

SPEECH TO PROFESSOR HARRY ARTHURS AND WSIB FUNDING REVIEW  
KATE LUSHINGTON: COORDINATOR, INJURED WORKERS SPEAKER SCHOOL

Good afternoon Professor Arthurs and members of the Funding review panel. My name is Kate Lushington. I am here as member of the general public. I am by profession a theatre director, a voice teacher and a freelance writer. Until 2003 I knew no injured workers, and nothing about the workers compensation system, which is pretty much the case for most members of the general public, I would imagine, unless they or anyone that they know, has the misfortune to be injured on the job. But that year, through a chance connection at my son's hockey game, I was invited to create a play with a community of injured workers. The play came to be known as Easy Money, an ironic title which I understand better now. I was so compelled by the stories I heard and the characters I met, that I took up a call to volunteer at a recently formed Injured Worker Speaker School in 2006. This became a paid position in 2007. I still work there on and off on a part time sessional basis.

While my job has been on the speaking side, as a relative ignoramus I have had to learn a great deal about compensation history and current policies, first as context for my play and subsequently to help my students understand the fine principles on which the workers compensation system was founded. Yet I witness first hand the devastating results of ill-considered policies and funding struggles on those students in my classes, and those in schools that are springing up across the province. You are hearing from some of them at this review.

Injured workers are here because they believe that they have a voice; that their experience of injustice and poverty is a result of misguided direction at the WSIB. They believe this can be remedied, in part by your findings at this funding review. They trust that their often baffling involvement with adversarial employers and the machinery of the Board can be improved, if not for themselves, then for other injured workers.

For all those you will hear and meet at this review, there are many more outside this room with similar stories. They may not be well enough to travel, they may not have easy access to transport – they are certainly living in poverty. And some may even feel intimidated by the possibility of losing what little benefits they may receive, since they have been treated in the past as liars, cheats and frauds. My students have been forced back to work too early, given meaningless retraining and deemed to be employed; they have been followed on the subway and videotaped as they garden under doctors orders. I salute the courage of those who are speaking out regardless. They are here to let you know that injured workers are not costs to be controlled, but people, injured in the workplace; they are the very reason the compensation system was founded in the first place.

My play Easy Money was inspired by Joan Eakin's research, which coined the phrase "a discourse of abuse" (you've heard details today from some injured workers who've experienced this abuse). Professor Eakin pointed out that this has a systemic negative impact on employers as well as injured workers.

But what does all this have to do with a funding review? Well, it is a critical context for you to understand that this discourse is maintained and perpetuated by aspects of the current funding model, and you have the opportunity to change that model.

The two areas of your mandated investigation, where you could make an immediate positive difference to the lives of injured workers, are employer incentives and indexation of benefits for partially disabled workers. Tackling these thorny issues with boldness and courage would either make a positive impact on the financial health of the system or no negative impact (as the rate of inflation affects WSIB revenue as well as expenses<sup>1</sup>).

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<sup>1</sup> see Paul Weiler, *Reshaping Workers Compensation in Ontario, 1985*:

*"Once we award an injured worker a certain share of the real economic pie, our refusal to keep the amount of his pension in line with inflation must mean that someone else in the economy will receive an increase. In effect, someone will reap a windfall profit from inflation at the expense of the disabled worker, and, the immediate beneficiary of such inaction would be business."*

They are (1) to eliminate the system of financial incentives known as experience rating, and (2) to establish retroactive cost of living adjustments immediately.

Experience rating is the hidden reason for that “discourse of abuse” experienced by so many injured workers. More expert witnesses than I have told you of the lack of evidence for improved health and safety under the experience rating system, which also violates Meredith’s principle of collective liability, and has employers scrambling and competing to control costs - by suppressing claims, hiding injuries, forcing the injured into useless jobs when they need time to recover, and hiring surveillance firms to spy on them to challenge their appeals. This carrot and stick system has not only hurt injured workers, it drains billions of dollars in rebates from the accident fund. It must be eliminated and replaced by steady state assessment rates.

And as to full indexation, it is a matter of simple justice and fairness - if you are not to condone a steady erosion of benefits for disabled workers who have been clearly recognized. When you compare their spending power today with the assessment rate holiday given to employers during the same time period, it is an outrage.

Yet the system set up by Sir William Meredith in 1915 was based on principles of justice for injured workers and legal protection and predictable costs for employers: non-adversarial, no fault, collective liability - and compensation as long as the disability lasts. Please consider these principles as you strive to recommend much needed reforms.

Injured workers are often isolated. It is good to see so many coming together at this review. Collectively they have a long and bitter experience of not being heard. Their presence at this funding review is a remarkable opportunity - for them, to be heard at last - and for you, to listen to their experience and let it be shown in your recommendations that you have heard.

Thank you.

*The following seems to cover the historical points being made in a different way – I didn't (yet) send it to Professor Arthurs:*

EXTRACT FROM SKIT PERFORMED AT QUEEN'S PARK, JUNE 1 2009  
FOLLOWING THE RELEASE OF THE INJURED WORKER POVERTY REPORT

(Using the real words of Bill Wrye, Paul Weiler, and figures from WSIB annual reports.)

*(Music: Like a Virgin, Madonna)*

FAIRY GODMOTHER OF HISTORY: Oh oh. They're playing Madonna - it must be the 1980's. And look who's here! A ghost from the past – it's the Honourable Bill Wrye, Minister of Labour for the Liberal Party, in 1985. That's the year *Like a Virgin* was top of the charts. Listen, he's promising cost of living adjustments to keep up with inflation. That should keep injured workers out of poverty.

ENTER BILL WRYE, *waving to the crowd. (music out.)*

BILL WRYE: The pain, the loss, the disruption and the disorientation caused to the worker and his or her family by a disabling injury is suffering enough.

FAIRY: *(revving up the crowd)* Suffering enough!

BILL WRYE: We should never add to this suffering the indignity of having to come cap in hand to the steps of the Legislature angrily demanding merely the protection of compensation benefits from the annual rate of inflation. From this day forward, injured workers will never again be in that humiliating position. *(he raises his arms for applause)*

FAIRY: Great words, Minister *(she grabs his hand and shakes it)* but sadly, it didn't happen *(boots Minister off stage)*. Injured workers are now paying 2009 prices, with a benefit cheque dated 1990!

*(Music: Macarena, Los Dos Rios)*

ENTER a Happy Capitalist in Hawaiian shirt, on holiday from premium rates, dancing.

FAIRY: Look who's here! It must be an employer, partying hearty on injured workers' money...

HAP.CAP: Excuse me! I am a hardworking businessman, struggling to control my compensation costs. I have been reading a very good book down by the pool. It's called "Reshaping Workers Compensation in Ontario," by Paul Weiler...listen, Professor Weiler says:

V.O (*live voice offstage - unseen*): “Once we award an injured worker a certain share of the real economic pie, our refusal to keep the amount of his pension in line with inflation must mean that someone else in the economy will receive an increase...

HAP CAP: An increase? For someone else? Who could that be? Let me see...

V.O.: In effect, someone will reap a windfall profit from inflation at the expense of the disabled worker...

HAP CAP: A windfall profit! I like that!

V.O. And, the immediate beneficiary of such *inaction* would be.... Business!”

HAP CAP: Business? That’s me! (*music out*)

FAIRY: The 1990’s! Cost of Living adjustments – eliminated.

HAP CAP: Windfall for me!

FAIRY: Benefit levels – reduced.

HAP CAP: But it’s a recession, everybody’s hurting. We all have to tighten our belts. Especially now – it’s 2009, we’re in a financial crisis! A disaster! An economic Tsunami!

FAIRY: Wait a minute - Injured workers are still paying for that last recession. Not the employers: Employer premiums – reduced by 25%.

HAP CAP: Windfall for me!

FAIRY: Rebates under Experience Rating – over 2 billion dollars– taken from the accident fund for injured workers. (*brings in large moneybags*)

HAP CAP: Windfall for me!

FAIRY: You are getting 2009 dollars – but you’re paying 1980’s premiums. Not only that, you get the exact same protection from lawsuits. You are protected in good times and bad.

HAP CAP: I’m on a premium holiday! Arrividerci Roma! I’m off to the pool. Anyone care for a mojito? (*exits dancing*)

FAIRY: And injured workers are living in poverty. Is this justice?

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