



# PHANTOM JOBS & EMPTY POCKETS



What really happens to workers with work-acquired disabilities?

# **Phantom Jobs & Empty Pockets:**

## **What really happens to workers with work acquired disabilities?**

What happens to people who are injured at work? Most of the time, workers endure minor injuries that heal and they return to their regular jobs and lives.<sup>i</sup> But what about those workers who don't fully recover? What are the outcomes for those who sustain lifelong back injuries, lose limbs, or develop chronic physical and mental conditions? Some of those people are looked after by workers' compensation, as they should be. But many are not. By WSIB's own statistics, **almost half of permanently injured workers have neither jobs nor workers' compensation benefits.**<sup>ii</sup>

### *WSIB & the Land of Make Believe*

The Province of Ontario is the birthplace of workers' compensation in Canada. In 1914, Ontario introduced a no-fault compensation system that was funded entirely by employer contributions. In exchange for giving up their right to sue employers for work injuries, workers were supposed to get guaranteed compensation for their lost wages. These wage loss benefits were to prevent injured workers from becoming burdens on their families and community.

Today, the province's compensation is run by the Workplace Safety and Insurance Board (WSIB). For short-term and visible injuries, the system works fairly well. Workers with these kinds of injuries usually receive benefits for the time they miss from work, they heal and return to their usual lives. But workers who have permanent injuries and are unable to get back to their job face a different story.

For these workers, the WSIB chooses a new job (called a "suitable occupation").<sup>iii</sup> These workers receive Work Transition Plans, which may or may not include formal schooling, and then they are sent out into the labour market to find jobs in their WSIB selected fields. Some of these workers do find jobs and return to work without issue. This report is about what happens to those who get left behind.

For these unemployed workers, **the WSIB simply waves a magic wand and assigns an imaginary job with an imaginary wage.** The WSIB then cuts the worker's benefits, by pretending that the worker is earning actual wages from the imaginary job. Injured workers refer to this process as "deeming" and call the

outcome a “phantom job”, because they are earning ghost wages. The phantom job makes the disabled worker’s real wage loss benefits disappear.

### ***How the magic wand works, in WSIB-Speak***

After her injury, April was unable to return to her job as a book binder, where she used to make \$112 per day. WSIB decided that she had the skills and ability to work as a receptionist. Although April is applying for many receptionist jobs, no one is hiring her. Still, the WSIB deems her to be earning \$98 per day as receptionist. Since she was earning a net wage of \$112 per day as a book binder, her WSIB benefits are reduced to \$11.90 per day ( $\$112 - \$98 = \$14$ ; and  $85\% \text{ of } \$14 = \$11.90$ ).

*\*April's story is a composite example of the type of stories ONIWG encounters regularly*

## *Who gets deemed: characteristics of workers without jobs*

Almost half of workers who do not return to their original employers do not find work after finishing their WSIB “work transition”.<sup>iv</sup> The WSIB itself has identified the personal factors that make a worker less likely to find a job. They are:

- *women*
- *lower wage earners*
- *those with fewer transferrable skills*
- *those with English language barriers*
- *in need of literacy and basic skills*
- *in specialized services*
- *those with psychological issues*
- *older workers*
- *and those with greater impairments from their injuries*<sup>v</sup>

This means that women, those who were in lower paying or less skilled jobs at the time of injury, and those who suffer mental health disabilities are more likely to be deemed as working than their higher paid and less precarious counterparts. **The most vulnerable workers in the system are most at risk of being left without benefits and unable to find work.**

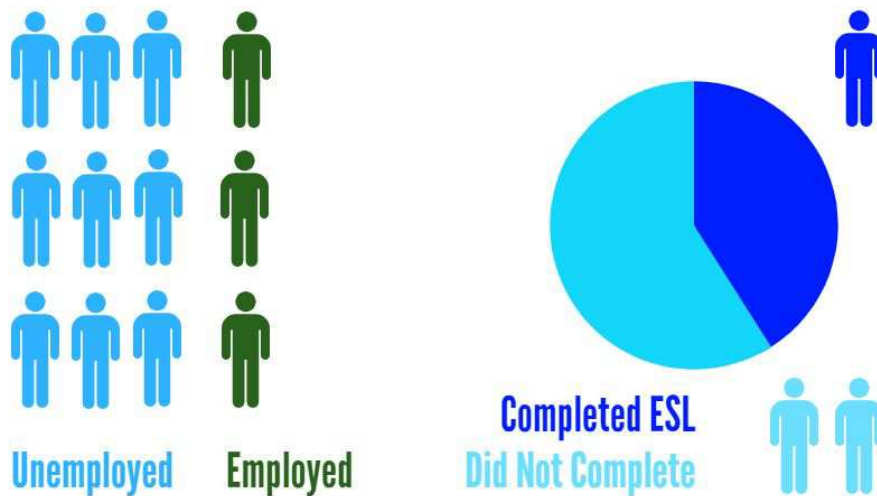
Despite identifying these vulnerable workers as those who have the hardest time finding work, the WSIB does not routinely consider these factors when they are deciding if a worker is employable. Deeming assumes 100% employment for everyone, regardless of disability, skills, age, gender, or language ability.<sup>vi</sup>

Workers who are not fluent in English were especially likely to be sent to the land of make-believe (deemed) jobs.<sup>vii</sup> Less than a quarter of non-English speakers were able to secure jobs after Work Transition.

## *WSIB's Shameful Record with ESL Training*

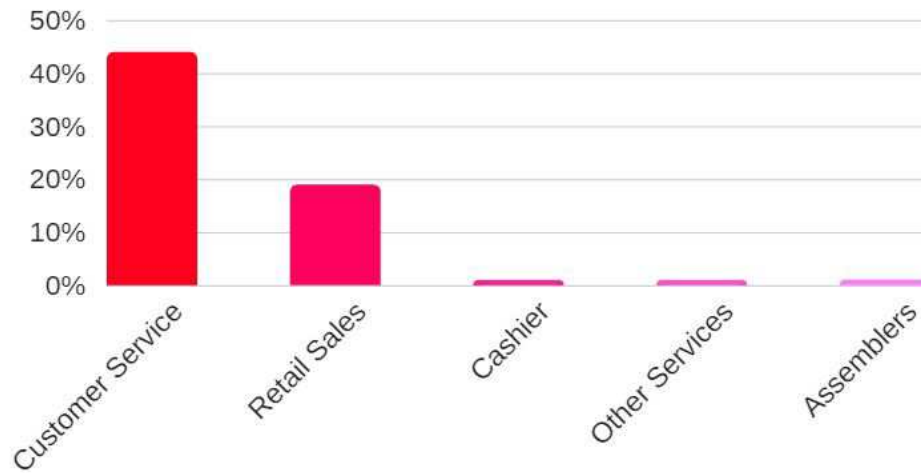
The WSIB has recognized that its ESL schooling is largely ineffective. Through freedom of information requests, we have learned that less than two thirds (59%) of workers actually complete their ESL classes. Of those who do, only 43% learn enough to meet the language demands of their selected suitable occupation.<sup>viii</sup>

**Only 27% of workers with English language barriers secured employment after completing work transition.**<sup>ix</sup>



In fact, one WSIB internal study shows that many commonly selected jobs (suitable occupations) workers with language barriers resulted in zero percent employment.<sup>x</sup> Despite this systematic ESL failure, non-English speaking workers continue to be deemed employable, meaning they lose their benefits whether they have a job or not.<sup>xi</sup>

## How many deemed ESL workers found jobs in their field?



Many if not most workers with limited English were working in manual labour before injury – jobs that did not require extensive language skills. There are, unfortunately, virtually no positions that do not require manual work or strong language skills. Without significant English skills, many workers living with permanent injuries are unable to find jobs that suit their limited physical and language abilities.

### *Who gets deemed: workers not provided training*

While some workers who cannot return to their original jobs are given formal retraining many are not. According to the WSIB documents, about 4,350 workers are referred to Work Transition (WT) services for assessment each year, but only 2,300 workers end up starting and completing work transition plans.<sup>xii</sup> That means that only half (53%) of workers who are referred to work transition services actually complete plans. Unfortunately, despite receiving hundreds of pages of documents via freedom of information requests, we do not know what happens to the 47% who are not given retraining, or who are unable to finish their programs.

## CREATING POVERTY

Here is one story of how deeming creates poverty:

*Harvey worked as a highrise window cleaner. In 1995, the clips on his ladder extension broke, and he fell 44 feet. His right foot took the full impact of the fall, shattering his ankle and turning his heel into dust. A year later, he managed to return to his job on a rebuilt foot.*

*In July 2009, though, Harvey re-injured his metal foot. He couldn't walk and needed another surgery. Harvey was still waiting to see a surgeon when the WSIB deemed him able to work as a parking lot attendant or light assembler – jobs that were not actually suitable or available to him.*

*With his phantom job and deemed wage, Harvey's compensation was reduced to \$419 per month. He and his wife, Evelyn, were forced onto social assistance. Harvey had never been put in this kind of position before. He started working at the age of 15 and was proud of that. At 18, he started his career as a highrise window cleaner and loved every moment of it. He felt ashamed that he was no longer able to provide for his family. Their debt grew larger with each missed rent and utility payment and they were forced to rely on food banks.*

*Harvey has now had four surgeries on his foot. The financial fallout from his phantom job began while waiting for the first surgery. His ankle still has an S shape to it, and he requires a custom brace, orthotic shoes and boots, a four-post cane, and a mobility scooter. He rates his pain at 8 out of 10 every day.*

*Harvey and Evelyn's life will never return to what it was before the workplace accident. Their financial future is one of unending poverty, brought on by the WSIB's practice of deeming. Harvey didn't just lose his ability to work; he lost the ability to live his life as he'd planned.*

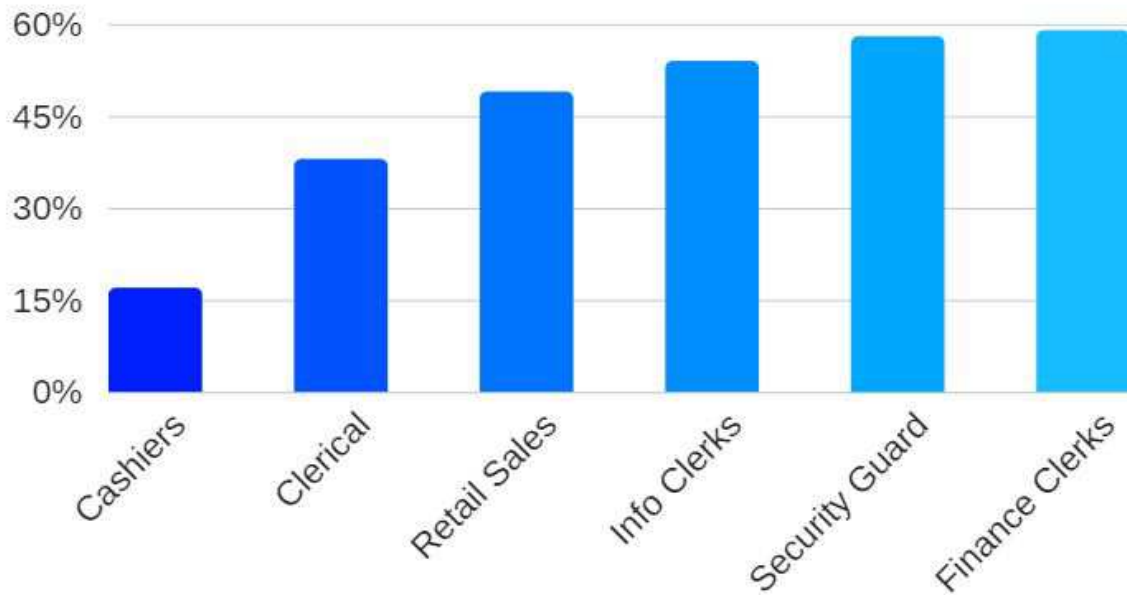
*As Evelyn says, "the WSIB is a 'safety net' full of holes big enough to drop a highrise window cleaner and his spouse through."*

## Common Make Believe (Deemed) Jobs

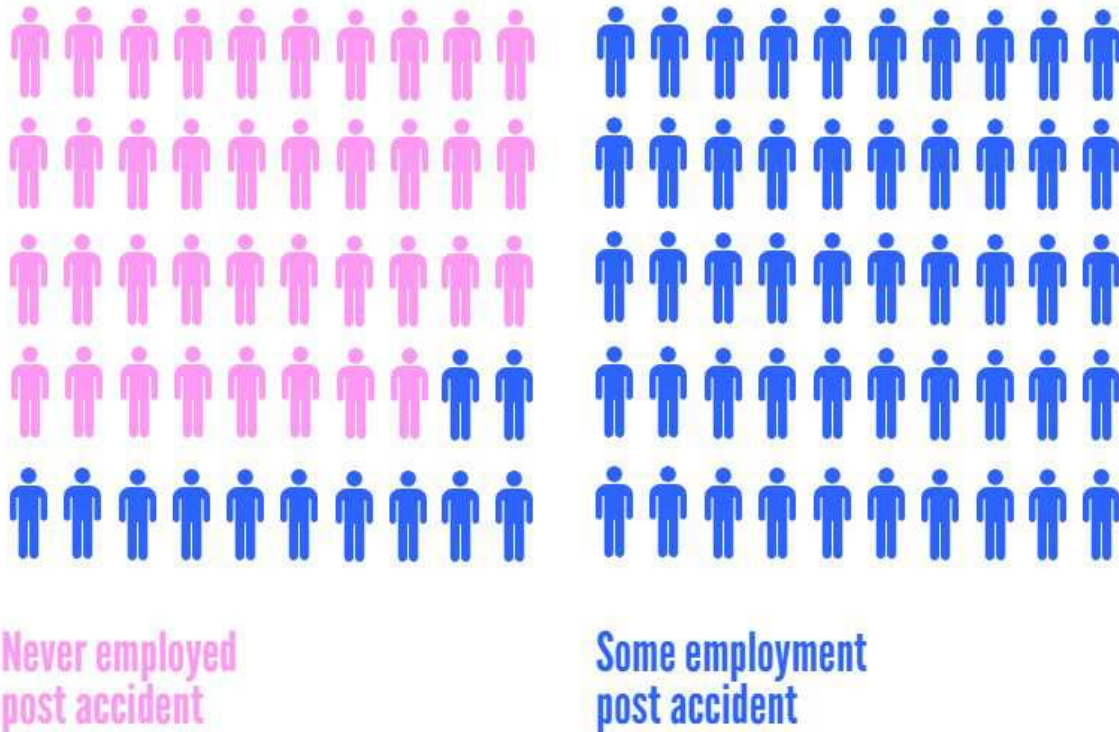
As noted, the WSIB selects a “suitable occupation” for those workers whose injuries prevent them from going back to their original jobs. The suitable occupation is chosen based on the worker’s skills and their pre-injury wages. The information we have obtained tells us that workers with suitable occupations in some fields fare significantly better than others.

At the higher end, for example, three quarters of workers who were told to find work as drivers were able to do so. At the lower end, however, only 17% of workers who were told they could be cashiers were able to find jobs, and only 49% of workers designated as customer service agents were able to secure work in their field. Unfortunately, cashiers and customer service are two of the WSIB’s most frequently selected suitable occupation, despite the fact that less than half of workers in these areas are actually able to find jobs.

### WHO REALLY FINDS THEIR JOBS?



In fact, of those who endure a permanent injury, many never end up working again. Of those who do, we know little about how much work they get or even how long that employment lasts.



*Where to turn:*

*Sources of real income for workers with pretend jobs*

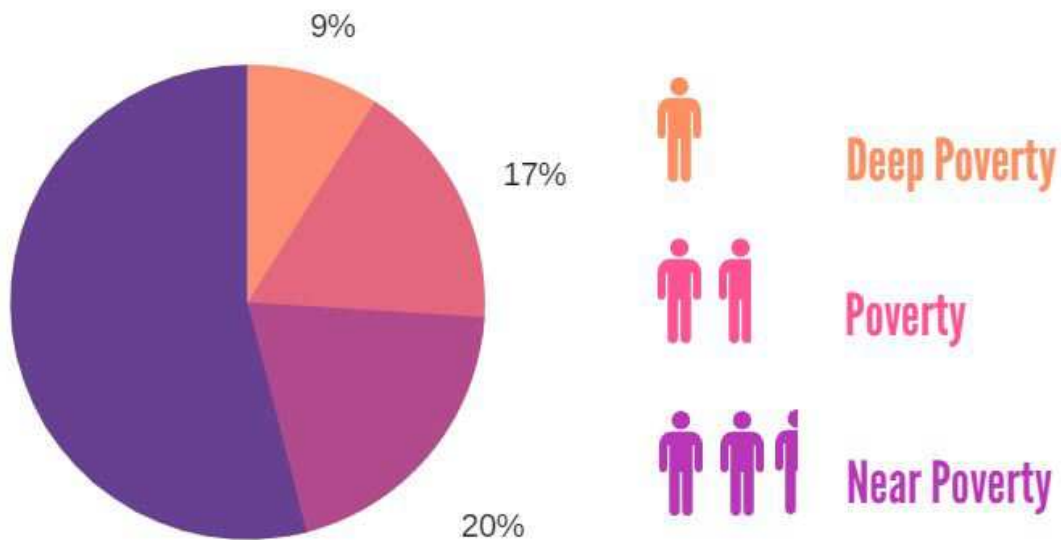
What happens to workers with permanent injuries who end up with imaginary jobs and no WSIB benefits? At this time, we don't know, because the WSIB does not track what happens to them. Some of them likely turn to family for support. Some of the more fortunate may rely on Canada Pension Plan disability benefits (CPP-D) and private benefit plans. Those who don't have access to those sources likely end up relying on welfare, and become a financial burden on taxpayers in Ontario.<sup>xiii</sup>

The Ministry of Community and Social Services' numbers from 2014 and 2015 tell us that there are at least 3300 deemed injured workers relying on social assistance to top up their WSIB benefits. Our own math suggests that social assistance payments to injured workers could cost taxpayers \$48 million per year.. And this very large number only includes workers that have been deemed but still get *some* money from the WSIB. Once workers who have been deemed to receive *no* benefits are included, the system loses track of them, and the cost to the public is likely significantly higher.



In short: **When the WSIB deems injured workers, it both creates poverty and costs you money.** The WSIB, currently sitting on billions of dollars, and the employers who continue to benefit from immunity to lawsuit are reaping the benefit of shifting these costs onto tax payers.

How much poverty is created? A 2015 study of permanently injured workers reveals some startling facts about who was near, below, or way below the poverty line:



That means that **if you endure a permanent injury at work, you have a 54% chance of not spending your life in poverty.**<sup>xiv</sup> Odds only slightly better than a coin toss.

## *Solutions:*

### *What is the alternative?*

Eliminating the poverty-creating effects of deeming is of critical importance for workers in this province. Fortunately, the change that is needed to reduce the most devastating effects of deeming is actually quite small. Just one little sentence tucked deep into the *Workplace Safety and Insurance Act* allows the WSIB to reduce a worker's benefits based on what they might be "able to earn" in a phantom job.<sup>xv</sup> Changing that sentence would be an easy legislative task for any government that is serious about protecting those who get injured on the job.

One fix would be to allow deeming only where a worker has turned down a job offer. Alternatively, the law could be amended to say that benefits must continue as long as an injured worker can demonstrate an active job search for medically suitable work. This would be consistent with the standard that the Employment Insurance system uses to determine benefits in Canada.

Whatever solution is chosen, one thing is clear: The practice of deeming creates injured worker poverty. It encourages a system where many injured workers are abandoned twice: first by their injury employer – who cannot or will not provide them with accommodated duties, and then by the WSIB, the very system that is meant to protect them in these circumstances.

Ontario was once a forerunner in this country when it came to treating injured workers with dignity and respect. Rather than trying to win a race to the bottom, it is high time we return to a position of leadership, and once again show Canada that when someone gets injured while contributing to our economy, they should not become a burden on their families, their communities, or taxpayers.

This is a report of the **Ontario Network of Injured Workers' Groups**.



ONIWG is a provincial voice for workers who have been injured or made ill on the job. We are injured workers (and their families) who have had first-hand experience with the WCB/WSIB, and we see how the system fails all too many workers across the province. We refuse to accept the unfair system, and we take united action to demand justice for injured workers.

We are a network of 22 injured worker groups in communities throughout Ontario. Whether it be through research and submissions to the WSIB and the government, or through organizing rallies and public mobilizations on the streets, we are committed to advocating for the rights of injured workers.

This report is a publication of ONIWG's Research Action Committee. It was compiled using data acquired via freedom of information requests submitted by Injured Workers Community Legal Clinic and Richard A. Fink. It was written with the assistance of Injured Workers Community Legal Clinic.

# **Phantom Jobs & Empty Pockets:**

## **Freedom of Information Documents Index**

**Link to documents by visiting [injuredworkersonline.org/EmptyPockets](http://injuredworkersonline.org/EmptyPockets)**

### Document 1

[Employable Analysis Report](#), September 2016. 42 Pages.

*Internal WSIB Document*

Acquired via Freedom of Information Request by Injured Workers' Community Legal Clinic

### Document 2

[WT Plan and Assessment Survey Report](#), 2017. 4 Pages.

*Internal WSIB Document*

Acquired via Freedom of Information Request by Injured Workers' Community Legal Clinic

### Document 3

[Employable Outcome Analysis](#), June 2017. 26 Pages.

*Internal WSIB PowerPoint Deck*

Acquired via Freedom of Information Request by Injured Workers' Community Legal Clinic

### Document 4

[Employable Outcome Analysis Update Summary](#), July 2017. 13 Pages.

*Internal WSIB PowerPoint Deck*

Acquired via Freedom of Information Request by Injured Workers' Community Legal Clinic

### Document 5

[Review of ESL Programs in WT](#), 21 April 2014. 24 Pages.

*Internal WSIB Document*

Acquired via Freedom of Information Request by Richard A. Fink

### Document 6

[Return to Work Program Overview](#), March 2017. 10 Pages.

*Internal WSIB PowerPoint Deck*

Acquired via Freedom of Information Request by Injured Workers' Community Legal Clinic

### Document 7

[Ontario Works and ODSP Average Monthly Cases, Cases in receipt of WSIB and Cases with a WSIB Assignment](#), 2017. 1 Page.

*Internal Ministry of Community and Social Services Document*

Acquired via Freedom of Information Request by Injured Workers' Community Legal Clinic

## End Notes

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<sup>i</sup> WSIB's most recent numbers say 90% of injured workers are back at work at full wages at one year after injury, down from 92% in 2017. Online at: <https://www.wsib.ca/en/corporate-reports> (Accessed 28 April 2019).

<sup>ii</sup> Document 1 - Employable Analysis Report – September 2016. This WSIB document looks at a large sample of injured workers who were not able to return to their original employer, but who WSIB believes could work, and classifies workers into two groups: Employed-NE (Employed at a new employer); and Employable (meaning they have deemed the worker employable, even though they are not working at a new employer – i.e. they are unemployed). Table 1, Page 5 notes that between from 2011 to 2015, between 45% and 54.7% of workers in one WSIB internal study were classed as “Employable.” In fact, This is likely an underestimation as it does not distinguish between workers who are working fulltime and those who are employed part-time, whereas benefits are almost always calculated as if a worker is working fulltime.

<sup>iii</sup> Document 2 - WT Plan and Assessment Survey Report. This report notes that about 40% of workers did not feel that they had choice or input into the WT plan (see table on page 3, plan development). It also tells us that about 30% of workers did not agree with the choice of SO or the WT plan (see page 3, plan review and approval).

<sup>iv</sup> See Endnote *ii*.

<sup>v</sup> Document 1. Re. Women – See Page 6; Lower Wage Earners – Page 1; Lower Skilled Workers – Page 10; Language Barriers –Pages 1, 7; Literacy and Basic Skills Page 13; Specialized Services – See Page 1; Psychological Issues – Page 15; Older Workers – Pages 1, 6; Greater Injuries – Page 1.

Also:

Document 3. *Employable Outcome Analysis*, June 2017. For Age, Older Workers, and Greater Injuries – See pages 7, 10, 11, 14, 17, 18, 22, 25, 26.

Document 4. *Employable Outcome Analysis Update*, July 2017.

<sup>vi</sup> For information on the gendered, racialized, and age-based realities of precarious work, see for example:

Endnote *viii*.

'A more unequal society': Labour market study paints worrying picture. *Hamilton Spectator*. 19 July 2018. Online at: <https://www.thespec.com/news-story/8679971--a-more-unequal-society-labour-market-study-paints-worrying-picture/> (Accessed 28 April 2019).

Getting left behind - who gained and who didn't in an improving labour market, Wayne Lewchuk et al. *Poverty and Employment Precarity in Southern Ontario*. June 2018.

Racialized and gendered disparities in occupational exposures among Chinese and white workers in Toronto, Wayne Lewchuk. *Ethnicity and Health*. 2014.

Barriers to return-to-work for linguistic minorities in Ontario : an analysis of narratives from appeal decisions. Stephanie Premji. *Journal of Occupational Rehabilitation*. 2015.

Immigration, citizenship and racialization at work: Unpacking employment precarity in southwestern Ontario, Luin Goldring & Marie-Pier Joly. *Just Labour*. Fall 2014.

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Precarious work experiences of racialized immigrant women in Toronto: A community-based study, Stephanie Premji. *Just Labour*. Fall 2014.

vii Document 5 - Review of ESL Programs in WT - 21 April 2014. Pages 2-5, 13.

viii Document 5 – Page 3.

ix Document 5 – Page 2.

x Document 5 – Page 21.

xi Documents 1, 4. The WSIB has recognized the abysmal ESL failure and now tries to use regulated public schools instead of private schools, for ESL programs. However, it has not provided any assistance (further schooling or wage loss benefits) for workers who were not given the skills to find jobs.

xii Document 6 - Return to Work Program Overview - March 2017. Pages 3 and 6.

xiii Document 7 – Ontario Works and ODSP – Average Monthly Cases, Cases in receipt of WSIB and Cases with a WSIB Assignment. This document shows that the Ministry of Community and Social Services spends at least \$48 million annually supporting deemed injured workers who should be better supported by the WSIB. The data indicates about 3,300 injured workers who are disabled from working but whose WSIB wage loss benefit leaves them so far below the poverty line that ODSP must top up their WSIB benefits. This means a minimum of about \$1200 per month per injured worker in ODSP benefits, for a total of nearly \$4 million a month or \$48 million annually to support deemed injured workers who should be better supported by the WSIB. Not counted here by MCSS is the number of injured workers on ODSP or OW who have been deemed to have no loss of earnings and therefore are not in receipt of WSIB benefits. The total cost of supporting deemed injured workers is much greater than the \$48 million captured in this data.

xiv Poverty status of worker compensation claimants with permanent impairments, Peri Ballantyne et al. *Critical Public Health*. March 2015.

xv Workplace Safety and Insurance Act, Section 43(2).

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May 2019

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