

Injured@Work

I want to personally thank you and welcome you to the second issue of *Injured@Work*. An e-Newsletter dedicated to providing information to injured workers and others about injured worker issues. I have been working on changing the physical format so readers can enjoy it more.

Submissions for *Injured@Work*

Please let others know of *Injured@Work* and please have them share it with others. Also, if you or anyone has any submissions to send them in subject line say Newsletter. You can even send a letter to the editor and I will publish it whether good, bad, or ugly.

You can send them, by e-mail to fightwcb@gmail.com



Injured Worker Events

Just wanted to remind everyone that there are many free events for people to attend, to observe, and even take part in. Most importantly you can learn a great deal from these events. Of course, all the events are online, via either ZOOM or other video-based technology.

I have broken the events, on the Events page, into four groups. Ongoing events, which are events that are always ongoing, like injured worker group meetings. Upcoming Events, which are events that are coming up. Past-Recorded Events, which are events that happened in the past, but you can still watch a video of the event. Past Events, which are events that occurred in the past.

I would also like to remind everyone that several injured worker groups have taken to hosting their meetings via ZOOM. For more information check out the Events page.

The various events are available on the Events page of the www.fightwcb.org website.

April 28th—National Day of Mourning



April 28th Day of Mourning is a day every year that everyone recognizes those workers who have been killed or injured in the workplace.

This is an event that has been recognized by the Parliament of Canada, as well as the Provinces, and the Territories of Canada, and the United Nations.

While I say it is recognized by all, I say that with great skepticism! This is because the media has done a very poor job of covering this event. The event is never covered or even mentioned in the media. Some are of the view the poor media cover-

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age is because the media depends solely on advertising. To cover stories which shed business in a negative light. This would be bad for their advertising dollars. As such they do not want to upset their advertisers. This, in part, is why there is likely poor coverage of this event. Regardless, I encourage you all to do the following from April 12 until April 27, that each of you send a simple note, letter to editor, e-mail, tweet, Facebook Message, or whatever to the various main stream media outlets, reminding them of April 28th and the importance of recognizing those workers who have suffered injuries and have been killed in their workplace. To also let the media, know of local, provincial, and national events occurring across the country involving injured workers.

Some Statistics Regarding Workplace Injuries and Deaths in Ontario

- There are **2,870 number of workers killed** annually in Ontario, with **only 10% being accepted** by the WSIB in Ontario.*
- There are **400,000 number of workers injured** annually in Ontario, with **less than 50% being accepted** by the WSIB in Ontario.*

Some Statistics Regarding Workplace Injuries and Deaths in Canada

These are numbers I do not believe and feel the WCBs in Canada have intentional underreported the numbers.

For example, if you review the 2013 Prism Economics it documented claim suppression as high as 28% in Manitoba and Ontario.

- There are **925 number of workers killed** annually in Canada**
- There are **271,806 number of workers injured** annually in Canada**

To learn more about April 28th day of Mourning check out [Canadian Centre for Occupational Health & Safety](#) Also check out [Injured workers online website](#).

Unfortunately, due to the COVID-19 lockdown restrictions, in-person events have been cancelled. There maybe some events held online, but at this point none of been made available to me.

By Paul Taylor

* Information obtained from flyer by WHCS
 ** Information obtained from AWCBC

A Worker Dies



A worker dies and who will care?
 They're just statistics of cost and fare
 The fare is freight we pay in lives
 The cost is borne by us who strive
 A living just; that meets our needs
 Are we not human with mouths to feed?
 And yet they lay their bodies torn
 The cost of greed from which it's borne
 A worker dies and who will care
 A day of mourning is where we'll share
 With all the pain and anguish

By Peter Page

April 28th Day of Mourning Statement Barrie Injured Workers Group



I would like to express our firm support for all the injured workers who have to cope with their disabilities as a result of work related injuries or diseases. We recognize their struggles to gain their rights.

We recognize the difficulties workers have generally and in particular under pandemic conditions, day in and out, fighting to uphold health and safety on the job in conditions where, for many employers, there are no consequences and little government oversight. We support the presumption principle for compensation. This would mean that COVID-19 cases would more easily be deemed to have arisen from the infected person's work, therefore, entitling them to worker compensation coverage. It is wrong that governments at various levels make workers targets of their "open for business" outlook, which seeks to restructure compensation programs to force workers to rely on private insurance companies, or tax funded social programs and in many cases workers have to fend for themselves.

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This our group can attest to through the many calls we receive due to unjust denials by the compensation system. Most head down the path of poverty and so this day we say: Fight for the living!



Our members suffer from falls, chemical injuries, unfair return to work schemes, dangerous factory conditions, denials of concussion injuries, and many more stories. Many are deemed able to work and cut off benefits even if there is no work. In the meantime, they suffer stress caused by the compensation system that must assist them.

These conditions are unacceptable in a modern society. We affirm that Workers Comp is a Right!

As we are mourning the dead, we call on governments to ensure criminal charges are put in place according to the Westray Act.

Do participate in commemorations this April 28th, Day of Mourning and take up the demands of the workers, their organizations, their families, for just compensation for as long as the injury lasts and an end to attacks on worker's health and safety.



This requires a will to stop paying the rich. The Ontario government has done this on the backs of workers health and safety and through compensation denials. Their handouts to employers are being done today through government

Bills that lower premiums thus making the funding of compensation systems through denying injured workers what is rightfully theirs.

Any workers needing support in the area of Barrie Ontario can contact us at

barriedistrictiwg@gmail.com

or call 211 for information.

Thank you for this opportunity and for arranging this newsletter to give a voice to injured workers.



By Christine Nugent

Families of Railway Workers Continue Their Fight

This article is from the Workers Forum newsletter



The families of rail workers who lost their lives working for CN and CP are once more taking action in their fight for justice for their loved ones and all rail workers. They have launched two new petitions, "Demand an Inquiry into Rail Policing" and "Protect TSB Whistle Blowers." The petitions continue the fight for safe conditions for workers, passengers, communities and all those impacted by the railways.



Click image to sign petition

The first petition, "Demand an Inquiry into Rail Policing," calls for a national inquiry under the Inquiries Act to determine the consequences of Canada's private railway self-investigation model on the criminal investigation of thousands of railway fatalities, serious injuries, explosions, and environmental disasters. The

petition states that with the exception of the criminal investigation announced by the RCMP into the 2019 fatal derailment near Field, BC, private railway police forces have asserted exclusive jurisdiction over rail disasters, including cases where the police forces' corporate owners were implicated.[1]

Both Teamsters Canada, which represents over 16,000 railway workers in Canada, and the Alberta Federation of Labour have demanded an independent investigation into the deaths of the three workers in the Field derailment and a petition was launched at that time demanding an independent criminal investigation.[2]

Speaking out when the criminal investigation into the 2019 disaster was announced, Teamsters Canada President François Laporte stated, "The union is also reiter-

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ating its call for the federal government to abolish corporate police forces. Three of our brothers died in that derailment. If CP has nothing to hide they should welcome an outside investigation for the sake of the families and all those affected by this disaster."

"Moreover, corporate police forces have no place in the modern world. It is absurd that a company should be able to criminally investigate itself. They'll never find themselves guilty of anything. We once again call on the government of Canada to abolish all forms of private policing," Laporte said.



[Click image to sign petition](#)

The second petition, "Protect TSB Whistleblowers," calls for changes to the Canadian Transportation Accident Investigation and Safety Board Act to authorize Transportation Safety Board (TSB) investigators to refer potential criminal violations to the RCMP and Canada's attorneys general. The petition also calls for the inclusion of TSB investigators in the Public Servants Disclosure Protection Act.

The Teamsters report that, "A TSB investigator was punished in 2019 for even suggesting possible criminal negligence in the Field derailment that killed three of our Teamster brothers. Clearly, the law ties the hands of the very public servants who are best qualified to facilitate justice for victims of railway incidents and to protect the public."



The petitions have been posted on the Teamsters Canada website. "After countless deaths, derailments, and injuries, the need for reform has never been more obvious. We ask that you please sign these petitions. Don't forget to share this page with your friends once you are done," the union says.

Workers' Forum calls on everyone to stand with the rail workers and their families in common cause to end workplace injuries and death and to defend the rights of all.

To sign the petitions, [click here](#).

Notes:

1. Three rail workers were killed on February 4, 2019 when their runaway train derailed and plunged 60 metres from a bridge into the Kicking Horse River in BC, near the town of Field, after its air brake system failed. The mother of Dylan Paradis, one of the workers, filed a complaint with the RCMP in November 2020 demanding an investigation into potential negligence in the crash and obstruction by the railway in investigating the crash. The following month the RCMP's major crimes unit in British Columbia opened a criminal investigation into the crash and allegations of a cover-up at Canadian Pacific Railway.
2. See ["Demands for Action in Defence of Rail Workers' Safety: Investigation Launched into 2019 Derailment," Workers' Forum, February 8, 2021.](#)

*Article Written by Peggy Askin
of Workers Forum*

[Click here for original article](#)

NEW DIRECTIONS SPEAKERS' SCHOOL

Are you looking to improve your skills in speaking in public, leadership, and advocacy?

Speakers' School is a free 7 week course designed to increase your confidence and public speaking skills through practice, mentorship, and support in a small group setting, hosted fully online.

Monday and Wednesday evenings
April 26 - June 2, 2021
7:30 - 9:00
Registration still open!

For more information, or to register:
e-mail: speakersschool@gmail.com
or call: 807-345-5840 ext. 9055
www.speakersschool.ca



New Directions Speakers' School

For more information on attending the Speakers School and to learn more about it:

E-mail: speakersschool@gmail.com

Tel: (807)345-5840 ext. 9055

Web: www.speakersschool.ca

The event is online so it maybe possible for people to attend from many locations.

Please call or e-mail for more details.



Update

National Class Charter Claim

**Next meeting to discuss this, is this Sunday
April 11, 2021 at 3pm (EST) or Noon (PST).**

Over the past few months, injured workers from across Canada have been regularly meeting, via ZOOM to discuss and plan on bringing a National Charter Class Claim against all of Canada's workers compensation boards. The foundation of their claim is that collectively they all believe that their respective WCBs have knowingly and intentional infringed their Charter Rights. This they believe has been done through the unlawful use of:

DEEMING

This is when the WCB alleges that an injured worker can work or work is available for the injured worker to perform, without any proof or effort of the WCB to establish such an allegation. The WCB then reduces or suspends the injured workers benefits.

A common example is when the WCB says a worker can be a parking attendant, which are non-existent in most cities and towns across Canada. In court this would be considered civil or criminal fraud.

WCB DOCTORS

This is when a WCB pays a doctor to allege that the injured worker is recovered, will recover, or is not injured at all. Often medical consultants are used to assist the WCB and never see the injured worker. These are commonly referred to as "*paper doctors*."

PRE-EXISTING CONDITIONS

This is when the WCB will demand to see an injured worker's entire medical file. The purpose of which is for the WCB to find something to allege that the injured worker has a pre-existing condition. Once the WCB finds, even the flimsy of medical evidence, the WCB then reduces or suspends an injured workers' benefits.

In reviewing common law practices in civil Court across Canada, there is a legal principle/doctrine known as the "*Eggshell*", "*thin skull*", or "*crumbling skull*". Simply put the doctrine says that the court is to take the victim as they are. This is regardless of what their condition was prior to any incident. Ironically, most WCB's in Canada have a policy which states they must also follow the same doctrine as the courts. But they do not!

The three previously mentioned issues are so commonly used by the WCBs in Canada against injured workers, that in September 2017 an injured worker group in Ontario called the Ontario Network of Injured Worker Groups – ONIWG created a campaign to raise awareness of these common abuses by the WSIB (Ontario's WCB). It was called **#WorkersComplisARight**, with the subsequent hashtag.

**PLEASE Help make
#WorkersComplisARight
trend, by adding the hashtag every
time you mention a
workers compensation matter!**

**Let's also make this a
National & International Campaign!**



OTHER CONCERNS

In addition to the three above concerns, two additional concerns have been added, which are intentional institutional delays and the concern of injured workers benefits being suspended or denied simply because the injured worker reaches the age of 65.

INTENTIONAL INSTITIONAL DELAYS

The WCBs in Canada are NOT taxpayer funded. In fact, they are 100% funded by employer premiums. Often injured workers who need to appeal a decision are forced to wait any where from a few years to up to ten year or more. As a result most injured workers are forced into poverty awaiting decisions. Most of those injured workers are forced onto taxpayer social programs. If they have not taken their own life!

Moreover, after the approval of Canada's *Charter of Rights & Freedoms*, in every Province in Canada, injured

workers brought charter claims in Canada's courts. Their claims were that the right of injured workers to sue their employer was unlawfully taken away from them. As such the law doing so was unconstitutional. In every case, the court agreed that the law preventing an injured worker from suing their employer was an infringement of their Charter Rights under section seven – *security of person*. However, the court ruled that the infringement was justified in a free and democratic society. This was because the court believed that workers compensation provides speedy determination and payment of benefits and as such is justified.



However, the court ruled that the infringement was justified in a free and democratic society. This was because the court believed that workers compensation provides speedy determination and payment of benefits and as such is justified!

DENIAL OR SUSPENSION DUE TO AGE 65

Another new concern was that many injured workers are having their benefits suspended or denied simply because they reach the age 65 or are older.

This concern has two parts to it.



The first is when injured workers reach age 65, they are told they will no longer receive their workers compensation benefits. Injured workers are instead told that while they were receiving their regular

benefits prior to age 65, a percentage was placed into a retirement fund and this fund will then pay them their income. Many injured workers, including myself are VERY concerned. This is because we believe the retirement income will be substantially less than the monthly benefits. Additionally, it is prejudicial based on age. For example, if you were age 30 and got hurt your retirement fund would be much higher than if you were injured at age 64.

The second concern is many workers are working past age of 65. However, if a worker is injured beyond the age of 65, they will not receive any income benefits. This may vary slightly depending on the Province/Territory.

This was not always the way. For example, in Ontario, workers injured prior to 1990, would receive full benefits as long as they lived, regardless of age. However, the law was changed and no doubt the change went to the rest of Canada as well.

The Claim of Charter Infringement

The above-mentioned concerns will be used to establish that all the WCBs in Canada violated:

- section 2 – freedom of belief,**
- 7 – security of person,**
- 12 – cruel and unusual treatment, and**
- 15 – right to equality,**

of the *Charter of Rights & Freedoms*. Therefore, a claim will be filed under section 24.1 of the Charter of Rights & Freedoms requesting the court award relief to all injured workers & family members of injured workers in Canada, who have been listed on the claim.

The claim is asking for an actual damage award of \$25 billion and a punitive award of \$20 billion.

For a total of \$45 Billion in Charter damages.

The National Charter Class Claim will be filed with the Court on April 28th, 2021, *hopefully!*

Additionally, the matter will be heard by the Court on June 1st, 2021, *hopefully.*

National Charter Class Claim to be filed with the Court on April 28th 2021!

The reason why these dates were selected is the significance to injured workers. April 28th is the day of mourning and June 1st is injured workers day.

If you are interested to learn more there is a meeting this

Sunday April 11, 2021 at 3pm EST or Noon PST.

To register for the meeting [click here](#) or go to the website and click on the tab **National Charter Class Claim**.



By Paul Taylor

Concern of WCB Accessing Our Health Information and the WCB's Control of our Healthcare Benefits

In October 2017, I had received a letter from the WSIB (Ontario WCB) asking for updated medical information. The letter specifically asked me to take the letter to my doctor and have my doctor send the report directly to the WSIB. I thought nothing of it, and I did as



asked. However, several months passed and on January 2018, when I went to refill a prescription, I was told it was not covered by the WSIB. I had learned that my doctor did not send the report in because the amount of information the WSIB required was more than my doctor knew. My doctor required a meeting with me to go over the report and answer the questions. I was infuriated because I was being punished for something that was not my fault. Moreover, the WSIB never even bothered to notify me of them not getting the report.

I immediately filed an application for judicial review with the court. This was my second court action against the WSIB. The first was me trying to sue them for intentional wrongs. During the court hearing the judge said well you were asked so that is enough warning. Yet the judge never referenced any policy or section of law. Also, the WSIB lawyer lied to the court. The lawyer said the requesting of medical in-



formation every two years was a regular practice and the WSIB had the authority to cancel any injured workers healthcare benefits. Yet the lawyer never referenced any policy

or section of law. Even now I have asked for the policy or section of law. None exists. This matter went all the way to the Supreme Court of Canada and not surprisingly the courts all sided with the WSIB.

I would later learn that the WSIB failed to realize I

was injured before the revised law. They thought I fell under the Workplace Safety & Insurance Act. More likely the WSIB did what they always do, whatever the hell they want. The new act allows the WSIB to, well, treat injured workers like garbage. However, because I was injured prior to the law, the old law is supposed to apply to me. It even states in the new law, that the old law applies to workers injured prior to the new law.

In reviewing the old law, I learned two things. First that the WSIB cannot demand medical information from injured workers who were injured under the old law, without the injured workers written consent. Additionally, the healthcare professional cannot release the medical information without the injured workers written consent. Second, that healthcare benefits are a right and cannot be suspended or reduced in anyway.

(This is only for workers injured prior to Jan. 1/98)

I would also learn that the WSIB has an enforcement policy. The policy clearly states that the WSIB after making a request of an injured worker MUST inform an injured worker of any breach and how to rectify it BEFORE the WSIB is allowed to suspend any benefits.

So, one would think the WSIB would learn from dealing with me that I will not take crap from them. However, no one ever said the WSIB is respectful of injured workers, or the Rule of Law!

Ironically, I just learned that the WSIB wrote a letter to my doctor demanding they send them all my medical information. This was without my knowledge or consent. I called the WSIB and actually had a person agree with me. They said yeah if that is what the law says they cannot do that. I am pretty sure they were just humoring me. I then wrote an e-mail to the WSIB counsel and instead of a lawyer saying, hey yeah you are right the law does say that. All he said was well you lost before so you are wrong.

So, now I will be filing an injunction against the WSIB to stop them from illegally requesting healthcare information. On the grounds it is an error of law. The WSIB must have more than, to say we require medical information in order for them to just get whatever they want from our doctors. They must provide a reason. I will also argue it is a violation of the *Charter of Rights and Freedoms*. I caution anyone to consult a representative before refusing to not co-operate in anyway with the WCB/WSIB/WorkSafe.

What is ironic is that the same thing is happening in Quebec!



Quebec Injured Workers Under Same Battle for Healthcare



I remember many years ago I attended a seminar hosted by the Bancroft institute. This is a non-profit organization, composed of re-

search scientists who study workplace accidents and work injuries. They then provide important information. I was invited to attend one event. This was *back in the days of in-person seminars*. This seminar was regarding two researchers who represented their comparative study on Ontario workers compensation compared to Quebec workers compensation with a focus on how doctors are viewed. The researchers noted that in Ontario the workers compensation system does not believe a word an injured worker's doctor says. Often claims are denied for this reason. I would suffer for more than a year. Simply because I did not provide the WSIB with a specialist report. A specialist's report that said the EXACT same thing as my doctor. This, obviously, is a hugely contested issue, with injured workers outside of Quebec.

However, from this study, I learn that in Quebec, the workers compensation board must listen to the injured workers doctors. *This caused my ears to perk up. I could not sit up as I was in pain.* Then I learned that while the workers compensation board in Quebec must listen to an injured worker's doctor, just like business in the rest of Canada, they found a way around the rules. Employers in Quebec can send an injured worker to "their doctor" to be assessed and just like a "board doctor" in other provinces, this doctor says an injured worker is miraculous healed or will be fully recovered very shortly.



Every time I think of Board and employer doctors, I am reminded back when I was a child, watching Sunday morning evangelical TV programs with the faith healers. *Hey nothing else was on TV!* Where they slap the person in the forehead and say by the power of God, I command you to be healed. It is amazing how we look

at these faith healers as scam artists and con men, yet we consider the words of a Board doctor as gospel!

Sorry for my rant, but in my case, like so many of you, I was examined by a board doctor a year and a half after my injury. The doctor, who was a specialist I might add, said I would be fully recovered in six weeks and with no formal treatment.

Just like a faith healer!

It was brought to my attention by a fellow injured worker advocate, Christine, who runs the injured worker group in Barrie Ontario. In Quebec, the government is passing a law to do the same thing they did in Ontario. This is or has likely happened in many other provinces/territories. The Quebec government is changing the law that for injured workers who required healthcare it will no longer be a right, but a privileged granted by the board.

This is a system of healthcare that has been used in Ontario for close to ten years now and perhaps much longer. It is a system of "***managed healthcare***" where the insurance company who pays the bills, decides what healthcare treatment you get or more accurately what you do not get! It is widely used in the U.S., but what the workers companion boards fail to realize, or more accurately just do not care, is that a lot of U.S. insurance companies are being sued in mass claims.



It is nothing more than putting, not money over people, but putting profits over people. I am a firm believer that if a company and eventually a worker's compensation board is found to be criminally negligent, then the individuals who devised this system should be charged under the criminal code. How will we ever stop those in government from intentionally hurting people, if we do nothing!

I am reluctant to move into the realm of criminal law, currently. It is because of the extremely high threshold of having to prove a case beyond a reasonable doubt. This is something most injured workers know if they have ever had to file an appeal within their respective workers compensation systems.

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Also, I am still studying the likelihood of being able to bring criminal charges. Unlike in the U.S., in Canada an organization can be charged under the criminal code. This is due to the **Westray Mine Act** Bill C-45. This was the result of the Westray Mine disaster where 26 miners lost their lives because of greed of a business. I like to say murdered! Sadly, due to incompetence, on the part of the Crown prosecutor, no one individual or the company was ever charged. This was just like the plant that exploded in Hamilton killing five workers in 1895. An event that prompted the first workers compensation law, commonly known as the law of employer liability. Most Canadians learned that private companies can be sued with the SNC Lavalin scandal. However, it is entirely different to prosecute a government agency or board. I do not believe it is even possible or legal. However, we MUST take a position to prevent such actions on humanity in the future. This maybe the only way to protect our future. I believe that while a worker's companion board cannot be charged under the criminal code, that staff members can be. Specifically, the ones who ordered and devised the policy to cause harm to individuals.

I have for simplicity copied the article that Christine provided me below. I give full credit to the authors of the article **Workers' Forum** April 7, 2021 - No. 25 and **Pierre Chenier**.

Right of Workers to Determine Health and Safety Conditions!

Opposition to Quebec Bill Dismantling Occupational Health and Safety Regime



March 23. Demonstration against Bill 59. (CSN)

Opposition continues to be expressed to Quebec Bill 59, An Act to modernize the occupational health and safety regime. Workers' organizations from different sectors of the economy are speaking out to oppose

both the content of the legislation and the manner in which it is being enacted.



Bill 59 was devised by a few cabinet ministers **who met for months with a handful of people behind closed doors**. The working conditions, security, lives and jobs of those affected by the changes are not the same as those who are dictating the changes which are to be made. As a matter of democratic principle that is not right. The government tabled the bill in October 2020, then held a few days of perfunctory hearings at the end of January 2021. The aim of these perfunctory hearings was to say that those concerned had been given a chance to give their input. The Labour Minister spoke about reaching a consensus of "stakeholders." His conception of who are the "stakeholders" fulfills the definition of the word fraud.



The bill has more than 300 articles. On March 10, the Minister tabled over 100 amendments. The bill is now being studied, clause by clause, by the Parliamentary Committee on Labour and the Economy, made up of representatives of parties with seats in the National Assembly. The committee will vote on the bill as amended. Once this process is over, it will go back to the National Assembly for adoption.

The government claims that its prior consultation with hand-picked individuals is a modernized process despite the fact that injured workers and organizations concerned with health and safety do not drive the changes.

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The bill reduces or eliminates access to treatments for injuries and illness, medical assistance, rehabilitation and compensation, all in the name of "**saving money**" for those who buy workers' capacity to work, the most powerful of which are the global private interests which form cartels and coalitions to get legislation passed which favours them. The bill furthermore concentrates all decision-making over prevention programs, health programs, hours allotted for the work of prevention representatives, organizing of the health and safety committees and so on, in the hands of the employers, eliminating the legal space that previously existed for the workers' organizations and representatives to have some input.

Workers rightfully consider this legislation a major abuse of power that must not pass. Workers must have a decisive say in the determination of the health and safety conditions under which they work. Workers' Forum supports the demands of Quebec workers that this bill should be scrapped and that the health and safety regime must be based on workers' demands and rights.

(Photos: UTTAM)

Quebec Steelworkers Reject Bill 59

Representatives of the United Steelworkers/Syndicat des Métallos working in mining operations on Quebec's North Shore, in Northern Quebec and Abitibi regions held a press conference on March 23 to address Bill 59 presently going through the adoption process in Quebec's National Assembly. They spoke up against the rollbacks on health and safety prevention and accountability measures related to occupational diseases and workplace injuries and deaths. USW Quebec Director Dominic Lemieux announced that the Syndicat des Métallos rejects the bill as unacceptable. It is worse than the current legislation, Lemieux said.

"This bill will weaken prevention measures by removing minimum standards and entrusting decision-making on prevention programs and related measures to the bosses alone. It goes so far as to deprive injured workers and victims of occupational diseases of care and support. This is not a 'modernization' of the law. It is seizing an opportunity, while the focus is on the pandemic, to turn back the clock 40 years on health and safety," Lemieux said.

Local union leaders from the region's mining sector spoke eloquently against the retrogressive measures contained in the bill.



*"The reality of workplace health and safety is that the workers are the ones who live it. Prevention measures are better tailored, more effective and enjoy greater support when workers are involved in the decision making. **Everyone loses if decisions are made by the employer alone.** It will lead to deaths and more accidents,"* said Nadine Joncas, prevention representative at ArcelorMittal's Mont-Wright mine in Fermont.

André Racicot, President of USW Local 9291 at Westwood Mine and the Syndicat des Métallos' foremost expert in health and safety, denounced Bill 59 and the impact it will have at workplaces such as the Westwood mine in Abitibi, which has had its share of serious incidents in recent years, including five collapses that trapped workers underground, and a miner's death in 2017.

"They say in the mines that the laws and regulations were written with the blood of the miners. These rollbacks will compromise safety and lead to even more tragedies," Racicot said.

He also denounced the fact that injured or sick workers will find it more difficult to obtain compensation, particularly for recognition of occupational deafness, which means that thousands of workers will be deprived of hearing aids, after their work has destroyed their hearing.

Eric Savard, President of USW Local 9449 at the Raglan Mine (Glencore), said that weakening prevention measures and making it more difficult to get compensation will only embolden global mining companies like Glencore.

"Global companies are really powerful," he said. *"Sometimes we wage a legal fight against them, and it's very difficult. The companies are powerful. With a small*

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group of workers against a global company, you know the battles aren't always equal." He said that cutting off workers' minimum legal protection, as the bill does, is the last thing that should be done.

Dominic Lemieux concluded the press conference by commending the Steelworker representatives for their hard work and their dedication to the health and safety of workers in the plants and underground.

To view the press conference, click here.

(Translated from original French by Workers' Forum. Photo: Métallos)

"This Bill Means Reduced Treatment and Compensation"

Interview, Félix Lapan –



Félix Lapan is a community organizer with the injured workers' defence organization the Union des travailleuses et travailleurs accidentés ou malades (UTTAM)..

Workers' Forum recently spoke with him about the consequences that the Quebec government's Bill 59 will have on injured workers if it is adopted. Due to the length of the interview, it will be published in two parts. Today we are publishing information on the impact of Bill 59 on workers with regard to the recognition of occupational diseases and their entitlement to medical assistance, treatment and rehabilitation services. We will publish information on the impact on the right to monetary compensation in a later issue.

Workers' Forum: According to UTTAM's investigation, what consequences will the Legault government's Bill 59 have on injured and sick workers if it is adopted?

Félix Lapan: Generally speaking, this bill means reduced treatment and compensation benefits for injured workers.

For example, the bill will make it more difficult to have many claims for work-related illnesses accepted. It attacks the right to medical assistance, the right to treatment, medica-

tion, devices like orthotics and prosthetics that are supplied by the Labour Standards, Pay Equity and Workplace Health and Safety Board (CNESST) and it attacks the right to rehabilitation for workers who have suffered permanent disabilities.



With respect to victims of occupational diseases, barriers are being created for people suffering from hearing loss and lead poisoning. It will be much more difficult to have hearing loss and lead poisoning recognized as occupational diseases.[1] The CNESST is being given regulatory power to add barriers to the recognition of all occupational diseases, which is of great concern to us. Moreover, the Ministry of Labour, in its document on the impact of the bill, is projecting millions of dollars in savings due to rejection of workers' claims for occupational illnesses and injuries, hearing loss in particular. In introducing the bill, the *Minister of Labour touted it as a measure that will produce \$4.3 billion over 10 years in "savings" for employers* who fund the CNESST through their premiums.

So, for victims of occupational diseases, there is a reduction in access to treatments and compensation.

Once a claim is accepted, whether related to an illness or an accident, **the new legislation reduces the worker's entitlement to medical assistance.** What is included in medical assistance is changed. There is an article in the current legislation that says that it is the responsibility of the CNEEST to provide all medical assistance. The CNESST currently pays 100 per cent of the cost of medication, orthotics, prosthetics and a whole list of treatments in private clinics. Bill 59 changes this article, article 194 of the Act respecting industrial accidents and occupational diseases (LATMP), which states that medical assistance is paid for by the board, that no fees can be charged to a worker for medical assistance needed as a result of an injury. The bill removes this section and says that the CNESST will be entitled to adopt a regulation permitting it to charge part of the medical assistance costs to the workers. With respect to drugs, and this is a first in the history of the plan, with this regulation they will no longer pay for all drugs.

According to the bill, only orthotics and prosthetics specified

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in a regulation still to be created will be paid for, so not all necessary devices will be paid for. The CNESST already applies internal policies that limit access to medical assistance, even though the law does not allow this, and these decisions are therefore often overturned by the courts. Now it's not just going to be an internal policy, it's going to be a regulation. **Will the regulation be that they reimburse drugs at 80 per cent like a private insurer? Are there going to be drugs that are excluded from the plan? We don't know.** The day after the law is passed, the CNESST will be able to publish its regulations in the Official Gazette and specify how access to medical assistance will be limited. Anything that is taken out of the law and put into regulatory powers for the CNESST will be out of our control. **They can change the rules of the game at any time** without going through a debate in the National Assembly, without amending legislation. When a regulation is published in the Official Gazette we have 45 days to comment on it, after which the regulation comes into force by a cabinet order.



With Bill 59 there are many things that move from the legislation to regulations made by the CNESST. **For example, the list of occupational diseases that are protected by the Act will move from the legislation into a regulation that the CNESST can amend as it sees fit.** The obstacles that workers face if they have claims for occupational deafness and lead poisoning could be put in the way of workers with many other injuries and illnesses. They have just set a blood lead level, which has nothing to do with science, that must be reached to have lead poisoning recognized. They could do the same thing for a lot of metals, almost all metals, for many toxic substances. All of a sudden, the CNESST becomes the legislator.

We have a system that is supposed to provide treatment for workers' injuries and illnesses. To put part of the costs of treatment on sick and injured workers is unacceptable.

The scenario that we are currently seeing with the regulation on medical assistance is the same scenario that was in the CNESST's plans in 2012. At that time, it was Bill 60 which would have provided for lump-sum treatment envelopes, a set amount for each illness or injury, with treatment provided until the designated amount was spent. [Bill 60 died when the Quebec government of the day called a general election -- WF Ed. Note]. We're going to possibly end up with a similar type of regulation.

WF: The bill also eliminates physical rehabilitation altogether.

FL: Yes, there is also an attack on the right to rehabilitation. The current law provides for three types of rehabilitation with specific programs. Rehabilitation is for workers who have permanent after-effects. There is physical, social, and professional rehabilitation.

Physical rehabilitation consists of treatments after the treatment of the injury itself is complete, treatments for permanent consequences of the injury. These are no longer treatments to heal, but to control and relieve pain, to reduce the consequences of a loss of quality of life. The bill simply abolishes physical rehabilitation. In other words, medical treatment, physiotherapy, occupational therapy or even psychotherapy in the case of psychological injuries will only be aimed at recovery or return to work. If a worker has permanent after-effects from his or her injury that affect his or her quality of life, this is no longer important according to the bill. That is the logic. There are also limitations to what can be received in terms of social and vocational rehabilitation. Social rehabilitation concerns rehabilitation measures such as home assistance, or home renovations, while vocational rehabilitation concerns measures such as training for vocational reorientation. The bill now provides for a specific list of measures covered, whereas currently the list is qualified by the word "including," which opens the door to other measures.

For us, these attacks on the rights of injured and sick workers are unacceptable and are deeply disturbing.

Note

1. Hearing impairment caused by noise is one of the occupational diseases specifically named in the Act respecting industrial accidents and occupational diseases. Currently, the only requirement to qualify for the presumption for this disease is to have performed "work involving exposure to excessive noise." With the amendments to the Act in Bill 59, it will now be necessary to demonstrate exposure to a threshold of more than 85 decibels for eight hours per day, over a period of at least two years, by means of evidence specified by the regulation.

A new condition is also imposed for the recognition of lead poisoning. The only condition at present is that the person must have worked in a job involving the use, handling or other exposure to lead or its compounds. The bill now adds the condition of having "a blood lead level equal to or greater than 700 g/L (micrograms per litre of blood)."

(Translated from original French by Workers' Forum.)

Photos: UTTAM)

Written by Pierre Chénier

Update on My Application for Judicial Review



I had filed an application for Judicial Review in the late summer of 2020. This was because the Ontario courts, included the Court of Appeal had informed me that the WSIB (Ontario's workers compensation board) and the WSIAT (Ontario's workers

compensation appeals tribunal) could not be sued by a single injured worker for damages of wrongdoing and benefits. That my only legal recourse was to file and application for judicial review. This you can learn more about on the website and see the court documents and decisions by [clicking here](#).

In August 2020, I filed an application for judicial review of the WSIAT decision with the courts. This was after getting the final decision from the Courts and trying once more to resolve the matter with the WSIAT with another request for reconsideration.

In response to my application for judicial the WSIAT had filed a motion for standing and to dismiss my application for delay. The WSIAT's motion was heard before a single sitting judge.

An application for judicial review is like an appeal to the court. The difference is that it is discretionary, and it is protected under s. 96 of the Constitution. This means even if the laws say you cannot, you can.

The WSIAT was not listed as a party to my application. This was for the simple reason it was their decision that I was appealing/having reviewed. I was of the belief, specifically in the case of workers compensation matters, a decision maker should not be allowed to be part of an appeal process/judicial review of their own decision. This is commonly known as biased. My reasoning is that unlike social benefits or energy boards, the workers compensation matters are hearing disputes between two parties the injured worker and the employer. I use what is commonly known as the Baker test to establish that parties before workers compen-

sation appeals tribunals must have the highest level of procedural fairness, much like that of a court. As a result, just like a court, a workers compensation appeals tribunal can not be allowed to be party to an appeal/judicial review of their own decision. This is because it would be a violation of the Rule of Law – biased decision makers. To prove my point, I used the fact that in Ontario, only three decisions of the WSIAT have ever been successfully judicially reviewed by the courts. Knowing this, would make any reasonable person feel if they had to have a decision of the WSIAT reviewed by the court that their attempt would be utterly futile. This is what is used by the Supreme Court of Canada to define a biased decision maker. However, the judge hearing the matter agreed with the WSIAT that they have a “**Right**” to be a party.

The next matter for the judge to decide was whether to dismiss my application for an abuse of process based on delay. The WSIAT alleged that my original injury was February 1997, and it is now August 2020 too much time has passed. As if the delays were all my fault, including the civil court process.

As a result of the motion, my application was dismissed by the motion judge.

Yep, you heard it right the WSIAT was claiming I did nothing from the time of the final WSIAT decision to the time of filing the application!

Here is an interesting point about the judge's reasoning. They stated in their decision that the lengthy delay caused the WSIAT to be prejudiced. Therefore, my application was dismissed because of delay and ultimately an abuse of court process. Now let us take a minute with this and think about it. The judge used the reason that delay was cause of the delay. This is commonly known as circular reasoning and is defined by the Supreme Court of Canada as unreasonable. Often lower courts administrative tribunals and boards will dismiss an application/appeal based solely on time. This is an error of law. Simply because there is a legal test that must be followed before something can be dismissed for delay and just saying it has been too long, is not it. The test involves determining if evidence is missing or not, if there is a case record, transcript and/or audio of the hearing, and if there were witnesses who cannot remember. One does not need to prove all of them but a majority. In my case before

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the single judge, I had used the test and stated the case record was in its entirety, the witnesses would not be needed that were witnesses at the hearing, as it is an appeal, the official audio of the hearing and the transcript is available, and the conduct of the WSIAT was in bad faith. The judge never considered any of my arguments.

The next step was for me to file a motion to go before a panel of judges of the court and ask them to set aside the single judge's decision based on an error of law and infringement of my Charter Rights. The court set March 8, 2021 as the date for my motion to be heard. Unfortunately, I was experiencing great difficulty completely my materials. This was having to review my own case and relive everything again. The court then adjourned the motion date and gave me to end of March to complete my motions materials. At which time, a new motion date would be set. I am at this point waiting for a new motion date.

The significance of my application is based on two factors.

The first is whether workers compensation tribunals should be allowed to take part in appeals/judicial reviews of their own decisions. I argue that this is wrong as it makes the WSIAT and the reviewing court to become biased decision makers. I proved this by performing a review of the WSIAT decisions reviewed by the courts and learn that only three had been successfully reviewed in its entire 40-year history. The second factor is how lower courts, boards/tribunals dismissed matters simply because of delay and do not perform the proper test. This I believe is not only illegal or an error of law but a violation of the Charter. As you can see from both of these issues, they will impact all injured workers not just in Ontario but across Canada and maybe elsewhere. So, as I always say the fight continues...



My Departure from ONIWG

I was appointed to the Board of Directors for the provincial group known as the Ontario Network of Injured Worker Groups – ONIWG. I was also appointed as corporate secretary. Over a short period of time, I worked closely with some very hard worked and dedicated people. It is very important to note that the people who run the injured worker groups like ONIWG are all volunteers and do not get paid for their time. The reasoning is simple they have no money or very little. So many do it not for the fame or fortune LOL. They do it for the love of it to help others by advocating for them.

It is very important to note that the people who run the injured worker groups, like ONIWG, are all volunteers and do not get paid for their time.

A lack of any resources for injured workers is something that has always frustrated me. No wonder injured worker issues are ALWAYS ignored. We have no resources. We have no paid staff or budget to properly promote a campaign such as #WorkersComplsARight. To put things in better perspective, the president of the WSIB receives just short of \$400,000 a year salary. This does not include an expense budget and the countless staff at their disposal.

Conversely, the president of ONIWG gets no salary, has no paid staff, with very few volunteers, and a budget that would be consider well below the poverty line!

I found that everyone who volunteers their time with ONIWG are very hard-working dedicated people. Moreover, the executive work much like a full-time job and must be very dedicated to do so.

It is in part for this reason I could no longer volunteer my time with ONIWG. I felt it was taking away from key fights I was making on my own that I believe may one day help all injured workers. Additionally, I was concerned that my legal action would be used against ONIWG somehow. I know the workers compensation board and the tribunal can be very underhanded and would stop at nothing to achieve their goals including violating the Rule of Law.

That said, I encourage injured workers to support their local, provincial, and even their national injured worker group. You can support them with money. Even a small donation by many, is like a large donation from one. As they say every little bit helps. If like most you have no money, then you can volunteer your time to help out as much or as little as you can. You would be surprised how beneficial you will find it and it may even improve your outlook on life by helping others. You can also call/e-mail your MPP/MLA and MP and demand that injured worker groups be recognized by the governments and as such receive proper funding. You make thing a little support is pointless, but again a

I encourage injured workers to support their local, provincial, and even their national injured worker group!



little from a lot of people goes a long way to helping everyone.

Not sure if you have a local or provincial/territorial group in your

area no problem. I created a section of the website to list all the injured worker groups EVERYWHERE. This way it hopefully helps injured workers connect with groups to become a strong voice. You can access that section of the website by clicking on the “Support Groups” tab of the navigation bar of the website www.fightwcb.org.

Do not have a local or even provincial/Territorial group. No problem, then start one. I have also added information on how to start and maintain a support group. I am still working on that section of the website but hope to have it finished soon. Also, the national group in Canada Canadian Injured Workers Alliance www.ciwa.ca can provide support to individuals wanting to start a provincial/territorial support.



Thunder Bay Injured Worker Group Events & Newsletter

As I mentioned on the front page of this e-newsletter there are many events hosted by many different organizations, including injured worker groups. One in particular is the group waaaaaay up in Thunder Bay Ontario, or as I like to say ***Thunder Bay!***



This group hosts a weekly ZOOM meeting on Tuesdays, which has a guest speaker. The topics are wide ranging and all impact injured workers. Needless to say they are very informative for injured workers.

Additionally, the group hold weekly peer support meetings on Thursdays all injured workers are invited.

To attend either ZOOM meeting event for this group simply go to their website www.thunderbayinjuredworkers.com and request to be register for the events.



Not sure if they are continuing with their newsletter, so watch for it as it will be good!

International Group/Organization



As part of the United Nations - UN, the International Labour Organization - ILO deals with matters involved labour issues. Their website is www.ilo.org. It is the only tripartite organization in the world where it is composed of labour, employers, and government. They often hear complaints regarding a country's failure to comply with its agreed mandates. However, this is where I believe, and many well-known scholars also, that the tripartite nature of the organization makes the ILO virtually ineffective in dealing with serious labour issues. Most importantly involving injured and killed workers in the workplace. Rarely, if ever are injured and killed workers issues ever considered or even

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dealt with.

For this reason, I strongly believe that an international organization/group should be formed to be the international voice of injured workers. My only condition is that its composition should be of injured workers from any and all countries and of its governing board. I have no concern with having a voice from organized labour, as well as advocates of injured workers. I also believe family members of injured workers should be treated much like injured workers. This is because I consider family members of injured workers, in effect injured workers themselves as they suffer with the loss of a loved one and suffer from trying to help their loved one injured at work. This is organization would promote the awareness of the global plight of injured workers as well as support the creation of national injured worker groups in each country on a global scale.

That is just my thoughts on the idea. You can let me know what you think. If it is crazy, wacky, or downright insane. Maybe you might think it is a great idea and know how to make it happen. Either way send me your comments and I will post them in the May edition of the newsletter. You can provide your full name and province/territory/state or say please mark from anonymous, but please indicate your province/territory/state this way people can understand where you are coming from literally.

Surveillance by Workers Compensation Boards



Alicia Micallef was followed and secretly videotaped by Ontario's Workplace Safety and Insurance Board while recovering from an injury in an effort to discredit her claim. (Tina Mackenzie/CBC)

CBC News Story reported by Rosa Marchitelli
[Click here to read the full story](#)

The WSIB (Ontario's WCB) made the news, in a negative way, yet again. This was about how the WSIB surveilled an injured worker for three years. This was done without any justified reason or probably cause.

The WSIB did it solely to find a reason to deny the injured worker any benefits. While it is a blatant violation of the individual's Human Rights and Charter Rights for taking such an action, there is also the concern of the damage done to the individual. My heart goes out to Alicia and others who have been treated so cruelly by the WCB/WSIB/WorkSafe.

The WSIB surveilled an injured worker for three years. This was done without any justified reason or probably cause!

This is the second time I have come across this issue, where the WSIB has used surveillance to deny injured workers their legitimate claims for compensation. The first was when they surveilled three injured workers, one I personally know. They suspended their benefits and then charged them under the provincial offences act. This is like the Criminal code and the injured workers could have faced up to six months in jail. In the next newsletter I will write more about this story detailing how the injured workers were treated by not just the WSIB, but by the courts. Thankfully the Court of Appeal dismissed all the charges brought by the WSIB.

CLC Creates Seminars for Organizers



The Canadian Labour Congress - CLC is launching a Digital Organizing series for affiliate staff, local leadership, and activists. **Injured workers and those that**

create injured worker groups are considered activists. The CLC event explores online strategies to get ready for a possible federal election this year. The series will highlight the work of leading organizations and experts who have used digital tools to win elections, grow a supporter base and engage union members. Injured worker groups and advocates can learn from these skills to get injured worker issues front and center in the next federal and/or provincial election.

For more information go to www.canadianplan.ca

Final Thoughts for April

I just want to thank everyone who made submissions and also those who took the time to read the second issue of Injured@Work. I hope you found it informative, but most importantly you realized it is about all of us!

If you have something to submit, an event, a submission, even a comment, for next month's newsletter you can send it to me by e-mail and I will add it to the newsletter.

Send submissions to fightwcb@gmail.com