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Workers' Compensation Newsletter

The New WSIB and the Work Reintegration Program

WSIB President David Marshall

Deputy Minister of Labour, Cynthia Morton

It's a Big Board with Big Problems

As reported in many of our previous newsletters over the past 3 years, and now has been brought to every ones attention by the Province's Auditor General, the WSIB is nearly broke. It has managed to spend a billion dollars per year more on benefits, than what it was taking in from employer assessments and investment income. For a few years this issue was masked by large investment returns from the Board's 15 billion dollar stock market portfolio, but billion dollar losses in the stock market two years ago exposed the WSIB's inadequate financial reserves. In turn this has led some to question the Province's own financial debt figures, because the Province does not include the WSIB's debt in its own fiscal balance sheet.

The Auditor General has stated that the WSIB is a "trust" of the government, and the WSIB's financial behaviour is causing the Government to loose its "trust" in WSIB management. A trust is a legal instrument whereby one party operates something of value for someone else's benefit. While I have no idea what the Auditor General thinks is a trust, the picture is quite clear: either the Board starts to drastically reduce its $14 billion dollar debt, or else. The "or else" is the Ontario Government's new Legislation: Bill 135, amending the *Workplace Safety and Insurance Act*. It essentially lets the Government step in to run the Board itself if the management of the Board isn't fiscally responsible. However, the Government couldn't bother waiting for the various clauses in Bill 135 to click in, so for the past 15 months the Deputy Minister of Labour, Cynthia Morton, and her two favourite disciples at the Board, David Marshall and Tom Teahen are now effectively in total command of the entire organization.

What's Wrong?

What is the problem at the Board and what is the solution? As everyone has known either from studying the Board's statistics or even a casual

observation of claims management, the average time off from a work injury in Ontario has doubled in the last 10 years, and outstrips by a large measure every other province. President Marshall's observation, that Ontario has a huge number of workers who are off benefits for a while but then come back onto Compensation three years later, what he calls "recidivism", occurs in no other province. He blames the experience rating NEER Plan's 3 year limited window of claim liability. This year he stretched NEER liability to 4 years and hopes next year, after the Arthurs' Commission reports, to stretch the window to at least 6 years, so that it is in synch with the 6 year final review the Board renders when it determines an injured worker's entitlement to loss of income benefits to age 65. Does that mean, with employer complicity, injured workers terminated in year 7 would be out of luck?

While I believe Marshall's analysis is severely flawed, the allegation that employers dump injured workers after 3 years begs the central question- why are Ontario workers off on benefits for so much longer than they were 10 years ago. Ontario had the same NEER plan then, approximately the same legislation, the same less than stellar performers running and working at the WSIB, and if one looks at the quantum of NEL awards the same severity of work accidents. The Board's reasoning is that in 1998 the WSIA moved from Future Economic Loss Awards to age 65, which periodically reviewed a worker's entitlement to wage loss benefits, to the LOE system which paid wage loss to age 65 following a final determination 6 years after the injury.

There is no statistical proof that locking in workers' quantity of benefits temporarily in the FEL system over many years, or locking those benefits in a definitive time period influences worker behaviour. Having myself witnessed more than 2000 claims over the past 20 years, it is the entire "pay to age 65 system" which has caused an escalation in average lost time claim, not the tweaking of the system in 1998. Nevertheless, I am going to put the real problem aside for the moment, and this article will mainly consider what the Board is currently doing to reverse the trend of "recidivism" and increasing lost time.

The WSIB's Return to Work Initiative:

Our studies over the years have revealed that there are at most 10,000 troublesome claims per year received by the WSIB out of over 200,000 injuries. More than half of these claims are a sprain or a strain, so the premise of the Board's new Work Return Initiative, rolled out in November 2010, is that practically all of the 200,000 workers injured annually can return to work in a short fixed amount of time. This viewpoint has been prevalent at the Board since day 1, 90 years ago. So what has gotten in the way of terminating workers' benefit entitlement in a timely fashion in the last ten years?- chronic pain and the family doctor. If the worker tells the family doctor, "my back is killing me", the Board gets a report from the doctor reflecting this, and the Board has generally been stymied on an effective means to terminate benefits.

The WSIB's new plan is a ten prong approach to not only wipe away the chronic pain and family doctor barriers, but to offload and redistribute the problem of recidivism, and the Board's financial losses that come with it, back to employers and workers . The following are the 10 initiatives:

1. American Disability Guides

Firstly the Case Managers have been given access to the Official Disability Guidelines. These Guidelines are produced by the Work Loss Data Institute of California, which describes itself as "independent" but does in fact produce a product which it hopes is purchased by the Insurance Industry in the United States. These Guides say how long, for instance a back sprain, can restrict a worker's ability to work, eg. 12 weeks. Adjudicators and Case Managers are told in a secret document, they must never refer to the Official Disability Guidelines in their decisions. Stupidly, Case Managers refer to the Guides in their internal memos, describing why they have terminated benefits. So much for secrecy. Irritatingly the WSIB does not have available a hard copy of the Guidelines, and will not provide our office with one. Working with the Board's Freedom of Information Office to access the Board's computer, was our firm's first viewing of the actual Guidelines first hand. Subsequently we purchased a copy of the shorter Edition ourselves.

The manner in which the Board is utilizing the Official Disability Guidelines is reflective of the entire

Work Return Initiative: it's a below the board (sic) sleight of hand, and at its heart, for further reasons discussed below, a dishonest scheme. I use the word "dishonest" not in the sense of theft or a lie, but more in the sense of moral turpitude. In the case of the Guidelines, Case Managers are surreptitiously using a protocol to limit entitlement without statutory authority. This is also a malicious abuse of public office, which will also be discussed below. But I must say it is an effective tool to get the Board where it wants to go.

Consider the following example: The worker breaks his right wrist when he falls off his truck on Oct. 30th. The Case Manager ignores the claim for the first 30 days, and on exactly November 29 her computer lights up pursuant to the new claims adjudication strategy implemented last year, causing her to consider the claim. She looks at the injury, a broken wrist and then determines that according to the Official Disability Guidelines, the worker should no longer be disabled on day number 58, which happens to be December 26. She writes this down in a memo and forgets about the claim until day number 120 when again her computer lights up with claim. In the meantime on day 45 the employer writes to the Board with an offer of modified work. This offer is ignored because the claim is hibernating until Day 120. On Day 120, February 26 the Case Manager cuts the worker's benefits off retroactively as of Day 58 (she uses December 27 as the 26th was a holiday). She creates an overpayment because the worker by day 50 is mostly healed and a modified job offer is available. The Case Manager ignores the Orthopaedic and Family Doctor's opinion that the worker is in a great deal of physical distress and will be undergoing further surgery in April.

In summary the Case Manager has:
a) ignored the employer's communication;
b) ignored the orthopaedic and family doctors' recommendations, based on a Guideline that according to the Board's Vice President is supposed to be used "for discussion purposes only".
c) cut the worker's benefits off retroactively without discussion or warning.
d) commanded the worker back to work without the opportunity for him to discuss same with his specialist let alone family doctor so as to convince himself that a return to work is safe and appropriate.

This is an example of what Board officials refer to as "hard ass" and "streamlined" adjudication. In my opinion it's mostly 'malicious' and 'illegal', and is not in the best interests of the employer or the worker, because it sets the stage for later costly litigation, instead of objective and successful claims management.

2. Ignore the Family Doctor

Case Managers have been told to generally ignore the reports of the family doctor. The reasoning employed by the Case Managers to accomplish this, is usually to find that no objective findings are present in the family doctor's report, to justify the restrictions listed in the family doctor's report. This is a modus operandi that has gone in out of favour at the Board, depending on how worker friendly the Provincial Government was over the years. For the last 3 years, family doctors have gone back into disfavour at the Board. While I would agree family doctors generally parrot the worker's complaints, these doctors aren't idiots and shouldn't be ignored wholesale. To do so, is again arbitrary, but obviously from the Board's viewpoint effective.

3. Refer Workers to WSIB Friendly Medical Specialists

As an adjunct to initiative number 2 above, and particularly in cases when the worker's own specialist reports the worker remains significantly disabled, Case Managers are instructed to use hospitals throughout the Province and most recently private medical specialists, to examine the worker and pronounce them either recovered or will be recovered within the time frame of the Official Disability Guidelines. This brings an interesting piece of civil litigation into play in a supposedly "no fault/you don't need a lawyer compensation scheme" (remember legal fees are not covered in workers' compensation and can't be collected in any form from the Board). The point is that many injured workers now do have a lawyer or paralegal, and the Board has been pushed into the role of a Defendant in a litigation exercise.

The Board has responded much like insurance companies who defend their insured tortfeasors- retain Defendant friendly doctors, ("defendant friendly" because the doctors are answering a business proposition), to write Defendant friendly reports. This isn't exactly new, because the Board's Downsview Hospital once was employed in a similar fashion, but

it isn't quite consistent with the purpose of insurance. If you look at the insured party as the worker and not the employer: ie. "I, the injured worker, insured with an agency and the moment they don't agree with my doctor they take steps to screw me" you might want to change insurance companies. In insurance law terms the Board is walking a very thin line between being prudent and being involved in bad faith behaviour..

4. Use of Chronic Pain Clinics

The Board's secret "Short Term Claim Management Guide" directs adjudicators to send all workers who persistently won't work due to chronic pain issues (ie. the pain is real but caused from mainly psychological sources) to chronic pain clinics, mostly administered by the University Health Network. The Board has never studied whether the treatment and chronic pain protocols adopted by the University Health Clinic are in any way effective in achieving an actual return to work. However there is another clinic that does publish its results, showing significant success in actual return to work statistics. This clinic offers a very different protocol for treatment, albeit at a much higher cost. This other clinic however is used by the WSIB to a far lesser extent.

Senior administrators of the Board have written to me stating that they don't need to study the results of the University Health Networks FRP program because the treatment is only costing a few million dollars per year annually. Whether or not the injured worker feels he can return to work following the treatment, or even does, is not much of a consideration for the WSIB. What the Board wants from the clinics are reports which clear the injured worker for return to work, and the medical/legal pretext to say: "we treated them". Using defendant friendly medical specialists has a whiff of moral dishonesty but could be generally overlooked because most insurance companies, let alone most North American Workers' Compensation Boards, have made the practice de rigeur. But the Readers Digest version of chronic pain treatment dispensed by the WSIB is a little more odious.

5. Employer Penalties for Non Co-operation:

Section 40 of the Act, known as the "co-operation section" has been around for 20 years, and was never used by the Board to specifically penalize employers, even if employers did not use every possible effort to find their injured worker alternate employment. Indeed the failure to re-employ is specifically covered by section 41 "the re-employment section". The advantage to the WSIB in utilizing a section 40 "co-operation" penalty regime as hammer against employers, rather than section 41 are obvious:

a) there are no time limits for enforcement in section 40: a penalty could be levied 5-10-20 years after the injury (s.41 has a time period of 2 years);
b) there is no limit on the size of the employer effected by section 40 (s.41 requires an employer of 20 employees or more);
c) good faith on the part of the employer is irrelevant under section 40;
d) and finally penalties under section 40, by encapsulating all of the Board's costs for 1 year in helping the worker get re-employed elsewhere, are far larger than section 41.

In my opinion the Board's use of section 40 in this manner is illegal and outside the clear intent of the Act. How can one have a specific section that outlines in detail the employer's responsibilities regarding re-employment and then produce a mass of policies under a very general section, that practically eliminates the value of the specific section? Legally the Board can't, and until someone challenges this, it has.

The Board proposed these Section 40 co-operation penalties 3 years ago, they were roundly rejected by the employer community, and thus the Board shelved them. In October 2010 President Marshall hauled the Section 40 co-operation/penalty system back into play with the force of law and with zero consultation, explaining that desperate times call for desperate measures. Later he relented to pressure from the Ontario Business Coalition and delayed their implementation to May 2011.

The new co-operation penalty regime kicked off the WSIB's great Easter Egg/job Hunt. Board Claims Managers are out in the woods hunting for every injured worker who has been given full LOE benefits to age 65 in the last six years (except for those with NEL's of over 60%). The Board informs these injured workers that their benefits are being or may be severely slashed because they are now deemed employable; while at the same time the Board visits

their accident employer to ferret out some work these individuals can be returned to.

So what we have, for example, is a 63 year old woman, former factory worker, without any skills and a bad back, who hasn't worked in 5 years, being told to come in to learn to write a resume and then get back to work in retail sales. And employers are facing Return to Work WSIB specialists at their doors, trying to return injured workers to work, such employers having already paid out severance packages to a disgruntled worker 4 years ago. Now the Board is telling the employer to find the long departed worker a job or else. For employers, to some extent, this is really a shake the trees exercise by the Board, to determine what jobs will fall. Even if only 10% of employers were able to accommodate their long forgotten injured worker after 6 years of separation, the savings to the Board would be in the tens of millions of dollars annually.

There is no doubt that in a few instances the Board will save money, but really what they are opening up is a paroxysm of worker appeals, encouraging employers to adopt a "hide and seek mentality with the Board" (discussed further below), and generally undermining whatever last shred of fairness any of the parties thought the Board possessed. As bad as the Easter Egg Job/ Hunt is, "the turn the screws of re-employment" technique discussed next, is worse.

6. The Underground Ergonomists, and Work Transition Services

At the point of accident the WSIB uses a tickler system for Case Managers. They are to check the file in 30 days, in 12 weeks and at 26 weeks, beginning with the date of accident, to determine if the worker is well enough to return. Of course, there are cases where the construction worker's arm is in a cast, and he is on significant narcotic medication resting in hospital, but the Case Manager believes he could leave the hospital every day to do a few hours of work. If the employer or the injured worker doesn't heed the siren call of return to work from the Case Manager, then out to the plant comes the Board's Return to Work Specialist, with the injured worker in tow.

Except in cases where an injury occurred after an injured worker was terminated for cause, in 30 years of representing employers, I have yet to witness an employer refuse to take the injured worker back immediately to modified or other work following an accident if work is available. My observations predate all of the *Workplace Safety and Insurance Act* penalty sections on re-employment. Coincident with the advent of trade unions, WSIB experience rating plans, and Human Rights Legislation, not to mention that most injured workers were an asset to the company before the injury, injured workers have been welcomed back to work for decades.

But now the Board has turned "return to work" into the TV show Jeopardy, where those employers who don't ring the buzzer quickly enough with the right question (eg:. what are the injured worker's work limitations?) walk out of the studio without the cash. The answer the Board wants to hear from employers is: "Worker is in the hospital, in a cast? No problem, send a cab over and we'll have him answer the phone.... He doesn't speak much English? No problem, he can talk only to our Portuguese customers."

The readers should know that the Board promotes this charade based on medical studies that show that injured workers who return to work earlier, have better outcomes to their disability claims than those who don't. But it must be said that the better outcomes are only 20% better, and further that construction workers who lust to return to work in a walking cast are more likely to have a better WSIB cost outcome in any event, based on work ethic alone.

The Return to Work Specialists appear to have been trained by watching The Godfather Part II. They start off by being "all friendly like". The dialogue starts as follows: "Mr. Injured Worker, what do you think you can do; and Mr. Employer what have you got." The Specialist herself has no copy of the medical file, just a note from the Case Manager saying: 'it's a sore shoulder-standard restrictions'.

If the worker says : "My family doctor says my shoulder is very bad and he's referred me to a specialist in two months time, but told me to stay off work",. the Specialist tells him the employer here has one armed work, so you better be back to work tomorrow, or I'm going to tell the Case Manager about what you said, and it's curtains for your benefits.

If the employer claims there is no modified work

available, the Return to Work Specialist then takes the employer into another room and says "Look buddy you got to try and work with me here. We are trying to save you some money, the worker may refuse your offer anyways, so put something on the table. Stay on side and we'll solve this claim, or you'll face severe consequences, you know what I mean?"

Our readers should ponder this-: almost half the Return to Work (RTW) specialists are former Board Ergonomists. When the Board ended official ergonomic assistance as a cost saving measure a year ago, most of the Ergonomists transferred over to become RTW specialists. Let's say for instance the employer offers an injured worker with a bad back a job at a desk cleaning machinery, but there is a question as to whether the job complies with ergonomic measurements for optimum spine angles, though it does comply with standard back restrictions. The trained, certified Ergonomist, with her measuring instruments in her car trunk, who is attending at the plant as RTW specialist is not allowed to measure the job for suitability and to advise on modifications. She needs to make recommendations to the Case Manager who then may or may not requisition an Ergonomist from a private company to attend at the plant. Why is that, particularly if time and money are of the essence to the WSIB? Obviously, because the Case Managers care little whether the job is particularly appropriate, if it looks good enough, ie. it's a desk job, get on with it.

The Godfather trilogy does not end on the happiest of notes, and neither will the current Work Transition program of the WSIB, and for the same reason: it is not sustainable and sooner or later the leadership ("head dons") of the Board will be "replaced". Firstly, if workers aren't given sufficient opportunity to adjust to their injury they will have benefits re-instated on appeal, and secondly, employers cannot afford to maintain injured workers indefinitely counting bolts- (a favourite modified job in the construction industry). More importantly, it is another instance of the corruption of the relationship between employers and the WSIB. The Board is saying lets start by playing a game that has artificial rules, eg: make up any job; and then finish the game years later (ie. when the experience rating window of liability finally ends) by the employer telling the Board how difficult it is to accommodate the injured worker. Or how about training an illiterate worker with a borderline IQ ("borderline" to mentally disabled) to read and write in a 6 month course, and then assigning him back to the employer for a desk job, allowing the injured worker to be fired and cut off benefits 6 months later for incompetence? The rules of this game are further discussed in the following section.

7. Bundle Up Your Problems

While employers remain open to taking workers back immediately following an accident, they go the other way when confronted with a returning worker 4 years later. Return to Work Specialists tell employers to bundle up some duties from various job responsibilities into one modified job. This of course has the effect of making other workers' jobs more taxing and leading to further problems in the work force. Thus at the end of this employer/ WSIB encounter, come out the words "sustainable" and "productive". When the Board doesn't like what the employer is offering the Board says it's not "sustainable", even though it's legislatively none of the Board's business to say so. When employers want to shoo the Board away, they state the employer doesn't have the ability to bundle together enough duties the worker can do, to make the job "sustainable" in either the plant, or by analogy the open labour market. It's unseemly for employers to be playing hide and seek.

8. New experiences in Experience Rating-President Marshall's Scapegoat

The WSIB President Marshall sees experience rating as the source of all evil. Firstly, employers have been paid $2 billion more in experience rating refunds than penalties over the past 15 years (the "off balance") and secondly, because employer behaviour, in response to experience rating has been to "manage" their claim costs, rather than fulfill their legislative obligations.
Experience rating liability for an employer under the NEER plan expires after 3 years from the date of injury. It is alleged employers terminate injured workers' employment after that time, or earlier if they can obtain significant second injury fund relief. Both of these allegations are preposterous exaggeration to coverup the real problems.

Firstly, the "off balance" has been caused because the NEER Plan formula could not keep pace with the decreasing number of WSIB claims reported each year, which skewed the Board's returns from experience rating. Furthermore, the formula similarly did not keep up the increasing duration of the average claim. The formula was skewed by the large amount employers have been contributing to pay down the Board's debts (none of which money was of course ever used to pay down the debt). The formula was recently corrected for these problems and the NEER plan now produces a surplus for the Board in the millions of dollars.

If President Marshall truly believed employers under the Neer Plan were keen on pressing the termination trigger in year 3 (the last year of NEER), would he not have evidence that the construction industry employers, under a 5 year window in the CAD VII experience rating system, were equally quick to press the trigger in year 5? He doesn't. Marshall does however have evidence that Schedule 2 employers (who pay all of their workers' claim costs plus 25%) keep their injured employees longer. However, to compare Schedule 2 employers who are all massive employers, all unionized, and predominantly government organizations of one sort or another, with NEER Plan participants, the vast majority of whom are employers with less than 200 employees, is ignorant.

Of course Schedule 2's keep their workers longer, they have more opportunity to create permanent make work projects given that it's often cheaper for their injured workers to do nothing at work than to remain on compensation (they do mostly work for the government). Schedule 1 employers in NEER however must remain competitive and cannot possibly operate an organization with workers who are suffering injuries, both physical and mental, that make their contribution to the organization a negative. Without NEER, employers would terminate these individuals far sooner than three years. Burdening employers with a work force that makes no contribution to production will be a much larger burden to society than having these employees transfer over to a Board sponsored Labour Market Re-entry plan.

The Board's goal is to design an experience rating system as close as possible to the pay as you go Schedule 2, but disguise the intent, by making the formula so convoluted that not even an accountant or a lawyer, much less an employer understands how much each claim is costing them. That was the formula the Board came up with five years ago. It was sunk by employers, and now the Board has hired the same actuarial experts to have another go at it. In the meantime the NEER window of liability has gone up to 4 years, retroactively, and Marshall is shooting for 6.

Marshall is waving the white flag: we at the Board can't contain claim costs or pay for them under the current legislative environment- so employers will take over the burden internally, by taking back non-productive workers. That way the cost of re-employment certainly doesn't show up on the WSIB's unfunded liability/ benefits and revenue financial statements. This raises the question of what use is the Board anyways if employers have to pay their own costs, except in the case of very small employers, or in the case of an extreme accident event?

9. Second Injury Fund Relief- Justice for Employers Neutered

Employers receive second injury fund relief because "the means didn't justify the end". A worker has a simple back strain and then never works again, primarily because of degenerative changes in his/her spine. Up until last summer (2010), SIEF relief would be applied, and there would be a discount in the employer's experience rating penalty. By 2010 one third of all cases received some form of SIEF. WSIB Chairman Mahoney, when he was still in the picture, said this is because the Board was using SIEF as a "happy pill" for employers to stop them from complaining about claim costs, that drove up their experience rating. However, an argument could better be made that the increase in SIEF granted was because more and more workers are being given large benefit entitlements, for conditions which have little to do with what happened to them at work.

The Policy for Second Injury Fund Relief is contained in the Board's Operational Policy Manuals. The Board changed these policies in November 2010 without changing the Operational Policy, bypassing the need to utilize a WSIB Board of Directors Resolution, by way of a secret Advice to Adjudicators training sheet. They did this to avoid employer complaints, and frankly I believe what they've done to be illegal as follows:

(A) To get SIEF, it was adequate under the Official Policy for the worker to have a "pre-existing condition". Now the secret policy says there must be a "pre-accident disability". So for example a condition can be non disabling but still be present and important to the final outcome. The legal published policy refers to "condition" not "disability".

(B) In the past, it was enough that the underlying condition played a "role" in the final outcome. The secret policy states that there must be "objective evidence" that the underlying condition is delaying recovery. So for example let us say that the worker has degenerative disc disease and his back pain is intractable and he can't work. Previously, the employer would receive SIEF automatically because the underlying condition is part and parcel of the work related condition. Now one must have "objective evidence" of what role the underlying condition played. If the doctor says the injured worker would have recovered from a simple strain but for the underlying degenerative condition in his back, the WSIB is saying that is not enough.

What the Board now requires is the doctor to state the injury impacted the disc at L4-5 causing it to tear. They require the doctor to say the disc at this level was already torn, and the injury just tore it some more, and if it hadn't of been torn already this accident wouldn't tear it any further. This scenario is probable but it can't be "objectively proven" without MRI scans done before the injury which 99% of the time don't exist, and the employer is snookered.

(C) The natural aging process is now eliminated from SIEF by the secret policy. The whole purpose of the policy was to relieve the employer in just such a scenario.

(D) A degenerative change in a young worker is to be given more weight than a degenerative change in an old worker. This certainly doesn't help encourage employers to hire older workers, and is without any medical justification.

(E) The severity of the accident is to be based on the description of the event rather than the outcome. So if a worker falls 4 feet and has only a bruise, that now becomes a moderate accident and SIEF is cut in half, because a four foot fall sounds serious even if the outcome was innocuous. This is not considered in the old published policy.

The Arthurs Commission is studying SIEF among other issues, and it would appear fairness for employers has been neutered. and is now on its way to death row.

10. Work Return; LMR; Work Reintegration: Or whatever else the Board is calling it this week.

When I was at the Legislative Committee in 1989 that was studying the current legislation prior to its passage by the Government, I protested vehemently that it would never work because many injured workers had no jobs to return to after injury. One of the MPP's told me this problem was solved by LMR. For a moment I thought he said "Alomar", as in Robbie Alomar, the second baseman for the Toronto Blue Jays. In hindsight Robbie Alomar could have done a better job with Labour Market Re entry than has the WSIB.

For 20 years the WSIB has suppressed statistics that show the abject failure of the program to re-integrate injured workers back to work. Even today they claim they have no statistics showing whether workers who complete the LMR are working and at what job, 3 years or longer after the completion of the program. Two Ontario Government Value for Money Audits have condemned the program and made extensive recommendations for change, many of which have not been adopted. One suggestion was that Ontario go to the German system where employers are forced to take back injured workers to employment indefinitely. The auditors forgot to mention that in Germany many workers are actually not returned to work, but paid off to go away.

First, the Board managed the LMR program internally. That didn't work so they privatized management to the private sector. That didn't work so recently they took full control again hiring 200 case workers from the private sector. So, while the number of accidents per year has decreased by about 20,000 in the last 12 months, the Board is adding staff- just what every enterprise does when faced with fewer customers, add more employees. To further save costs the Board has abandoned doing Psychovocational Assessments of injured workers in many cases. I guess it's best not to know that the injured worker is functionally illiterate before you send him out on a job search to find "clerical work". And the Board deems

all its injured workers ready to be service advisors in an automobile repair facility, if so designated under a LMR Plan, whether the worker passes the service advisor courses or not- "completion of the course is sufficient", as is broken English.

This new "express" LMR program is like throwing an idea against the wall and seeing what sticks. Something is going to stick, ie. some injured workers will get jobs and others will not litigate, so some money will be saved. It is however a cynical and more importantly counter productive regime, as the return on WSIB investment does not justify the effort.

11. The WSIB Appeals Branch About Face

Historically 40% of worker appeals for more benefits were granted at the Appeals Branch. I have checked with 5 worker representatives and their experience is that only 20% of the appeals are being granted. The Board's own statistics are that allowance of appeals have gone from 30.1% to 26.8% in the past 3 years. This comes on top of close to a 30% increase in the number of appeals coming forward, due to the Board's policies discussed above. Officials at the WSIB deny that instructions were given to the members of the Appeals Resolution Branch to lower the number of successful appeals. Yet it is instructive that Tom Teahen, who is politically close to the Government, was made Vice President of Appeals and pulled the Appeals Branch out of the Adjudication Department. If in fact the Appeals Resolution Officers have been given direction to negatively respond to employer SIEF appeals, and worker appeals for further benefits, then all of their decisions rejecting appeals in the past year are of dubious legal validity, and a massive malicious abuse of public office has occurred. Our firm continues to research this topic.

Conclusion:

In October, 2010 Judy Geary, long time WSIB bureaucrat, and now the President of the Work Re-integration Program of the WSIB, rolled out for a month long consultation, and implemented the program contained in her title. It replaced 24 existing policies. President Marshall says he would like to replace all of the Board's 800 pages of policies. How about starting with the 55 pages of the *Workplace Safety and Insurance Act* itself, because in regards to the Work Return policy change, in the 6 months it has been around, it's missed most of its published "Key Features" as follows:

1. There has been little integration of health recovery and Return to Work;
2. Almost no worksite functional assessments are being done;
3. Not one small business has received a grant to rehire an injured worker;
4. No fast track appeals are available;
5. Vocational assessments are not sound, the WSIB is not using psychovocational testers in many cases;
6. Little labour market expertise is made available to look at future employment prospects. Incredibly, the Board is still training people to be parking lot attendants and ticket takers. Have they not heard of the word "automation"?
7. Employers are not active participants in work transition but rather are captives of make-work projects;
8. No placement provider incentives;
9. No report on exactly what the Board is reporting on annually for program performance;
10. "Increased expectations of Private Career Colleges". (If the goal was to pass every injured worker with or without having understood his/her training course, this has been an overwhelming success).

The current legislation is doomed to failure. By telling workers the sicker you present yourself, the more chance you have of jumping aboard the WSIB gravy train to age 65, the more sick they will be. The incentives to do well either in school or in a Board sponsored chronic pain clinic are minimal in comparison to the incentives to do otherwise. The Government is afraid to change the WSIA Legislation before the election scheduled in the fall this year, just as they are afraid to tackle the Province's fiscal debt by decapitating provincial government labour costs, for fear of alienating big labour Unions. Instead, the Government has it's big three: Deputy Minister Morton, President Marshall and VP Teahen trying to turn a sow's ear into a purse, and Harry Arthurs studying just how much extra employers need to pay to get the Auditor General and the Swiss Bankers off the Province's back. Meanwhile employer lobbyists have enough work in making representations to Arthurs causing them to lose sight of the root of the problem. It's ugly, and it's pathetic that the Government needs to pull some stunt for 12 months,

waiting for an election mandate, rather than tackling a serious problem they have a mandate to deal with now.