

POST-TRAUMA

OFL Submission to the Ontario Standing
Committee on Social Policy on *Bill 163,*
Supporting Ontario's First Responders Act

MARCH 2016





**Post-Trauma: OFL Submission to the Ontario Standing Committee on Social Policy on Bill 163,
Supporting Ontario's First Responders Act**

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

15 Gervais Drive, Suite 202, Toronto, Ontario M3C 1Y8
416-441-2731 • 1-800-668-9138 • info@ofl.ca
TDD: 416-443-6305 • FAX: 416-441-1893

www.OFL.ca   **@OFLabour**

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**“ All workers suffering from PTSD
or other mental illnesses from
chronic stress as a result of their
work need to be treated with
dignity and respect. ”**



INTRODUCTION

The Ontario Federation of Labour (OFL) is the central labour organization in the province of Ontario. The OFL represents 54 unions and speaks for more than a million workers from all regions of the province in the struggle for better working and living conditions. With most unions in Ontario affiliated, membership includes nearly every job category and occupation. The OFL is Canada's largest provincial labour federation.

The OFL commends the government's commitment to help ensure that compensation is provided to workers who develop Post-Traumatic Stress Disorder (PTSD) from traumatic events experienced at work. It is important that workers receive timely recognition of and treatment for PTSD.

We welcome this opportunity to comment on *Bill 163, Supporting Ontario's First Responders Act*.

“Compensation for all workers who have been psychologically harmed is a right that must be recognized.”

The OFL believes that compensation for all workers who have been psychologically harmed is a right that must be recognized.

“ Presumptive coverage of PTSD for first responders is a positive step forward for those workers but many other workers at risk of developing PTSD are being left behind. ”



EXPANDING COVERAGE UNDER THE BILL

Bill 163 is a good first step forward but it does not cover other workers who experience traumatic events due to the nature of their jobs and are also at risk of developing PTSD.

The OFL represents many other workers not named in the Bill who face traumatic events in their work. For example, nurses and Personal Support Workers (PSW) who work in the community and face assaults and sexual violence in the course of their work. Workers in long-term care facilities and group homes face similar hazards and are also at risk of developing PTSD or other gradual onset psychological injuries. Health care workers in the emergency departments of hospitals experience traumatic events as do workers in mental health facilities. Subway operators and train engineers witness suicides and accidents in front of them. All of these are deeply traumatizing situations.

The government's intention to provide presumptive coverage of PTSD for first responders is a positive step forward for those workers. Many other workers at risk of developing PTSD are being left behind. This Bill should be expanded to include other workers who are experiencing deeply traumatizing situations and processes as a result of their work.

On election night, June 12, 2014, Premier Kathleen Wynne promised, "We're not going to leave anyone behind."¹ This Bill will leave many Ontarians behind.

Manitoba's PTSD Legislation

In 2015 the Manitoba government passed an amendment to their *Workers' Compensation Act* providing presumptive coverage for PTSD for all workers covered under the Act. If a worker is exposed to a traumatic event or events and is diagnosed with PTSD by a physician or psychologist, then the PTSD is presumed to be caused by work unless the contrary is proven. This amendment came into effect January 1, 2016.

The Ontario government should follow Manitoba's lead and expand the presumptive coverage to all workers covered under the *Workplace Safety and Insurance Act (WSIA)*.

¹ <http://www.ctvnews.ca/video?playlistId=1.1866645>.

Beyond PTSD

Workers who face these traumatizing situations and processes on a regular basis can often become afraid to even enter their own workplaces or they do so in fear. This chronic stress can result in other types of psychological injuries which can also be debilitating. These workers will not get the recognition or help they need from the Workplace Safety and Insurance Board (WSIB)

The WSIA prohibits claims due to chronic stress. This discriminates against workers who have developed gradual onset psychological injuries. The WSIB does provide compensation benefits to workers who develop gradual onset physical injuries such as Repetitive Strain Injuries (RSI).

This unequal treatment of work-related disablements has been found to be a violation of Canada's *Charter of Rights and Freedoms*.

Section 15 of the Charter guarantees that:

Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

In a ground-breaking decision a Panel of the Workplace Safety and Insurance Appeals Tribunal (WSIAT) refused to apply the

“The WSIA prohibits claims due to chronic stress. This discriminates against workers who have developed gradual onset psychological injuries.”

legislation in a mental stress claim.² They rightfully decided that the section of the WSIA which prohibited the WSIB from recognizing disablements resulting from chronic mental stress and the WSIB policies that support the legislation are in violation of section 15 of the Charter.

A second panel at WSIAT has also made the same decision and allowed the claim.³ Both of these claims were disablements arising from

workplace harassment. We understand there are a number of similar claims making their way to the Tribunal.

In British Columbia⁴ and in Nova Scotia⁵ the courts have struck down discriminatory sections of the workers

compensation legislation because they violated section 15 of the Charter.

We should not have to wait for a legal challenge to strike down the discriminatory provisions of the WSIA. The government should act now to ensure workers who suffer a psychological disablement as a result of their working conditions are provided with benefits on a fair and equal basis as workers who suffer physical injuries.

We believe that Saskatchewan has the best legislative language and policies related to this issue. Ontario should follow their model.

2 Workplace Safety and Insurance Appeals Tribunal Decision No. 2157/09.

3 Workplace Safety and Insurance Appeals Tribunal Decision No. 1945/10.

4 <https://www.canlii.org/en/bc/bcca/doc/2009/2009bcca188/2009bcca188.pdf>.

5 Nova Scotia (Workers' Compensation Board) v. Martin; Nova Scotia (Workers' Compensation Board) v. Laseur, [2003] 2 S.C.R. 504.

Ontario's Workers' Compensation System

While we believe the government has good intentions in introducing these amendments our experience with how the WSIB interprets and applies the language is an entirely different situation.

Ontario's compensation system is mandated to provide wage loss benefits and health care benefits to workers who are injured on the job. By law, injured workers are barred from commencing lawsuits for their work injuries

and must instead seek benefits from the WSIB. Legally, workers are entitled to treatment from the health care provider of their own choosing. Section 33 of the *WSIA* states that:

*A worker who sustains an injury is entitled to such health care as may be necessary, appropriate and sufficient as a result of the injury and is entitled to make the initial choice of health professional for the purposes of this section.*⁶

The *Act* goes on to state that "The Board shall pay for the worker's health care."⁷

For years the OFL and injured worker advocates have been raising concerns that the WSIB system is more interested in clearing its case load than supporting workers who have been seriously injured on the job. It is a situation that over the past five years has gone from bad to worse.

The WSIB created a punitive practice of 'deeming' injured workers eligible to resume work when their treating physicians and medical professionals have clearly stated the opposite. This practice flies in the face of their legislated mandate.

When injured workers claim mental distress as part of their claim the WSIB often demands five years of clinical notes from their physician looking for anything they can use to call the claim a "pre-existing" condition. These fishing expeditions cause further delays and distress on the workers.

"When injured workers claim mental distress as part of their claim the WSIB often demands five years of clinical notes."

The proposed Bill allows a very large loophole for the WSIB to exploit, "the post-traumatic stress disorder is presumed to have arisen out of and in the course of the worker's employment, unless the contrary is shown."⁸ It is our experience that the WSIB will go to great lengths to prove the contrary.

The other issue that labour and injured worker advocates have been raising has been the WSIB's systemic practice of disregarding the reports prepared by the treating doctors of injured workers. This has resulted in injured workers not receiving benefits they are entitled to under the *WSIA*. These concerns have been largely ignored.

6 <http://www.ontario.ca/laws/statute/97w16#BK36>.

7 33(2).

8 Bill 163 2(6) http://www.ontla.on.ca/bills/bills-files/41_Parliament/Session1/b163.pdf.

“The net effect is a WSIB system that re-victimizes the very injured workers it is mandated to compensate and protect.”

On November 5, 2015 the OFL and the Ontario Network of Injured Workers’ Groups (ONIWG) released a damning report exposing interference on the part of the WSIB in the medical care of injured workers.⁹

The report tells the story of these doctors and their patients. This report illustrates some of the ways the WSIB’s management of medical care and medical evidence harms patients. This includes failing to heed medical advice regarding readiness to return to work, insufficient treatment, blaming ‘pre-existing’ conditions for ongoing illness, or using independent medical reviews which proclaim patients to be healed, despite the evidence of treating practitioners. The net effect is a WSIB system that re-victimizes the very injured workers it is mandated to compensate and protect.

Points highlighted in the report include:

Inadequate services:

- Approval for services can take months, when patients’ needs are often immediate.
- Treating physicians’ referrals for psychological therapy are often denied, even in dire situations.

- The WSIB will refer an injury claimant to a specialist but will not fund sufficient time for a proper assessment and report. The WSIB also demands frequent progress reports that it will not pay for and the recommendations of which are frequently ignored.
- The treatment allowed is often too narrow, such as not covering activities related to brain injury rehabilitation; or occupational therapy.
- In cases where the WSIB does provide funding for psychological treatment, for example, the sessions are often cut off before the treating psychologist determines that healing is complete. Some health care professionals report that when they ask why funding for services has been discontinued, they are simply told that the Board is not required to provide explanations to care providers.
- If the psychologist feels that his patient is still struggling at the time that care is cut off, they are forced to either abandon a patient in need or provide services for free.
- Physiotherapists report that when ongoing treatments (“maintenance treatments”) are denied, injured workers’ conditions can degrade. This often leads to increase use of pain medication, loss of function, or self medicating with drugs and alcohol, all of which come with significantly more side effects than proper physical treatment.

⁹ Prescription Over-Ruled: Report on How Ontario’s Workplace Safety and Insurance Board Systematically Ignores the Advice of Medical Professionals, Nov. 5, 2015 <http://ofl.ca/wp-content/uploads/2015.11.05-Report-WSIB.pdf>.

Ignoring the opinions of treating medical professionals (when those opinions are not what the WSIB wants to hear):

- The WSIB refers injured workers to medical professionals for assessment, and then fails to follow the professionals' recommendations.
- Despite medical opinions to the contrary, the WSIB often attributes illness or injury to "pre-existing conditions," and refuses to fund benefits or care.
- The WSIB will often seek second opinions from so-called "paper doctors," who simply review the file without ever meeting the patient. Dr. Brenda Steinnigal has alleged that the WSIB inappropriately pressures these doctors to deliver dishonest reports so that they can avoid paying benefits.
- The WSIB pressures workers to return to work even when their treating doctors recommend more time to heal.
- Injured workers' well-meaning attempts to return to work are being used against them as evidence that they are employable and healed, even when these attempts fail, resulting in loss of benefits.
- The WSIB actively tries to discredit the opinions of treating health care professionals when those opinions are likely to lead to increase benefit costs.

As the report shows, there are drastic human consequences to the problems described

“Injured workers’ physical and mental health, as well as their social well-being is profoundly affected by the WSIB’s improper interference with medical care and bad faith decision-making.”

above. Injured workers' physical and mental health, as well as their social well-being is profoundly affected by the WSIB's improper interference with medical care and bad faith decision-making.

Persons with work-induced disabilities are vulnerable. They frequently suffer mental health consequences and are at heightened risk of poverty. Recent research has shown that mental health problems in injured workers are elevated after their injury, and that the stress of dealing with the Board can actually make things worse.¹⁰

Following the release of the report, the OFL and injured worker advocates met with senior management at the WSIB to discuss the concerns raised in the report only to have the concerns dismissed. A letter to the WSIB's Board of Directors was ignored.

After the report's release, we immediately began to hear from more doctors, more injured workers, and more advocates, ultimately reinforcing our suspicions that the problem we laid out in the report is in fact widespread and systemic.

¹⁰ <http://journal.cpha.ca/index.php/cjph/article/view/3036>.

Complaint to the Ombudsman

The WSIB was caught exercising what we believe is bad faith in dealing with injured worker claims but was unrepentant. We felt we had no choice but to file a complaint with the Ombudsman's office.¹¹

The submission alleges that the WSIB "systematically ignores the advice of medical professionals for the purpose of rejecting and limiting otherwise legitimate injury claims." We are calling for a full investigation into the practices of the WSIB.

We are concerned that despite the best of intentions by the government, the WSIB will do to the workers covered in this Bill what they have been doing to all other workers for years.

Reforms are badly needed to correct a culture that seeks to find any opportunity to deny claims or cut off benefits. In our view it is a culture whose prime objective is simply not to serve the needs of injured workers.

Diagnosing PTSD by Physicians

We note that Bill 163 requires that PTSD be diagnosed by a psychologist or a psychiatrist. This will be difficult given Ontario's shortage

¹¹ Submission to the Ontario Ombuds Office, Jan. 29, 2016 <http://ofl.ca/wp-content/uploads/2016.01.29-OmbudsSubmission-PUBLIC.pdf>.

"Because of the stigma surrounding mental illnesses, many workers may be reluctant to see a psychiatrist or psychologist, but may be more willing to speak about their symptoms and feelings to their family doctor."

of these types of clinicians, especially in rural areas. We also know that because of the stigma surrounding mental illnesses, many workers may be reluctant to see a psychiatrist or psychologist, but may be more willing to speak about their symptoms and feelings to their family doctor. Manitoba's legislation allows PTSD to be diagnosed by a physician or a psychologist.

We have raised this issue with one of the psychologists we worked with in preparing the "Prescription Overruled" report. We were advised by his office that in the Sudbury area there are no psychologists taking new WSIB patients. The psychiatric outpatient department at Health Sciences North measures wait time for non-crisis new patients in years. Most often the crisis cases are seen by a social worker not a psychiatrist.

In London Ontario, a media report¹² describes a crisis in mental health at the Victoria Hospital. A registered nurse there is quoted, "People who seek psychiatric help in London can wait a year just to see a psychiatrist."

Information from the Canadian Psychiatric Association states that, "In Ontario, 60 per cent of family physicians rank access to psychiatrists as fair to poor."¹³ This is higher

¹² <http://www.lfpress.com/2016/03/03/critical-bed-shortage-for-mentally-ill-in-london-raised-at-queens-park>.

¹³ <http://www.cpa-apc.org/media.php?mid=2015>.

than the National average where “55 per cent rank access to psychiatrists as fair to poor.”¹⁴

According to the latest report by the Wait Time Alliance¹⁵ the Ontario government does not report wait times for psychiatric treatment.

We recommend that the Bill be changed to allow PTSD to also be diagnosed by physicians.

It is also our understanding that the DSM-4 referenced in sub-section 2(15) of the Bill is considered obsolete by mental health practitioners as they have been using DSM-5 for at least two years.

“The OFL recommends strengthening prevention obligations by adding employer and supervisor obligations in the OHSA that can be enforced by Ministry of Labour inspectors.”

Strengthen Prevention Obligations

The Bill would amend the *Ministry of Labour Act* to give the Minister of Labour the power to direct the employers of included workers to provide information to the Minister about their plans to prevent PTSD in the workplace. It also gives the Minister the power to collect the information to assess the PTSD prevention progress and prepare reports. The Minister has committed to posting these plans on the Internet. The OFL questions the efficacy of public shaming as an incentive to improving prevention.

There is no corresponding amendment in the *Occupational Health and Safety Act (OHSA)* to require employers to prepare a plan to prevent work-related PTSD. No requirements in the current Bill attract enforcement by health and safety inspectors. This prevention strategy excludes any role by the joint health and safety

committee (JHSC) or the health and safety representative (HSR). The penalty under the *Ministry of Labour Act* for not providing this information is low at a maximum of \$25,000.00.

The OFL recommends strengthening prevention obligations

by adding employer and supervisor obligations in the *OHSA* that can be enforced by Ministry of Labour inspectors. Incorporating prevention of PTSD in the *OHSA* also empowers the internal responsibility system to address the issue.

Employers and workers on JHSC and HSR who have the most workplace expertise can engage in activities, make recommendations, and implement measures to prevent PTSD.

This initiative needs to be linked to a stronger prevention strategy that includes the Ministry of Labour’s enforcement and prevention system.

¹⁴ <http://www.cpa-apc.org/media.php?mid=2385>.

¹⁵ <http://www.waittimealliance.ca/wp-content/uploads/2015/12/EN-FINAL-2015-WTA-Report-Card.pdf>.

Occupational Health and Safety Management Responsibility Statement

The OFL represents workers in the broader public sector. It has been our experience that the senior management in these sectors are some of the worst offenders for refusing to recognize the application of the *Occupational Health and Safety Act* in their workplaces.

These organizations are receiving public funds to operate and a failure to live up to their health and safety responsibilities results in injury and illness to the workers and additional costs for the organization including fines from Ministry of Labour prosecutions all paid for with public funds.

We know that good health and safety policies, programs and practices will reduce work related injuries and illnesses and related costs.

The Ontario government should require the CEO or equivalent head of the organization receiving public funds to sign a statement that

“We know that good health and safety policies, programs and practices will reduce work related injuries and illnesses and related costs.”

their policies, programs and practices meet or exceed the legislated requirements with personal penalties if they fail to live up to the statement.

It is our firm belief that if this were to occur it would go a long way to improving occupational health and safety for the broader public sector workers.

This could be done as part of an accountability statement or equivalent document each ministry requires from the head of organizations receiving public funds.

CONCLUSION

Compensation must be real. There is nothing in Bill 163 that reassures us that first responders will see the compensation and benefits the government is promising.

All workers suffering from PTSD or other mental illnesses from chronic stress as a result of their work need to be treated with dignity and respect. They deserve to be provided with benefits and services without being placed under a microscope.

Compensation for all workers who have been psychologically harmed is a right that must be recognized. This Bill will leave too many workers behind.

For more than 30 years, JHSCs and HSRs have been the cornerstone of improving health and safety in the workplace but they need strong laws and strong enforcement to back them up.

Protecting those who may become victims of PTSD and other psychological injuries will require new enforcement tools for the Ministry of Labour inspectors.

