

# From Invisibility to Equality? Women Workers and the Gendering of Workers' Compensation in Ontario, 1900–2005

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Résumé de l'article

L'arrivée d'un système d'indemnisation des accidents du travail en Ontario au milieu des années 1910 était un moment de gain remarquable pour les travailleurs blessés. Grâce à l'adoption de la 1915 Workmen's Compensation Act (Loi 1915 d'indemnisation des accidents du travail), les travailleurs blessés ne auraient plus besoin de dépendre d'un juge et d'un système de jury incertain, et même hostile, pour recevoir quelque sorte d'indemnité de leurs employeurs. Cette loi était, pourtant, une loi discriminatoire contre les femmes. Comme l'article expose à grands traits, la Loi 1915 d'indemnisation des accidents du travail enchâsse statutairement les suppositions du jour que le travail payé des femmes était de valeur moindre que celui des hommes. La situation est restée incontestée jusqu'aux années 1970, quand un mouvement de travailleurs blessés, vibrant et doté d'influence politique, est émergé et, de taille petite mais importante, a commencé à mettre au défi les dimensions sexuelles et raciales du système d'indemnisation des accidents du travail. Cependant, il s'est trouvé que les victoires saisies lors de cet incident par le mouvement de travailleurs blessés ayant un impact sur les femmes – en tant que femmes, mères et veuves des travailleurs blessés – étaient plutôt symboliques que matérielles. Car bien qu'un changement en 1982 du nom anglais de la loi : de "Workmen's" à "Workers Compensation Act" soit symbolique d'une loi de genre officiellement neutre (suivie du passage de la Loi sur la sécurité professionnelle et l'assurance contre les accidents du travail en 1997), les travailleuses blessés au cours des vingt dernières années ont signalé que leurs demandes de prestations ont été traitées par les responsables de la Commission des accidents du travail qui sous-estimaient la gravité et la légitimité de leurs blessures, d'un côté, et qui circonscrivaient les programmes de réadaptation et formation à l'emploi avec des notions sexuelles que leurs travaux étaient secondaires en importance par rapport à ceux des hommes de leurs foyers, de l'autre côté. Les femmes blessées ne sont plus totalement ignorées; elles font maintenant face à un système d'indemnisation des accidents du travail néo-libéral qui ressemble de plus en plus au régime du bien-être social, dont l'état neutre officiel ne vise aucune inégalité bien ancrées du marché du travail ni les contradictions de règlements et processus entre les lois et leur application.

## ARTICLE

# From Invisibility to Equality? Women Workers and the Gendering of Workers' Compensation in Ontario, 1900–2005

**Robert Storey**

She's single, black, and pregnant, and she's on welfare. And all these things are mentioned. Well, black is not mentioned. She's from Ethiopia. But the fact that she's on welfare is mentioned in the decision. The fact that she's pregnant is mentioned. The fact that she has had, you know, somewhat of a social life, and had a boyfriend in the past. So, some of this got mentioned in the appeal decision. Some of it's mentioned right in the file where the psychologist says, you know, how much chronic pain can she have if she can take a flight to Ethiopia? And she has had somewhat of a social life, having revealed to me that she recently broke up with her boyfriend. This is something, these types of issues, I've never seen in other files, particularly a man's file. He's recently broken up with.... I've never read in any male worker's file anything about relationships as far as, relationships illustrating that they have a social life.<sup>1</sup>

THE ABOVE WORDS, spoken by Linda Vanucci, a Toronto lawyer who works in a legal clinic specializing in assisting injured workers with their workers' compensation claims, point to the principle concern of this paper: the gendering of the Ontario workers' compensation system over the course of the 20th century. If we understand gender as a set of processes, relationships, and

1. Author interview with Linda Vanucci, 18 April 2006. The interviews cited in this paper are part of the Injured Workers' History Project (IWHP). To date, 82 in-depth interviews have been conducted under the auspices of IWHP. As the lead coordinator for this project, the author has conducted 55 of the interviews with injured workers and injured worker advocates. Interviews noted here as IWHP interviews were conducted by members of the IWHP working committee, which is composed of injured workers and injured worker advocates. Of the 82 interviews, 28 have been with injured worker advocates (21 males, 7 females). The remaining 54 interviews have been conducted with injured workers (30 males, 24 females).

structures that create and reproduce inequalities between women and men,<sup>2</sup> then it is clear that since its inception in the mid 1910s, the Ontario workers' compensation system has been structured and/or has functioned in ways that systematically disadvantage injured women workers. The mechanisms used to produce the various inequities have changed over this period. As the paper will show, while the present statute no longer excludes the bulk of women workers from basic coverage, or distinguishes between married and non-married women as dependents and survivors of men killed on the job, formal statutory visibility and equality is undermined by decision makers who continue to view women as secondary wage earners, who see them as biologically predisposed to certain kinds of injuries and illness, and, as the example above illustrates, who privilege their "social" over their working lives in the adjudication of their claims.

However, if we are to more fully understand the experience of this and other women as gendered, we need to situate their experiences within the role workers' compensation systems play in the larger political economy of capitalist production and labour market relations. According to Grant Duncan, "[w]orkers' compensation is an instrument of government, serving the political and economic objectives of minimizing a cause for industrial conflict and maximizing capital accumulation, while simultaneously managing the conduct of the injured worker."<sup>3</sup> As the paper will demonstrate, while workers' compensation laws were enacted with an eye towards ameliorating conflict between injured workers and their employers – and between labour and capital more generally, the laws and their administration have often led to individual and, more significantly, collective protest. That is, workers' compensation boards have not always been successful in "managing the conduct of the worker." With regard to maximizing capital accumulation, workers' compensation systems are class-based in form and practice: they are an institutional/administrative manifestation of structural relations of embodied dominance that, while taking different forms for working class women and men, coerced both sexes into jobs that were low paying and inherently hazardous.<sup>4</sup> Early 20th

2. Joan Acker, *Class Questions: Feminist Answers* (Lanham 2006): "Gender is best understood as pervasive patterns of difference, in advantage and disadvantage, work and reward, emotion and sexuality, image and identity, between male and female, created through practical activities and representations that justify these patterns that result in the social categories of women and men. Gender may include more than these two social categories. Gender is a basic principle of social organization, almost always involving unequal economic and social power in which men dominate. Gender is socially constructed and diverse, and varies historically and cross-culturally." (5–6)

3. Grant Duncan, "Workers' Compensation and the Governance of Pain," *Economy and Society*, 32, 3 (August 2003), 454.

4. This coercion could take many forms, but the lack of alternative work was/is the dominant form. See Carol Wolkowitz, *Danger: Bodies At Work* (London 2006), 100–117, for a discussion of this relationship. See also, Clair Williams, "Class, Gender and the Body: The Occupational

century workmen's compensation laws were directed primarily at these jobs – the “dangerous trades” – or those associated with heavy industrial or primary labour. While such an orientation might seem logical given that workers in such industries were seemingly more susceptible to accident and injury, that logic did not incorporate compensation rates that adequately attended to the economic needs of the injured worker. Indeed, the reality of the legislative and regulatory machinations of such laws ensured that workers could never recover their full wages in the event of either temporary or permanent disability. Already earning less than those in middle class occupations and the professions, injured working class women and men encountered workers' compensation systems that reinforced the economic/material dimensions of class inequalities characteristic of industrializing capitalist societies in this period.<sup>5</sup>

There is, then, a need to understand the historical and ever-changing intersection between gender and class. As the situation of the injured worker who opened this paper attests, we must also be cognizant of the processes and consequences associated with racialization. A much discussed and contested concept, Robert Miles' understanding that racialization refers to “ideological practices through which race is given significance, and cultural and political processes or situations where race is invoked as an explanation or a means of understanding,” is employed in this paper.<sup>6</sup> It is clear, as numerous studies have demonstrated,<sup>7</sup> that for many government, business, and labour offi-

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Health and Safety Concerns of Blue Collar Workers in the South Australian Timber Industry,” in Michael Quinlan, ed., *Work and Health: The Origins, Management and Regulation of Occupational Illness*, (Melbourne 1993), 33–56; William Graebner, “Doing the World's Unhealthy Work: The Fiction of Free Choice,” *The Hastings Centre Report* (August 1984), 28–37.

5. See Karl Marx, *Capital*, Volume 1, (London 1976), for the classic analysis of this process for England. For an examination of this process in Canada, see Bryan D. Palmer, *Working-Class Experience: Rethinking The History of Canadian Labour, 1800–1980* (Toronto 1991).

6. This interpretation of Robert Miles' conceptualization of racialization is taken from Karim Murji and John Solomos, “Introduction: Racialization in Theory and Practice,” in their edited collection, *Racialization: Studies in Theory and Practice* (Oxford 2005), 11. In Miles' own words racialization refers to “those instances where social relations between people have been structured by the signification of human biological characteristics in such a way as to define and construct differentiated social collectivities. The characteristics vary historically and, although they have usually been somatic features, other non-visible (alleged and real) biological features have also been signified. The concept therefore refers to a process of categorization, a representational process of defining an Other (usually, but not exclusively) somatically.” Miles, *Racism* (London 1989), 75.

7. Daiva Stasiulis and Radha Jhappan, “The Fractious Politics of a Settler Society,” in Daiva Stasiulis and Nira Yuval Davis, eds., *Unsettling Settler Societies: Articulations of Gender, Race, Ethnicity and Class* (London 1995); Donald Avery, *Reluctant Host: Canada's Response to Immigrant Workers, 1896–1994* (Toronto 1995); Peter Ward, *White Canada Forever: Popular Attitudes and Public Policy towards Orientals in British Columbia* (Montreal 1978); Constance Backhouse, *Colour Coded: A Legal History of Racism in Canada, 1900–1950* (Toronto 1999); David Goutor, *Guarding the Gates: The Canadian Labour Movement and Immigration, 1872–1934* (Vancouver 2007).

cial building the Canadian nation was synonymous with the ideological and political construction of a “white” nation expressed in attitudes, policies, and practices that embraced a generalized, open hostility to Asians and particularistic opposition to workers from eastern and southern Europe. As the paper will also show, such prejudicial attitudes and discriminatory practices could be found decades later within the Ontario Workmen’s Compensation Board (WCB). In this latter instance, however, such treatment precipitated sustained resistance among these different communities, particularly Italian working class women and men concentrated in Toronto’s west end. While such practices on the part of the WCB have attenuated since the mid 1980s, there is the fleeting suggestion by injured workers of various racialized groups that their status as immigrant workers, in most cases with little or no knowledge of the law and its policies and regulations, renders them highly vulnerable to a workers’ compensation system under pressure from employers and governments to cut costs.

To understand the gendering of the Ontario workers’ compensation system, then, we must integrate, in various dimensions and degrees, the intersecting concepts/processes/structures of class and racialization. As I shall outline, the 1915 Workmen’s Compensation Act (WCA) statutorily enshrined the assumptions of the day that women’s paid work was of less value than that of men’s while simultaneously augmenting laws pertaining to regulating workplace health and safety that either excluded and/or systematically disadvantaged women.<sup>8</sup> The situation remained uncontested until the 1970s when a vibrant and politically influential injured workers’ movement (IWM) emerged and, in small but important ways, began to challenge the gendered and racialized dimensions of the workers’ compensation system. As it happened, the victories secured at this juncture by the IWM that impacted on women – both as injured workers and as wives, mothers, and widows of injured workers, proved to be more symbolic than material. For, while a 1982 change in the name from “Workmen’s” to “Workers’ Compensation Act” was symbolic of a formally gender neutral statute (continued with the passage of the Workplace Safety and Insurance Act in 1997), women workers injured over the past two decades report that their claims are being processed by WCB officials who downplay the severity and the legitimacy of their injuries, on the one hand, and who circumscribe rehabilitation and job training programs with gendered notions

8. Known as “protective legislation,” these laws were passed in most industrializing countries from the 1880s to the 1920s. For a discussion of their introduction and role in Ontario, see Eric Tucker, *Administering Danger in the Workplace: The Law and Politics of Occupational Health and Safety Regulation in Ontario, 1850–1914* (Toronto 1990). See also Jane Ursel, “The State and the Maintenance of Patriarchy: A Case Study of Family, Labour and Welfare Legislation in Canada,” in Jim Dickinson and Bob Russell, eds., *Family, Economy and the State: The Social Reproduction Process Under Capitalism* (Toronto 1986); Margaret Hobbs, “Dead Horses’ and ‘Muffled Voices’: Protective Legislation, Education and the Minimum Wage for Women in Ontario,” MA Thesis, Ontario Institute for Studies in Education, 1985; and Nancy Chenier, *The Selective Protection of Canadian Working Women* (Ottawa 1989).

that their jobs are secondary in importance to that of male members of their households, on the other hand. No longer totally ignored, injured women workers now confront a neo-liberal, increasingly welfarized workers' compensation system whose formal gender neutrality does not address entrenched labour market inequalities or the regulatory discrepancies between laws and their application.

### **Not One "Muffled Voice"**

MOST ANALYSES OF WORKMEN'S compensation in Ontario pay tribute to the first two decades of the 20th century when the "modern" system of no-fault insurance was fiercely debated and then implemented. As these studies have outlined, the 1915 WCA was a product sensitive to the pressures and turmoil of the times.<sup>9</sup> Workers and unions were angry and frustrated with the increasingly visible carnage of industrial production. Moreover, while injured workers were experiencing some success in suing their employers, they were exasperated with a juridical system that remained prohibitive on almost all counts: it was expensive, ideologically hostile, and the compensation awards fell far below what was required for minimal subsistence. For their part, employers were searching for different pathways as well. As Michael Piva recounts, in addition to their concerns about the relative growing successes of workers in the courts, they were, along with the Ontario government, interested in finding ways to attend to the growing industrial conflict and political radicalism among Ontario workers.

In the time-honoured Canadian tradition, in 1910 the Progressive Conservative government of Sir James P. Whitney called upon Ontario Chief Justice Sir William Meredith to head a royal commission with a mandate to investigate various systems of workmen's compensation and make recommendations for changes to the one in place in his home province.<sup>10</sup>

Meredith took three years to complete his deliberations. Over that time he heard testimony from scores of individuals representing labour, business, and the insurance industry, and traveled to the United States, England and countries within Europe to view the operation of their respective workmen's compensation systems first-hand. In the end, his draft act – which was adopted by the government almost in its entirety – was viewed by Meredith

9. Michael Piva, "The Workmen's Compensation Movement In Ontario," *Ontario History*, 67 (1975), 39–56; Richard Risk, "This Nuisance of Litigation: The Origins of Workers' Compensation in Ontario," in David H. Flaherty, ed., *Essays In The History of Canadian Law, Vol. II*, 4 (Toronto 1981), 18–91; Eric Tucker "The Law of Employers' Liability in Ontario, 1861–1900: The Search For a Theory," *Osgoode Hall Law Journal*, 22 (1984), 213–280.

10. Ontario, Royal Commission, *Laws Relating to the Liability of Employers To Make Compensation to Their Employees For Injuries Received In The Course Of Their Employment Which Are In Force In Other Countries, And As To How Far Such Laws Are Found To Work Satisfactorily* (June 30, 1910).

as a just compromise between these competing interests. Workers injured on the job would be guaranteed some form or amount of compensation. This was a victory for injured workers. In return, however, injured workers would have to relinquish their right to sue their employers. This was a victory for Ontario employers. Ultimately, as Eric Tucker<sup>11</sup> has pointed out, while marking an advance over the uncertain and fundamentally inequitable system of employer's liability, the 1915 Act did not stray beyond the economic, political and ideological boundaries of capitalist market relations. That is, while "the historic compromise" of a no-fault system replacing tort action assured injured workers in Ontario that their accident and injury would receive a modicum of economic recognition, this and other changes did not challenge or encroach upon the rights of management to produce their products any differently – or even more safely<sup>12</sup> than they had prior to the passage of the Act.

Nor did this legislation challenge the dominant gender ideologies of the period – perhaps the most relevant of which related to the roles of women and men in the interconnected realms of production and reproduction. As Bradbury, Parr, Sangster, and Pierson<sup>13</sup> have written in studies that bookend this historical moment, male workers were understood to be the main providers, and, in turn, they expected to be paid wages sufficient enough to maintain the daily upkeep and generational reproduction of their family households. The latter was, in turn, understood to be the work of the female members of the household. Encapsulated in the notion of the "family wage," such gender ideologies went both unquestioned and unchallenged in Meredith's Royal Commission proceedings and in *Final Report on Laws Relating To the Liability of Employers To Make Compensation To Their Employees For Injuries Received In The Course Of Their Employment Which Are In Force In Other Countries, And As To How Far Such Laws Are Found To Work Satisfactorily*.<sup>14</sup> Aside from their hegemonic stance in larger society, the absence of contest and conflict

11. Tucker, "The Law of Employers' Liability in Ontario."

12. One of the arguments used in favour of an employer-funded compensation system was that it would be a system characterized by strict attention to safety and prevention. This is a contested notion. For a comprehensive critique of this and other "efficiency" notions relating to workmen's compensation, see, Martha T. McCluskey, "The Illusion of Efficiency in Workers' Compensation 'Reform,'" *Rutgers Law Review*, 50, 3 (Spring 1998), 657–941.

13. Bettina Bradbury, *Working Families: Age, Gender and Daily Survival in Industrializing Montreal* (Toronto 1993); Joy Parr, *The Gender of Breadwinners: Women, Men and Change in Two Industrial Towns, 1880–1950* (Toronto 1990); Joan Sangster, *Earning Respect: The Lives of Working Women in Small-Town Ontario, 1920–1960* (Toronto 1995); Ruth Pierson, "Gender and the Unemployment Insurance Debates in Canada, 1934–1940," *Labour/Le Travail*, 25 (1990), 77–103.

14. Sir Wililam Meredith, *Final Report on Laws Relating To the Liability of Employers To Make Compensation To Their Employees For Injuries Received In The Course Of Their Employment Which Are In Force In Other Countries, And As To How Far Such Laws Are Found To Work Satisfactorily, October 31, 1913* (Toronto 1913).

regarding such gender ideologies can be further explained by the fact that of the scores of employees interviewed, not one was a woman. In contrast to the 1880s Royal Commission on the Relations of Labor and Capital where 102 women testified, there was not even one “muffled voice” to be heard.<sup>15</sup> The almost 1,300 pages of testimony reveal that their accidents, injuries, and illnesses were not even of minor concern. Rather, what did generate anxiety among many of the male participants was the level and extent of benefits to be paid to female survivors and their children. Under Meredith’s proposal, contained within his Final Report (one fiercely contested by the Canadian Manufacturers’ Association representative, Frank W. Wegenast), an injured workman would receive “compensation as long as the disability caused by the accident lasts.”<sup>16</sup> In the event of a death, however, there was a question, posed again by Wegenast, of how long a widow should receive these payments. What should happen if she were to remarry, or worse, live with a man as a “common prostitute?” Was she to be entitled to lifetime benefits in such cases?

Meredith’s draft bill, and the WCA itself, contained clauses allocating benefits to widows for their lifetimes or until they legally remarried, while children of deceased workers were to receive monthly payments until they reached the age of sixteen. Importantly, in the only clause where working women were made explicitly visible – a clause that was in keeping with gendered notion of the able-bodied, working class, masculine breadwinner<sup>17</sup> – husbands of women workers killed on the job were to receive benefits only if it was determined that they were “invalids” or “physically or mentally incapable of earning.”<sup>18</sup> Male workers were thus understood to have a stable and lifelong attachment to the labour market that was legitimately broken only when they were physically and/or mentally unable to work. Women’s attachment to their jobs was to last until they were married and/or when they remarried – at which point, as stated above, their benefits would be terminated. While one can readily posit that this change in benefit status was not what these women desired, the same cannot be said for Meredith and each royal commission participant. In one session, Mr. Hinsdale from the state of Washington’s workmen’s compensation board, provided Meredith with information relating to benefits to widows who, he stated, on average were expected to live until they were 65 years of age. In calculating the costs associated with these benefits, Hinsdale reported that the “question of widows remarrying is an important one; a great many do remarry....” Upon hearing that in one year of operation, two out of 243 widows had remarried, thus allowing the Washington workmen’s compensation board

15. Susan Mann Trofimenkoff, “102 Muffled Voices: Canada’s Industrial Women in the 1880s,” *Labour / Le Travailleur*, 4 (1979), 131–164.

16. Meredith, *Final Report*, 11.

17. Parr, *The Gender of Breadwinners*, 165–186.

18. Sir William Meredith, *Workmen’s Compensation, Draft Bill*, 9.



to terminate their benefits, Meredith asked: "Do you find the oldest and ugliest marry first?"<sup>19</sup>

The payment of benefits to survivors also had a racialized/gendered dimension. In keeping with the dominant discourse regarding the undesirability/inferiority of male workers from eastern and southern Europe, questions were raised by witnesses before Meredith's Royal Commission as to the utility of paying their dependents and survivors full compensation in the event of injury and/or death. Mr. G. A. Kingston, a counselor for the Union Trust Company of Toronto, replied to Meredith's query asking why an injured worker would stay in bed beyond the time he was actually injured.

With reference to this question there is a point that comes up as to the wisdom or otherwise of eliminating the right of foreign relatives of a deceased man to make any claim upon its compensation fund. The system has grown up in this country, and there are several gentlemen in Montreal who thrive greatly on it, of taking up these cases. They represent the foreign element in the whole of Canada, consuls of some of those European countries, and they succeed usually in finding out a dependent relative in the Old Country. No doubt in many cases there may be foundation for the claim, but I should not think that there should be a great deal of sympathy displayed in a Compensation Act for foreign relatives. I am not now referring to relatives who are British subjects, but for instance in Romania and Bulgaria and Turkey.<sup>20</sup>

Daniel LeRoy Cease, from Cleveland, Ohio, and representing the Brotherhood of Railway Trainmen, echoed these sentiments, informing Meredith that some of the American state compensation laws "regard[ed] an alien dependent in the same light as they do their own people." "Would it not," Meredith asked Cease, "be rather an unjust law that forbade giving compensation to the dependents of a man because they happened to live in a foreign country?" "Broadly speaking, it would," Cease replied. "The contention against paying the full amount has been that the standard of living in other countries is so much lower than it is in our own country that to pay the same amount abroad as is paid at home would in result be greater to the foreigner than to the men at home; that was the argument."<sup>21</sup>

When it came to benefits, it is again not surprising that there was no talk about scaling such that low income earners could receive a higher percentage

19. Royal Commission, *Laws Relating to the Liability of Employers, Minutes of Evidence*, Twenty-Third Sitting, January 14, 1913, 400.

20. Royal Commission, *Laws Relating to the Liability of Employers, Minutes of Evidence*, Fifth Sitting, December 5, 1911, 251.

21. Royal Commission, *Laws Relating to the Liability of Employers, Minutes of Evidence*, Twenty Second Sitting, January 10, 1913, 396–97. It is important to state that Meredith did not agree with such proposals. For example, his reply to Kingston's comments was short and sharp: "Your idea, Mr. Kingston, would be, let them starve if you don't see them starve." And, when Wegenast pointed out that the Quebec compensation act did not pay any compensation to dependents unless they lived in the province, Meredith stated: "I think that is also the case in British Columbia. I do not like the look of that kind of legislation." Fifth Sitting, December 5, 1911, 251.

of their lost wages because of time off work due to injury or illness.<sup>22</sup> Given that most women earned less – and for many a great deal less – in wages than men, a compensation system that paid injured workers according to a percentage of their average wages could only reflect and enhance those already marked labour market inequalities. Moreover, the WCA was gendered in its exclusive preoccupation with the so-called “dangerous trades.” That is, while the WCA did include industries where women worked with high risks of injury and disease i.e., textile mills, steam laundries, tanneries, furniture factories, box-making plants, auto plants, and the like<sup>23</sup>, it did not extend to those jobs where the overwhelming majority of women could be found in this period, i.e., domestics in private homes, textile work in sweatshops, office work, education, and health. In addressing the issue of their exclusion in his Final Report, Meredith wrote that along with “farming, wholesale and retail establishments,” while there was “no logical reason why ... all should not be included, ... I greatly doubt whether the state of public opinion is such as to justify such a comprehensive scheme.”<sup>24</sup> Given the exclusion of these occupations, the name workmen’s compensation was not a misnomer.

Access to workmen’s compensation benefits was thus understood by those who designed the WCA to be a contingent right derived from gainful employment. Like workmen’s compensation systems introduced elsewhere in the same time frame, it was a social insurance program separate and distinct from other, more welfare-oriented public assistance programs that did not have this seminal tie to the labour market.<sup>25</sup> Reminiscent of 19th century versions of the “deserving” and “undeserving” poor, and foreshadowing the discourse surrounding the policies embedded in the 1940 unemployment insurance act, the WCA, by incorporating women almost solely as dependents, reinforced the dominant gendered assumptions regarding women workers’ ephemeral relationships to the labour market. Moreover, as stated earlier, it was legislation aimed almost exclusively at the white male working class body. Throughout the Royal Commission hearings employer representatives were adamant that

22. Pierson, *Gender and the Unemployment Insurance Debates*, 84–89.

23. Ruth Frager, *Sweatshop Strife: Class, Ethnicity, and Gender in the Jewish Labour Movement of Toronto, 1900–1939* (Toronto 1992), 98–148; Parr, *The Gender of Breadwinners*, 165–186; Sangster, *Earning Respect*, 50–80; Pamela Sugiman, *Labour’s Dilemma: The Gender Politics of Auto Workers in Canada, 1937–1979* (Toronto 1994), 65–97.

24. Meredith, *Final Report*, xi.

25. Linda Gordon, “Social Insurance and Public Assistance: The Influence of Gender in Welfare Thought in the United States, 1890–1943,” *American Historical Review*, 97,11 (1992), 19–53; Barbara Nelson, “The Origins of the Two-Channel Welfare State: Workmen’s Compensation and Mother’s Aid,” in Linda Gordon, ed., *Women, The State and Welfare* (Madison 1990), 123–151; “The Gender, Race and Class Origins of Early Welfare Policy and the Welfare State: A Comparison of Workmen’s Compensation and Mother’s Aid,” in Louise A. Tilly and Patricia Gurin, eds., *Women, Politics and Change* (New York 1990), 413–435; Deborah Stone, *The Disabled State* (Philadelphia 1986).

benefits not be so high that they blunted the incentive of injured male workers to return to work as soon as possible. Meredith agreed that this was critical – setting the wage percentage on which benefits were based low enough (55 per cent) so that injured workers would be anxious to return to work. To some extent, then, while workmen’s compensation guaranteed benefits to injured workers and their dependents, the amounts they received did not serve to decommodify or truly buffer them from, in Karl Marx’s words, “the dull compulsion of economic relations...”<sup>26</sup> The WCA was, in Piva’s terms, closely aligned with the desires of employers for a cheap form of injury and illness insurance.<sup>27</sup> It was also, to use Tucker’s analysis, in sync with the Ontario state’s reluctance to tamper with the voluntary nature of its labour laws; that is, like the Factory Act passed before it, the WCA left the responsibility for the human casualties of industrial production to the two major workplace actors – labour and capital. Within the confines of this legislation, female and male workers would be obliged to seek economic recompense for injuries suffered “through no fault of their own.” Women workers, however, started out in this process from a major point of disadvantage: they were all but invisible.

### The Breadwinner Body

FROM THE PERSPECTIVE of injured workers and the labour movement, the Ontario WCA operated well enough from the 1920s through to the late 1950s and early 1960s. To be sure, as reported in the 1932 and 1950 Commissions of Inquiry into workmen’s compensation headed respectively by Justices W.E. Middleton and W. D. Roach, there were ongoing complaints regarding the percentage of a worker’s wages upon which compensation was based, what they perceived to be a punitive and burdensome waiting period, the low and arbitrary wage ceiling, the meager pensions awarded to workers with permanent partial and total disabilities, the insufficient funds allocated to the widows and children of male workers killed on the job, the exclusion of workers and industries, and the reluctance of the WCB and successive governments to include more diseases in the list of those deemed compensable. But incremental improvements in these areas served, if not to completely satisfy, then to at least allay the discontents of all but a small percentage of injured workers.<sup>28</sup>

Ontario’s postwar economic boom, particularly as it was expressed in the growth in manufacturing and the building of its cities, was to change this

26. Karl Marx, *Capital*, Volume 1: 899. On the concepts of commodification and de-commodification, see, Gosta Esping-Anderson, *The Three Worlds of Welfare Capitalism* (Princeton 1990). See also, Robert Maton, “The Emergence of Neo-Liberalism in Ontario’s Workers’ Compensation System,” PhD dissertation (University of Toronto, 1991).

27. Piva, “The Workmen’s Compensation Movement in Ontario,” 56.

28. *Report of the Commissioner In the matter of The Workmen’s Compensation Act*, Ontario, February 11, 1932; *Report on The Workmen’s Compensation Act*, Ontario, May 31, 1950.

scenario. As happened in the early 1900s, the rise in activity and employment in manufacturing and construction produced a concomitant rise in accidents and injuries.<sup>29</sup> Indeed, it was on the basis of employer complaints regarding increased compensation claims that in 1966 the government called on Justice George A. McGillivray to head a Royal Commission In The Matter of The Workmen's Compensation Act. Unlike the Middleton and Roach Commissions, McGillivray's inquiry was extensive, with the commissioner receiving long and detailed submissions from trade unions, employer associations, individual companies, medical associations, the WCB, and a sprinkling of interested individuals.<sup>30</sup> In testimony that ultimately took up over 3,000 pages, each of the parties presented McGillivray with recommendations bearing mainly on the issues listed above; now, however, the tone was changing. Representatives from the automotive and mining sectors, for example, expressed growing exasperation at the numbers of their employees who were filing compensation claims relating to lower back injuries. In this regard, they blamed WCB-initiated changes to the definition of accident to include "disablement," which, they charged, opened the way for workers injured at home or while engaged in some recreational activity like "ice hockey, or something like this, and he comes back in the next morning and he goes and says that it happened at work the last day."<sup>31</sup> For their part, trade unions, particularly the United Steelworkers of America and the United Auto Workers, took great pains to refute allegations that their injured members were either cheaters or malingerers. According to representatives from these unions, the problem was not with the workers; rather, it was with new heavy machinery that contrary to the labour-saving claims of employers, was more difficult to operate in the conditions and at the speeds demanded by the companies.<sup>32</sup>

While the highly regarded civility between unions and employers was showing signs of strain, there remained an unspoken consensus that the wage-earning male body was the sole object of concern. That is, as with the Meredith Commission, the debates and points of contest relating to accidents, injury, illness, and compensation assumed the male industrial breadwinner.

29. As reported by the Ontario Workmen's Compensation Board, settled claims rose from slightly over 200,000 in 1957 to slightly over 300,000 in 1966. Within this figure, there was a 50 per cent increase in claims for lower back injuries. These injuries were the most expensive in terms of both short and long term awards. Ontario Workmen's Compensation Board, *Annual Report, 1968*.

30. Ontario, *Report of The Royal Commission In The Matter of The Workmen's Compensation Act*, Ontario, 1967.

31. Ontario, *Royal Commission on the Workmen's Compensation Act, Volume 6*, 699. Prior to 1963 an accident was defined as "a willful and intentional act, not being the act of the workman, and a fortuitous event occasioned by a physical or natural cause." In that year the WCB altered the definition by adding to these provisions the phrase "disablement arising out of and in the course of employment."

32. Ontario, *Royal Commission 1966, Volume 11*, 1579–1581.

Union representatives, for example, were virtually singular in their discourse regarding the impact of serious injury and/or illness on their members' ability to work and contribute in their roles as "the provider." Thus, they demanded that totally disabled male workers should receive 100 per cent of their wages as compensation. The need for full compensation was greater still, William Kennedy of the United Electrical Workers Union argued, when the injured workman "dies as a result of the injury [and] the financial burden upon the widow becomes greater instead of less."

It is a well known fact that if a man is hale and hearty, that there are multitudes of things that he does around the home, things that if he were to hire some tradesman to do, would cost money. However, he assumes that responsibility as part of his general home making and housekeeping contribution. If the provider, the husband, dies, then the widow has to hire someone to do many of the chores that have to be done around the house, some things that are just beyond the scope of a woman.<sup>33</sup>

As with the Meredith Commission, then, women were a topic of discussion only as the dependents of male workers. To be sure, union representatives, and even some company officials, were wholly sincere in their proposals for dramatic increases in widow's pensions and death benefits. But these issues totally encompassed their concerns with respect to women. Despite that fact that by the mid 1960s women workers were experiencing 10 per cent of all accidents resulting in temporary or permanent disability, women, as wage earners, did not make it onto the agendas of the commissioner or the individuals and organizations that made submissions.<sup>34</sup> Symbolic of this omission, out of the almost 3,000 pages of testimony, not one bore the spoken words of a woman.

Workmen's compensation also did not take women into account in their roles as wives and members of households. Always a difficult arrangement for working class women, the tasks and responsibilities associated with managing a household became more arduous still in the event of serious, disabling injury to husbands and sons. For, if, as was evident, compensation awards made to disabled workers did not nearly match their previous income levels, such awards failed completely to acknowledge and incorporate the hidden/private costs associated with workplace injury. Indeed, in this regard, legislators and WCB officials operated on the basis of assumptions that the tasks and most of the costs of caring for the injured worker would be naturally – and quietly – absorbed by the family. Given the accepted divisions of domestic labour, such tasks went primarily to the wife/partner. In a letter to Stephen Lewis, the leader of the Ontario New Democratic Party (NPD), one woman wrote of

33. *Royal Commission 1966*, Volume, 6, 711.

34. It was not until the mid 1960s that Ontario Workmen's Compensation Board statistics for accidents resulting in temporary and permanent disability showed women reaching 10 per cent of similar injuries for male workers. It was also at this time that the accident rate for married women topped that of single women. Since this time period the percentage of lost time accidents incurred by women workers has steadily risen. See Appendix A, Chart 1, "Lost Time By Sex, Marital Status, Selected Years."

her “great disappointment, considerable annoyance and some despair...” as the disabling injury to her husband had resulted in a sea change in the costs of keeping her household, not to mention the extra tasks and responsibilities she had been forced to take on.

1. bathing and dressing; 2. placing in wheelchair and adjusting clothing; 3. possibly feeding, shaving, brushing teeth or adjusting prosthetics for same where necessary; 4. change, adjust, clean and drain urinary apparatus of different kinds; 5. give laxatives and enemas; 6. be ready to change clothes or sheets at any time of the day or night because of lack of control of body functions; 7. be aware of any change in patient's condition which may warn of pending illness or complication; 8. check body regularly and thoroughly to guard against pressure sores; 9. superintend diet and medication if necessary, and make sure water jug is always accessible and full; 10. wash hair, manicure and pedicure; 11. act as chauffeur as needs or wishes require; 12. never leave the disabled person unattended for more than two hours; 13. devise a hobby or entertainment so he doesn't just sit.

In addition, a wife will do laundry, shop, cook meals and generally keep house. Where could one hire someone to do all these things at the level of pension you are paying? In addition to all the above, it is also true that in many cases the pension maximum is far below the income of the worker at the time of his injury.<sup>35</sup>

## Gender and Justice for Injured Workers

IN THE EARLY 1970S, accumulating individual and familial economic and social hardship fueled the emergence and growth of public protest. Based principally in Toronto's working class Italian communities, whose experience with work injury through construction work was unparalleled at this time, the transformation of accidents/injuries from private troubles into an IWM was nurtured and propelled forward in three principal ways: the formation of their own organization – the Union of Injured Workers (UIW);<sup>36</sup> the work of law students who identified with the demands for justice by injured workers and who assisted in their WCB claims and appeals; and the willingness of injured workers themselves to continually voice their discontents by taking to the streets in front of the Ontario Legislature, the Ministry of Labour, and the offices of the WCB.<sup>37</sup>

The demands for economic justice and human dignity made by leaders and members of the IWM were heavily informed by the gendered image of the honest and hard-working “man,” on the one hand, and the experience of ethnic/racial discrimination, on the other hand. With regard to ethnic/racial

35. Legislature of Ontario, *Legislative Debates*, June 5, 1973, 2717.

36. The four central demands of the UIW were: 1. Full Compensation or Job Security; 2. Cost of living increases; 3. No Board Doctors; 4. Improved, and enforced, occupational health and safety laws. “How Our Fight Began,” *Injured Workers Voice*, 1 (May 1975), 5.

37. For a full discussion of the emergence of the IWM, see, Robert Storey, “‘Their Only Power Was Moral’: The Injured Workers’ Movement in Toronto, 1970–1985,” *Histoire Sociale/Social History*, 81 (2008), 99–132.

discrimination, Italian workers confronted a WCB that was, in the words of Ross McClellan, a community organizer in the Italian community in the early 1970s, “the most hideous organization on the face of the planet. It was run by, we always used to call him Generalissimo, Brigadier General Legge... He looked like ... a blonde Aryan. He looked like that. And, he had filled the Compensation Board with ex service officers, ex military officers and they ran it like a military operation. And, they had the Anglo-Saxon attitude towards pain and suffering: Go back to work or I’ll shoot you.”<sup>38</sup> According to McClellan, WCB officials examined the back claims of Italian workers with great suspicion, “They referred to Italian back,” McClellan remembered. “It was a way of dismissing the reality of musculoskeletal injury caused by overwork and work fatigue and repetitive strain ... as well as trauma. So, there was just no recognition of the legitimacy of musculoskeletal injury in the construction trades.”<sup>39</sup>

One instance of such discriminatory views proved to be a turning point in the evolution of the IWM. In 1973 a WCB psychiatrist’s report of Giuseppe Pulera that labeled him as “a poorly acculturated Italian without any useful occupational skills,” became public. This revelation led to a rally at the University of Toronto attended by hundreds of injured workers and supporters and later the fashioning of a petition demanding that the psychiatrist, Dr. Ian Hector, who was associated with the university, be fired. While university officials refused the demands to fire Hector, the incident propelled activists within the Italian community to forge an alliance among competing groups – an alliance that resulted in the formation of the Union of Injured Workers in May 1974.<sup>40</sup>

In response to these ethnic/racialized perceptions and class-based differences, i.e., Anglo-Saxon/Celtic middle class doctors and Board officials versus immigrant working class men and women,<sup>41</sup> injured workers offered the gendered image of the honest, hard-working man. First, with specific reference to Italian construction workers, workmen’s compensation advocates noted that the inequities and shortcomings of the compensation system were preventing

38. Author interview with Ross McClellan, July 14, 2003.

39. McClellan interview.

40. In their brief to the 1980 Weiler Commission, the Injured Workers’ Consultants summed up these issues: “Statements like this very often go unchallenged because the files are not open to the injured workers at any time and are only open to a representative if there is an appeal. The argument is that doctors and Board representatives would not be able to be frank in their comments if they were subject to scrutiny. An upper administration public relations person has openly made the following comments: – ‘spaghetti backs,’ ‘Luigi syndrome,’ – ‘all niggers start at Calais.’ i.e., all non anglo-saxons.” *Submission To Paul C. Weiler on Workers’ Compensation in Ontario* (August 1980), 71.

41. One of the central complaints of injured workers in the 1960s and 1970s was that the WCB did not have staff who could speak the native languages of injured workers from Italy, Portugal, etc. In their dealings with WCB officials, these men and women would often take their children with them as translators.

injured workers from recovering and returning to work – a result that was devastating for these individuals. Peter Rosenthal, a mathematics professor at the University of Toronto and a member of the left-wing Committee for Just Compensation (CJC) recalled the early meetings of the CJC. In his words they were “lively and fun, in a way.”

It was inspiring, actually, to see people, wounded not just physically but [also] mentally by staying at home. Not working. These were people who mainly believed in working. They were working class people who didn't like the idea of being on the dole of any kind. It was part of their being to be productive workers.<sup>42</sup>

Over the course of the 1970s to the mid 1980s, these sentiments were a critical aspect of the workmen's compensation discourse when referring to Italian workers: the system was forcing honourable, hard-working men to go on welfare.

The second way this gendered image found its way into discussions and debates of workmen's compensation revolved around the changing role and place of the male injured worker in his family. In her study of Italians in post-war Toronto, Franca Iacovetta highlighted the importance of work to Italian men, i.e., how their jobs –and the incomes from them – both underscored their sense of themselves as men while securing their roles as the heads of their families. They were the acknowledged breadwinners.<sup>43</sup> Disabling injury, however, threw this ideological and practical configuration into crisis. Simply, ways and means had to be found to replace lost income. The solution, if wives were not already in the paid labour force, was for the woman/wife to get a job. But, for many of these men, this was a difficult and personally diminishing solution. Domenico Pietropaolo, in the early 1970s the director of CENTRO, a multipurpose social service agency, housed within the YMCA in the heart of Toronto's “Little Italy,” became personally aware of the impact of the workmen's compensation struggles on the injured worker and his family.

The family context was important because in almost all instances the person who is injured is also providing the cheque and when he can no longer do that, you have workmen's compensation benefits for a little while and then they run out. Or, you are given a disability pension that is in accordance with the law but is minimal for you. The roles of the family have to change, too. Someone else will have to assume that responsibility. The role of leader changes. The authority figure changes. There is great tension when there are children involved.<sup>44</sup>

Such situations could also unite families. Throughout the 1970s meetings of the UIW were attended by large numbers of women – some of them members of the UIW by virtue of being injured workers themselves. Indeed, in the latter 1970s, activists within the IWM worked diligently with female family members.

42. Author interview with Peter Rosenthal, 7 July 2003.

43. Franca Iacovetta, *Such Hardworking People: Italian Immigrants in Postwar Toronto* (Montreal 1992).

44. Author interview with Domenico Pietropaolo, 29 August 2003.



Alec Farquhar, one of the key activists in the IWM in this entire period, learned how to speak Italian, and along with Orlando Buonastella, a young Italian workmen's compensation advocate whose father was an injured worker, organized numerous meetings with Italian women. As Farquhar noted, separate meetings with Italian women were necessary both to address the particular needs of injured women workers, and because their husbands did not approve of them attending meetings where men were present.<sup>45</sup> According to Odoardo DiSanto, persuading Italian women to become active in the struggles of their husbands, sons, and brothers was easily accomplished.

Women were those who felt, immediately on their skin, the results of the accidents which happened to their husbands, or their fathers in their families. So, their problem was very real. And, we involved them because we did not want to have an organization of men. We wanted to involve all the injured workers.... There were hundreds of women workers who were involved in the movement.<sup>46</sup>

While there is some debate regarding the level of activism of women in the IWM,<sup>47</sup> there is consensus on the discriminatory treatment they experienced in their relationship with the WCB if they were themselves injured workers. Speaking before the Ontario Legislature's Standing Committee on Resources Development (SCRD), Gerbina DiMichele, related how after two back operations she had been "cut off" by the WCB. She was told to find "light work" because her problems "were all in my head." DiMichele agreed that "some of its in my head. There was a lots of shock and emotional problems." She appealed to the Committee to "take a more active look ... at this discrimination, to look at the proper rehabilitation... [and] retrain people in decent jobs rather than forcing us to knock on doors like beggars to different companies or to treat us like Welfare cases, which we are not."<sup>48</sup>

According to Marion Endicott, a caseworker and organizer at the IWC, DiMichele's complaints were characteristic of the patterned ways that the WCB dealt with injured women workers. In an interview Endicott talked about how injured women workers were treated very casually by WCB adjudicators.

We did recognize that women had particular issues. And, in terms of workers' compensation, they most certainly had particular issues. They were not taken seriously as injured workers. They, it was presumed that they had husbands who were working, and therefore the income they were bringing in was not as important. It was, they were more psychologized,

45. Author interview with Alec Farquhar, 7 January 2004.

46. Author interview with Odoardo Di Santo, 18 July 2003.

47. Di Santo's comments notwithstanding, activists did find it difficult to mobilize injured women workers on an ongoing basis. At meetings of the Ad Hoc Committee on Workmen's Compensation, there were repeated reminders by female members of this collective to try to recruit injured women into the movement. Author interview with Marion Endicott, 22 December 2003.

48. Legislature of Ontario, Standing Committee on Resources Development, Weiler Report, "White Paper on the Workers' Compensation Act," September 22, 1982, 12–13.

or whatever the word, that, you know, it was assumed that their pain and their problems were more emotional, as opposed to real...Ever more quickly sent off to psychiatrists and issues around children were not recognized. So, if a woman had been working part-time, and looking after her children part-time, and then suddenly was supposed to go to school full-time, what about the kids? It was not involved in the compensation system. And issues of, you know, maternity leaves, and you know, the equivalencies of what you would have in the workplace being transferred into notions in the compensation system, sometimes they were there, but by and large they were not there. So those kinds of issues were all readily identifiable, and we identified them as issues and worked on them.<sup>49</sup>

Endicott's words catch the experience of many injured women workers, including Margaret Martin, who in 1980 told a newspaper reporter that "the atmosphere at WCB headquarters made me nervous because everything seemed so oriented to men. One board member kept mentioning that my husband works too as if that would hurt my eligibility to benefits...I just said I'm an individual too. I'm a working woman and always have been. What am I supposed to do, sit home and do nothing just 'cause my husband works?" Further, the reporter pointed to two problems relating to women workers long known to injured worker advocates. The first was the fear women workers had of reporting their accidents and injuries. As the article stated, the jobs where women work and get injured were typically "low-paying, low security jobs" which makes them "afraid to claim compensation lest it be seen as 'making trouble' and grounds for firing." Second, "a vast number of women are believed to miss out on WCB benefits because they don't speak English."<sup>50</sup> These views found a strong echo in a brief presented by the IWC to the Paul Weiler Commission on Workmen's Compensation in August 1980.

Injured women worker's benefits are often slower to arrive. On one occasion a local Board manager told a legal worker that "this worker is married; what does she need the money for; besides we process men with families first, then the less important claims.

Women in part-time work have no minimum rate at which point they receive 100 per cent compensation. No matter how low they always receive 75 per cent as if their earnings were just 'pin money.'

Injuries to women workers are considered 'less serious,' especially for women workers in job ghettos. Pensions are lower, even though they are supposed to be based solely on medical criteria. Women who complain are categorized as 'typically hysterical' and temporary awards for psychological problems are granted instead of fully recognizing the seriousness of the physical disability.

Married women do not 'need' rehabilitation because they can be housewives. Their need for upgrading and training is considered less seriously. As a result, when they get assistance, it is directed towards placing them in menial jobs at low pay – after all, as the Board would have it, the income is not as important as a man's who may have to support a family. The Board relies on this false stereotype to justify less assistance to women.<sup>51</sup>

49. Endicott interview.

50. Louise Brown, "Job injury new issue for women," *Toronto Star*, 8 February 1980, C1.

51. Injured Workers' Consultants, *Submission to Paul. C. Weiler on Workers' Compensation in*

## The Shifting Paradigm

THE EFFORTS OF THE IWM to highlight the plight of women injured workers, notwithstanding, it would be erroneous to suggest that their situations, both as injured workers and as members of families, garnered equal time and space in the organizing efforts or the analyses drawn up by the activists within the IWM: the IWM was a quintessential male social movement in terms of its membership, leadership, guiding ideologies and political demands.<sup>52</sup> To be sure, as the struggles between the IWM, the government and the WCB grew increasingly fractious in the early 1980s because of their vehement opposition to the government's plans to eliminate the life-time pension for permanently disabled workers, activists pressed the government on the issues contained in the IWC's submission to the Weiler Commission. Moreover, they demanded that the odious term "common prostitute"<sup>53</sup> be stricken from the WCA and that the widows and children of deceased workers be given lifetime pensions commensurate with the wages earned, and to be earned, by their dead husbands and common law partners – regardless of whether or not the woman subsequently remarried. When the Progressive Conservative government finally introduced its amendments to the WCA in the late spring of 1984, not only were lifetime pensions still in place, but widows of deceased workers under the new law would receive pensions regardless of their formal marital status. Gone as well was "common prostitute." All of these amendments and changes were wrapped in a markedly improved statute now entitled the "Workers' Compensation Act."<sup>54</sup>

As I have outlined elsewhere,<sup>55</sup> the decision of the government not to eliminate the lifetime pension system represented a clear moment of victory for

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*Ontario* (1980), 72–3.

52. Marion Endicott revealed in an interview that at one point the leadership of the UIW turned down – flatly and with derision – the idea that women be permitted to form a separate caucus within it. They were informed by the male leadership that the UIW looked after the interests of all injured workers. The IWM was also a relatively isolated movement, i.e., it did not have an ongoing relationship with any of the other social movements of the period, e.g. labour, women's, environmental. Indeed, trade unions put most of their activism and resources into occupational health and safety, dealing with workers' compensation and injured worker issues almost solely in the form of convention resolutions and depositions to legislative committees.

53. This term could be found in Section 49 of the WCA. It read: "Where it is found that the widow or common-law wife to whom compensation has been awarded is a common prostitute or is openly living with any man in the relation of man and wife without being married to him, the Board may discontinue or suspend compensation to such widow or common-law wife or divert such compensation in whole or in part to or for the benefit of any other dependant or dependants of the deceased employee." My thanks to Gary Newhouse for providing me with this information.

54. The change of name had actually taken place in a 1983 amendment but was little noticed in the midst of the heated discussions over the future of permanent pensions.

55. Robert Storey, "Social Assistance Or A Workers' Right: Workmen's Compensation And The

injured workers. But it was only an historical moment. When the Liberal Party freed itself from the shackles of its accord with the NDP via a 1987 election that brought them into power with a majority government,<sup>56</sup> they quickly revived the issue and, despite the protests of injured worker organizations, passed an amendment to the WCA that replaced permanent pensions with two awards: a Non-Economic Loss (NEL) component that was to account for pain and suffering, and a Future Economic Loss (FEL) award directed at providing the injured worker with ongoing payments that the government claimed would, on average, be higher than lifetime pensions. Critiqued in the early 1980s debates as a major step towards the “welfarization”<sup>57</sup> of the workers’ compensation system, the dual award system was complemented by an increase in the authority of compensation board officials and adjudicators to “deem” workers into jobs when they considered them healthy enough to return to work. Under this provision WCB officials could arbitrarily place workers into jobs that they considered them able to perform. As injured workers’ organizations pointed out, there were at least two significant problems with this approach to returning injured workers to the paid labour market. First, their experiences with the WCB in medical and psychological rehabilitation gave them little confidence that the WCB would, indeed, wait until the worker was fully healed; and, second, they worried that WCB officials, in their drive to cut costs, would either deem workers into poor and/or inappropriate jobs, or worse, no jobs at all.

As it happened, these changes ushered in by the Liberal Government were only a precursor to those introduced by the Conservative Party of Mike Harris. Swept into power in 1995, Harris’ government immediately set about further welfarizing many of the key components of workers’ compensation in Ontario. In a policy paper entitled *New Directions in Workers’ Compensation*, the government announced its plans to overhaul the system to make it more efficient and accountable to those who actually paid for the system: employers. According to the government, employer assessments had risen to the point where the competitiveness of industries and businesses was being threatened. Moreover, they charged, the WCB’s “unfunded liability,” or the monetary difference between what was owed to injured workers and the current assets

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Struggle Of Injured Workers In Ontario, 1970–1985,” *Studies in Political Economy*, 78 (Autumn 2006), 67–91.

56. The Liberal Party, with David Peterson as its leader, had entered an “Accord” with the NDP after the 1985 election where none of the three main parties secured sufficient seats to form a government. Anxious to be in power, and to finally end the 42 years of consecutive PC governments, the Liberals and NDP signed an agreement wherein the Liberals agreed to act on policies and programs prioritized by the NDP. One such item was the annual indexing of workers’ compensations pensions. The Liberals followed through on this item in 1985 – a change that sent compensation costs skyrocketing and no doubt lead to renewed employer demands for changes to the compensation system that aimed at controlling awards and thus their costs.

57. Andrew King and Nick McCombie, “Workers’ Comp: Legal Right or Social Welfare?” *This Magazine*, 15, 1 (1981), 34–8.

of the WCB, was escalating to the extent that it threatened the viability of the workers' compensation system in Ontario. It was time, then, for a "new direction."

Instituting efficiency and economic stability to the WCB involved refocusing the mandate of the system itself. According to *New Directions in Workers' Compensation*, workers were receiving compensation for injuries and illnesses that had little or nothing to do with their workplaces. To that end, the government signaled its intent to de-list stress and chronic pain as compensable illnesses – two illnesses they considered to be of indeterminate origins and growing sources of abuse within the compensation system.<sup>58</sup> As has been outlined with regard to the impact on women workers of neo-liberal inspired labour market restructuring more generally, it could be argued that these measures had a decidedly gendered intent in that the building numbers of stress-related claims were primarily connected to women workers. Although somewhat less so, the same could be stated for claims relating to chronic pain as the type of jobs women perform are more likely to involve repetitive motion resulting in musculoskeletal injury which, if not fully and completely treated, can lead to chronic pain.<sup>59</sup>

At the other end of the compensation spectrum, the government emphasized the need to get injured workers back to work as quickly as possible – whether in their former or new jobs. Hence, when it introduced its workers' compensation legislative package in the form of Bill 99, it contained what it termed the Early and Safe Return To Work (ESRW) and Labour Market Re-entry (LMR) programs. Along with an increased vigilance with respect to deeming and a more systematic use and monitoring of experience rating,<sup>60</sup> government officials claimed that a new era had dawned for workers' compensation in Ontario: it was now an act true to its founding vision in its orientation to addressing workplace injuries and illnesses and by its focus on the prevention rather than

58. As it evolved, neither of the goals was completely achieved. For, while chronic stress claims were eliminated, traumatic stress claims continued to be compensable. With regard to chronic pain, while such claims were not eliminated, the legislation did give the government the power to restrict compensability by regulation.

59. With regard to stress, Katherine Lippel found that in the province of Quebec, women workers were a great deal less likely than men to have their claims for stress accepted by the Quebec Compensation Board. See, Katherine Lippel, "Workers' Compensation and Stress: Gender and Access to Compensation," *International Journal of Law and Psychiatry*, 22,1 (1999a), 79–89; "Watching the Watchers: How Expert Witnesses and Decision-makers Perceive Men's and Women's Workplace Stressors," in Karen Messing, *et al.*, eds., *Invisible: Issues In Women's Occupational Health* (Charlottetown, 1995), 265–291.

60. Experience rating programs provide monetary rebates for firms with better than average safety records, and financial penalties for firms with safety records poorer than the average. For an enduring critique of experience rating, see, Terence Ison, "The Significance Of Experience Rating," *Osgoode Hall Law Journal*, 24, 4 (Fall 1986), 723–742.

simply the compensation of accidents. In this vein, the new act bore the name Workplace Safety and Insurance Act (WSIA).<sup>61</sup>

### The Neo-Liberal Body

TAKEN TOGETHER, THE CHANGES that had been made to workers' compensation law in Ontario from the early 1980s to the late 1990s served to produce a gender neutral statute: all injured workers were to be treated equally.<sup>62</sup> Almost one decade after its passage, Marion Endicott argues that the WSIA can be viewed as gender neutral only in the sense that the WSIB has an equally intense interest in closing the case files of all injured workers – female and male.<sup>63</sup> In practice this has meant, for example, that female and male injured workers have been subjected to questions and processes that humiliate them.<sup>64</sup> Brandy Crocker, a trained lab technician born in St. Croix in the Virgin Islands, immigrated to Canada in 1969 with her husband. Working and raising six children, she eventually hurt her back “helping elderly people in their homes.” In an interview she spoke angrily that after 12 years she had not received anything from the WSIB except “insults.” What Crocker found insulting was her WSIB adjudicator using private medical information and her social behaviour to discredit her claim.

Mr. Macklin was one of the adjudicators and, um, in his letter he said that it was my thyroid that was causing the [back] problem. My doctor failed to block out some of the information that the [WSIB] shouldn't have had in the first place. So they were using everything... It was my thyroid and I was smoking. And, I fell one Christmas Eve. I slipped on the ice and battered my elbow and they tried to say it was that and this was years down the road when I fell on the ice. Years after the injury. So this Mr. Macklin was using all these things against me.<sup>65</sup>

According to Crocker, the WSIB's denial of her claim has “made me a beggar. I beg to survive from the people at my congregation, from my children. It is sad, you know. I was raised where you paid for everything. You worked or you didn't eat. And all of a sudden I find myself not being able to work, not

61. Injured worker groups and trade unions mounted sustained critiques of each of these various measures and were able to defeat associated attempts by the government to close down a series of occupational health and safety clinics that had been in place since the late 1980s, as well to curtail plans to severely limit the independence of the appeals tribunal.

62. The same holds true for Canada's unemployment insurance laws. See Ann Porter, *Women, Unemployment Insurance and the Political Economy of the Welfare State in Canada, 1945–1997* (Toronto 2003).

63. Conversation with author, 16 December 2005.

64. This is an almost universal feeling among injured workers interviewed for this project. At bottom, injured workers interviewed for this project believe that the WSIB adjudicators “start from no” and await the appeal.

65. Injured Workers' History Project, Interview with Brandy Crocker, 24 August 2004.

being able to pay my rent and pay my bills and have not food in the house.” Ultimately, Crocker stated, she had no choice but to ask for social assistance.

Reminiscent of the 1960s and 1970s when injured workers complained bitterly that compensation payments and pensions were insufficient and that they were being forced to seek social assistance, a growing number of injured workers in the late 1990s and early 2000s reportedly share Brandy Crocker’s experience. Indeed, for those workers with permanent disabilities that prevent them from working, social assistance is often their only form of income.<sup>66</sup> Yet injured workers make this decision only after all other avenues prove futile. When asked why, they respond that if the compensation process is structured to make them feel like “criminals,”<sup>67</sup> applying for and receiving welfare makes them feel like a “nobody.”

Perceptions of prejudice and discrimination are not common in the interviews with ethnic/racialized injured workers.<sup>68</sup> This should not be taken to mean, however, that the types of treatment accorded to Italian construction workers in the 1960s and 1970s have disappeared in the present context. It may be, as the example of the Ethiopian woman whose accident claim story opened this paper, that prejudicial views get expressed as comments on the “social” behaviour of the injured worker. Or it may be that, unlike the Italian working-class community in west end Toronto in the late 1960s and early 1970s, contemporary injured workers, particularly recent immigrants, do not have a community where their stories and perceptions can be told and echoed by other injured workers, thereby helping to turn a private problem into a public issue.<sup>69</sup> Maryam Nazemi, for example, immigrated to Canada from Iran. When events altered her plans for a career in the hotel industry,

66. Orlando Buonastella, staff employer at rwc since 1978, states that it is now difficult for injured workers to attend meetings with wsib officials as they do not have enough money for bus or subway fares. This is different from the 1970s and 1980s, Buonastella recalls, because even with low compensation payments and inadequate pensions, injured workers were still able to purchase public transit tickets. Author interview with Orlando Buonastella, 15 October 2004.

67. This is a term used by virtually all of the interview participants in this research project.

68. Over the past 10–15 years, the ethnic/racialized composition of injured workers in major urban centres has changed along with the ratio of women to men. Whereas in the 1960s and 1970s, injured workers were predominately anglo-saxon and anglo-celtic, with a growing proportion of southern and eastern Europeans, injured worker advocates now report increasing numbers of Caribbean and east and south Asian women and men coming into their offices seeking assistance with their compensation claims. The author, along with the rwhp, is probing whether, and in what ways, members of these various ethnic/racialized groups perceive their treatment by the wsib to be similar/different than other ethnic and racialized groups.

69. This is a notion taken from American sociologist C. Wright Mills in his book, *The Sociological Imagination* (New York 1959) where he defines sociological imagination as making the link between private troubles and public issues. As I have outlined in a separate article on the rise of the injured workers’ movement in Toronto, it was when the private troubles of injured Italian workers became public within their community that the injured workers’ movement was born.

she began to work in a Montessori school where she was constantly picking up children and moving heavy furniture. After a few months Maryam's back was injured so severely that she required surgery. One month after having a disc removed, her employer asked her to return to work and perform the same duties.<sup>70</sup> Needing the money, she did so. When she could no longer work, Nazemi searched desperately for any kind of economic assistance for herself and her family. Her employer did not tell her about the WSIB and the possibility of filing a claim – information that was not readily available from family, friends, and her larger community. When, after much time and distress, Nazemi did find out about the WSIB, it was only to discover that her job was not covered by the legislation.<sup>71</sup> Another separate but thematically related instance concerns Basil Boolis, a young man who arrived in Canada from Iraq and who was injured “doing very repetitive, heavy lifting, about 1200, 1100 to 1200 motors and blower wheels per shift. It was quite repetitive, and very heavy. The motors were about 7 kg each in weight. And I was on the beginning of the line, and I had really to do, like, the whole line would depend on me, if I would be delayed, the whole line would go like very slow. So it was quite a pressure on me.” When he began to feel intense pain in his arm, shoulder and back, Boolis received little help from the local union and none from his employer or the WSIB.

I was living in a basement, I was living alone, I have no family, no support, whatever. I don't know people who can help me, like, how to fight the [WSIB] Board. I know I had a union, but I didn't know them. I didn't know the language. I didn't know how to really get my union involved hundred percent, to support and guide me through that. I'm not blaming the union in a way, but, you know, I was very vulnerable, for the, like, very vulnerable to, to be denied, very vulnerable to have more pain, to have more suffering, to go through more challenges. I mean, it left me, you know, I'm kind of like a trustworthy person ...and kind of, the employer was like taking an advantage of it, and using it against me... But, I'm like injured, and I'm supposed to be taking care of by the [WSIB] Board and the employer...You know, hold on, I was doing a service for you, and now you want to get rid of me? Like, I felt very humiliated, by my employer, by the [WSIB] Board...<sup>72</sup>

In short, virtually all of the injured workers interviewed for this project report feeling personally diminished in their dealings with the WSIB. This was particularly the case for those immigrant women and men with middle class and/or professional backgrounds who first, found themselves labouring in traditional working class occupations and second, felt personally demeaned by

70. IWHP interview with Maryam Nazemi, 26 June 2007. There is recent Canadian evidence that immigrant workers work in more dangerous occupations get injured more and are presented with a series of additional obstacles in submitting accident claims to the WSIB. See Peter M. Smith and Cameron Mustard, “Comparing the risk of work-related injuries between immigrants to Canada, and Canadian-born labour market participants,” *Occupational and Environmental Medicine*, www.oem.bmj.com. Published online 9 July 2008.

71. The issue of coverage is complex. See footnote 95 for information on coverage.

72. IWHP interview with Basil Boolis, 15 July 2004.



their employers and the WSIB. Despite the formal gender neutrality of the WSIA, however, it remains the case that female injured workers receive differential treatment within the WSIB system. To begin, given the fact that compensation paid to injured workers continues to be based on less than their full wages (85 per cent as of 1998), women workers systematically receive less compensation by virtue of their lower wages and salaries.<sup>73</sup> Second, as Karen Messing, Jinjoo Chung and her associates point out in separate research studies, because the jobs that women perform in large and majority numbers do not draw the interest of occupational health and safety researchers and policy makers, such work is either considered safe and/or less important than that performed by men.<sup>74</sup> Moreover, as Katherine Lippel and Penney Kome conclude, women injured on the job are more likely to have their injuries/illnesses downplayed and/or dismissed by compensation boards and appeals tribunals.<sup>75</sup> As these authors argue, the reasons for the negative predispositions of medical researchers and compensation board officials towards women's injuries and illnesses are varied, but each point to the type of jobs performed by women as being central. That is, WSIB officials (including WSIB doctors) are apt to deny musculoskeletal injuries associated with the routine, highly repetitive jobs that women factory and office workers are most likely to perform. These officials argue, as was the case with the lower back injuries that plagued Italian construction workers in the 1960s and 1970s, that such injuries are difficult to accurately diagnose, on the one hand, and have a diffuse etiology, on the other hand. With respect to the issue of etiology, Linda Vanucci stated that some compensation claims by women workers for musculoskeletal injury are being denied by the WSIB if, at any time, they have been pregnant.<sup>76</sup>

The WSIA, then, is gendered in the ways it extends and entrenches labour market inequalities between women and men into the compensation awards/payment system. It is also gendered in its acceptance of medical and research

73. For a similar set of analyses see, Robert Guthrie and Janis Jansz, "Women's Experience in the Workers' Compensation System," *Journal of Occupational Rehabilitation*, 16 (2006), 485–499; Kathleen Clapham, "Experiencing Occupational Rehabilitation in NSW: Non-English Speaking Background Women's Views," *Australian Journal of Social Issues*, 29 (1994), 26–43; Women's Study Committee, *Women and Workers' Compensation in New York State*, Workers' Compensation Board (New York State 1997); Peter M. Smith and Cameron A. Mustard, "Examining the associations between the physical work demands and work injury rates between men and women in Ontario, 1990–2000," *Occupational and Environmental Medicine*, 61 (2004), 750–756.

74. Karen Messing, *One-Eyed Science: Occupational Health and Women Workers* (Philadelphia 1998); Jinjoo Chung, et al., "Women, Work and Injury," in Terence Sullivan, ed., *Injury and The New World Of Work* (Vancouver 2000), 69–90.

75. Katherine Lippel, "Workers' Compensation and Stress: Gender and Access to Compensation," *International Journal of Law and Psychiatry*, 22:1 (1999a), 79–89; Penney Kome, *Wounded Workers: The Politics of Musculoskeletal Injuries* (Toronto 1998).

76. Linda Vanucci interview.

assumptions regarding which employment sectors and what occupations are more likely to injure and produce illness as well as postulated biological states to specific injuries/illnesses, for example, pregnancy and carpal tunnel syndrome. According to injured women workers, it also remains gendered in its assumptions about the role and place of women in society. That is, adjudicators tell injured women that they should not be concerned about their claims as their husbands/partners have jobs.<sup>77</sup> Moreover, injured women workers argue that the ESRW programs fail to take the specific/household responsibilities of women workers into account. In this regard, injured women workers report that like injured male workers, WSIB adjudicators and employers pressure them to return to work before they are fully healed. According to injured women workers, however, what adjudicators fail to recognize is that women with families must continue to perform domestic labour that involves tasks akin to those that injured them in the first instance. Under such conditions, healing takes longer. Healing also takes longer, Calvey and Jansz argue, because musculoskeletal and/or stress related injuries are not amenable to quick and/or easy medical treatment. One notable consequence is that such injuries lead to compensation claims of longer duration and are, thus, more likely to be contested by employers and workers' compensation officials alike, which, in turn, can lead to increasing frustration and exacerbation of health problems.<sup>78</sup> As Audrey Parkes, an injured worker with repetitive strain injury told an interviewer, protracted and difficult interactions with the WSIB can increase anxieties and stress and lead to injured women workers abandoning their claims.

To me, it's sad that the system that was created to help injured workers, they're not. They're more thinking about the bottom line, you know? When somebody gets injured, especially a person with RSI, I think workers comp their take on it as, well, you say you have this, but is it work related? And then you have to fight the fight to prove that it's work-related, and if they do accept it, which is, like, rarely for an RSI case, they will pay for a little while and then push you back to work. My dealings with workers comp, they accepted my claim, but I had to fight, you know, and I just don't want anything to do with them. That is why am working. You cannot depend on them at all.<sup>79</sup>

Employers are no more likely to address the double day circumstances of injured women workers.<sup>80</sup> According to Patricia O'Reilly and Airissa Gemma,

77. These comments were part of a meeting of the "Women of Inspiration" held on 16 September 2005. The "Women of Inspiration" is a group of injured women workers who meet regularly in the office of the IWC to discuss their problems with the workers' compensation system and to formulate demands that are of particular interest to them and injured women workers more generally. Although a decidedly ethnic/racialized group, to this point their demands for change are based in issues relating to gender and class.

78. Guthrie and Jansz, "Women's Experience," 493; Kome, *Wounded Workers*.

79. Injured Workers' History Project, Interview with Audrey Parkes, 17 September 2004.

80. For recent studies of the ESRW program, see, Joan Eakin, "The Discourse of Abuse in Return-to-Work: A Hidden Epidemic of Suffering," in Chris Peterson and Claire Mayhew, eds.,

injured worker advocates with IWC and Industrial Accident Victims Group of Ontario (IAVGO) respectively, employers have proven reluctant to accommodate the needs of women injured workers, either in terms of setting work schedules so that they could attend to their domestic tasks, or in providing for modified work.<sup>81</sup> Demitra Dimopoulous, who arrived in Canada in 1969 and who injured her back through years of cleaning offices and sewing together 100 pound body bags, weaved her way through the compensation system to the point where she was ready to look for a job she could safely perform. Along with her WSIB adjudicator, Demitra went to a potential employer who, after hearing of Demitra's limitations, agreed to hire her as a sewing machine operator at ten dollars an hour. "The minute the lady walked out of the door," Demitra recalled, "you know what she said to me, I'm sorry Demitra. I cannot pick you, I cannot hire you, the way you are."<sup>82</sup>

With respect to LMR programs, one critique is that they are not sensitive to the differing life histories of injured women workers. Francis Nicholson, who in 2004 was in her early 50s, had only an elementary school education to place alongside over 30 years of working in sewing and personal care jobs – jobs where she repeatedly injured her back and developed carpal tunnel syndrome. At first she was told by her WSIB claims adjudicator that she could have her choice of education/retraining programs. However, as with other injured workers, when the time came for Nicholson to enter an LMR program she discovered that the choice was not hers to make.<sup>83</sup> Moreover, she was placed in a learning situation where, she believes, she was destined to fail. "They put me into a classroom of three," Nicholson stated, "which I was supposed to be taught one-to-one. I start doing that. I didn't understand it because not going to school for over 30 years, you forget a lot of things. With the pain and everything, and trying to keep up at that school I got very depressed, and I phoned the adjudicator. They just keep threatening, if you can't do it, we will cut off

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*Occupational Health and Safety: International Influences and the 'New' Epidemics* (Amityville 2004); Injured Worker Participatory Research Project, *Making The System Better: Injured Workers Speak Out On Compensation and Return To Work Issues in Ontario* (Toronto, 2001).

81. Author interview with Patricia O'Reilly, 16 September 2005. Author correspondence with Airissa Gemma, 12 September 2005. Linda Vanucci made the same points in our interview.

82. Injured Workers' History Project, Interview with Demitra Dimopoulous, 15 October 2004.

83. A common complaint of injured workers revealed in the interviews is that since the advent of the LMR program, WSIB adjudicators have been increasingly aggressive in placing them in short-term education and retraining programs that fail to provide them with the knowledge and skills required to get a "good" job. Moreover, injured workers argue that since the passage of the WSIA and the privatization of the development and delivery of rehabilitation and education programs, WSIB officials now have only a purely financial, bottom line interest in such issues. In this sense, injured workers state, WSIB officials are not sympathetic to the long-term education and training desires of injured workers such as Francis Nicholson as they see them as either inappropriate for the worker, e.g. the worker is perceived as too old, or as too costly – or both.

your cheque. And then that just made me more depressed because I had to have a way of living".<sup>84</sup>

Finally, after they have been through one of the LMR programs,<sup>85</sup> it is the impression of injured women workers that they are more likely than men to be "deemed" into low level, poorly-paying jobs that may, or may not, actually exist.

Women workers suffer the consequences of their injuries and illnesses in more personal and intimate ways. As Audrey Parkes and other injured women workers lamented, their injuries, particularly if they were musculoskeletal, prevented them from fully experiencing their roles as mothers. In the case of Parkes, repetitive strain injury in her arms and shoulders not only meant that she could not do expected household tasks, but that she could no longer pick up, hold, and carry her small children. "The young one," she said, "I could not lift her. I dropped her. I tried to pick her up. She was about 18 months. She fell right out of my arms."<sup>86</sup> With a voice full of bitterness and anger, Brandy Crocker talked about how her injury threw her family into poverty – with the impact being felt most by her children.

Why should we get hurt on the job and end up in poverty. Because that's where we are, in poverty. We can't pay our rent. We can't buy food. Some of us have children and it's worse for them that have the children because the children suffer terribly. Doesn't anyone worry about these children? I mean forget about us, we know ... they don't worry about us. But what about those babies, does anybody think about them? Do they have a heart? When they see their kids shoving food in their faces, don't they think about our children?<sup>87</sup>

For Beryl Brown, a young woman who arrived in Toronto from Jamaica in the early 1990s, a repetitive strain injury borne out of seven years of drilling holes in small electrical parts, resulted in her filing a compensation claim that the WSIB rejected, stating that her injury was not work-related. As with other women injured workers in similar circumstances, the years of conflict and economic hardship have taken their toll on her health and her dreams of having a family.

My entire life. You know. My entire life. I don't have a family life. All I have to show from that workplace is just pain, sickness, stress, nothing...Oh God, you know, I saw myself having a family, I saw myself in a good job, and everything, and this cut me down to nothing. I'm never going to have a family of my own, you know?... I mean, I'm in pain, I'm not healthy

84. Injured Workers' History Project, Interview with Francis Nicholson, 13 September 2004.

85. Guthrie and Jansz make the argument that injured women workers are less likely than men to return to work, or be offered and take retraining programs. This is because, they state, of their domestic responsibilities and "their more frequent part-time employment base" (p. 494). Similar data is not available from the WSIB, hence no direct statistical comparisons can be made.

86. Audrey Parkes interview.

87. Brandy Crocker interview.

because of my injury. I can't start a family. Who could I betray to pretend I am well when I'm not well. You know? So it's like my life has just completely crashed...<sup>88</sup>

There is, as well, the loss of intimate relationships with husbands and partners. One meeting of the "Women of Inspiration" was peppered by caustic comments about sex and questions asking, "What's that?" The injuries these women have suffered impact not only on their physical and emotional lives, they restrict the opportunities available to them to express and fulfill a central component of their personal identities.<sup>89</sup>

In this way the experiences of injured women workers are disappointingly similar to injured male workers. In the late 1970s an Italian construction worker told an interviewer that his injury had caused him to "lose his sex."<sup>90</sup> If we fast forward to the early 21st century, we hear a parallel tale from Basil Boolis. After a short period of receiving compensation, Boolis was terminated because video surveillance had revealed him doing tasks and engaging in movements he claimed he could not perform.<sup>91</sup> From this point forward, Boolis' relations with the WSIB have been reminiscent of Franz Kafka's *The Trial*, where the novel's principal character tries to find someone within a government bureaucracy who can satisfactorily answer his questions. Like Kafka's character, Boolis has not been successful in these encounters. In an interview he described his state as isolated and demoralized, his sense of himself as a provider fundamentally undermined by his injury.

A doctor told me that not too many people are able to work with chronic pain syndrome. They are in too much pain and everything. Well, I am not able to work and I'm feeling discouraged. I'm feeling depressed. I'm going back to anxiety and depression, especially in wintertime. In the summer when you can walk around, you know. You kind of enjoy it at the time. But, I don't feel like I'm valuable. Like if I want to get married or start a life, like if I am not working I find it impossible. I don't feel I'm valuable enough for people. If I meet people they ask what you would do. What do you do for a living?<sup>92</sup>

88. Author interview with Beryl Brown, 11 February 2005.

89. The loss of intimacy, through the break up of relationships, the difficulties referred to in the quotation, physical problems stemming from the injury, or because of energy-robbing pain, is understandably a sensitive topic in interview situations. The context for these comments was a meeting of the Women of Inspiration. The author was there to present some of his research findings and these comments came as the meeting was breaking up.

90. *Right To Life*, Union of Injured Workers, Video, (Toronto 1976).

91. IWHF interview with Basil Boolis, 15 July 2004. As with other injured workers, Boolis argued that it was not that he was completely unable to perform certain movements and tasks, but that he was unable to perform them on a routine, regular basis. Many injured workers report that they engage in some physical tasks, including those they know are detrimental to their condition, either because they are tasks essential to daily maintenance, or because they want to feel useful.

92. Basil Boolis interview.

## Conclusion

INJURED WOMEN WORKERS are caught in the midst of a contradiction: while the pervasive erosion of the standard employment relationship, that is, one job, 52 weeks a year, for the lifetime of a male worker, has precipitated women's ever-increasing labour market participation rates,<sup>93</sup> it remains the case that the breadwinner and associated gender ideologies continue to underscore the assumptions and administrative practices of the WSIB. The changes I have outlined – the elimination of lifetime pensions, the increased use of deeming, the implementation of ESTW and privatized LMR programs – constitute a shift in workers' compensation from a work-based rights social insurance model to a classic social assistance model that, it will be recalled, is closely associated with women and the “undeserving poor.”

This is the welfarization of workers' compensation.<sup>94</sup> As noted previously, the spectre of this process was first raised by the IWM in the early 1980s when its most central instrument, the dual award system, was proposed and defeated. That victory was subsequently reversed and the paradigm has shifted – a process coincident with its gradual feminization, both in terms of the ever-increasing number of claims filed annually by women workers<sup>95</sup> and the now highly contingent nature of the workers' compensation claims adjudication process, which resembles social assistance programs that historically have been formulated and oriented primarily to women. As it has evolved, the neo-liberal compensation body is a physical frame draped by a woman's social/political form.

Moreover, the gradual, century-long move from a highly gendered statute to one that is formally gender neutral has not resulted in making injured women workers completely visible. For, while the WCA of 1915 did not cover those occupations where women worked in the largest numbers, current legislation covers approximately 73 per cent of Ontario workers, with the excluded and “voluntary” businesses, for example, banks and insurance companies, being, once again, those where women work in large, even majority, numbers.<sup>96</sup> The

93. Leah Vosko, *Temporary Work: The Gendered Rise of a Precarious Employment Relationship* (Montreal 2006).

94. Ellen MacEachen, “The mundane administration of worker bodies: from welfarism to neo-liberalism,” *Health, Risk & Society*, 2, 3 (2000), 315–327.

95. In 1991, 28.3 per cent of all lost time claims were filed by injured women workers. In 2005, this figure had increased to 38.0 per cent. Workplace Safety and Insurance Board, *Statistical Supplement to the 2006 Annual Report*, Ontario, WSIB: 11; *Statistical Supplement to the 1999 Annual Report*: 9. As the nominal figures indicate, some of this percentage increase is due to the decrease in the number of lost time claims made by male workers. These decreases notwithstanding, the absolute figures for women workers have either risen or hovered around the same number for the past decade. See Appendix A.

96. This is an obtuse area of workers' compensation law. Presently, there are only a few industries/sectors that are explicitly excluded from coverage: barbering and shoe-shining establish-

shift from an industrial to a post-industrial economy has arguably left injured women workers in relatively the same situation. Neither, as I have outlined, has a formally gender-neutral law addressed the complexities of injured women workers lives as they attempt to bridge their responsibilities in the realms of production and reproduction. As the women interviewed for this project have informed us, ESRTW and LMR programs do not recognize their continued primary responsibility for the domestic labour associated with their households – tasks which restrict their availability to attend meetings called for the next day or to take courses at times and in locations that come into direct conflict with those household duties and “labours of love.”<sup>97</sup>

As with other economic, social and political developments associated with the rise and consolidation of neo-liberalism,<sup>98</sup> then, changes to the Ontario workers’ compensation system do not portend equality of experience for injured women workers. This is the case for the reasons outlined above, first, because of women’s continued and arguably deepening inequalities in labour markets and, second, because formal equality written into statutes rarely, if ever, translates into real equality in the processing of that law. Further, as an organization with a current mandate to reduce costs in order to meet their stated goal of a zero unfunded liability by 2014,<sup>99</sup> WSIB policies and practices treat both labour market and process inequities as non-problematic: WSIB officials and adjudicators understand their jobs as applying the rules and regulations associated with the WSIA. As Joan Acker has recently reminded us, large, hierarchical, class, gender, and racialized organizations such as the WSIB

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ments, educational work, veterinary work and dentistry, funeral directing and embalming, the business of a photographer, and taxidermy. Banking and insurance companies are the largest among a still sizable group of employers who can voluntarily cover their employees while opting for private insurance, or, choose neither and thus confront the unlikely possibility of being sued by their employees. Interestingly, the WSIB is in favour of complete coverage while past and present governments have been reluctant to legislate this option because of business interests in Ontario that have been opposed to such a change. Indeed, according to Marion Endicott, a section of the Ontario business community is lobbying government to eliminate all mandatory coverage in favour of voluntary coverage. Author conversation with Marion Endicott, 5 February 2009.

97. Meg Luxton, *More than a labour of love: three generations of women's work in the home* (Toronto 1980).

98. Jamie Peck, “Canada’s Path: Permeable Welfare/Fragile Workfare,” in his *Workfare States* (New York 2001), 213–260; John Shields, “No Safe Haven: Work, Welfare, and the Growth of Immigrant Exclusion,” P. Kretsedemas and A. Aparicio, eds., *Immigrants, Welfare Reform and the Poverty of Policy* (Westport 2004), 35–60; Ted Klassen and David Buchanan, “Ideology, Policy and Economy: Liberal, New Democratic and Conservative Reforms of Ontario’s Welfare Program,” *Journal of Canadian Studies*, 40, 3 (Fall 2006), 186–209; Leah Vosko, “Gendered Labour Market Insecurities: Manifestations of Precarious Employment in Different Locations,” in Vivian Shalla and Wallace Clement, eds., *Work in Tumultuous Times: Critical Perspectives* (Montreal 2007), 52–97.

99. WSIB, *Road to Zero: Zero Fatalities, Zero Injuries, Zero Illnesses* (Toronto 2007), 27.

are integral to the perpetuation of societal classed, gendered, and racialized inequities.<sup>100</sup> In the case of the WSIB, if it is to effectively meet its politically prescribed goal of lowering costs, then either the prevention of accidents and illnesses must be addressed in a comprehensive fashion, or, as is more likely, the costs must be recovered from injured workers.<sup>101</sup> Given that women workers are found in majority numbers in part-time, highly-competitive, and nonunion jobs and, are, thus, the most vulnerable, they are, as this paper has outlined, most likely to bear a disproportionate share of the burden of policies and programs designed to meet this goal.

The prospects of resisting this neo-liberal transformation of the workers' compensation system in Ontario presently seem quite dim. As the history of injured workers in Ontario informs us, however, such advances are not impossible. It will be recalled that Italian construction and industrial workers and their families confronted a strikingly similar task in the 1960s and 1970s – and they were successful. Ironically, the unfortunate increase in the number of injured women workers provides for the possibility of creating a more inclusive injured workers movement. The challenge for activists is to once again link the private troubles of injured workers with the public issues of gender, ethnic/race, and class equality.

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100. Acker, *Class Questions*, 105–134.

101. Compensation boards across Canada and the United States have proclaimed the preventative efforts over the past decade have resulted in a real decline in accidents as evidenced in the general fall-off of compensation claims. Many researchers are doubtful of such claims, pointing out that this same period has witnessed increased job insecurity on the part of ever-larger numbers of workers, causing them not to make compensation claims for fear of losing their jobs. So, too, employers have embarked on aggressive claims management strategies whereby incentives of various kinds are offered to workers if they do not file compensation claims. For an incisive critique of the celebration of declining accidents rates, see, Lenore S. Azaroff, et al., "Wounding The Messenger: The New Economy Makes Occupational Health Indicators Too Good To Be True," *International Journal of Health Services*, 34, 2 (2004), 271–303.



## Appendix A

Chart 1: Lost Time Claims by Sex, Marital Status, Gender, Selected Years, 1923–2006

	1923	1932	1941	1951	1961	1968	1981 *	1991	2001	2006
<b>Women (Single)</b>	340	145	833	434	1,025	2,466				
<b>Women (Married)</b>	34	25	398	569	2,504	7,775	30,800	44,063	33,039	31,625
<b>Men (Single)</b>	12,103	5,370	8,374	10,054	11,853	21,807				
<b>Men (Married)</b>	17,817	11,356	13,031	19,149	36,446	57,292	126,744	110,859	66,271	51,554
<b>Total</b>	30,294	16,896	22,636	30,206	51,828	89,340	157,697	154,922	98,359	83,179
<b>Percentage Women</b>	1.3	4.1	5.4	3.3	6.8	11.4	19.5	28.3	33.6	38.0
<b>Percentage Men</b>	98.7	95.9	94.6	96.7	93.2	88.6	80.4	71.3	66.4	62.0

Source: Ontario Workmen's Compensation Board Annual Reports. 1923–1991. Workplace Safety and Insurance Board, Statistical Supplements, 2001–2006. The figures for the selected years are not directly comparable. From 1923 to 1968 the figures represent time lost for permanent and temporary total disability. From 1981, the figures simply refer to lost time.

\* Data for the 1970s is unavailable. At some point between 1968 and 1981 the WCB stopped reporting lost-time claims by "Marital Status," replacing it with "Gender."