to pressure all levels of government for concrete actions to reduce and ultimately end violence against women.

In November 2006, the OFL and women's groups launched the **Step It Up** campaign. The campaign outlines ten immediate steps all levels of governments can take to end violence against women and children. The campaign involved lobbying government, raising issues during election campaigns and public education. A campaign website was

launched to provide information and actions on the ten steps *www.stepitupontario.ca*.

There is a direct link between violence against women in the home and when that violence follows her into the workplace. An abused woman is often a working woman. Not surprisingly, women experiencing violence at home from their male partner often carry the impact of the violence with them into the workplace. Domestic violence can interfere with a woman's ability to get, perform or keep a job.

In June 2000, Gillian Hadley was murdered in her home by her husband (from whom she was separated). The inquest that followed her murder heard from the OFL and other groups on the impact domestic violence can have on a woman in her workplace.

In 2002, the inquest report was released. It was the first time an inquest of this kind addressed the issue of domestic violence pursuing women outside their homes and into their jobs. The report stated:

> *We recommend that all employment related legislation, including the Employment Standards Act, the Human Rights Code, the Occupational Health and Safety Act and the Workplace Safety and Insurance Act be reviewed and amended to ensure that: violence is defined to include harassment, stalking and threats of violence; women experiencing violence in an intimate or personal relationship may take a leave of absence sufficient to address the violence in the relationship and establish themselves and their children in a safe place without fear of losing their employment or fear of experiencing some other employment related reprisal.*

The Federation continues its work with the Ontario Association of Interval and Transition Houses (OAITH) to press for the implementation of the report.

No woman should have to choose between her personal safety and her job. Many women who have left abusive men are especially vulnerable at work. Work is somewhere the abuser knows he can find his victim. It is all too common for women to be stalked and harassed, and in the most extreme cases, physically injured or killed at work, whether or not their abuser is employed in the same place. Unions are winning supportive bargaining language. However, unorganized working women experiencing or escaping domestic violence must have protection under the *Employment Standards Act* to ensure no loss of job or discipline, and, when needed, accommodation to work schedule or location when being stalked by an abusive partner.

Unions have bargained collective agreement language that recognizes supports needed by working women escaping domestic violence, such as legal plans; leaves to go to court; help to find new housing; child care and help to heal without fear of being disciplined; the right to alternative work; to be accommodated if stalked by a violent partner; workplace women's safety audits and Employee Assistance Programs. Many union brothers participate and support groups such as Men Against Male Violence.

We must build on our work by continuing to bargain and strengthen collective agreements, increasing workers' education and continuing to work in coalition with women's equality-seeking groups for effective government action to end domestic violence.

Violence is not part of the job. Overt violence against women in the workplace takes two main forms: harassment and front-line violence.

In 1980, Bonnie Robichaud, a PSAC member in North Bay, filed a complaint of sexual harassment against her supervisor and her employer (the Department of National Defence). Sister Robichaud received strong support from her union, the broader labour movement and women's organizations. Victory for Sister Robichaud came after seven years of appeals. In 1987 the Supreme Court of Canada ruled that "an employer is responsible for the unauthorized discriminatory acts of its employees in the course of their employment under the *Canadian Human Rights Act*."

This decision was an important equality step for all working women. The decision's message is very clear – workplace harassment and sexist discrimination are not tolerated. This decision served as a foundation to define and address harassment within our workplaces and our unions.

The harassment women experience is not limited to sexual harassment. Women of colour, Aboriginal women, lesbians, women with disabilities and trans-identified women are subjected – everyday – to prejudiced actions, words and attitudes which cannot easily be separated from the oppression which they experience.

Harassment on the basis of race, sexual orientation, disability, gender identity/expression and various other forms of personal harassment, compounded with harassment due to their gender, can make the workplace, and indeed society, more dangerous and even lethal for women.

On June 2, 1996, Theresa Vince, was shot to death by her harasser in the Chatham Sears store where she had worked for the last 25 years. On November 12, 2005, Lori Dupont, a nurse at Hôtel-Dieu Grace Hospital in Windsor, was murdered at work by her ex-boyfriend who worked as a doctor in the same hospital. Women's organizations and the labour movement mobilized support for the Vince and Dupont families and their demands for an inquest.

Front-line violence has many causes. Government cuts to funding, services and downsizing, together with corporate greed for maximum profits, creates workplaces where workers are over-stressed and the public, trying to access services, get frustrated and angry. Women are often more at risk due to their location in the workforce − social workers, service providers, receptionists, nurses and teachers.

Clearly, if we are to address the issue of workplace violence, Ontario must introduce Violence in the Workplace Regulations under the *Occupational Health and Safety Act*. The McGuinty government must fully support and pass NDP/MPP Andrea Horwath's Private Member's Bill that would give all Ontario workers on-the-job protection by making workplace harassment an offence under the *Occupational Health and Safety Act*. The Bill would make harassment count as a workplace hazard.

Studies show the impacts harassment, stress and violence have on the physical and psychological health of women workers. The *Ontario Workplace Safety and Insurance Act* must be amended to provide coverage of these health hazards.

Unions have faced the challenge to end violence against women both inside and outside the workplace. The work we do

and the struggles we engage in are never easy. In working with our community partners we also have to review our own structures, views and priorities. We deepen our analysis of the intersections with gender violence with racism, ableism, homophobia and poverty and how these oppressions layer the barriers to escape and marginalize women.
Our vision of equality must lead to a world in which girls and women are safe in homes, schools, on streets and in their workplaces. It is a world we can create.

Employment Standards

Over the last 50 years, the OFL and its affiliated unions have spoken out, lobbied, demonstrated and campaigned with and on behalf of working people in Ontario for the right to decent work. That is work with benefits, working conditions and compensation levels that help ensure their basic rights and quality of life. The following outlines some of these rights as captured in legislation concerning employment standards and labour relations.

The premise we start out with in discussing employment standards is that all workers should be entitled to a basic standard of rights concerning income levels, hours of work, working conditions and many other provisions. This is not the case today as thousands of workers enjoy some of the provisions found in the *Employment Standards Act (ESA)* while others are completely covered and still others are not covered at all, but rather excluded from the *Act* and thereby some of the rights contained in it.

In our view, all workers should have the right to be covered by all basic employment standards and to have such enforced. For those of us that are unionized, the *ESA* constitutes the floor of rights from which we bargain superior provisions such as increased wages, vacations and holidays.

Yet most of us have family members and friends who are without union coverage and in many cases the provisions of the *ESA* or at least the provisions that cover their job, not only constitute a floor or partial floor of rights, but also the ceiling – that is, they never get wages or benefits or any other provisions, that are above those specified in the *ESA*.

The provisions of the *ESA* are therefore important to all workers, unionized and un-unionized. The provisions covered under the *ESA* include:

- Minimum wage: The general minimum wage is currently $8.00 per hour, there is also a student minimum wage for those under 18 years of $7.50, a liquor server's minimum wage of $6.95 and a home worker's minimum of 110% of the general minimum wage. In Ontario today about one in four workers earn less than $10.00 per day. Almost half of this number are immigrants and 61% of minimum wage earners are women. Following a public campaign by trade unions and community groups, the McGuinty government promised and extended into regulation the raising of the minimum wage to $10.25 in 2010.

- Eating periods and breaks: Currently an employee has to work for more than five hours in a row in order to receive a 30 minute unpaid meal break. There is no provision in the *Act* – but there should be – requiring an employer to provide coffee or nutritional breaks or other kinds of breaks.

- Overtime hours: There are more employees working excessive overtime today than in the past. The Liberal government's Bill 63 required employers to obtain employees' agreement in writing to work beyond the 48-hour work week. Many employees feel compelled to sign such "Agreements" in order to get hired and then find it difficult or impossible to revoke. Therefore many employees find themselves working excessive overtime or in retail working on Sundays for years without any opportunity to get out of such arrangements.

- Overtime pay: Under the *Act* this is to be paid after 44 hours in a week at the rate of 1.5 times the regular hourly wage. If an employer wants an employee to work beyond 48 hours he needs a letter from the employee stating their willingness to work such hours and Ministry of Labour approval.

  Paid time off instead of overtime pay needs written agreement. The averaging of overtime hours so as to save employers from paying time-and-a-half is still permitted with written agreement. Employers have even more "flexibility" as many occupations are exempt from this provision.

- Vacation period and pay: The *ESA* provides for only a two week vacation period and pay to cover it (4%) after 12 months employment. These two weeks can be taken in a block or spread out and taken one day at a time. This can be compared to most European jurisdictions wherein workers are entitled by law to four or five weeks vacation per annum.

- Public or statutory holidays: Currently in Ontario workers are entitled to eight statutory holidays. An employee can agree to work a public holiday and be paid holiday pay and premium pay (1.5 times) or agree to work at your regular pay and take another day off.
- Pregnancy and parental leave: These are relatively recent improvements in the *ESA*. Pregnant employees have the right to take pregnancy leave of up to 17 weeks. Both new parents have the right to parental leave for up to 35 weeks. These are two distinct provisions. Employees are entitled to such leaves regardless of their employment relationship – full-time, part-time, and permanent or on contract. Both of these provisions are unpaid.

- Leaves of absence: There are several leaves of absence under the provisions of the *ESA* including an emergency leave provision providing employees with the right to take up to ten days of unpaid time off work every calendar year due to illness, injury, medical emergencies or an urgent matter of certain family members. There is also a medical leave provision in the *Act* providing for a 26 week period of family medical leave to care for or support certain family members who have a serious illness with a significant risk of dying within a 26 week period.

- Termination pay: Where an employer terminates a worker or closes down and the employee has worked more than three months, he or she must be given written notice. In the absence of written notice the employee must be paid termination pay for the number of weeks or notice they are entitled to. The amount of termination pay depends on the number of weeks, months and/or years one has worked.

- Severance pay: Severance pay is separate from termination pay. To receive severance pay one must have worked for the same employer for at least five years. The employer must have an annual payroll of more than $2.5 million or more or the employee is one of 50 or more employees terminated in the last 6 months. Under the severance pay provision an employee has a right to one week pay for every year of employment up to a maximum of 26 weeks.

- Equal pay for equal work: This provision provides for equal pay for equal work (not for work of equal value). It came into the *ESA* from the Human Rights Commission in 1968.

Outlined above are ten key provisions of the *ESA*. There are more provisions, but the point here is not to detail each and every provision in the *Act*, but rather to note that even in those occupations where all the provisions of the *Act* are applicable, they are either inadequate, un-enforced or both. They should be basic work rights for everyone.

Take, for example, the minimum wage provision which applies to many occupations, but not all. Following a massive campaign by unions, labour councils, the OFL, community groups and coalitions, the Toronto Star newspaper and the New Democratic Party (NDP), the McGuinty Liberals bowed to popular pressure and promised to raise the minimum wage up to $10.25 over three years.

Ten dollars is the amount it takes to reach the poverty line as established by Statistics Canada's Low Income Cut Off today in 2007. The Provincial government intends to have it paid out in the year 2010. This is to take place only if they keep their promise or are re-elected or if some other government agrees following an election between now and then. But shouldn't a legal minimum wage be above the poverty line as a right? Shouldn't it be indexed so poor workers don't fall beneath the poverty line again and then again? We believe that improved vacations, paid leaves of absence, equal pay for work of equal value (rather than just equal work), overtime pay at least after 40 hours rather than 44, no averaging of overtime hours over weeks so that an employer can try to get out of paying time-and-a-half and more, should constitute fundamental rights for all workers.

Precarious Work

Not covered in the legislative provisions of the *ESA* is clear and specific language concerning the dramatic rise of non-standard or precarious employment. Precarious employment includes: part-time work, contract work, various forms of temporary work, self employment, seasonal employment and casual labour. Full-time permanent employment across Canada, which up until this point has been known as standard employment, has now dropped from 67% in 1989 to 64% in 1994 and 63% in 2003. At the same time precarious employment has dramatically risen: It grew from 32% of the work force in 1989 to 36% in 2003.

Viewed another way, alongside of what is termed "just in time" or JIT production we see the rise of a "just in time" workforce largely engaged in various types of precarious work such as contract work or what Statistics Canada terms self employment "own account" (meaning self-employed with no employees). Closely associated with the latter is the rise of temp agencies. According to the Directory of Recruiters there are now 3,299 temp agencies across Canada today. This total is higher than the number of Tim Horton's outlets across the country. In Kitchener alone the number of temp agencies has exploded to 79.

Other cities and towns across the province are experiencing similar growth in the number of temp agencies. Thousands of young people are going to temp agencies in the hope that it is the route to full-time employment, yet this prospect is most often thwarted as contracts between employees, client companies and the temp agencies either contain language preventing a temp agency employee working full-time for client companies or contain financial penalties should the client company hire the employee outside the agency contract.

The issue of self-employed "own account" or what is termed an "independent contractor" needs further study as many workers find themselves in this situation following layoffs and closures. Often a company finds it preferable to hire a worker as an independent contractor rather than hire them as a full-time or part-time employee. At first, a number of workers see this arrangement as beneficial as they don't have to pay what are termed "payroll taxes."

All too often it is only later that they discover they need workers' compensation coverage, a dental plan, a good pension and that such benefits are worth much more than they at first thought. It is also to be hoped that they discover that companies bring in temp agency workers to save themselves administration costs and labour costs (temp agency workers earn abut 40% of what permanent employees receive). It is also true that many workers who believe they are independent contractors are legal employees: An independent contractor is someone who runs their own business or has full control over their own work; you are an employee if you work for someone who has control or direction over your work.

The situation facing the self-employed or independent contractors is poorly legislated, confusing and what positive provisions exist are rarely enforced. We need clear, strong language in the *ESA* regulating all forms of precarious work, including the self-employed. Temp agencies themselves should be governed under the *ESA* to ensure fairness and basic worker rights.

Labour Relations

The *Ontario Labour Relations Act (OLRA)* concerns the statutory rights and regulations concerning the unionized workforce. It is our position that all workers should have the right to join a union without fear of repercussions in order to realize their needs and aspirations. Put another way, the OFL believes that freedom of association, inclusive of the right to join a union, is a fundamental right of people in a democratic society. Such rights are usually codified in constitutions, charters and world bodies such as the International Labour Organization (ILO) of the United Nations. Convention #87 of the ILO, to which Canada signed in 1948, endorses freedom of association and protection of the right to organize.

More recent (1998) is the ILO's Declaration on Fundamental Principles and Rights at Work which requires all member states, including Canada, "to respect, to promote and to realize in good faith and in accordance with the constitution, the principles concerning the fundamental rights which are the subject of those conventions, namely: freedom of association and the effective recognition of the right to collective bargaining…."

Despite signing such internationally recognized conventions, there are major groups in Canada and Ontario that remain excluded from the right to join a union and collectively bargain. One such group is agricultural workers. There are over 100,000 agricultural workers in Ontario including some 17,000 migrant workers from such places as the Caribbean and Mexico.

Another group of workers that have always been excluded from the *OLRA* are part-time instructors in community colleges. The *Colleges Collective Bargaining Act* excludes them and they currently cannot be organized under the *OLRA*. The union in the colleges, OPSEU, has tried in the past to organize these workers and is in the process of trying again. The legislation needs to be changed. Part-time employees in universities, high schools and public schools have the right to organize; there is no justification for treating community college part-timers differently.

Key rights in this legislation include:

- Certification: There are jurisdictions in the world wherein workers don't have to go through the hoops of certification procedures. Ontario's certification process was based on a card-based system to ensure a majority of workers wanted to unionize. This was established over 40 years ago, not long after the founding of the OFL, and was in effect for decades under Conservative, Liberal and NDP governments.

  Then under the Harris/Eves Conservative government in Ontario, and with no independent study as to the facts and no meaningful consultation, this cornerstone of the labour relations system was abolished. No matter how high the percentage of workers in a work place signed a union card it became mandatory to hold a vote. Such mandatory representation votes give employers significant opportunities to frustrate and interfere with the democratic decisions taken by workers to unionize.

  The McGuinty Liberals only restored card certification for building trades unions, not for the vast majority of unions and members who are in the public and broader public sector unions and in the industrial unions. Thus despite Canada signing ILO conventions concerning the right to collectively bargain and join a union, this situation leaves Ontario workers wishing to unionize with more fear and facing more employer interference. This results in thwarting their right to join the union.

- Anti-Scab Provision: Under the former Ontario NDP government's extensive labour law reforms, a key provision made it illegal for an employer to bring in scabs or replacement workers under most circumstances during a legal strike. Again, this provision was abolished under the Harris/Eves Conservative government.

Yet, in our view, it should be a basic right of workers when exercising their right to strike in a democratic society that they also not be confronted with an employer bringing in other workers to do their jobs.

- Successor Rights for the Contract Service Sector: Contract employment, as noted above, is a growing reality confronting more and more working people across the province. The lack of fairness in this form of work had historically initiated a number of submissions from the OFL and affiliated unions calling for needed reforms and eventually motivated a short-lived provision in the *Act* that served to protect employees' successor rights where the service contract changed from one company to another. Once again, this provision was repealed under the Harris/Eves Conservative government.

  Currently, where a company provides such contract services as cleaning, security guards and food services and then the client company contracts with another service provider, there are no successor rights as formally there has been no "sale of a business." The result is that the current *Act* provides no protection for those employees that have chosen to be represented by a union. The employees are left without a union, without a collective agreement and thus lose their compensation levels, employment security, seniority, benefits and vacation package. It is our view that workers in such circumstances should not lose their hard won contractual rights merely because a third party had decided to change contractors. Successor rights should be restored to these employees and considered as a fundamental right.

- Certification Bars: As a result of amendments made in 2000, the *OLRA* now contains an automatic bar prohibiting all trade unions from applying for certification for a period of one year where a union withdraws its application for certification after a representation vote, or where a union's application is dismissed by the Labour Relations Board after a vote. Where a trade union withdraws its application before a representation vote is taken, the union is barred for a minimum of six months and a maximum of one year. To strengthen the right of all working people to join a trade union of their choice all bars should be eliminated.

The provisions above are examples of key sections of the *Ontario Labour Relations Act* that need to be amended in order to firmly ground worker rights. There are many other provisions such as interim orders, unfair labour practices, partial rights while waiting for a first collective agreement and expedited hearings. A few provisions of the *Act* have been fully or partially restored since the Harris/Eves Conservative government, but the vast majority need substantive amendment if working people across Ontario are to enjoy their full rights.

Workers' Compensation

APPRECIATING OUR PAST

Definition of Accident

In 1963, the definition of accident was expanded to include "disablement arising out of and in the course of employment". The amendment provided recognition of compensation for injuries or illnesses that arose gradually over time. The legal

wrangling regarding whether these types of conditions were legally covered under the definition of accident was effectively terminated.

Waiting Period

A waiting period for compensation was eliminated in 1985 and provided that the employer was responsible for any lost earnings on the day of accident and that compensation benefits commenced the following day.

Workers' Compensation Appeals Tribunal (WCAT)

The WCAT was created in 1985 as an independent tribunal responsible for the final level of appeal within the system. Injured workers had campaigned for years to change the appeal system that was entirely internal and provided no means of ensuring accountability of the Workers' Compensation Board's (WCB) decision making practices. In his 1980 paper titled "*Reshaping Workers' Compensation for Ontario*", Professor Paul C. Weiler stated that in order that injured workers could have a sense of confidence and some finality, the appeal system must not only be fair and impartial but it must have the appearance of being fair and impartial.

Industrial Disease Standards Panel (IDSP)

The IDSP was created in 1985 as a multi-stakeholder body responsible for researching the work-related causes of disease. Their work and resulting research papers were responsible for significant changes in the adjudication of occupational disease claims and inclusions into the disease schedules.

Full Indexing

Prior to 1985 it was a responsibility of the WCB Board of Directors to establish the annual indexation of compensation benefits. Bill 101 mandated that compensation benefits would increase each year proportionate to the rise in the consumer price index.

Schedule 4

A new disease schedule was created that provided a non-rebuttable presumption of work-relatedness should a worker suffer a disease and have worked in the corresponding industry.

The Office of the Worker Adviser (OWA)

The creation of the OWA in 1985 gave injured workers access to professional representation with no fee for service. The growing complexity of the compensation system resulted in a growing epidemic of appeals.

Chronic Pain

A successful appeal at the WCAT prompted the development of a formal policy that recognized and compensated for chronic pain disability.

Re-Employment Obligation

On January 2, 1990 an employer's obligation to re-employ their injured employees became effective. Although threshold criteria for eligibility and the obligation duration were problematic, it was a significant step in the right direction.

Employment Benefits

Bill 162 provided that an employer continue contributions to an injured worker's pension plan, health care premiums and life insurance coverage for one year after the accident.

Bipartite Board of Directors

The inception of bi-artism at the WCB Board of Directors gave employers and workers an equal voice in regards to many systemic changes including the approval of Board policies.

Bi-partism recognized that workers should be considered as an integral part of the compensation system and be considered as a valuable stakeholder and not just a client of the system. One of the first things the Harris government did when elected was to dismantle the bipartite Board and replace it with a corporate Board.

OFL/WCB Training Project

In 1990, a small grant was directed to the OFL to establish and facilitate the training of injured worker representatives. The project grew over subsequent years developing many more courses and advanced workshops that provided up-to-date and comprehensive education aimed at the representation of injured workers. The project expanded access to its training and has provided training to over 10,000 workers. Over the past 17 years, it has survived through three different governments and the training project has established its value and impact on the entire compensation system.

Addition of Schedule 4 Diseases

On May 28, 1992 asbestosis and mesothelioma became the first diseases added to Schedule 4. The presumption applied to workers who were employed in a process involving the generation of airborne asbestos fibres. In December of 1993 primary cancer of the nasal cavities were also added.

Benefits for Spouses who Re-marry

For many years the compensation legislation had disadvantaged those surviving spouses of workers who had died of work-related causes. The practice of terminating their benefits if they re-married was deemed to be discriminatory, thus ending the practice and providing retroactive payments to the many affected.

Early and Safe Return to Work

In 1998, the legislation was amended to introduce a new obligation on employers to determine and offer suitable work for their injured employees who had not yet fully recovered from the impact of their work injury. The obligation was independent of the re-employment obligation and did have threshold eligibility criteria or a maximum duration on the obligation.

Fair Practices Commission (FPC)

The creation of the FPC provided an effective mechanism of ensuring internal accountability at the WCB. Workers were afforded easy access to a body who could investigate complaints of unfair practices at an individual or systemic level.

Systemic Changes

Through the efforts of injured workers and other worker organizations, many positive systemic changes have occurred over the past 50 years. Consider that in the mid 1980s workers were not allowed access to the many documents and memorandums contained in their Board claim files. Workers were allowed only to view and read the files (by appointment) and make personal notes regarding the content. If they chose to appeal a decision, they were provided only a summary of documents and evidence contained in their file.

The administration of the Board and its practices has been forced to become transparent and they are no longer able to subdue or conceal documents or "hidden" adjudication guidelines.

Workers now have total access to their claim files and the Board's policies have been published on their web site.

This has not only improved the quality of fairness to workers but has made the entire appeals regime more effective and accountable.

Independent Living Allowance (ILA)

More recently an aggressive appeal strategy by a number of worker and union organizations resulted in the development of an Independent Living Allowance (ILA). This yearly benefit is intended to provide significantly impaired injured workers with a yearly allowance in order to pay for the many tasks and chores (e.g. lawn cutting, snow shovelling) that their compensable injuries prevent them from doing on their own.

Maintenance Therapy

Similar to the ILA, the result of many successful appeals was a concession by the Board through policy to pay for maintenance type therapy. Previously the Board had only paid for health care treatment that was to improve the worker's medical condition. Maintenance treatment allows workers to maintain their levelling of functioning and prevents exacerbations resulting in further lost time from work.

Firefighters Presumptive Clause

As a result of compelling research from the Occupational Disease Panel (ODP), a Private Member's Bill (NDP Andrea Horwath) and the efforts of the Ontario Professional Fire Fighters Association (OPFFA), the government recently passed amendments that created a presumption of work relatedness for many diseases including heart conditions for those employed as firefighters or inspectors.

MAPPING OUR FUTURE

COLA

Employers have received a windfall benefit in the form of a 24.7% rollback in their costs for workers' compensation coverage over the past 10 years, while injured workers are forced to live in poverty because their compensation is not adjusted for inflation. Injured workers have seen their benefits reduced 24.7% due to inflation over the past 10 years. In a letter to the OFL dated April 4, 2003 Dalton McGuinty stated: "Injured workers and their dependants should not have to rely on their pensions being topped up by welfare payments. We would want to ensure that injured workers only have to receive one payment. We are also studying an approach to introduce a fair inflation factor to protect worker benefits from inflation." They waited over three years and finally introduced legislation that would see injured workers receive a 2.5% increase on July 1, 2007 and another 2.5% on January 1, 2008 and January 1, 2009. Injured workers deserve full inflation protection now.

Coverage

In a report prepared for the Workplace Safety & Insurance Board (WSIB) it was reported that 35% of workers in the province of Ontario are not covered by the workers' compensation system. While the report recommended full coverage for all workers the government has refused to implement its recommendations. Adding independent operators and the service sector, including banks and insurance companies, would provide the system with a steady income when the

economy fluctuates. All workers, regardless of where they work or how they earn a living, should be covered by the *Workplace Safety & Insurance Act (WSIA).*

Deeming

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

Although deeming was introduced to the system by the 1989 amendments to the *Workers' Compensation Act (WCA)*, the current system allows for a level of deeming that disentitles a far greater number of workers than under the previous system. This is especially so for permanently impaired workers. Deeming in effect transfers the cost of many workplace injuries to other provincial and federal social programs and thus to the taxpayers of Ontario and Canada. The *Act* should be amended to eliminate deeming to ensure that the basis for wage loss is calculated on the actual wage loss incurred after an injury.

Increase Average Earnings Amount from 85% to 90% of Net Average Earnings

Another important way in which injured workers' benefits were affected by the *WSIA* is the reduction from 90% to 85% of net average earnings as the basis for wage loss benefits.

This is a reduction which significantly impacts injured workers ability to maintain their pre-injury standard of living, especially for workers affected by the COLA provisions discussed above and the cap on benefits discussed below. The average earnings amount should be restored to 90% of net average earnings.

Remove Cap on Compensation Benefits

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

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

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

Loss of Retirement Income (LRI)

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

own benefit payments. If a wage loss system is continued, restore LRI amount to 10%.

Non-Economic Loss (NEL)

The monetary awards allowed for under the NEL provisions are meant to compensate injured workers for the pain and suffering caused by their workplace injuries. However, the amounts awarded are very small compared to the pain and suffering endured by injured workers who become permanently impaired as a result of a workplace accident. These small awards are often interpreted by injured workers as an affront to their dignity and sense of self worth and are thought by many to "add insult to injury". If the dual award system is retained, the base amounts for NEL awards should be substantially increased.

Employment Benefits

Injured workers who have an employee benefits plan when working only continue to receive those benefits for a maximum of one year post-injury. The employer's responsibility ends at that point. The Board takes no account of the impact of the loss of benefits, nor does it provide compensation or any alternative benefit plans. This adversely affects all injured workers and their families. Obviously the more severely injured a worker is, the greater the adverse impact. The *Act* should be amended to include a Board sponsored benefits plan for all injured workers and their families.

Restriction on Entitlement for Mental Stress

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

Time Limits

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

Time limits add complexity to the system by generating more appeals and more bureaucratic rules. They have made the system more formal and legalistic and therefore less accessible to injured workers. Time limits have arguably added administrative costs related to the greater number of appeals and the procedures created to administer the system in the context of time limits. In 2005 close to 10% of Workplace Safety & Insurance Appeals Tribunal's (WSIAT) decisions were time limits decisions (287 out of a total of 2,969 for 2005).

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

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

Appeals Tribunal

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

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

A significant restriction on the Tribunal's jurisdiction and independence was introduced in 1998 in what has been referred to as the "policy binding" provision: s. 126 of the *WSIA*. This provision requires the Tribunal to apply Board policy in its decision making and only allows it to deviate from Board policy under limited circumstances. This provision undermines the independence of the Tribunal, further complicates the system, and leaves this aspect of the legislation and at least some Tribunal decisions open to challenge in the courts. The *Act* must be amended to remove the "policy binding" provision and restore the independence of the Tribunal.

Preference for Single Vice-Chairs

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

Bipartite Board of Directors

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

Occupational Disease Panel (ODP)

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

Scheduling Diseases

Though the Occupational Disease Advisory Panel (ODAP) Report did a good job of outlining the legal principles that must be applied in adjudicating occupational disease claims, it would be significantly more helpful to workers and their survivors if more occupational diseases were included in the Schedules. The *Act* must be amended to require regular review and updating of Schedule 3 and Schedule 4.

Name of the Board

It is an important symbolic issue for the worker community that the name of the *Act*, Board and Tribunal be restored to their previous forms, i.e. *Workers' Compensation Act*, Workers' Compensation Board, Workers' Compensation Appeals Tribunal. This would recognize one of the key

purposes of the system, which is to provide compensation to workers who are injured or made ill by their work. It would also signify the government's commitment to the founding principle of providing fair compensation. The legislation must be amended to change the name of the *Act*, Board and Tribunal back to the *Workers' Compensation Act*, Workers' Compensation Board, Workers' Compensation Appeals Tribunal, respectively.

Labour Market Re-Entry (LMR)

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

The most significant problem relates to the fact that the goal of LMR is only to get workers back into the general labour market and not to ensure that they actually manage to secure employment when they have completed LMR. In addition, workers are simply "deemed" to have the wages related to the suitable employment or business (SEB) chosen during the LMR process, regardless of what their actual post-LMR earnings are. This is true even where a permanently impaired worker is never able to work again.

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

Finally, there are significant problems related to the quality of the for-profit primary and secondary service providers, many of which have arisen since the privatization of LMR (previously vocational rehabilitation) function. The responsibility for the "vocational rehabilitation" (VR) of injured workers should be returned to the Board. Clear rules need to be set out in the legislation that requires a worker's personal and vocational characteristics and job availability be taken into consideration in determining appropriate VR services. The *Act* should also be amended to allow the Board to provide assistance and payment of benefits for job search.

Secondary Victims

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

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

Valuing the Lives of Workers without Dependants

Currently, survivor benefits are tied to economic dependency. Family members who were not financially dependent on their loved one who died as a result of a workplace injury are left feeling that the worker's life is not valued by the compensation system or society. This is frequently the case when a young injured worker losses his or her life. There is an extremely poignant sense of loss when a young worker dies, but the emotional dependency of the family members is not recognized or valued. The *Act* should be amended to allow, in the cases where there is no relative who was financially dependent upon the injured worker, for one lump sum payment to one from a list of specified relatives (i.e. parents, sibling or grandparents).

Return to Work (RTW)

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

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

Return to Work Training Agency

Funding needs to be provided to the central labour body to develop and deliver comprehensive training regarding disability prevention principles and therapeutic RTW practices. The OFL's Occupational Disability Response Team has a proven track record in this area. The funding agreement must include a long term commitment and not be subject to political whims. Funding should be provided under S. 7 of the *Act* so that the Agency is a designated entity.

Eliminate Experience Rating

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

Eliminate Apportionment

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

or systematically by policy. The practice of apportioning benefits is unlawful and must be eliminated.

Improve Occupational Disease Adjudication

Victims of occupational disease are stricken with the impact (functionally and psychologically) of the disease and then are forced to endure ridiculously long period of adjudication. There is no justifiable excuse why workers and their families have to wait as long as two years for an initial decision from the Board. The Board must develop the capacity to expedite complicated entitlement issues in a timely manner. The Board must adopt formal adjudicative practices that are consistent with the legal principles of causation. Imported criteria cannot be used to suppress entitlement. Much of the exposure criteria contained in current policy is arbitrary and not scientifically supported.

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

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

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

Prevent Privatization

The current strategy of the Board is to eliminate the unfunded liability by the year 2014. Once the unfunded liability is eliminated, the compensation system will be attractive to private insurance companies. The government has made no secret of their desire to sell off portions or even the entire compensation system. We must begin mobilization now to defend the privatization of our system. It must remain publicly delivered and accountable to the citizens of this province.

Occupational Health, Safety and Environment

When the OFL came into existence, workers had no legal right to refuse work, to know about hazards in the workplace or participate in the workplace on issues that impacted their health or safety. After a long struggle, workers gained these rights in law but continue to fight to get them respected by employers. Labour continues to fight for meaningful protection from reprisals for exercising those rights.

The precautionary principle is recognized as a means to advance worker rights to safe and healthy workplaces and by extension of healthier communities. Most recently it was recognized by the SARS Commission and was listed in the first three recommendations. This principle provides for more meaningful involvement of workers in decisions which affect their health and safety. It shifts the burden so that emerging hazards such as nanomaterials would have to be addressed before they are introduced into the workplace, worker's bodies and the air we breathe, water we

drink and food we eat. It would require a greater respect for worker's health and their role in the workplace and community. Issues of harassment, violence and ergonomics would have to be addressed.

Labour understands that workplaces are not disconnected from the community. Domestic violence is too often brought into the workplace; toxic substances and emissions cross property and political boundaries; stress travels with the worker from work to home and back again. Advancing worker health and environmental health go hand in hand. If workers are not healthy then it is a sign that the community is not healthy. Labour's vision for a healthy environment has been founded on sustainability. By this we mean a sustainable economy, sustainable employment, sustainable production and the public services that support a sustainable society.

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

Just as workers have a right to know about workplace hazards, so do the members of a community have a right to know about the hazards they may face from the workplaces in their community. Community right to know legislation would also help to drive toxic use reduction. What we wish for our members, we wish for their neighbours.

Action points:

- Lobby for the implementation of the SARS Commission recommendations.
- Lobby for toxic use reduction, substitution and extended producer responsibility legislation.
- Lobby for meaningful Just Transition programs.
- Lobby for community right to know.

Scent-free Workplaces

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

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

Few chemicals used in perfumes have had any testing as to the long term health consequences for the user. Consequences for those who are sensitized to the chemicals in perfumes are known. Organizations are beginning to recognize that a scent-free working environment is needed to help protect the health of sensitized individuals.

Conclusion

Some bad bosses here in Ontario would like to forget all about unions, workplace rights and laws that protect working people and their communities. It is our job as a labour movement to put in place and keep in place labour laws that serve all workers in every job and every sector. The OFL must continue to fight for the protection of all workers no matter where they work.

Governments come and go. Working people have to fight to hold on to our basic workplace rights over and over again. The OFL must continue to rebuild Ontario after the destruction of the Conservative and Liberal governments' years in power. It is a big job. There is a lot to be done. Labour laws, successor rights, occupational health and safety, union organizing and human rights legislation all need attention and major change.

Unions affiliated to the OFL and labour councils across Ontario, along with our activists and community partners, have been working steadily to improve workplace laws. The work is never done but thousands of working people are continuing the fight like their parents and grandparents did in the past – building, protecting, standing up for their rights and the rights of others.

Cope343