ALL DISABILITIES ARE NOT CREATED EQUAL: A COMPARATIVE HISTORIOGRAPHY OF WORKERS' COMPENSATION AND DISABLITY BENEFITS IN ONTARIO, CANADA

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Abstract

This dissertation establishes that work injury and injured workers are relatively neglected in Critical Disability Studies (CDS). A further observation is that CDS tends to avoid a class analysis of disability politics in favour of identitarian approaches. This research focuses on income security. Through a Marxist critical policy historiography, I compare workers' compensation benefits and state-sponsored benefits for disabled people whose disabilities originated outside of the workplace in Ontario. I argue that the workers' compensation program is superior to the state-sponsored program because of the class location and politics of the respective groups of people with disabilities seeking income security. The discussion also highlights some of the reasons for the missing injured worker in CDS. Specifically, injured workers experience disability as a loss worthy of compensation rather than a positive identity. Further, rather than viewing prevention measures as the erasure of disabled people, injured workers support the prevention of disability through occupational health and safety laws and workplace practices. By focusing on the political economy of each program, the historical narrative suggests that disability benefit programs in Ontario were developed less by moral suasion and more because of their role in capital accumulation. Although the argument holds for the early history of the two programs in their early history. the negative impact of neoliberalism on both workers' compensation and the current benefits program in Ontario (the Ontario Disability Support Program) has created a convergence of interests between permanently impaired injured workers and other disabled people, underscoring the importance of including injured workers' perspectives in CDS.

Dedication

This research is dedicated to workers who are injured or made ill at work.

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List of Abbreviations

AIWG	Association of Injured Workers Groups
AMO	Association of Municipalities Ontario
CAP	Canada Assistance Plan
CCF	Cooperative Commonwealth Federation
CDS	Critical Disability Studies
CHST	Canada Health and Social Transfer
CMA	Canadian Manufacturer's Association
COPOH	Coalition of Provincial Organizations of the Handicapped
CPP-D	Canada Pension Plan-Disability
CWS	Committee on the Weiler Study
EI	Employment Insurance
FEL	Future Economic Loss
IAVGO	Industrial Accident Victims Group of Ontario
IWC	Injured Workers' Consultants
IWM	Injured workers' movement
LICO	Low-Income Cut-Off
LIM	Low-income measure (of poverty)
LOE	Loss of Earnings
MBM	Market Basket Measure (of poverty)
MCS	Multiple chemical sensitivities
NDP	New Democratic Party
NEL	Non-Economic Loss
ODSP	Ontario Disability Support Program
ODSPA	*Ontario Disability Support Program Act*
OFL	Ontario Federation of Labour
ONIWG	Ontario Network of Injured Workers Groups

OPSEU	Ontario Public Service Employees Union
OW	Ontario Works
PD	Permanent Disability
SAWP	Seasonal Agricultural Workers Program
SSM	Service System Manager
UFL	Unfunded liability
UFWA	United Farm Women of Alberta
UIW	Union of Injured Workers
WCB	Workmen’s Compensation Board
WSIB	Workplace Safety and Insurance Board

Chapter 1: Introduction

"The problem with injured workers is that they don't see themselves as people with disabilities." I overheard this statement, or words to that effect, at Congress[1] in 2013. The speaker was Dustin Galer, one of the few disability scholars whose research has touched on injured workers. My own experience working with the injured workers' movement confirms this assertion. However, my first thought on hearing this statement was that the benefits system for injured workers is better than that for people disabled outside the workforce, so not identifying as disabled people did not appear to be a "problem" in that regard. Rather, I argue that the superiority of workers' compensation can be understood in terms of the class location and class politics of the respective groups of people with disabilities seeking income security.

That injured workers identify as injured workers rather than as disabled people is one reason that they were completely absent from my coursework and comprehensives in Critical Disability Studies (CDS). (I understand that this has since changed [Geoffrey Reaume, personal communication.]) However, as I contemplated their absence, I realized that the experience of injured workers challenges some of the tenets of CDS. For example, Galer (2018b) described the divergence in conceptions of disability between disabled people and injured workers in his account of disability rights in the Canadian labour movement:

> The idea that physical disability was somehow a loss in need of financial reimbursement or could be so plainly quantified through medical testing was clearly at odds with the ideologies underpinning disability rights that also empowered disabled people to reconsider their self-identity and social roles. (p. 274)

[1] Congress of the Humanities and Social Sciences is an annual national meeting of Canadian academics.

The injured workers' movement, particularly in its formative years, also emphasizes the prevention of workplace injury, and therefore, impairment. In contrast, prevention, for some in the disability rights movement, is tantamount to the erasure of disabled people. However, discussing the prevention of impairment and disability among injured workers adds to the debates about the desirability of disability that is created by exploitation, colonization, war, and other forms of violence (Erevelles, 2011; Meekosha, 2011).

Along with injured workers, another discussion I found missing was a substantial discussion of class and disability, even within the social model, an avowedly materialist analysis of disability. Oliver (1990) situates disability within capitalism, which "suggests that all phenomena (including social categories) are produced by the economic and social forces of capitalism itself…. Hence, the category disability is produced in the particular form it appears by these very economic and social forces" (p. 2). Yet the analysis that follows from this premise does not include an explicit understanding of the role of the working class in challenging those "economic and social forces of capitalism". Class in CDS tends to be discussed largely in terms of the poverty and unemployment that disabled people experience, rather than as a specific analytical tool and a key element in social change. Since injured workers tend to be working-class people, examining injured workers' perspectives and experiences of impairment and disability, and their struggles to deal with them, introduces a different notion of class into the discussion of disability.

Purpose of the Study

To explore how injured workers and their class location challenge key tenets in CDS, I compare workers' compensation and "general" disability benefits (for lack of a better term). This

dissertation explores the implications of the different conceptualizations of disability for understanding the politics behind two very different income security schemes within the welfare state. The history of the development of these two income security systems provides insight into the role of disabled people's agency in bringing them about, allowing for the exploration of sources of political power for disabled people. For example, the following critical policy historiography shows that the class politics behind the development of workers' compensation resulted in a superior income security system for injured workers than for those with disabilities that were not work-related. Indeed, until structural and policy changes in the 1990s (Wilken, 1998), workers' compensation benefits were considered the "Cadillac" of Ontario income security schemes. This phenomenon, in turn, raises the question of how different monetary approaches to disability became socially acceptable. Through a Marxist understanding of class, state, and civil society, this dissertation is a critical examination of the role of the welfare state in reducing poverty, decommodifying labour, and reproducing or mitigating existing social inequities (Nelson, 1990) among people with disabilities.

Research Questions

The research questions probe the substantive history of each income security program. Relying on Marxist/feminist political-economic analysis, this analysis will attempt to discern what Raphael (2014) calls the "raw politics" behind the development and implementation of these policies. I seek to understand the difference in approaches to income security for injured workers versus others with disabilities through an examination of the political and economic conditions surrounding their development. This examination also includes an analysis of the nature, politics, and tactics of the key players in their development. The following factors are used to determine the nature of each program: eligibility criteria and application process;

comprehensiveness versus selectivity of the program; and the source of funding for the program and the rationale behind it. It also includes an assessment of how successful each income security program is/was in achieving income security for each group by addressing the issues of poverty reduction and decommodification of labour.

Broader research questions arise from this examination. Russell (2019) succinctly frames an overriding and defining question for this study when she asks, "…what role do public disability benefits play to further the machinations of production and wealth accumulation?" (p. 19). Throughout this examination, the divergences and convergences between injured workers and other disabled people are identified and discussed, culminating in the discussion of sources of effective political power for disabled people. Changing and differing concepts of disability underpin all of this examination.

Chapters Outline

Chapter 2 establishes the methods and theoretical framework for this study. This critical policy historiography uses comparative-historical methods, described in detail, to establish the facts of the history of each program. Historical narrative methods are appropriate for the "how" and "why" questions that this study seeks to answer (Little, 2010). Furthermore, as critical social research, this study is concerned with both describing history and advocating for change to address social injustices revealed in the historical narrative (Taylor, 1997; Troyna, 1994).

Chapter 2 also provides a detailed description of the theoretical frameworks used for this study, specifically Marxist and feminist political economy and welfare state typology. Marxist terms such as class, exploitation, dialectics, and the reserve army of labour are defined as to how they are used in the context of this study. Similarly, the discussion of feminist political economy explains how the concept of social reproduction is understood for this research. The chapter also explores the connections between Marxist political economy and feminist political economy to

situate disability within these frameworks. Some of the differences between a Marxist approach and an intersectional approach are also delineated, particularly regarding notions of class.

Welfare state typology theory is also explained in detail because of the importance of its concepts for analyzing the quality of the respective programs, as touched on above. Chapter 2 puts welfare state typology into the context of the larger debates about welfare state development and its role in capital accumulation.

Chapter 3 provides an unconventional literature review. Because the historical-comparative method relies on both primary and secondary sources, much of the relevant literature on the two income security programs is discussed in the historical narrative. The literature review in this research aims to determine the extent to which injured workers and workers' compensation are discussed in the CDS literature. However, because CDS is interdisciplinary, it is difficult to define the confines of its literature to develop a search strategy. Thus, the search strategy described in Chapter 3 is an attempt to roughly gauge the coverage of injured workers and workers' compensation in the CDS literature. The studies and articles found provide ample material to explore the tensions between the injured workers' movement and the disability rights movement identified above.

Chapter 4 begins the substantive analysis of the development of workers' compensation. The chapter covers the period from the late nineteenth century to the passing of the *Workmen's Compensation Act* in 1915. By delving into the class dynamics behind the emergence of the workers' compensation system in Ontario and applying the concepts of welfare state theory to the system that emerged, I establish workers' compensation as an institutional program in an environment of residualism with an explanation for how this came about (Guest, 1999).

The development of workers' compensation represented an important turning point in the legal and social understanding of the role of personal responsibility and moral failure as the cause of falling on "hard times". The prevalence and impact of work injury helped to redirect attention away from personal responsibility to social and political causes of impairment and disability. The early history of workers' compensation in Ontario also provides a vivid example of the role of the state in both its roles to further capital accumulation and in legitimizing the capitalist system, issues discussed more broadly in Chapter 6. Finally, the early history of workers' compensation describes how the workers' compensation system cemented the conceptualization of impairment and disability as a loss by framing the discussion in terms of dependence rather than disability.

Chapter 5 describes the development of benefits for the general disabled population to compare this development and the nature of the programs with workers' compensation. For context, this chapter covers some of the public discussion on social security and the development of several categorial disability benefits programs (such as allowances for the blind) that occurred after the emergence of workers' compensation until the introduction of disability in the early 1950s. This discussion offers a glimpse into the thinking behind the public's acceptance of a less generous and accessible program for people with disabilities acquired outside of the military or the workplace. The historical narrative makes clear that disability (arising outside of the military or the workplace) was conceptualized as "personal tragedy", but still worthy of a social response in the era of welfare state expansion. In assessing the agency of disabled people in this development, Chapter 5 also uses primary sources to portray the contribution of one seldom-depicted organization of disabled people, The Canadian Association of Incurables.

Drawing on the analytical tools provided by welfare state theory, Chapter 6 compares the two programs as social policy. The specific policy analysis tools assess the eligibility criteria for each program, the extent of coverage of the population of each program, and how well each program decommodifies disabled people's labour to establish workers' compensation as the superior program. In addition, the role of social class and the socio-political context in which the programs emerged are considered, leading to an in-depth theoretical discussion of the state in capitalist society. This analysis of the social location of the disabled people advocating for each program provides the foundation for a later discussion about how the group advocating for general disability benefits had to be state-oriented in its struggles, whereas injured workers were in a position to struggle directly against employers, as well as the state. In short, the chapter establishes that the differences between the two programs are firmly rooted in their function in the political economy, even as both programs fall short of decommodifying disabled people's labour.

Chapter 7 returns to the substantive history of workers' compensation, covering the period from 1915 to the near present. The literature on the history of workers' compensation after 2010 is scant, so much of the material presented here is derived from primary sources. Despite considerable scrutiny—three Royal Commissions and various reviews—the workers' compensation system in Ontario changed very little, except for some significant increases in the level of benefits, until the 1980s. The chapter describes those Commissions and some of those reviews leading to the game-changing Weiler Report in 1980 when law reform for workers' compensation in Ontario began in earnest. Not coincidentally, the 1980s also saw the rise of the injured workers' movement, also covered in some detail. Nor was it a coincidence that changes to workers' compensation accompanied the emergence of neoliberalism during this period. These

changes included an end to permanent pensions, cuts to benefits, modifications to return-to-work policies, and an end to the fundamental "pay-as-you-go" funding philosophy. Injured workers' advocates argued that these changes have thrust many injured workers into poverty, a claim inconsistently corroborated by research. Important to our purposes here, these changes eroded the institutional nature of workers' compensation by introducing elements of residualism, setting up a potential convergence of interests between disabled people and permanently impaired workers.

The next chapter continues the history of disability benefits necessarily set in the broader context of the development of social assistance in Ontario. Covering the period from 1930 to the present, Chapter 8 briefly describes some of the early categorial disability benefits (veterans' and blind persons' pensions) and their evolution within an expanding social assistance regime. Like the preceding chapter, some (but not all) of the ample discussion of both social assistance and disability is covered for context and analysis, particularly from the 1970s forward. This history is further complicated by the involvement of both federal and provincial jurisdictions. Indeed, as the historical narrative shows, federal politics were very influential in the provincial disability policies that developed (McColl, 2015).

As with the recent history of workers' compensation in Ontario, the history of the Ontario Disability Support Program (ODSP) has yet to be written. Consequently, the account presented here relies heavily on primary sources to piece together a historical narrative. Taken together with the better-documented history of social assistance in Ontario, the narrative tells the story of the victory of residualism over universalism in Canadian social security. Rather than understanding social assistance as a necessary collective response to systemic inequities,

neoliberal notions of self-responsibility and a double-edged emphasis on employment now dominate the thinking about social security as neoliberal ideology becomes solidified.

Chapter 9 offers a policy analysis of the two programs as they developed using the same criteria as the earlier comparison chapter: eligibility, population coverage, and level of decommodification. Doing so leads to a discussion of the impact of precarious employment on eligibility for workers' compensation. The analysis also lends itself to a discussion of the stigma associated with receiving benefits of any kind and how stigma is experienced differently between injured workers and other disabled people. The crux of the chapter, however, focuses on answering the question of the role of income security programs in capital accumulation. With the entire historical narrative of both programs laid out, we can delve into the political economy behind the rationale for the emergence of each program and for the changes that the narrative documents. This analysis demands a more in-depth look at neoliberalism and its predecessor, Keynesianism. The discussion of neoliberalism lends itself to an examination of a debate in CDS regarding the "right not to work" and whether or not refusing to engage in employment represents a means of resistance to capitalism.

The final chapter combines the Discussion and Conclusion of the study. As such, it answers the research questions outlined above to the best of the ability of the findings presented in the historical narratives and reflects on the findings in light of current realities. Issues raised in the literature review, including differing concepts of disability, are also revisited to point to some inconvenient ideas for CDS. For example, if disability is a near-universal experience (Garland-Thomson, 2012), how do we account for the disproportionate prevalence of disability in different social groups? Similarly, the chapter reflects on some of the implications of introducing a Marxist conception of class into the discussion of disability in an attempt to situate both

disability and income security programs for disabled people in the larger class struggle. This, in turn, necessitates a discussion of disability, work injury, and the labour movement.

Having presented evidence to support the argument for the primacy of political economy in the determination of income security programs for disabled people, the bulk of the chapter focuses on the question of sources of political power for people with disabilities. Political power is discussed in the context of current tendencies and realities of the disability and injured workers' movements. This discussion includes a reframing of the question to clarify the objectives of each movement, with a call to the disability movement in particular, to be more specific and concrete about what would constitute the foundations of a disability-positive society that ensures income security.

Researcher's Standpoint

In recognition of the influence it has on how one approaches research, this section describes my social location as a researcher. As noted, this research grew out of my involvement with the injured workers' movement. This work started in the mid-1980s as the director of the only occupational health clinic in an Ontario community health centre. The qualifications that brought me to that position were a Master's in Health Sciences, Health Promotion and a baccalaureate certificate in occupational health and safety. The health promotion degree included a heavy emphasis on the social determinants of health and the prevention of disease, both of which influenced my approach to this research. After a long professional detour in community health and medical editing, I began working with injured workers again in the mid-2000s as the part-time Research Coordinator for the Research Action Alliance on the Consequences of Workplace Injury. The Alliance was a joint community-university initiative funded by the Social Sciences and Humanities Research Council to investigate the positive and negative impact of the

workers' compensation system on injured workers in Ontario. I also have been sitting on the Board of Directors of the Injured Workers Community Legal Clinic for over a decade. Thus, I approach this research as an advocate for injured workers. In keeping with a critical social research perspective, my goal is to present the findings from the perspective of injured workers and disabled people receiving benefits. However, my experience with the latter group is much less extensive than my experience with injured workers.

I am not an injured worker, nor have I been a recipient of provincial disability benefits, though part of my interest in this topic stems from finding myself without an income when I was first physically disabled in mid-life. When I became physically disabled with a spinal cord injury, I had just started a new position and had not yet qualified for the disability benefits offered by the employer. I was also initially denied Employment Insurance (EI) Sick Benefits because I had a 6-week gap in my employment history before starting the new job, despite over 13 years of continuous employment before that. I appealed and won and later was granted Canada Pension Plan-Disability (CPP-D) benefits when I was no longer eligible for EI Sick Benefits. My husband was newly self-employed and earning very little income, so I have experienced disability-related poverty. Thankfully, this experience was relatively short and mitigated by living in a housing cooperative that had a subsidy available.

Other factors that undoubtedly affect my standpoint, both consciously and unconsciously are that I am a White, cis-gendered, heterosexual woman with an English heritage; that is, I am part of the dominant, colonial culture in Ontario. This dominance was particularly strong when I was growing up from 1955 through the 1970s in a conservative (small and big "c"), quietly racist, working-class household. My class position is the factor that has been the most influential on my standpoint and identity.

A Note on Language

I use the terms “disabled people” and “people with disabilities” interchangeably in this work. The term “disabled people” tends to be preferred by people who see their disabilities as a key part of their identities, whereas people-first language arose to emphasize personhood with disability as only one aspect of identity. There is an ongoing debate about which term is more appropriate, but both come from a place of respect and the effort of disabled people to define themselves, rather than being defined by society (Reaume, 2014), so I use both depending on syntax.

Contribution of this Research

The mysterious case of the missing injured worker from CDS (see Chapter 3) is less mysterious in light of their experience of disability and their struggle for compensation for a loss as the focus of their movement. Thus, the exploration of these different concepts and experiences of impairment problematizes facile notions of disability. For example, there have been several critiques of the social model of disability (discussed in more depth in Chapter 2) that argue that the separation of impairment and disability disembodies disability (Crow, 1996; Morris, 2001). More simply put, even from a disability-positive perspective, we still need the space to talk about the difficulties we have with our bodies and minds (Withers, 2012). A discussion of injured workers helps to create that space.

Importantly, the discussion of injured workers introduces a class analysis to understanding disability that can deepen our understanding of the importance of class beyond an analysis of poverty or classism (also discussed in Chapter 2). A class analysis opens up little-discussed possibilities for new ways to resist and even overcome disability oppression, particularly economic oppression. Further, since work injury and illness are often at the heart of

exploitive economic processes, this work also contributes to the emerging literature that calls to decolonize disability studies by recognizing how trauma, violence, and exploitation cause disability and affect populations disproportionately (Grech, 2015; Meekosha, 2008).

This research also contributes to the history of disability in Ontario and Canada by describing and analyzing the work of The Canadian Association of Incurables, possibly for the first time in CDS. This work also offers fledgling histories of ODSP and workers' compensation after 2010 with the hope that this will inspire more in-depth work in these areas.

Chapter 2: Methodology and Theoretical Frameworks

Critical Policy Historiography

This study uses primary and secondary sources and comparative-historical methods to generate and analyze data for critical policy historiography of the development of workers' compensation and general disability benefits. The criteria for historical studies are that they ask "how and why" questions, the context of the phenomenon cannot be separated from the object of study, and the researcher has no control over events or behaviours (Yin, 1994). According to Gale (2001), policy historiography is concerned with three main questions that are particularly relevant to this study: "(1) what were the 'public issues' and 'private troubles' within a particular policy domain during some previous period and how were they addressed?; (2) what are they now?; and (3) what is the nature of the change from the first to the second?"

The reference to "public issues" and "private troubles," of course, draws from the classic work, *The sociological imagination* by C. Wright Mills, first published in 1959. For Mills, "troubles" occur in the private sphere of individuals and their relationships, whereas "issues" occur in the public sphere of social structures (Mills, 2000). Understanding the linkages between the two is the task and the promise of the sociological imagination (Mills, 2000). Gale (2001) further argues that policy historiography is also capable of addressing another relevant question for this study: "What are the conditions that make the emergence of a particular policy agenda possible?" (p. 157).

However, Gale (2001) goes on to distinguish "critical" policy historiography, arguing that a critical perspective adds additional questions, also relevant to this study: "What are the complexities in these coherent accounts of policy? and…what do these reveal about who is advantaged and who is disadvantaged by these arrangements?" (p. 155). With the addition of

these questions, Gale (2001) places critical policy historiography within the realm of "critical social research", which is "concerned not only with unpacking reality, but [with] suggesting ways of altering it; to provide genuine support, in other words, in the struggle against the structural oppression of discernible groups" (Troyna, 1994, p. 82; see also Taylor, 1997).

Comparative-historical Methods

Comparative-historical research is conducted through a straightforward, though often iterative, three-step process: gather evidence, analyze the evidence, and present the results (Lange, 2013). Although comparative-historical methods are widely used in sociology and political science,[2] the actual methodology is often ill-defined (Lange, 2013). One reason for this ill definition is that comparative-historical analysis involves "detective work" (George & Bennett, 2005; Lange, 2013), the outcome of which is highly dependent on the skill and insights of the detective (Lange, 2013) and the quality of argumentation (Little, 2010; Nelson, 1990). It is also difficult to define the comparative-historical method because it is not a single method; rather, it combines various methods to achieve its ends.

Primary Within-case Methods: Historical Methods

Lange (2013) differentiates between primary within-case methods (primary because they are done first in the process) and secondary within-case methods. Primary within-case methods include historical methods, internal comparison, network analysis, ethnography, linguistic methods, and archaeological methods. Historical narrative is the most commonly used method to generate data (Lange, 2013) and is the method used in this study. Historical narrative describes but does not try to explain, a phenomenon (Lange, 2013). Comparative-historical researchers

[2] According to Lange (2013) "books using comparative-historical methods won one-quarter of the American Sociological Association's award for best book between 1986 and 2010" (p. 40). Scholars who use these methods range from Karl Marx to Max Weber to Barrington Moore to Charles Tilly.

often use primary sources to create a historical narrative that will provide data for analysis, but more frequently, they use information from secondary sources (Lange, 2013). This is because comparative-historical methods usually analyze broad questions concerning large-scale events, such as revolutions and major socioeconomic transformations. Amenta (2009), however, argues that it is no longer sufficient for historical sociologists to rely solely on secondary sources for causal narratives (see also Bonnell, 1980; Lange, 2013). Rather, historical sociology "scholarship tends to seek less general claims rooted in more in-depth knowledge" (Amenta, 2009, p. 353) using primary sources akin to the way historians do. He further argues that historical sociologists also need to be more like historians in addressing "issues of order, timing, and pace in making conjunctural causal arguments" (Amenta, 2009, p. 353).

As mentioned, a common unit of analysis in comparative-historical research is an entire country or region of a country. Although the two income security programs of interest in this study do not represent as broad a topic as entire countries or social revolutions, they are complex enough to allow for historical narrative as the primary within-case method. There is a model for the current study in the feminist literature on the welfare state. Describing her methods as "case histories", Nelson (1990) uses comparative-historical methods at the policy level to conduct a feminist analysis of the origins of the workers' compensation system and the mothers' aid program in the United States welfare system. She demonstrates that differences between these two programs reflect important class, gender, and racial relationships and ideology that support the notion of separate private and public spheres, which are institutionalized in the administration and delivery of the programs (Nelson, 1990). Amenta (2009) also used causal narrative to analyze policy in his assessment of the impact of a social movement, the Townsend Plan, on the development of old age security in the United States.

Secondary Within-Case Methods: Causal Narrative

Secondary within-case methods are used to analyze the data generated by primary within-case methods. The most common of these methods is "causal narrative". Causal narrative depends on historical narrative to describe the social phenomenon under study, (Lange, 2013). Simply put, a causal narrative is "an account of the unfolding of events, along with an effort to explain how and why these processes and events came to be" (Little, 2010, p. 29). Little (2010) outlines the key questions factors in causal narrative as understanding how the context of the phenomenon played a role in the outcome, the role of agency, that is actions and choices that were made and why they were made, and "any other causal processes—either social or natural—that may have played a role in … the outcome of interest…" (Little, 2010, p. 29). Ragin (1987) describes this process as "piecing evidence together in a manner sensitive to historical chronology and offering limited historical generalizations sensitive to context" (p. 35).

Comparative Methods

Ragin (1987) argues that "comparison is essential to empirical social science" because it "provides a basis for making statements about empirical regularities and for evaluating and interpreting cases relative to substantive and theoretical criteria" (p. 1). This study is a small-N comparison of two cases of income security programs for people with disabilities. As with other qualitative methods, small-N comparisons aim to provide rich insight that can be obtained only by closely examining a small number of cases, rather than seeking broad generalizations beyond the particular cases. One factor contributing to the limitations on generalizations is that small-N studies are often used to highlight the differences between cases (Lange, 2013), which is appropriate for the current study, because it is the differences between the two programs that are of intrinsic interest.

According to Lange (2013), small-N comparisons are common in comparative-historical studies and are well suited to within-case analysis methods. Indeed, another reason the comparative-historical method is hard to define is that

> The combination of small-N comparison and within-case methods is usually so complete that it can be difficult to separate the two. Similarly, the insight of small-N comparison and within-case analysis cannot be easily separated, as both are commonly intertwined within the same narrative and strengthen one another. (Lange, 2013, p. 85)

Like the historical methods for this study, the comparative method is also narrative. Narrative comparison does not identify variables and the relationships between them (Lange, 2013). Rather, it considers factors that are not easily quantified. Lange (2013) argues that causal narrative and narrative comparison work together well, because this combination allows for "focus on diverse elements of processes, including sequencing, interactions and configurations, exogenous factors, and critical events" (Lange 2013, p. 89) to identify those components that appear to be the most likely to have produced certain outcomes. Despite the limitations of this method for making generalizations, narrative comparison is used to generate both explanatory and descriptive insights into the topic under study (Lange, 2013).

There are three major subtypes of narrative comparison: process-oriented, mechanistic, and ideal-type. This study uses process-oriented narrative comparison, which is adept at examining causes for differences and similarities among phenomena, so is appropriate for analyses that look at several varied causes (Lange, 2013). Process-oriented comparison relies on the use of counterfactuals, meaning the researcher must assess the evidence to consider what might have happened if one "case was similar to or different from another case in one or more

ways" (Lange, 2013, p. 88). Thus, process-oriented comparison is an ideal method for looking at two policies aimed at income security for people with disabilities to assess those factors that were sufficiently different to reach such different outcomes.

Structured and Focused Comparison

The qualitative comparative analysis of this study also borrows from the "structured-focused" comparison, widely used in comparative case studies (Kaarbo & Beasley, 1999). According to George and Bennett (2005), the method is structured in that general research questions are applied to all cases under study, which guides and standardizes the data collection for systematic comparison during analysis. The method is "focused" because only certain, specific research objectives within a theoretical focus appropriate to those objectives are examined (George & Bennett, 2005). As such, the structured-focused method allows "[a] researcher's treatment of a historical episode…to be selectively focused in accordance with the type of theory that that the investigator is trying to develop" (George & Bennett, 2005, p. 70; see "The role of theory" below for further discussion). The structured and focused method also allows for the "orderly cumulation" of evidence across cases, also important in theory development (George & Bennett, 2005, p. 68.) Yin (1981) warns however that "There are no fixed recipes for building or comparing explanations" (p. 61) and again likens the process to detective work. Little (2010) defines the criteria for a successful causal narrative as the factuality of the claims included in the historical account, the overall persuasiveness of the interpretation of the evidence, and the ability for causal claims to be tested by empiricism and logic.

The Role of Theory

As discussed, causal narrative is used to generate both explanatory and descriptive insights, but limits a researcher in making broad theoretical generalizations, especially when only a small number of cases are examined (Lange, 2013). Thus, causal narrative is not well suited to

hypothesis testing, but it is well suited to theory development, particularly when paired with process-oriented comparison, because it demands that a researcher analyze complex causal processes over time, as well as the conditions that affect those causal processes. This level of detail allows "researchers to consider diverse aspects of phenomena that might be theoretically relevant" (Lange, 2013, p. 145).

Little (2010) argues that "We use narratives to connect the dots of things that have happened; to identify causes and meanings within this series of events; and to select the 'important' events and processes out from the ordinary and inconsequential" (p. 34). Theory in comparative-historical methods, then, can be used in determining what is important and in "selecting and ordering the facts" (Moore, 1993, p. 521). Or as Bonnell (1980) puts it, theory provides "the medium for handling historical evidence" (p. 165). She likens the process to filling "'empty theoretical boxes' with empirical evidence" to assess how well the theory can be used for interpreting historical events.

The danger of using theory in this way, however, is the temptation for "cherry-picking" evidence to fill those boxes in a way that conforms to the chosen theory (Bonnell, 1980; Lange, 2013). The strategies for avoiding this kind of bias in comparative-historical research include being self-conscious of this danger, carefully assessing the evidence provided by both primary and secondary sources, and increasing the number of primary sources used (Lange, 2013; see also Amenta, 2009). Mertens (2005) argues that perhaps a greater danger is that research "rests on unexamined, unrecognized theory" (p. 7).

Theoretical Frameworks

Income security is, by definition, an economic issue. Accordingly, this study draws from several related theoretical perspectives: a materialist analysis of disability, Marxist political

economy, social movement theory, feminist political economy, and theories of the welfare state under capitalism.

A Materialist Analysis of Disability

According to Gleeson (1997), the conceptual distinction between impairment and disability is fundamental to a materialist understanding of disability. With impairment referring solely to the function or lack thereof of a bodily mechanism or system, there is no "*a priori* assumption made about the social meaning or significance of impairment" (Gleeson, 1997, p. 194). Thus,

> Impairment can only be understood concretely viz. historically and culturally through its socialisation as disability…. Attitudes, discourses and symbolic representations are, of course, critical to the reproduction of disablement, but are themselves the product of the social practices which society undertakes in order to meet its basic material needs. (Gleeson, 1997, p. 194)

Also fundamental to a materialist analysis is the contention that how humans interact with nature to survive (means of production) gives rise to particular social formations (Gleeson, 1997; Marx, 1846/1978; Wilson, 1983). Further, "all social relations are products of [these] practices" (Gleeson, 1997, p. 191), including disability. The social model of disability conceptualizes current experiences of disability as a social construction rooted in "the material and ideological changes associated with capitalist development" (Oliver & Barnes, 1998, p. 61). Certainly, many disability scholars agree that the experience and consequences of having a physical, sensory, or mental impairment, and hence how it was understood and experienced, was different in agrarian-based economies, where the family and village were the main economic units (Barnes, 1991; Gleeson, 1999; Oliver, 1990; Russell, 1998; Russell, 2002; Stone, 1984;

Winzer, 1997). For disabled people, the important distinction between an agrarian mode of production and a capitalist mode of production is the emergence of the "direct reciprocity between individual work and individual reward" (Gleeson, 1999, p. 64) in an industrial economy.

Gleeson is, of course, referring to the commodification of labour power. In an industrial society with the requirement for most people to sell their labour power to survive, "[d]isability became an important boundary category through which persons were allocated to either the work-based or needs-based system of distribution" (Russell, 2019, p. 17). Those deemed or recognized as "less exploitable" are "purposively shifted onto social welfare or segregated into institutions" (Russell, 2019, p. 17). For a materialist analysis, then, "the primary cause of oppression [under capitalism] is economic" (Russell, 2019, p. 13).

Viewing disability as a social construction specific to the capitalist mode of production also lays the foundation for understanding it as a neutral or even positive phenomenon (Charlton, 1998; Swain & French, 2000), a key component of the social model of disability and disability politics (Withers, 2012). This contention has prompted debate within CDS, even among those who endorse the social model. For example, Crow (1996) acknowledges the distinction between impairment and disability as distinct social concepts but argues that all experiences of disability must be considered, including any "personal struggle related to impairment [that] remain[s] even when disabling barriers no longer exist" (Crow, 1996, p. 58). Including injured workers in the discussion of impairment and disability contributes to expanding our understanding of "all experiences of disability". As Withers (2012) puts it, a model of disability needs to provide space for talking about those times we have difficulties with our bodies.

Marxist Political Economy

There is much to unpack here. Let's begin with the concept of commodification. Capitalism demands that everything be turned into commodities for exchange in the market, including basic human needs such as food and shelter. For Marx, the commodification of labour power distinguishes capitalism from all other modes of production (Marx, 1867/1978; Wilson, 1983). A commodity must have both use-value and exchange-value. Use-value exists in the function of a good to meet a human need. Exchange-value is realized only when a good is not used right away but is exchanged for something else (Mandel, 1973; Marx, 1891/1978; Wilson, 1983).

Marx locates exchange-value in the amount of labour that has gone into a commodity's production rather than solely in the price realized in the exchange process (Hunt & Lautzenheiser, 2011; Mandel, 1973; Marx, 1891/1978, Wilson, 1983). In Marx's labour theory of value, exchange-value is not determined by the actual number of hours of labour performed by any individual worker, nor do "slow workers create more value than fast workers" (Wilson, 1983, p. 178)—quite the contrary. For Marx "value" reflects "the socially necessary labor time" needed for the production of a good (Wilson, 1983, p. 178). "Socially necessary" labour refers to "the quantity of labor necessary under the average conditions of labor productivity existing in a given country at a given time" (Mandel, 1973, p. 30). Mandel (1973) adds that skilled labour is "taken as a multiple of simple labor" (Mandel, 1973, p. 3; see also Marx, 1867/1978; Marx, 1891/1978). The value that is created by the amount of labour that workers spend in producing something that is over and above the amount they would spend if they were simply reproducing themselves is "surplus value" or profit (Mandel, 1973; Marx, 1867/1978; Marx, 1891/1978).

"Exploitation" is the technical and specific term for the extraction of surplus value (Marx, 1867/1978; Wilson, 1983). Although this term often connotes low wages and poor working

conditions, in Marxism, exploitation is the mere act of this extraction of surplus value, regardless of the conditions in which it occurs. Further, and importantly, the extraction of surplus value "is required by the internal logic of capitalism" (Applebaum, 1978, p. 72). It is within this concept of exploitation that Russell (2019) deems some disabled workers to be "less exploitable" and consequently, they are systematically discriminated against in employment.

This understanding of exploitation is important for people with disabilities because it exposes how hiring workers who may be less "productive" or require accommodations goes against the very foundation of capitalist production. As such, it helps us to understand the high rates of unemployment among people with disabilities in objective and material terms. Little wonder, then, that

> Concerning the social condition of disablement, the focus is on the struggle of the class of disabled persons for the right to enter the labor force and on the place the disabled body occupies in the political economy of capitalism" (Russell, 2019, p. 12)

Russell is not using the word "class" in the Marxist sense of the term (discussed below), but her comment represents a widely held belief in the disability rights movement.

Unfortunately, and ironically, this focus on employment plays directly into a neoliberal "'social ethos'… that encourages… the "active" and "enterprising" citizen" (Pinto, 2010, p. 121). As the historical narrative will show, "The social policy implications of this are that "[p]rograms aimed at improving *individual employability* are chosen over initiatives that fight structural barriers and work to achieve full citizenship for all people with disabilities regardless of their status in the labour market (Pinto, 2010, p. 121, original emphasis). This is not to say that disabled workers should give up the fight for employment and accommodations. Nor does it

argue against the evidence that many disabled workers are highly successful and that often accommodations cost little or nothing to put into place (Job Accommodation Network, 2023). Rather, it is to understand the "raw politics" behind high unemployment and poverty rates among people with disabilities. Understanding these politics opens the door to moving beyond the negative notions of dependency so often associated with social assistance benefits of any kind. As Pinto (2010) argues, "it is necessary to understand how policies that equate employment with social inclusion shape social identities and construct disability and dependence…" (p. 126).

Another implication of this understanding of exploitation concerns materialist notions of class. Again, the word "class" has certain connotations associated with socioeconomic status and social ranking. However, the materialist concept of class, like exploitation, is specific: class is a social relation determined by one's relation to the means of production. Under capitalism, the owners of the means of production, the bourgeoisie, compose one class, and those who sell their labour power compose another, opposing class (Marx, 1846/1978; Marx, 1891/1978, Wilson, 1983; Wright, 2009). In *The communist manifesto*, Marx famously claimed that "The history of all hitherto existing society is the history of class struggles" (Marx & Engels, 1848, para. 5), because he observed that social change and transformations came about because of the opposition and confrontations among various classes. Under capitalism, however, he argued that the class structure was simplified from the days of "patricians, knights, plebeians, [and] slaves" in ancient modes of production and the "feudal lords, vassals, guild-masters, journeymen, apprentices, [and] serfs" of feudalism (Marx & Engels, 1848, para. 7) into "two great classes directly facing on another—Bourgeoisie and Proletariat" (Marx & Engels, 1848, para. 9). As this research shows, this definition of class has implications for our understanding of the nature of oppression, including disability oppression.

However, another of Marx's concepts of class is also important for our purposes here: the lumpenproletariat or surplus population, that is, those tenuously in or completely outside the labour market. Currently, many people with disabilities fit this category. According to Barrow (2020), most scholars consider the concept of the lumpenproletariat in Marx's and Engel's writings as "ill-defined" and used "only as a vague and inconsistently deployed political epithet" (p. 30). The fact that it was used as an epithet is the first clue as to how Marx and Engels viewed this population. Barrow (2020) refers to debates about whether Marx and Engels considered the lumpenproletariat as a non-class or part of the working class. He concludes, based on Marx's and Engel's writings, that they did not see the lumpenproletariat as part of the industrial proletariat, but they did see this heterogenous population as part of the working class, except those with a chronic lack of connection to the labour force (Barrow, 2020). In Volume 1 of *Capital*, Marx wrote, "Every worker belongs to [the surplus population] during the time when he is only partially employed or wholly unemployed" Marx, 1867/1990, p. 794).

The reserve army of labour referred is part of the surplus population. The terms "lumpenproletariat" and "reserve army of labour" are related but not synonymous (Barrow, 2020). Marx (1867/1990) described the reserve army as a "mass of human material always ready for exploitation by capital in the interests of capital's own changing…requirements" (p. 784). Marx saw the creation of this reserve as a dialectical process integral to the process of capital accumulation. Applebaum (1978) explains, "The dialectic, as utilized by Marx in his economic analyses, refers to a mode of understanding empirical socioeconomic phenomena as *necessarily* yet *contradictorily* interrelated" (p. 76, original emphasis).

A dialectic is apparent in Marx's observation that one key to capital accumulation is raising productivity through investing in increasingly efficient processes and capital to create

more value with fewer workers (Barrow, 2020). This greater amount of fixed capital, however, also entails higher costs (Shaikh, 1983) and changes the ratio of fixed capital to variable capital (mostly labour costs). When investment in fixed capital reaches a high level, "additional increases in productivity are an inadequate strategy to maintain profitability" because only labour power can create surplus value (Wilson, 1983, p. 194; see also Applebaum, 1978). Ultimately, this leads to the tendency for the overall rate of profit in the economy as a whole to decline, even while some individual capitalists maintain or increase their profits (Applebaum, 1978; Hunt & Lautzenheiser, 2011; Wilson, 1983).

Competition among capitalists also creates the need to produce more value with fewer workers. The contradiction of competition resides in the fact that if other types of employment do not replace those jobs, workers must consume less, leading to recession and a larger surplus population (Agger, 1991; Applebaum, 1978; Wilson, 1983). Barrow (2020) summarizes the argument as follows:

> The process of displacing labor (variable capital) relative to machinery and technology (constant capital) is what Marx calls the rising organic composition of capital. Thus, while the initial (growth) of new industries may absorb a portion of the surplus population, as the organic composition of capital continues to increase over time, it not only fails to absorb the surplus population, the rising organic composition of capital contributes to an increase in the relative surplus population. (p. 36)

Marx identifies "three forms which [the surplus population] always possesses: the floating, the latent, and the stagnant" (Barrow, 2020, p. 38; Marx, 1867/1990, p. 794). The floating surplus population comprised "retirees and the elderly" (Barrow, 2020, p. 38). Marx

(1867/1990) observed that "the consumption of labour-power by capital is so rapid that the worker has already more or less completely lived himself out when he is only half-way through his life" because of the strenuous nature of the work and industrial accidents and diseases (p. 795). The latent surplus population comprised agricultural labour whose work became seasonal and migratory under capitalism (Barrow, 2020). Finally, the stagnant element of the lumpenproletariat, Marx (1867/1990) describes as "part of the active labour army, but with extremely irregular employment. Hence it offers capital an inexhaustible reservoir of disposable labour power" (p. 796). Barrow (2020) argues that this segment of the lumpenproletariat is an example of how

> the development of capitalist relations of production…systematically de-compos[es] the working class to the point of casualizing and pauperizing ever-larger proportions of its labor force…—even at times driving wages below the amount that is socially necessary to the extended reproduction of labor power. (p. 41)

This is important to Barrow's (2020) contention that "elements of the relative surplus population and the industrial reserve army are spun off from the proletariat as a result of the continuous de-composition and re-composition of the working class" (p. 42), making the boundaries between the lumpenproletariat and the proletariat fluid and constantly shifting. These ideas are important both for understanding the class position and sources of political power for disabled people and the dynamics of income security policy. Russell (2019) observed that, as disabled people increasingly try to get into the labour market, fuelled by anti-discrimination legislation, they may become a "new" reserve army of labour, that is, adding to the visible numbers of the

unemployed that serve to keep wages low and to be called upon during periods of labour shortages.

Marx's segmentation of the lumpenproletariat continues. Beneath those with a tenuous relationship to the labour force are those with no relationship to the labour force. This "lowest segment" of the surplus population "consists of three distinct categories of nonworkers" (Barrow, 2020, p. 41). The first category is those physically able to work, but not able to find work—which sounds very much like many disabled people today. The second category is people who are poor or pauperized in Marx's words, because their wages are below the level needed for subsistence or they are casual or seasonal workers. This group also sounds like many disabled people today. The third category and "the lowest sediment" of society and includes

> the injured and disabled, the chronically ill, the mentally ill, elderly widows, discarded orphans and abandoned children, drug addicts and chronic alcoholics, men who have lived well past the average male lifespan, and middle-aged males whose skills have been rendered obsolete by changes in the industrial structure of the capitalist economy and by continuing technological advancement. (Barrow, 2020, p. 43)

And let us not forget the vagabonds and criminals (Barrow, 2020). Thus, in keeping with his times, Marx throws disabled people in with criminals, just as they were in Poor-Law institutions.

It is easy to conclude then, as Bengsston (2016) does, that Marx viewed disability as "something negative and out of the normal" (p. 154). However, perhaps he could be forgiven considering the working conditions of the mid-to-late nineteenth century. Indeed, according to Harvey (2000), work-related disability is central to Marx's analysis of capitalism.

> Marx's primary point of critique of capitalism is that it so frequently violates, disfigures, subdues, maims, and destroys the integrity of the labouring body (even in ways that can be dangerous to the further accumulation of capital.) It is, furthermore, in terms of potentialities and possibilities of that labouring body…that the search for an alternative mode of production is initially cast. (p. 108)

As such, Marx emphasizes that many acquired impairments are directly related to one's class position in the capitalist mode of production. His focus on the impacts on the disabilities of women and children further emphasizes the disproportionate distribution of disability in a capitalist society (Bengsston, 2016).

Thus, Marxist theory recognizes capitalism's inherent instability. Unemployment under capitalism is not an aberration, but an integral aspect of its own dynamic, which keeps wages low due to competition among workers for scarce jobs (Russell, 2019). This leads Marx (1867/1990) to observe that the reserve army of labour "belongs to capital just as absolutely as if [capital] had bred it at its own cost" (p. 784).

Intersectionality, Social Movement Theory, and Political Economy

The arguments of the primacy of economics and class immediately distinguish materialism from an intersectional analysis that argues against "single-axis" analyses (Crenshaw, 1989) in favour of a "matrix worldview" (May, 2015). For intersectionality, the nature of inequality and inequity is always the outcome of how the intersection of identities, social locations, power relations, and lived experiences combine, interweave, and reinforce one another (Hankivsky. 2014; May, 2015) rather than "the result of single, distinct factors" (Hankivsky, 2014).

That is not to say that a materialist analysis does not recognize intersections of oppression. It does so, however, from a different viewpoint. For a materialist analysis, "[o]ppression is the systematic subordination of a recognized social group (e.g., women, Aboriginal peoples, lesbians, and gays) by a dominating group (e.g., men, European colonizers, heterosexuals) and the impact of subordination on the oppressed group" (Luxton, 2006, p. 17). Further, oppression takes many forms, such as social exclusion leading to reduced access to economic and social resources such as education and jobs. Oppression also takes the form of political discourses that claim the inferiority of the oppressed groups (Luxton, 2006). Oppression is, however, conceptually distinct from "exploitation" where exploitation is the extraction of surplus value. Thus, as Lewis (2016) explains, within this conceptualization, "class is not an *additional vector* of oppression" (p. 274, original emphasis). Instead, class is "primary…not in the sense of more important, but in the sense of being the limit, the foundation, the point where profit is extracted and the point where it can be challenged. The centrality of class is tactical, not moral" (Lewis, 2016, pp. 274–275). The significance of this understanding of class is that it marks the proletariat as the only class *structurally* able to end class society (Draper, 1978). Yet, there is very little specific mention of working-class politics and the role of the working class in addressing disability oppression in disability scholarship (see Galer, 2018a for an exception) even within avowedly materialist analyses. Examining injured workers' perspectives and experiences of disability, and their struggles to deal with it, necessarily introduces the issue of class into the discussion.

The distinction between oppression and exploitation has other strategic and theoretical implications. Oppressed groups tend to form social movements in response to their oppression, often based on their shared identity. Social movements tend to emphasize "new" and various loci

of struggle and resistance beyond the "point of production" (Agger, 1991), which is identified as key in materialist political economy. Indeed, the shift in emphasis for these new social movements is a direct result of a political perception that theories and practice focused on class and state politics do not adequately address oppressions based on identities arising from gender, sexuality, race, ability, etc. The "politics of difference" emerged with the rise of postmodernism and post-structuralism, which argue for the demise of "grand theories" such as materialism that attempt to explain reality broadly across all phenomena. A politics of difference seeks to "develop and promote positive self-identifications", affirmation of differences, inclusion without assimilation, and social equality of both individuals and groups based on an end to discrimination and positive public policy for that group (Rice & Prince, 2000, p. 157).

The conceptualization of disability as difference is crucial to challenge the hegemony of the medical model of disability as pathology and tragedy and to develop an understanding that disability is a "human variation" (Scotch & Shriner, 1997) "inherent in the human condition" (Garland-Thomson, 2012, p. 339; see also Russell, 2019). Thus, disability scholarship tends to see the disability rights movement as a new social movement (Oliver, 1990, Shakespeare, 1993). Victories are measured by the development and implementation of human rights legislation; measures to gain and maintain employment; successful challenges to the medicalization of disability and the demeaning processes associated with the welfare state; the creation of disabled-led organizations and direct payments for services; and the fostering of a positive disability culture and identity (Barnes, 2002; Swain & French, 2000).

Fraser (2003) has characterized the rise of new social movements as shifting "the center of gravity [of struggle] from redistribution to recognition" (p. 89). She argues that the conditions of "post-Fordism, post-communism, and globalization" (Fraser, 2003, p. 90) in the early twenty-

first century shifted for many social movements. Post-Fordism refers to the decline of a prosperous manufacturing base in many industrialized countries. Post-communism refers to the fall of the Soviet Union, which Fraser argues, drove "the broad delegitimation of economic egalitarianism" (Fraser, 2003, p. 90). Globalization erodes the role of the nation-state and the welfare state in containing struggles for economic justice, while the migration it engenders brings us into closer contact with people different from ourselves. Fraser (2003) further argues that these circumstances tend to disassociate to "displace" issues of redistribution at the very historical moment when "an aggressively expanding neoliberal capitalism is radically exacerbating economic inequality" (p. 92). Identity-oriented politics, she argues, tend to simplify and reify group identities (Fraser, 2003).

Others, such as Weir (1993), object to such a sharp political demarcation between the politics of class and the politics of identity. (See also Vosko, 2002). Weir (1993) welcomes notions of multiple sources of domination and thus, the need for multiple and diverse "political actors". She further questions just how "new" these political approaches really are, arguing that cultural and identity movements have long been embedded in socialist movements. She notes that E.P. Thompson's historical account of the English working class is as much about a rising cultural identity as it is about political-economic development (Weir, 1993). Similarly, Vosko (2002) argues that "many struggles for gender equality as well as many struggles against racism and heterosexism, are, by definition, struggles for redistribution" (p. 77).

That said, Galer (2018a) discerned a "recognition vs. redistribution" tension between the injured workers' movement and the disability rights movement. He noted that "because injured workers are "[p]reoccupied with their experience of disease and injury" and draw support "from their peers in labour organizations and injured workers associations, they aligned themselves

with a collective outlook that was distinctly different from disability rights, identity politics and equity activism" (Galer, 2018a, pp. 191–192). Injured workers tend to be working-class people by definition. The disability rights movement has its roots in diverse groups, sometimes cooperating and other times in conflict with one another, such as parents advocating for their disabled children and those working for disabled-led organizations (Galer, 2018a). Furthermore, general disability benefits are meagre, reflecting a Poor-Law mentality in their design. Thus, an examination of the design and outcomes of the differences between these two income security programs and their origins offers insights into the differences between these two types of movements, as well as notions of exploitation and oppression as they are defined here.

Feminist Political Economy

Feminist political economy offers a deep understanding of the relationship between exploitation and oppression, especially gender oppression, because it helps to situate oppressions within the political economy through its conceptualization of social reproduction. The term, social production, is broad and meant to include

> …the activities and attitudes, behaviors and emotions, responsibilities and relationships directly involved in the maintenance of life on a daily basis, and intergenerationally. Among other things, social reproduction includes how food, clothing, and shelter are made available for immediate consumption, the ways in which the care and socialization of children are provided, the care of the infirm and elderly, and the social organization of sexuality. Social reproduction can thus be seen to include various kinds of work—mental, manual, and emotional—aimed at providing the historically and socially, as well as biologically, defined care necessary to maintain existing life and to reproduce the next generation. (Laslett & Brenner, 1989, pp. 382–383)

As Luxton (2006) points out, to be useful analytically, social reproduction must be understood as more than a laundry list of daily activities. It must be emphasized that social reproduction is essential to the ongoing reproduction of the capitalist economy because the capitalist system cannot replicate itself without the replication of labour power (Luxton, 2006; Vosko, 2002). Therefore, understanding production and social reproduction as interdependent parts of one socioeconomic process "allows for an explanation of … structures, relationships, and dynamics…" (Luxton, 2006, p. 37).

Further and importantly for this study, the feminist political economy conceptualization of social reproduction includes an analysis of the impact of neoliberalism on the role of the state and civil society (third-sector and voluntary organizations) in the social provisioning that helps makes it possible for human beings to reproduce themselves (Bakker, 2007). As such, the inclusion of social reproduction as an important and legitimate area of study allows for unpaid and sometimes invisible work to be made visible and to be evaluated for its role in the political economy of disability benefits.

Situating Oppression in the Class Struggle

As the previous discussion of class and intersectionality suggests, Marxist economic theory places great importance on the point of production and "productive labour", that is, labour that creates surplus value. This has led some to criticize Marxism for ignoring gender and other sources of oppression at the expense of class and taking the existence of human beings as a given (Lewis, 2016; Luxton, 2006). As Luxton (2006) points out, however, "[t]he centrality of labour power" in Marxist theory also allows for "recognition that all modes of production include the production of people, which potentially locates women at the centre of theories about modes of production" (p. 24). Luxton (2006) further places social reproduction squarely in the class

struggle when she points out that employers need high-quality labour produced by the processes of social reproduction at the same time as they struggle to keep down wages that ultimately affect the quality of life and labour that social reproduction can produce.

In making this argument for expanding the Marxist conceptualization of the mode of production to include social reproduction, Luxton (2006) is arguing against the notion that reproduction represents a "parallel system…referring to the production of life itself" (p. 26), in which sex the key division of labour. She makes this argument based on the anthropological evidence that sexual divisions of labour do not automatically produce gender inequality, nor are the types of inequalities uniform across different social formations (Luxton, 2006). Thus, like a materialist understanding that "there is no *a priori* assumption…about…the significance of impairment" (Gleeson, 1997, p. 194), feminist political economy interrogates the social structures and formations that transform biological sex into a subordinated gender (Luxton, 2006). Despite this affinity, however, feminist political economy has not been widely used in the analysis of disability (LeBlanc Haley, 2017; see Pinto, 2010 for an exception). The use of feminist political economy allows us to reconsider research in which disabled people are often labelled "as solely 'care receivers' … and unproductive both in relation to surplus production and social reproduction" (LeBlanc Haley, 2017).

Intersectionality and Feminist Political Economy

Understanding social reproduction and production as integral relations within one system places gender at the heart of class analysis, rather than simply "adding" gender to a political economy analysis. Although race and ethnicity are currently under-theorized in feminist political economy (Luxton, 2006), the mode of analysis also allows for issues of imperialism, colonialism, and racialization to be integrated through interrogating where the reproduced labour supply for production and social reproduction originates and how it migrates to those areas

where capitalism is dominant. As Luxton (2006) puts it, “the transnational and trans-regional locus of social reproduction mean that capitalist expansion is foundationally racialized” (p. 38).

Feminist Political Economy and the Welfare State

It is important to note that an analysis of social reproduction not only illuminates the nature of gender in the political economy, it also helps to shed light on the nature of the state, and the welfare state in particular (Bakker, 2007, Vosko, 2002). Although much social reproduction is accomplished through the unpaid labour of women in the private household, the state also has a (changing) role, as does paid and unpaid labour in civil society through voluntary and third-sector organizations (Bakker, 2007; Bezanson & Luxton, 2006, Luxton, 2006). Indeed, part of the function of a feminist political-economic analysis is to assess “[t]he allocation of responsibility for social reproduction between the different spheres” (Luxton, 2006, p. 38) and at different times for their significance in everyday life. As this research will show, charities and families were an integral part of social security in the long period before disability was recognized as a social category worthy of income support (Galer, 2018a; Rice & Prince, 2000). More recently, with the rise of neoliberalism, feminist political economy has turned its attention to how the changes in reproductive labour are accomplished as the state privatizes many of the roles it once played in social provisioning (Bakker, 2007). Thus, a feminist political economy lens places benefit programs such as workers’ compensation and disability benefits clearly in the essential realm of reproduction to help us answer Russell’s question above: “What role do public disability benefits play to further the machinations of production and wealth accumulation?” (Russell, 2019, p. 19). As will be shown, the relationship between workers’ compensation and capital accumulation is fairly obvious: workers gave up their right to sue employers and capital bought labour peace by participating in workers’ compensation. Understanding the relationship

between disability benefits and capital accumulation, on the other hand, benefits from feminist political economy because we need to consider the reproduction of disabled people.

Capitalism and the Welfare State

The recognition of capitalism's inherent instability is behind much of the early theorizing about the welfare state. Titmuss (2006) reasoned that because of the "unidentifiable causality" of the many "disservices" and social insecurities associated with a rapidly changing capitalism (p. 45), universal benefits were the fairest approach to social security. The famous "Beveridge Report" of 1942 argued that social security programs were necessary to address the "five giants on the road of reconstruction" after World II: Want…Disease, Ignorance, Squalor and Idleness" (Beveridge, 1942, para. 8). Comprehensiveness, universalism, and the guarantee of a minimum standard of living are the hallmarks of the influential Beveridgean approach. His scheme rested on "the contributory principle" that individuals, employers, and the state should share responsibility for the cost of security (Beveridge, 1942, para. 31). However, he also recognized that "some, through physical infirmity, can never contribute at all", which meant that some social security needs should fall to that state (Beveridge, 1942). In contrast, a Bismarckian approach to social welfare relies much more heavily on contributions. It shows "no concern for poverty and for that section of the population which does not participate in the labour market" (Bonoli, 1997, p. 357). These two approaches to social security identify some of the key features that have been used to build a large body of literature on the analysis of social welfare: comprehensiveness, universal versus selective programs, contributory versus tax-based funding of programs, and the overall aim of the social security system.

Welfare State Typologies

Titmuss (1974) characterized a universal approach to social security as the "institutional redistributive model of social policy", which he contrasted with the "residual" model. The residual model advocates that the two "'natural' channels" for meeting needs are the market and the family and that only the failure of these two natural channels should instigate the involvement of social welfare institutions (Titmuss, 1974, p. 31). Titmuss (1974) also theorized a Bismarckian, corporatist approach, which he called the "industrial achievement-performance" model of social policy, which rests on "various economic and psychological theories concerned with incentives, effort and reward, and the formation of class and group loyalties" (p. 31). These observations also underpin Esping-Andersen's (1990) seminal work that theorized three types of capitalist welfare states: liberal, conservative, and social democratic. The theory rests on a concept of the "decommodification" of labour, as measured by "the degree to which individuals or families can uphold a socially acceptable standard of living independently of market participation" (Esping-Andersen, 1990, p. 37). Esping-Andersen (1990) calculated a "decommodification score" for 17 capitalist countries by assessing the accessibility, universality, and generosity of their old age pensions, sickness benefits, and unemployment insurance. By clustering countries with similar scores, he identified those with the least decommodification as liberal welfare states, those with moderate decommodification as conservative, and those with the greatest degree of decommodification as social democratic.

In liberal welfare states, most benefits are means-tested and payments tend to be modest, reflecting Titmuss' residual approach. In conservative welfare states, benefits are usually contributory schemes tied to employment, reflecting Titmuss' "industrial-achievement approach". Conservative schemes tend to preserve existing social strata and to support families to engage in social care, which tends to keep women in traditional roles in the family. Social

democratic welfare state types tend to have the most universal, accessible, and generous benefits because the underlying philosophy is to foster social equality and solidarity (Esping-Andersen, 1990). This type of welfare state is most like Titmuss' "institutional redistributive" model because it uses state intervention to redistribute wealth and active labour market policies to promote employment and income protection. Benefits tend to be aimed at individuals, rather than families, to promote gender equality (Bambra, 2004; Esping-Andersen, 1990; Raphael, 2007).

It is important to note that Esping-Andersen's typology consists of ideal types and that many welfare states include various approaches to social security. In the current study, although Canada is considered a liberal welfare state, the two income security programs under study may be classified differently. As will be explored further in Chapter 4, Guest (1999) characterizes workers' compensation in Ontario as a "program with a clear institutional concept at a time when the residual concept of social security held undisputed sway" (p. 40). Thus, these various conceptualizations of social security will be applied to each income security program for people with disabilities to shed light on differences and similarities.

Welfare State Development

The welfare state literature also features debates about the impetus behind the development of welfare states. The nature of the development of welfare states is important for this study because a key focus is the inception of each income security program; indeed, some have argued that workers' compensation marks the inception of the welfare state (Abbott & DeViney, 1992; Guest, 1999).

The modernization or "logic of industrialisation" theory of welfare state development argues that capitalist development itself necessitates the welfare state. As labour is commodified, those without labour to sell need alternative supports to survive, especially in light of the breakdown of rural kinship relations with urbanization (Abbott & DeViney, 1992; Huber &

Stephens, 2001, Myles & Quadagno, 2002; Skocpol, 1980; Skocpol & Amenta, 1986). At the same time, it is the development of capitalism that allows for the wealth creation that facilitates the development of the state and its welfare interventions (Abbott & DeViney, 1992).

This understanding is similar to early Marxist analyses of the welfare state, though they emphasized that the process was driven by the logic of capital accumulation specifically (Myles & Quadagno, 2002). Moreover, welfare states have the dual responsibility of ensuring the right conditions for capital accumulation, while legitimating the capitalist mode of production, in part by ameliorating some of the harsher effects (Lightman & Lightman, 2017; Myles & Quadagno, 2002). Offe (1984a), considered one of the proponents of Marxist analysis, argued that the welfare state's role is

> …to balance the asymmetrical power relation of labour and capital, and thus to overcome the condition of disruptive struggle and contradiction that was the most prominent feature of pre-welfare state, or liberal, capitalism. In sum, the welfare state has been celebrated throughout the postwar period as the political solution to societal contradictions. (p. 147)

Myles and Quadagno (2002) argue that no one questions the basic premise that industrialization, along with economic growth and an aging population, are necessary for welfare state development and expansion. Rather the question is whether "[w]elfare states are the inevitable product of large economic forces beyond the control of policy makers and publics that compel a common response" (Myles & Quadagno, 2002, p. 37). In short, the debate centres around whether politics, broadly defined, matters in welfare state development. The most compelling argument against the logic of industrialism explanation is the continued divergence of types of welfare states. If powerful economic forces were the main driver behind welfare state

development, we would expect to see "common structures and cultures" also develop with continued industrialization (Wilensky, 2002, p. 3). There seems to be much evidence on both sides of the welfare state retrenchment debate (Starke, 2006) with some finding evidence of major retrenchment, particularly of the social democratic welfare state (Korpi, 2006, Kvist & Greve, 2011). Others such as Goodin, Heady, Muffels, and Dirven (1999) conducted a major study using panel data and found that the typology holds. Others similarly find Esping-Andersen's welfare state typology to be quite robust (Arts & Gelissen, 2002; Huber & Stephens, 2001; Myles & Quadagno, 2002, Starke, 2006). Recent research, however, suggests rising poverty and inequality in social democratic welfare states, anti-immigrant sentiments that threaten the universalism of their programs, and the risk of "welfare state fatigue" or the fear that those who are "undeserving" may unfairly benefit from a generous welfare state (Raphael, 2014; Raphael & Bryant, 2020).

Alternative theories of welfare state development argue that the role of the demands of the working class is an important, perhaps defining, characteristic of welfare state development (Abbott & DeViney, 1992; Starke, 2006). One version of such a "demand" theory is the power resource theory, which argues that "the distribution of organizational power between labor organizations and left parties …and center and right-wing political forces…[are] primary determinants of differences in the size and distributive impact of the welfare state" (Huber & Stephens, 2001, p. 15; see also Korpi, 2006). In short, "the balance of class power is the primary determinant of variations in…welfare state effort" particularly concerning redistribution that is affected by social policy (Huber & Stephens, 2001, p. 3). In Marxist terms, Matthews (2018) argues that the "complexity of social policy in any capitalist society is such that it has always been a platform for class struggle" (p. 33) and notes the significant role of labour unions in

shaping welfare states in most developed countries. Thus, Marxist analyses of the welfare state have moved beyond the understanding that it is merely an "instrument to support and smooth economic growth" (Matthews, 2018, p. 33). One specific manifestation of the balance of class power plays out in partisan politics. Huber and Stephens' (2001) quantitative and comparative-historical study of 18 welfare states concluded that "partisan politics was the single most important factor" in welfare state development and "accounts for the variation in welfare state outcomes across countries" (p. 1).

Abbott and DeViney (1992) argue that demand theories are somewhat supported by the fact that workers' compensation and unemployment insurance, that is programs of immediate impact on the working class, are almost uniformly the first programs adopted in capitalist welfare states, followed by family allowances. They reason, that "Among these three, programs are adopted earlier as they are perceived closer to the immediate wage relation" (Abbott & DeViney, 1992, p. 267). However, the primary finding of their quantitative study of the sequences of policy adoption is that "the [early] adoption of welfare programs is essentially a world-historical process" (Abbott & DeViney, p. 261) in which "perhaps early socialism had a greater effect in the West than is sometimes thought" (Abbott & DeViney, p. 267). Giddens (2006) makes this point more directly, arguing that the origins of the welfare state "were far removed from the ideals of the left—indeed it was created partly to dispel the socialist menace" (p. 378).

The idea that "politics matter" has also been expressed in state-centred theories of welfare state development, which argue that the main means of expression of class politics and the level of economic development is the state itself (Abbott & DeViney, 1992). These theories emphasize "the organization and structure of state institutions" (Myles & Quadagno, 2002, p.

38). A state-centred approach to understanding welfare state development is differentiated from the "logic of industrialism", Marxist structural approaches, and other demand theories (society-oriented approaches) because it argues for looking at the autonomous actions of states when they "formulate and pursue goals that are not simply reflective of the demands or interests of social groups, classes, or society" (Skocpol, 1985, p. 9; see also Skocpol, 1980). Rather, the state's "institutional features of government" (Myles & Quadagno, 2002, p. 38), including the actions of bureaucrats and the military (Skocpol, 1985) play a determining role in policy outcomes.

Currently, the international forces of importance to the welfare state are those of globalization. Myles and Quadagno (2002) describe the globalization theory of the welfare state as similar to the modernization or logic of industrialization theory in that states and societal processes are relatively helpless in the face of structural forces. The theory argues that with the ease of moving capital, governments are disinclined towards policies opposed by capital, such as high taxes to pay for generous welfare provisions, forcing welfare states into a "race to the bottom". Myles and Quadagno (2002) argue that empirical evidence does not support this, except in liberal welfare states, and Starke's (2006) review of the literature found mixed evidence of retrenchment due to globalization. Others, however, implicate globalization in the rising income inequality and poverty in social democratic welfare states (Raphael, 2014).

Much of the debate among these theories focuses on which factor is the most important in determining the development of the welfare state. For our purposes, these theories of welfare state development are useful because taken together, they highlight the complex interaction of factors that must be taken into account in understanding the nature of each income security program and the differences between them. These factors, which will be explored further in the context of each income security program, include functional-structural requirements of capitalist

development and growth, demands from social actors, the balance of class forces in society, autonomous actions on the part of the state, and international influences.

Conclusion

This study uses causal narrative and process-oriented comparison to understand the political economy behind two different income security programs for people with disabilities. The interrogation of the political economy behind these policies is meant to generate insights into the social conceptions of disability associated with the program, as well as the role and politics of the groups of disabled people involved in each program. As a critical policy historiography, the study asks of each program what the "public issues" and "private troubles" the policy aims to address at inception and currently; how the programs have changed between those two periods and why; what is the political-economic context for the policy in each period; and what do the context and the complexities of each program reveal about who is advantaged and who is disadvantaged by the policy?

The role of theory in this investigation is to guide the choice of specific questions and the selection and ordering of the historical material. This study uses a materialist analysis of disability that allows for the social construction of the experience and conceptualization of disability by the political and economic context of the periods under study. To situate each group of disabled people within the political economy, the study draws on Marxist conceptions of class, exploitation, and oppression, while remaining mindful of the different conceptions of these phenomena within social movement theory. Because labour force attachment cannot be assumed for all people with disabilities, the study also draws from feminist political economy to direct questioning towards the realm of social reproduction, where much unpaid and invisible labour takes place for disabled people and their families. Finally, the study uses theories of welfare state

development and welfare state typologies to direct attention to the appropriate questions for understanding the emergence and nature of each income security program.

Chapter 3: The Mysterious Case of the Missing Injured Worker

Although there is a vast literature on work injury and workers' compensation, there is comparatively little that considers these topics from a CDS perspective. The purpose of this chapter is to document the extent to which injured workers and issues of workers' compensation are addressed in the CDS literature, as well as the extent to which these issues are examined and discussed within a CDS perspective. As this critical literature review will show, injured workers are relatively absent from debates in CDS, compared to issues like human rights discrimination and disabled identities. The mysterious case of the missing injured worker from CDS can be illuminated through an examination of the different perspectives of the disability rights movement versus the injured workers' movement. In turn, these differences shed light on the research questions concerning the differences between workers' compensation and general disability benefits. Through a review of CDS literature on injured workers, this chapter lays out these differences and contradictions as the foundation for subsequent analysis.

Different Perspectives

What is meant by a CDS perspective? As Reaume (2014) puts it, "Critical disability studies seek to change conventional notions of disabled people as pitiable, tragic victims who should adjust to the world around them" (p. 1248). In this discourse, disability is reconceptualized as "human variation" (Scotch & Schriner, 1997) or as "difference" (Garland-Thomson, 2012; Wendell, 1996). As such, disability is not seen as a phenomenon that needs remediation or prevention. Indeed, it should be considered a source of "positive identity" (Garland-Thomson, 2012; Swain & French, 2000). In that vein, the early days of CDS sought a distinction from "disability studies" that focused on medical intervention and rehabilitation (Linton, 1998, Pfeiffer & Yoshida, 1995). Instead, CDS is a "socio-political-cultural examination of disability" (Linton, 1998, p. 525). At the heart of the difference between rehabilitation-

focused disability studies and CDS is the theoretical distinction between impairment and disability. Whereas an impairment is a physical, sensory, cognitive, or mental condition, disability is created by the restrictions, attitudes, and barriers in the social and physical environment, rather than the impairment per se (Oliver, 1990). One problem with the conflation of impairment and disability is that it individualizes a phenomenon that is, in fact, social and political. “Maintaining the distinction between Disability Studies and applied approaches underscores that individual responses are appropriate for impairment, but misdirected for disability” (Linton, 1998, p. 528).

Furthermore, the development of CDS is intimately linked to the practical and political struggles of the disability rights movement (Abberley, 1987; Linton, 1998). Consequently, disability issues examined from a CDS perspective emphasize the perspectives and agency of disabled people (Linton, 1998; Reaume, 2014) particularly as they respond to political, legislative, and policy issues of discrimination, legal rights, and political organizing. Within that movement, the poverty and social exclusion of people with disabilities are conceptualized in terms of institutional discrimination, medicalization, and ableism, with an emphasis on a human rights approach to political organizing. Thus, the passage of anti-discrimination legislation, successful human rights claims, increased employment opportunities, changing attitudes, expressions of disabled identity, and the development of disabled-led organizations represent political successes (Barnes, 2002; Galer, 2018a; Pelka, 2012; Rimmerman & Herr, 2004).

What then is the perspective of the injured worker movement, and how does it conflict with a CDS perspective? For injured workers with permanent impairments, disability is seen as a loss—often including the loss of a job, the loss of a role in the household, the loss of dreams (Beardwood et al., 2005; Ontario Network of Injured Workers Groups [ONIWG], 2012; Storey,

2008). Instead of being a source of positive identity, disability often represents the loss of identity to injured workers (Storey, 2008). It is precisely because disability is equated with loss that compensation is necessary for that loss. No distinction is made between impairment and disability. Indeed, historically workers were compensated according to the loss of body parts—so much for a finger, so much for an arm, etc.—making notions of "embodiment" very concrete. Furthermore, social justice for injured workers is largely represented by awarding adequate compensation benefits or preventing the erosion of adequate benefits within the workers' compensation system (Biggin et al., 1995; Storey, 2009b). Because the workers' compensation system is funded entirely by employers, the poverty and social exclusion of injured workers are understood to be rooted primarily in the unwillingness of employers to pay the costs of just compensation, rather than ideas such as "systemic discrimination". Discrimination and stigma do enter the conversation; however, it is usually associated with the widespread belief that injured workers are malingering (Lippel, 2012; Storey, 2009b). Injured workers eschew the welfare system because they understand that workers' compensation is legally and morally the responsibility of employers rather than a "favour" from the state (Storey, 2008).

These differences between the two movements set up what I have called elsewhere a "benefits versus rights" false dichotomy (Heath, 2010). Fraser (2003) characterizes this tension as the politics of recognition (rights) versus redistribution (benefits). (See Methods and Theory chapter.) In CDS, a human rights approach to obtaining employment is seen as the antidote to the paternalism and dependency of general disability benefits (Oliver, 1990; Oliver & Barnes, 1998; Ville, 2019). Another characterization, discussed further in the context of this review, frames the debate in terms of emancipation versus social protection (Ville, 2019). The early days of the social model took a particularly dim view of general disability benefits, arguing in one case, that

generous benefits might deter employers from hiring disabled people (Oliver & Barnes, 1998). Barnes and Mercer (2005) have also argued that the revolutionary potential of the industrial working class has been diluted by the trappings of the modern welfare state. More recently, the social model has modified this stance, especially in light of the changing nature of work. Barnes and Mercer (2005) have called for "a reassessment of theoretical and policy approaches, based on a reconfiguration of the meaning of work, and a re-evaluation and de-stigmatization of welfare and social care provision" (p. 528). This reassessment has led to understanding disability benefits as "an indicator of collective social responsibility and social justice" (Barnes & Roulstone, 2005, p. 324). Thus, increasing general welfare benefits is a concern for the disability rights movement, and certainly, for people with disabilities themselves, but this goal does not dominate the CDS literature or the movement in the same way as it is central to the injured workers' movement.

The injured worker movement also has a different relationship to rehabilitation, though just as troubled. Once again, the issue of malingering is central to this relationship. Although successful rehabilitation and return-to-work is a goal of injured workers and the workers' compensation system alike, conflict arises when the injured worker does not heal quickly or thoroughly enough or is unable to return to work at all (MacEachen et al., 2007; Storey, 2009b). However, the contrast to CDS is the idea that impairment is something to be "fixed" or remediated, with the goal of getting back to paid employment and without a distinction between impairment and disability.

Another area of difference is the issue of prevention of injury, and therefore the prevention of impairment/disability. Prevention is not a focus for the injured worker movement since the injury has, by definition, already occurred; however, the injured workers' movement

would never argue against the prevention of workplace injury. As such, it is a fertile area for understanding the case of the missing injured worker from disability studies.

In CDS, prevention has been examined primarily in terms of prenatal testing (Asch, 1999; Garland-Thomson, 2012; Shakespeare, 2006). Interestingly, the CDS perspective on prevention blurs the distinction between impairment and disability, because it objects to the prevention of impairment as an attack on the disabled identity (Meekosha, 2011). This is understandable given the horror of eugenics. However, debates about the prevention of impairment caused by war, violence, and social injustice were only just beginning when Meekosha (2011), describes the issue of prevention as a "major lacuna in our scholarship" (p. 679).

> Maybe it is too confronting to deal with the continuing disabling of people in the global South because in trying to claim the positives of a disability identity it becomes difficult to acknowledge the overwhelming suffering that results from colonisation, war, famine, and poverty. Thus there exists an intellectual and political tension between pride, celebration and prevention. (Meekosha, 2011, p. 679)

Fortunately, much has been done to correct the lacuna Meekosha describes in 2011 (Personal communication, Geoffrey Reaume, April 22, 2024). Interestingly, Abberley (1987) raises the issue of the compatibility of pride and prevention in his influential article on a theory of disability as oppression. One of the key tenets of such a theory, he argues, was that it "asserts the value of disabled modes of living, at the same time as it condemns the social production of impairment" (p. 17). More recently, Erevelles (2011) asks a pointed question that also gives a clue as to the reason for the missing injured worker in CDS:

> How can acquiring a disability be celebrated as "the most universal of human conditions" if it is acquired under the oppressive conditions of poverty, economic exploitation, police brutality, neocolonial violence, and lack of access to adequate health care and education? (p. 119)

This review will analyze how injured workers are treated in CDS literature around these themes: "benefits versus rights" or the recognition/redistribution tension and disability as something to be remediated, and impairment/disability as the product of social injustice, and therefore, preventable. As well, the review will analyze whether injured workers are part of a CDS analysis that focuses on agency, lived experience, identity, and definitions of disability, especially those that challenge the medical model, and policy and legal issues, such as discrimination, attitude and stigma, and human rights.

What Constitutes the CDS Literature?

Because CDS is interdisciplinary, defining what constitutes the CDS literature is difficult. A vast array of literature that is claimed by the disciplines of history, sociology, political science, comparative policy studies, rehabilitation science, and other disciplines find their way into CDS discourse. Practically speaking, a search combining the terms "disability studies" and "workers' compensation" or "injured workers" yields very limited results. At the same time, a search combining the terms "disability" and "workers' compensation" taps into a vast literature on workers' compensation that is outside of CDS.

To deal with these problems and make this task manageable, this chapter will review the literature on injured workers and workers' compensation in 14 journals deemed to have a CDS perspective, based on the above criteria. Consequently, books and articles in other publications that constitute part of the CDS literature were not included in the search strategy for the review.

As such, this review is not exhaustive but offers an overview of how injured workers and workers' compensation issues are dealt with in key journals focusing on disability.

The search strategy for this review was designed with the guidance of a librarian experienced with literature on both disability and workers' compensation. The JournalTOCs database was searched for journals with the term "disability" in their titles. JournalTOCs is the largest collection of searchable tables of contents for scholarly journals, containing over 36,000 journals collected from over 3,000 publishers. One hundred journals with "disability" in the journal title were identified. Journal titles that indicated a focus on a specific disability that would not be work-related (e.g., developmental disabilities, learning disabilities) were excluded. Because of the distinction between CDS and rehabilitation studies, journals that focus on rehabilitation were also excluded. Table 1 lists the journals searched. Only English-language articles were searched and reviewed.

Between October 8 and 28, 2020, Google Scholar was searched for the exact phrase "injured worker" or "workers' compensation" or "work injury" or "work-related" or "occupational injury" or "work accident" or "workplace accident" anywhere in the article for each of the 14 journals for the period 1985 to 2020. Google Scholar was chosen for its breadth and because it allows for searching by specific journal name. Then each journal's website was searched again with the same search terms. These searches yielded 337 results. It is not clear that journal websites recognize a Boolean search, so these searches yielded a large number that contained only the word "work" or "occupational" (as in occupational therapy) or "compensation". Consequently, 131 were rejected by title (e.g., the title indicated a focus on multiple sclerosis or learning disabilities), and 122 were rejected by abstract, leaving 85 for full-text review. Of these 85, 27 were rejected for lack of content and one was forthcoming and

therefore not available at the time of the review, leaving 57 articles for review. Finally, a manual search of the references for each of the 57 articles was done, looking for articles from the 14 journals. This yielded one additional article, bringing the total number of articles to 58 that were included in the review.

Of the 58 articles reviewed, 30 (52%) make only passing reference to work injury and/or workers' compensation, often in the context of discussing the history of benefit programs for people with disabilities (Burkhauser & Larrimore, 2009; De Picker, 2019; Gilad & Rimmerman, 2014; Gulland, 2017; Parker & Cass, 2005; Scotch & Berkowitz, 1990; Ville & Ravaud, 2007; Winance et al., 2007) or as one of the current sources of income for people with disabilities (Garthwaite et al., 2013; Denton et al., 2013; Malacrida, 2010; National Academy of Social Insurance, 1996; Stapleton et al., 2009). Workers' compensation is referred to in comparative analyses of various income support programs (Dixon & Hyde, 2000; Jongbloed & Crichton, 1990) or comparisons of laws relating to disabled people (Barnartt, & Seelman, 1988). One article (Prince, 2016a) noted that the administrative data kept by workers' compensation boards could be a source of data for creating knowledge about disabled people. A number of these articles discuss work injury as one source of disability among the groups and samples that were examined in the studies undertaken (Bernell, 2003; Burkhauser & Daly, 1994; Coles & O'Hare, 2004; Fox & Reichard, 2008; Galer, 2014; Houtenville & Brucker, 2014; Lo & Ville, 2013; Meekosha, 2011; Memisevic et al., 2017; Øderud, 2014; Roulstone, 2002). For example, a study of life expectancy after spinal cord injury in Zimbabwe mentioned work injury as one cause of spinal cord injury (Øderud, 2014). Another study looking at the factors influencing appeal decisions under the *Americans with Disabilities Act* noted that a significant number of those appealing had disabilities due to work injury (Fox & Reichard, 2008). In exploring concepts of

"employability" among a sample of disabled people that include injured workers, Lo and Ville (2013) observe that those with "administratively recognized" disabilities, such as injured workers, tend to make use of available services more than other groups of disabled people. Another study refers to the workers' compensation system in its argument in favour of private health care options, since injured workers receiving workers' compensation benefits have access to private services and don't have to deal with the wait times in the public system (Gelinas et al., 2010). One study (Memisevic et al., 2017) makes only passing reference to work injury as a source of disability but does specifically comment on the differences between general disability benefits and workers' compensation and veteran benefits as a possible form of discrimination.

General Disability Benefits Versus Workers' Compensation

Indeed, the difference between general disability benefits and workers' compensation is not lost on disability scholars. Jongbloed (2003) argues that public policies are shaped by the underlying concept of disability. She places workers' compensation in the medical and economic model of disability, which co-existed from 1910 to 1970 (Jongbloed, 2003). Workers' compensation (and veterans') benefits, often the first types of disability benefits to be developed (Abbott & DeViney, 1992), were predicated on the idea that those who contribute economically (or militarily) to society are more deserving than those whose disabilities arose from other origins (Jongbloed, 2003).

Scotch and Berkowitz (1990) also offer a historical perspective on how and why different benefit programs developed in the United States, with the aim of explaining why there is not one comprehensive system that treats all people with disabilities equally. Their primary explanation is that certain groups of people with disabilities, such as injured workers, veterans, and blind people, managed to develop enough political clout to lobby for separate systems "that gave them an advantage over other people with disabilities" (Scotch & Berkowitz, 1990, p. 8). However,

they also acknowledge that "that different ways of conceptualizing disability and its relation to social and economic functioning have different policy consequences" (Scotch & Berkowitz, 1990, p. 4). The authors describe a key difference between compensatory schemes and social assistance schemes. Compensatory schemes saw disabled people as "damaged goods; and hence in need of legal redress" (Scotch & Berkowitz, 1990, p. 5) Importantly,

> The method for determining benefits failed to differentiate between those who could work and those who could not. In general, it was the existence of an impairment whose origins were in the work process that triggered benefits and permitted a person to claim the status of disabled. (Scotch & Berkowitz, 1990, p. 5)

Benefits under social security, on the other hand, require the existence of an impairment, combined with a judgement about the impaired person's ability to work. As the current research will demonstrate, this distinction has an immense impact on the experience of the disabled person.

Benefits Versus Rights

Ville (2010, 2019) corroborates these observations with the differences in how French society approached those injured in the course of work or war and those she calls the "civil" disabled, whose disabilities have other origins. She argues that social protection for the former was rooted in the politics of "'solidarism'—which aimed to counter the negative effects of rampant and poorly controlled industrialisation" (Ville, 2019, p. 105; see also Ville, 2010). Ville (2019) wades right into the "benefits versus rights" debate in her article that sets out the conditions for a "possible alliance between social protection and emancipation" (p. 102). She observes how the disability rights movement's focus on rights and discrimination led to opposition to social protection systems "that had become the symbol of segregation and

exclusion. Universal treatment through civil rights and category-based treatment through social protection are now presented as two contradictory and irreconcilable models" (Ville, 2019, p. 104). She further analyses how this particular critique of social protection plays directly into the hands of the neoliberal thrust towards "activation" policies, designed to reduce benefit use through employment and save money for the welfare state, which is supposedly in financial crisis.

Ville (2010, 2019) also observes the differences in how French society approached those injured in the course of work or war and the civil disabled. While workers' compensation and veterans' pensions, the "first forms of social protection", were rooted in the politics of solidarism (Ville, 2019, p. 105; see also Ville, 2010), the "civil" disabled were thought to be "victims of nature or chance" and saw no social protection at the time that workers' compensation and veterans' benefits appeared (Ville, 2019, p. 105; see also Ville, 2010). However, according to Ville (2010) what did emerge at this time (1920s) were associations for the sick and disabled civilians, first at the local level, but eventually growing to the national level where they were able to influence French disability policy. She asserts that these associations arose in response to the lack of recognition and recompense these disabled people received compared with injured workers and war veterans (Ville, 2010). Based on the writings of some of the people in these associations, Ville (2010) offers an explanation for why the civilian disabled developed a different orientation to disability. She argues that

> the lack of any system of reference for "civil" disability, which thus found itself excluded from procedures of recognition and treatment, caused a new meaning of disability to be produced, by rebound. This was something which had until then been totally ignored: individual experience, which included modes of expression which had in common the fact

> of contributing towards people's identities, their values, their attitude towards existence and the quality of their relationships with others. (Ville, 2010, p. 64)

Galer (2018a) (not included in the review) observed a similar phenomenon in the Canadian injured workers and disability rights movements, with injured workers leaning toward more collectivist forms of organizing focused on social protection (redistribution) and the disability rights movement leaning towards more individually oriented organizing based on identity (recognition).

Ultimately, Ville (2019) calls for rejecting "reductive binarisms" such as social protection versus emancipation, arguing that "a virtuous alliance between social protection and emancipation is possible" (p. 111). This alliance rests on the "combination of a guarantee of sufficient resources" with what she calls the "between-us" or collective solidarity of disabled people's organizations, "which offer resources that are both material and symbolic, for a personal and collective valorisation of the experience of disability" (Ville, 2019, p. 110). Indeed, she argues that sufficient resources through social protection are "a material condition for the possibility of negative freedoms"— by which I assume she means negative rights such as freedom from discrimination—though she is not clear on the mechanism for this (Ville, 2019, p. 111). For example, it is not clear how adequate social protection would necessarily combat discrimination in hiring.

It appears that Gilad and Rimmerman (2014) would beg to differ with Ville's alliance between emancipation and social protection. They compare the development of the disability rights movements in the U.S. and Israel and conclude that Israel "failed to create an overall disability movement", in part, because of the inability of the various organizations to work together (Gilad & Rimmerman, 2014, p. 227). In the course of their analysis, they provide a stark

example of Ville's "social protection versus emancipation" tension. They chronicle the evolution of disability advocacy in the United States from what they call a "medical-rehabilitative" focus, directed largely by professionals and parents to disabled-led organizations and advocacy focused on rights (Gilad & Rimmerman, 2014, p. 228). They discern this ideological shift in the "second half of the 20th century" (Gilad & Rimmerman, 2014, p. 227) characterizing it as moving towards empowerment and rights and away from a focus on "being a part of a specific disability group or being viewed as needy and nothing more" (Gilad & Rimmerman, 2014, p. 228). For these authors, the advent of equal rights legislation, in particular, "marks the conceptual change" that led organizations to stop focusing on particular impairments and disabilities and start focusing on physical and social barriers for disabled people. They lament disability organizations in Israel may not have fully made this shift noting that they "continue using benefits-based language instead of transforming it into rights" (p. 227). They go so far as to suggest that a focus on benefits disqualifies disability advocacy from the status of "social movement":

> Compared with the development in the United States, the organization in Israel failed to reach the status of a national social movement…. In fact, most of the protests were held by people with mobility disabilities, who were struggling to improve their own benefits. (Gilad & Rimmerman, 2014, p. 235)

Rimmerman and Herr (2004) come to a similar conclusion in the analysis of the 1999 strike by Israeli disabled people. Without giving details of what the strike actually entailed, they conducted a content analysis of the media coverage of the strike and conclude that, based on that coverage and how often certain topics were discussed, "the nature of the protest was mostly economic, reflected in its demand for an increase in benefits" (p. 15). They describe the strategy of the strike as one meant to improve the benefits of those with

the most severe disabilities with the long-term goal of improving all benefits for disabled people. Indeed, according to Rimmerman and Herr's (2004) analysis, the strike appears to have achieved some success in this regard. The authors, however, see this focus as a lack of political development compared with the U.S. disability rights movement that seeks to "redress past discrimination, promote civil rights, or change the attitudes of the public toward people with disabilities" (Rimmerman & Herr, 2004, p. 16.) The authors also address the divide between injured workers and war veterans arguing that the government's "early commitment" to these groups in terms of benefit programs "created a differentiation between these disability groups and the rest of the population with general disabilities" (p. 13). The result of this differentiation is that injured workers and war veterans tend not to work together with other disabled people's organizations (Rimmerman & Herr, 2004).

In his analysis of the *Americans with Disabilities Act*, Berkowitz (1992) characterizes this tension another way: as the conflict between the "rhetoric of rights" versus the "realities of economics" (p. 2). "Put another way, the discovery or awarding of new rights rearranges the distribution of resources. The redistribution of resources leads to the disruption of existing routines and to political conflict that must be resolved in the policy process" (Berkowitz, 1992, p. 2). The author argues that much disability policy resolves this conflict by emphasizing the cost savings or the consumption opportunities afforded by measures such as rehabilitation initiatives, de-institutionalization, and disability management in the workplace, rather than the advantages accrued to disabled people. The *Americans with Disabilities Act* resolved this conflict through its focus on setting standards for private business employment practices without mandating any new programs to implement those practices, essentially taking a "social problem off-budget" (Berkowitz, 1992, p. 5).

Regarding workers' compensation specifically, the author argues that the safety campaigns of the Progressive Era saw a boost with the advent of workers' compensation because "[o]nce employers knew that accidents would cost them money, they hastened to invest in safety devices" (Berkowitz, 1992, p. 7).

Case Studies

In some of the articles where case studies are presented, one or more of the case studies involved an injured worker, but the work-relatedness of the disability is irrelevant or incidental to the analysis (Gupta, 2012; Hanson, 2018; Nelson et al., 2013) For example, one article (Hanson, 2018) presents legal case studies on the social construction of fatness and fatness as a disability, one of which involved an injured worker. Nelson et al.'s (2013) focus is on discrimination and housing, but two of the cases in their study on mortgage default relate to workers' compensation benefits recipients. They offer a brief description of the injured worker's experience, particularly the difficulty they have when they find they are unable to return to work.

McColl et al.'s (2016) narrative textual analysis of 14 disability discrimination cases heard by the Supreme Court of Canada also includes workers' compensation and work injury in the analysis. One of these cases involved the Nova Scotia Workers' Compensation Board and another involved the interaction of workers' compensation benefits with the Canada Pension Plan-Disability (CPP-D). The latter case (*Granovsky*) involved an injured worker who received temporary workers' compensation benefits for a back injury, the duration of which made him ineligible for CCP-D. It was determined that the injured worker had not been discriminated against; rather, he merely did not qualify for the benefit. However, the case clarified that discrimination must also undermine citizenship rights, which his treatment, in this case, did not. More pertinent is the *Martin and Laseur* case, which enhanced the concept of disability to include chronic pain. The authors note that these cases imply the court's recognition of an

"economic model" of disability, in which "the role of society *vis à vis* those who are disabled by virtue of the inability to work is to provide for them financially" (McColl et al., 2016, p. 201). Overall, however, they conclude that the cases they examined show the social model of disability prevailed in decisions because of the recognition of the barriers imposed by environments and attitudes. McColl et al.'s (2016) analysis includes a critique of a legal approach to dealing with disability discrimination because the legal system is inherently "individually based" with little assurance that broader policy and social changes will flow out of case law (McColl et al., 2016, p. 206). They also point to the often costs and skills required to pursue a legal route, which may prohibit this option.

Epidemiological and Clinical Approaches

Several articles took what could be described as an epidemiological or clinical approach to work injury. Xiong et al. (2016) take a clinical approach to assessing the factors that affect return-to-work outcomes among men and women with work-related traumatic brain injury. Through a retrospective chart review, they find men with "clinical diagnoses of depression, anxiety, pain disorders, self-perceived cognitive disturbance, and certain psychosocial factors" (Xiong et al., 2016, p. 439) were less likely to return to work, but called for further research, especially regarding women.

Casey (2015) provides a quantitative, longitudinal analysis of perceived unmet health care needs among people with disabilities, including a sub-group of injured workers. Using data from the Canadian National Population Health Survey administered by Statistics Canada (1994/95 to 2008/09), the author corroborates other studies that disabled persons have a higher risk of reporting unmet health care needs than people without a disability and that the reasons for unmet needs were likely to be structural rather than personal. Casey (2015) also seeks to determine if injured workers, in particular, face stigma in the health care system, but the results

on this question were inconclusive. She argues that, as the Canadian population ages, the incidence of disability will increase likely leading to more unmet health needs. Further, because the barriers to health care for people with disabilities are more frequently structural than personal, this situation is amenable to policy intervention. The author makes a specific reference to CDS, noting that "Critical disability theorists argue that disability needs to be viewed as a continuum and not a dichotomy. Therefore, people are neither disabled nor non-disabled, that is ability status falls somewhere between the two" (Casey, 2015, p. 174). She also acknowledges the influence of various intersections, such as race, gender, age and socioeconomic status, on "whether a person experiences disability or unmet health care needs" (Casey, 2015, p. 174).

Shi et al. (2015b) provide a systematic review and meta-analysis of the literature on the risk of unintentional injuries of people with pre-existing disabilities with a subset of the included studies focusing on the risk for workers with disabilities. The article discusses discrimination against disabled workers since they have a high rate of injury. On the issue of prevention, the article takes what could be called a standard "health and safety approach", in which impairments created by workplace injuries and disease are implicitly negative and preventable through better occupational health and safety practices. As such, it does not address the tensions between the two perspectives on this issue. In another article, Shi et al. (2015a) use panel data to estimate medical costs associated with work injuries among people with disabilities. They find higher rates of injury and higher medical costs for disabled workers who get injured on the job and expressed the concern that these factors could lead to discrimination against hiring people with disabilities.

Coles and O'Hare (2004) also take a clinical approach in their two case studies on the role of occupational therapy for disabled farmers. One of their case studies involves a work-

related disability. Although the focus of the article is the need for and efficacy of occupational therapy interventions, the case study also paints a picture of the challenges faced by disabled farmers who continue to work in agriculture. Jackman et al. (2016) also focus on farmers with disabilities in a detailed quantitative analysis of Quality of Life and Independent Living and Working scores. The only reference to work injury, however, is that the source of disability among farmers tends to be work. The authors seem unaware of a CDS perspective since they equate disability with terminal illness.

Jayasooria et al. (1997) focus on the labour force participation—or lack thereof—of disabled people in Malaysia. They note that "A majority of disabled persons in Malaysia have impairments which are birth related, congenital or acquired in early childhood" (p. 455). With increased industrialization, however, Malaysia was also seeing an "alarming" number of industrial accidents: an average of 80,000 annually with about 3,000 resulting in permanent disability (Jayasooria et al., 1997, pp. 459–460). They tiptoe into the "benefits versus employment" arena when they express concern about the lack of rehabilitation services for injured workers and the tendency for them to accept benefits and not return to work. They make the argument for better services in the context of the social inclusion of all people with disabilities, particularly through employment.

Political Economy Approaches

Injured workers are also a subset of a convenience sample of 100 people with multiple chemical sensitivities (MCS) (Gibson & Lindberg, 2007). Of the respondents in the convenience sample who attributed their MCS to one large chemical exposure, more than half said it had been a workplace exposure. The authors cite a larger study (n=917), in which 31% of participants had filed for workers' compensation for MCS, giving a sense of the scope of this issue for injured workers. The study discusses experiences with workplace accommodations—or lack thereof—

harassment, and dismissal as a result of MCS. The authors argue that, as an invisible disability, MCS is under-recognized both in the medical literature and even in disability studies. The reasons for this and their explanation for the difficulties of respondents are directly situated within the political economy. They argue persuasively,

> …disabilities [like MCS] that implicate industrial products as causative are destined to be disparaged and delegitimized by industrial capitalism, as accommodation and prevention of these sensitivities would require a rethinking of the very basis of the industrial economy. (Gibson & Lindberg, 2007, p. 730)

Similarly, Gnanayutham (2017) takes an overtly political economy approach in her analysis of changes to rehabilitation and return-to-work processes for injured workers. Gnanayutham's (2017) is one of nine articles of the 58 that focus exclusively on work injury and workers' compensation. Indeed, this article was included in the review, despite its focus on rehabilitation, precisely because it situates rehabilitation within capital accumulation. Using a labour theory of value, she argues

> the rehabilitative movement and the rise of injured worker reintegration [in Ontario] can be closely linked to the process of reimagining the bodies of injured individuals and reproducing them as potential working bodies and spaces for capital accumulation. (Gnanayutham, 2017, p. 69)

She points out the contradiction for capitalism that working bodies present: on the one hand, capitalism needs working bodies for its very existence; on the other, it "maims" and injures them through the process of working. The author thus joins the benefits versus employment debate from the injured worker's perspective of disability as a loss that needs to be compensated,

arguing that “injured bodies are a socially created category derived from harmful labour processes” (Gnanayutham, 2017, p. 69). The author refers to a policy process whereby the basis for compensation shifted from the severity of the injury and the loss incurred to an emphasis on “injured workers’ efforts to seek re-employment” (Gnanayutham, 2017, p. 77). With this, Gnanayutham (2017) touches on one of the key debates in the benefits versus rights dichotomy when she asks if “the ability to labour is … the requirement for full membership in society” (p. 92).

Other articles that focus specifically on work-related disabilities also take a socio-political approach. Kim’s (2011) qualitative interviews with 11 injured migrant workers in Korea ask if migrant workers injured in industrial accidents in Korea receive equal treatment to domestic workers. They find discrimination against migrant workers both in the process of treatment and in access to compensation. Kim (2011) recounts negative experiences of disability with stories of employers pressuring injured workers to return to work before optimal recovery; employers attempting to suppress workers’ compensation claims; discrimination by health care providers; and language barriers in medical treatment of injuries, for health and safety education, and in accessing workers’ compensation benefits. With recommendations for improving health and safety training in multiple languages, education about the workers’ compensation system, “promoting the use of this entitlement” (p. 553), and developing advocacy centres to represent injured workers, this study reads as if it were part of the health and safety literature, with implicit support for prevention. The study does, however, address issues more familiar to CDS when it illustrates a harsh reality for migrant workers returning to their home countries, willingly or unwillingly. Kim (2011) notes

> The majority of the migrant workers came from Asian countries, and they reported that they seldom saw persons with disabilities in their countries because people look on at those with disabilities with pity, and the environment is not accessible. The prospect of becoming a person with a disability had been so upsetting that they had not even imagined it previously. (p. 562)

Lo-Hui et al.'s (2011) research focus is rehabilitation and psychosocial "adjustment", but they squarely place disability into a socioeconomic, cultural, and gendered context in their case studies of rural women migrants in China. They describe the consequences of China's transformation into the "world's factory" (Lo-Hui et al., 2011, para. 3). Young rural women who have finished school, but are too young to marry, become surplus labour that migrates to the cities. They do so, however, in the context of a strong value system of "familism" in rural China, in which women are subordinated to men and considered "temporary members of their natal homes" (Lo-Hui et al., 2011, para. 6) because they will eventually marry and join another family. Work-related impairment and disability for these women makes them less desirable for marriage and therefore, less eligible for the respectability and security that marriage brings. Consequently, they felt guilty and feared becoming a burden and a source of shame for their families. Whereas a disabled man could expect to be "looked after" by a wife and his own family," [t]he experience of disability will further de-value the role of these women in her natural family" (Lo-Hui et al., 2011, para. 33). The women also expressed a fear of discrimination from both strangers and close relatives alike. The authors comment on the implications of these experiences of disability for rehabilitation professionals; for example, these women were highly motivated to learn self-care to reduce the burden on their families.

Histories/Book Reviews

Historical considerations of disability appear to be a source of material on work injury and workers' compensation in disability studies, no doubt because of the high prevalence of work-related disability in previous periods. Because books were not included in this review, historical accounts of disability appeared through book reviews. Galer's (2014) review of *A Social History of Disability in the Middle Ages* by Irina Metzler makes only passing reference to work injury but indicates that the book contains an analysis of work injury, compensation, and fraternal societies. Burke (2013) reviews *Picturing disability: Beggar, freak, citizen, and other photographic rhetoric* by Robert Bogdan, a book of 224 images of people with disabilities in different social contexts. The book includes a section on "begging cards", which focuses mostly on people with work-related disabilities. Turner's (2018) glowing review of Sarah Rose's *No right to be idle: The invention of disability, 1840s to 1930s* denotes an in-depth analysis of work injury and workers' compensation. Rose argues that the workers' compensation system had the effect of discouraging the hiring of disabled workers. Turner (2018) notes that the book fills a gap in disability studies discourse, in that it is widely held that industrialization was the underpinning for the economic marginalization of disabled people. However, Rose documents this process in more depth than has been done to date. Warden's (2019) review of *Disabling barriers: Social movements, disability, history and the law*, edited by Ravi Malhotra and Benjamin Isitt points to an article in which Eric Tucker gives an overview of the development of workers' compensation in Ontario and the relationship between workers' compensation and the commodification of labour.

Work Injury in Poetry and Literature

A student journal, *Critical Disability Discourses*, offers a poem called "Don't write me off" by injured worker, Beryl Brown. Although the journal does not indicate this, the poem is a

scathing retort to the treatment she received at the hands of the workers' compensation system[3]: *Don't crush my desire to flourish/ I have substance, likewise/ Others will see. You don't have to love me/ You don't have to be my friend but everyone should be treated fairly/ Would you like to be treated the way you treat me?* (Brown, 2017). Brown is part of what Storey (2009b) calls "the problematic three percent" (p. 157) of injured workers whose claims are not adjudicated to the satisfaction of all the parties involved. This 97% success rate is the Workers' Safety and Insurance Board's estimate (Storey, 2009b). With over 50,000 workers' compensation claims processed every year, this problematic proportion represents thousands of individuals (Workplace Safety and Insurance Board, 2021). As Storey (2008, 2009b) and others (Beardwood et al., 2005) have shown, Brown's poem is emblematic of how many injured workers in this situation feel: *I wish you would understand the impact of your mocking indelible pen/ Remember what I say to you; don't write me off as dead* (Brown, 2017). As such, it stands as a powerful explication of injured workers' experience in the CDS literature.

In a wide-ranging article, Hron (2005) provides a critical look at how first-generation Maghrebi (Arab North Africa) immigrant fathers to France are portrayed in a body of novels by French-Maghrebian immigrants. She notes that the first-generation fathers in these novels are "routinely depicted as disabled" (abstract), most often from a "seemingly inevitable work accident" (para. 1). Referring to "American Disability Studies", she notes how disability has been reconceptualized away from the medical and legal understanding—typically associated with work injury—to "the realm of political minorities" (para. 4). Within this conceptualization, she argues that the frequency with which first-generation fathers are depicted as disabled signals

[3] I was involved in soliciting both this poem and Rachel Gnanayutham's article as a member of the journal's editorial board for that particular issue. Beryl Brown and I sit on the Board of Directors of the Injured Workers' Community Legal, where Rachel Gnanayutham was formerly a staff member.

a type of identity politics because the “physically disabled body is clearly associated with a specific ethnicity and gender” (para. 4). Moreover, she notes the negativity with which these characters are depicted:

> "…permanently damaged goods", "fatally-flawed products," "isolated misfits" or "invisible outsiders" manifestly exposes mainstream prejudicial attitudes towards disabled people. Thus—very problematically indeed—these second-generation writers depict their fathers in the same discriminatory manner that they themselves claim to be represented in majority discourse. (para. 35)

She closes with the question of “[h]ow to move from a discourse of…suffering victims…to one of possibility, agency, and ability (para. 47). Although she tackles the issue of exploitation directly, her focus on discourse means she does not consider the possibility that this frequent depiction of the father could be a reflection of the ubiquity of workplace accidents among this population and as such, an accurate depiction worthy of repeated exploration.

As such, Hron’s (2005) analysis stands in contrast to the other analysis of literature included in this review. Jones (2017) makes a compelling case for the feminist political economy of disability in her analysis of the representation of women’s work and disability in the fictional British coalfields literature of 1880 to 1950. In doing so, she directly takes on issues of exploitation leading to disability and how the experience of disability is mediated by class. Focusing on the inter-war period, she describes the strenuous labour of colliers’ wives in the daily fight against the dirt created by coal mining. Without running water, the women were responsible for hauling and heating water for the daily baths of their coal-mining husbands and sons, who sometimes worked different shifts, requiring multiple baths in a day. This taxing work

intersected with the other main domestic duty of these wives: reproducing the workers for the insatiable labour needs of the industry—insatiable in part because of the short work life and life expectancy of miners. In addition to premature births caused by strenuous labour, Jones (2017) adds that “Childbearing was a significant cause of women's disability, and coalfields regions had the highest rates of infant and maternal mortality in the UK” (para. 14). Another key role for women that emerges in the literature is that of taking care of their husbands and sons who have been injured or made ill by the work of mining. Thus, Jones (2017) uses the plight of coalfield women to caution against a gendering of work in which domestic labour is discounted, because women’s experiences of disability and contributions to industrialization would be missed. Pertinent to the topic of workers’ compensation, she also argues that a gendered view treats “certain types of impairment or injury as more authentic of the industrial experience” (Jones, 2017, para. 4). Yet, the coalfields literature supply ample evidence of how the boundaries between domestic and industrial are blurred, “depicting female disability as a consequence of the demands of the industry” (Jones, 2017, para. 32). With this, she asks for the expansion of the concept of industrial work to include work done in the home, as well as an expansion of the concept of disability to include chronic illness since coalfields women’s “disabilities were often related to chronic ill health, complications from childbirth and strain injuries from over-exertion” (Jones, 2017, para. 4).

Jones (2017) does not shy away from the inconvenience that this expansion of disability poses for CDS. She acknowledges the concerns of Oliver and Barnes that an illness perspective on disability could play into a “personal tragedy view of disability [that] stifle[s] the development of studies which focus on the structural forces, economic, political and cultural, that have created and continue to sustain disability” (Oliver & Barnes, 2012, p. 51, as cited in Jones,

2017, para. 4). Ironically, Jones's focus is, in fact, on structural forces that create disability. She argues that the literature frames "[d]isability in coalfields women…as an inescapable consequence of an industry that infiltrates every aspect of domestic and family life…. In this way, coalfields literature reveals the complex relationship between women's work, industrialisation and disability" (Jones, 2017, para. 32).

Disability, Work Injury, and Prevention

So far, in the literature reviewed, the notion of prevention of impairment as positive has been implicit when articles take a health and safety approach or, as in Jones (2017), when she points to the "complex relationship between women's work, industrialisation and disability" (para. 32). As noted, Abberley (1987) raised the issue of prevention in the early days of CDS in his seminal article on a theory of disability as oppression. He uses examples of work injury and illness, preventable blindness, and malnutrition to support his argument that impairment is socially produced and not simply naturally occurring phenomenon; therefore, it demands to be addressed as a social, and not just a medical, issue (Abberley, 1987). Furthermore, he raised the issue of prevention in a way that suggested there was little tension between the affirmation of "disabled modes of living" and the prevention of socially induced impairment (Abberley, 1987, p. 17).

More recently, Meekosha (2011) openly addresses this tension in her call to "decolonize" disability studies. She attributes the "rapid increase in impairment in the global South" to the interrelated mechanisms of colonialism, globalization, and northern imperialism (Meekosha, 2011, p. 674). She uses the sweatshops of Southeast Asia as one example of the social production of impairment, citing research that describes a five-year working life span for garment workers before they are "forced to retire because of injuries" (Meekosha, 2011, p. 676). She further argues that to ignore or sanction impairment caused by colonization, war, poverty,

economic exploitation, the dumping of defective pharmaceuticals, nuclear testing, and the export of pollution is a luxury not available to those in the Global South because of the prevalence and severity of the impairments, their source, and their impact on the lives of those living under these conditions. Rather, a "southern theory of disability and human rights must inevitably question international inequities, especially those between the global North and global South" (Meekosha, 2011, p. 678) and would entail joining with other movements to oppose "war and all forms of violence" that produce impairment (Meekosha, 2011, p. 679).

Interestingly, one of the most direct engagements with the issue of prevention and disability comes from a Foucauldian analysis in an undergraduate student journal. González Tanamachi (2019) analyzes Canada's Seasonal Agricultural Workers Program (SAWP) as a manifestation of racist, sexist, ableist and neocolonial biopower. Quoting Foucault, the author characterizes biopower "as the primary function of the state towards its population is to preserve life, a process that necessitates racism [and ableism] to justify the elimination of those deemed threatening to the health of the collective body" (Foucault, 2003, p. 255, as cited in González Tanamachi, 2019, p. 46). Thus the "biopolitical significance" (González Tanamachi, 2019, p. 46) of the SAWP is that racialized migrant farm workers produce the food that nourishes the Canadian collective body under the social control afforded by the threat of repatriation, which ensures efficiency and compliance. Anecdotes of migrant worker experiences with repatriation after injury illustrate these arguments. The author then seeks to explain how "a political/relational model [of disability] and a disability justice framework offer…to move away from the idea that preventing the production of disability entails devaluing" (González Tanamachi, 2019, p. 45). According to the author, the disability justice framework necessarily critiques the "personal responsibility" and independence narrative of neoliberalism, instead

advocating for interdependency, which is at the heart of "desiring disability". The author argues that this critique challenges "the idea that Mexican workers are uniquely fit productive machines, only valuable because of their labor" (González Tanamachi, 2019, p. 51). The political/relational model of disability argues that disability can be experienced only in the context in which occurs, (González Tanamachi, 2019), presumably allowing for the experience of disability as a loss. This definition of disability as fluid and contextual does not distinguish between impairment and disability, and, echoing Jones (2017), calls for the inclusion of chronic conditions within the realm of disability. Ultimately and unfortunately, however, it is not clear how these models of disability reconcile "desiring disability" with the prevention of impairment, but the author makes one of the most forthright attempts in the literature reviewed.

Martinez-Pérez (2017) posits the prevention of work injury, along with rehabilitation and deciding benefit eligibility, as a medical triad of social control in Franco's Spain. This ambitious article uses legislative documents, newspapers, medical publications, and propaganda pamphlets to describe how disability was socially constructed as a "problem" under Franco's fascist regime in Spain. Identifying a "form of biopolitics", the author elaborates on the role of occupational medicine in this social construction. He notes, as several authors in this review have, that capitalism problematizes disability when people are unable or deemed unable to work due to impairments. This problem was intensified under Franco's regime in which a productive workforce was embedded in the establishment and maintenance of the regime. Indeed, according to a key legal text, work was a "social duty" "imposed on mankind by God, to fulfil the individual purposes and the prosperity and greatness of the homeland" (cited in para. 14). Since disability could temporarily or permanently affect a person's capacity for productive work, it "became a powerful reason to justify and legitimate actions aimed at controlling the behaviour of

all the workers to prevent them from becoming, either temporarily or permanently, unproductive people" (para. 2). The legislative context for occupational medicine's work gave responsibility for preventing work injury to the state, the employer, and to individual workers, leading the author to charge that "Under Franco's regime, the victim was at fault" (para. 21).

Occupational medicine received strong state support, for example, the funding of the National Institute of Medicine, Health and Safety at Work, to grow and develop into a mechanism aimed at preventing impairment, rehabilitating disability, and deciding which disabled people would be eligible for state benefits if they were unable to work. As such, occupational medicine was a major contributor to the development of a medical model of disability in Franco's Spain.

The author summarizes the implications of these conditions for the medical perception of disability combined with a blame-the-victim approach to work injury in a context that extolled work while it "stimulated a view of disabled people as a burden for the public coffers" (para. 44). Interestingly, none of the observations about how disability and work injury are understood is new or particular to Franco's regime. For example, the legislative context for occupational health and safety described above essentially operates in Ontario today. Rather, the author appears to be arguing that it is the intensity of state support and the overtness of the state's intention that makes this particular case so menacing to disabled people in general and injured workers in particular. Further, it is not clear if the author is opposed to the prevention of impairment per se, or prevention efforts as social control.

Disability and Litigation

Campbell's (2006) article on "litigation neurosis" refers to workers' compensation in Australia in the broader context of injury litigation. In Australia, injured workers have the option to sue their employers rather than go through the workers' compensation system. That option is

not available to injured workers in Ontario, but for the "problematic three percent" discussed above, the experience of appealing claims is often experienced as litigious. Thus, Campbell's examination of "contestations over meanings given to responses by the injured litigant" (para. 2) brings forth themes familiar to injured workers. The first of these is the concept of "litigation neurosis" itself, the idea that the very act of seeking compensation for an injury can cause the injured person to malinger or exaggerate disability. On the one hand, Campbell is adamant that litigation neurosis is a fiction, unsupported by credible evidence. On the other hand, she argues, were malingering to occur, it could be interpreted as a highly rational response to a legal system that reduces disability to a medical problem devoid of social context and emphasizes disability as a personal tragedy (Campbell, 2006). Indeed, as she points out, and as compensation systems imply, "suffering [is] the benchmark of redistributive justice" (para. 26). Thus, Campbell might explain the injured worker's experience of disability as a loss as the product of an ableism that is so embedded it frames a person's subjective experience of disability. It further informs resistance to legal proceedings that force the litigant to show suffering and loss to access compensation benefits that may be necessary for survival. In short, Campbell is trying to square the circle of an impairment as loss with disability as a positive identity by pointing to ableism in the medical and legal systems. In doing so, however, she seems to suggest that disabled people do manipulate compensatory systems when she argues, "…disabled people are highly skilled in negotiating the hoops of diagnosticism by "recripping" (hyper-accentuating disability) or "decripping" (mitigating disability) themselves to satisfy eligibility criteria as well as the expected performances of ableism (Campbell, 2006, para. 2). Though she qualifies this statement by saying "the jury is still out on the extent of this behavior" (Campbell, 2006, para. 26), injured workers bristle at this notion since the suspicion of malingering is as embedded in their

experience as the ableism Campbell describes (Storey, 2009b) and is a key source of stigma and stress (Lippel, 2012; MacEachen et al., 2007). Campbell (2006) argues, however, that it is "critical to explore modes of resistance by disabled people rather than view the disabled client as a passive victim" (para. 21).

Campbell (2006) points to another experience familiar to injured workers when she critiques a medicalized and legal view that expects disability to be "factual, significant and objective" (para. 3). She cites the example of spinal cord injury, which is readily recognized, "while impairments induced by lax occupational health and safety environments and practices: stress, nervous "disorders", back and repetitive strain injuries, are viewed as suspect, invalid and therefore mis-recognized" (Campbell, 2006, para. 3). Not only are the impairments suspect, but so are the people who have them, particularly if they are deemed "uncooperative" or "non-compliant", that is, particularly if they resist the process they are undergoing. These disabled people "are especially vulnerable to having their realities interpreted by experts as either a psychosomatic illness or as a moral malady—a suspect class of persons, fraudulently manipulating their bodies for financial gain" (para. 3). With this statement, Campbell (2006) sums up a key aspect of the experience of injured workers in the "problematic three percent".

Conclusion

This critical literature review is hampered by the difficulty of defining a searchable CDS literature; consequently, books and disability literature in other journals were not included. Because this dissertation uses comparative-historical methods, however, much of the literature that was missed will likely be included among the secondary sources. Within this limitation, it is fair to say that although issues of work injury and workers' compensation are not completely

absent from this selection of CDS journals (Table 1), they are not dominant topics or themes. This review found 58 articles over 35 years of publication, about half of which made only passing reference to work injury or workers' compensation. Nine articles focused specifically on work injury and/or workers' compensation, while the remaining 19 articles included work injury and/or workers' compensation within analyses of issues relating to disability such as anti-discrimination legislation and human rights cases.

This analysis of this literature foregrounds several differences and tensions between the perspectives of the injured workers' movement and the disability rights movement, which help to explain why work injury and workers' compensation have received relatively scant attention in CDS. The most central of these is the very concept of disability, specifically disability as a positive identity versus disability as a preventable loss that demands recompense and remediation. A related tension is the disability rights movement's ambivalence towards benefits systems compared with the injured workers movement for whom benefits, their adequacy, and the process of acquiring them are central. Most often these tensions were left unaddressed; even though injured workers were referred to as "victims" or having "suffered" a workplace injury in articles that otherwise maintained a CDS perspective. The idea that the prevention of workplace injury was positive was only implicit in many of the articles that focused on the experience of work-related impairment and disability. The literature suggests that one place for injured workers in CDS discourse is in the debates that argue for the prevention of impairment and disability caused by violence, war, poverty, and economic exploitation.

Table 1: Critical Disability Studies Journals

African Journal of Disability
Alter—European Journal of Disability Research
Canadian Journal of Disability Studies
Critical Disability Discourse
Disability & Society
Disability and Health
Disability and the Global South
Disability Studies Quarterly
Journal of Disability and Religion
Journal of Disability Policy Studies
Knots
Review of Disability Studies
Journal of Literary and Cultural Disability Studies
Scandinavian Journal of Disability Research

Chapter 4: The *Workmen's Compensation Act,* 1915: Ahead of its Time

Of workers' compensation in Ontario, Guest (1999) writes, "Here we have the emergence of a program with a clear institutional concept at a time when the residual concept of social security held undisputed sway. Such a development requires an explanation" (p. 41). The purpose of this chapter is to provide an explanation for this development based on the international and domestic economic circumstances, the political climate, and the agency of the parties involved at the time. As such, workers' compensation in Ontario was ahead of its time as a policy, discussed below. Chronologically, Ontario's workers' compensation was very much in line with an international phenomenon. Abbott and DeViney (1992) studied the emergence of the welfare state in 18 Western capitalist countries and found that "policies for worker's compensation, unemployment, and family allowances were nearly always adopted in that order…within a 20-year real-time epoch" (p. 266) around the turn of the twentieth century.

The residual model of social welfare rests on the assumption that the family and the market are the "natural" (Titmuss, 1974, p. 31) or "normal" (Guest, 1999, p. 3) means for meeting material needs. Although the sources of social assistance have evolved from charities to the state, a fundamental principle of the residual approach is that assistance should be a last resort and that accepting assistance indicates a personal failure on the part of the people who need it (Guest, 1999). An institutional concept of social security theoretically does away with the blame and stigma associated with the residual approach, because it recognizes systemic causes of unemployment and hardship within an urban, capitalist economy. Furthermore, social security is seen as "the primary defense against adversity" (Guest, 1999, p. 5) rather than a last resort. Importantly, an institutional concept of social security views it as a right rather than an act of charity (Guest, 1999).

The *Workmen's Compensation Act* of 1915 created a program whereby, after seven days of lost time, injured workers were entitled to 55% of their pre-injury wage in periodic payments for as long as they were disabled, even if they played a role in causing the accident (Jennissen, 1981; Piva, 1975; Risk, 1983). The legislation was also meant to cover six occupational diseases "on the same footing as to the right of compensation as accidents" (Ontario, 1913, p. xv) with the provision that more diseases could be added to the compensable schedule. If workers were partially but permanently disabled and could find work, they were compensated for 55% of the difference between pre-injury average weekly and post-injury earnings (Piva, 1975). If the worker was killed on the job, his or her dependents would get a pension, based on earnings but capped at $2,000 per year (Risk, 1983). Widows were eligible only so long as they remained unmarried (Storey, 2009a). Husbands of women killed on the job were eligible for pensions only if they were incapable of earning an income due to "invalidity" (Storey, 2009a). (It is worth noting that this provision is the only place in the legislation that refers specifically to women [Storey, 2009a]).

Workers' Compensation as Policy: Meredith Principles

The *Workmen's Compensation Act* of 1915 came about after a Royal Commission into workers' compensation systems, presided over by Sir William Meredith, then Chief Justice of Ontario. The modern injured workers' movement embraces at least five principles that can be extrapolated from the transcripts of evidence and final report of the Royal Commission (Storey, 2011). Known as the "Meredith Principles," these principles also provide a basis for policy analysis of workers' compensation as an institutional conception. They can be summarized as follows: workers' compensation was designed to be a no-fault and non-adversarial system, and

administered by a public, independent board, in which the employers assume collective liability[4] and pay the cost of compensation. Compensation benefits were to be provided for as long as the disability lasts (Injured Workers History Project, 2009; Storey, 2011). The compensation fund, managed by the Board, was to have enough money to cover the costs of accidents during the year, plus a reserve, the amount of which was determined by the Board. To these principles, the Association of Workers' Compensation Boards of Canada adds "exclusive jurisdiction" meaning that only workers' compensation boards are responsible for this type of insurance and that the boards have the ultimate authority in decision-making (Association of Workers' Compensation Boards of Canada [AWCBC] n.d.). The Association of Workers' Compensation Boards of Canada notes that the concepts behind the Meredith Principles "underlie most workers' compensation legislation in Canada today" (AWCBC, n.d.).

The stated goals of the new system were to ensure that injured workers would receive compensation for their injuries and to prevent injured workers from becoming a burden on their families and the broader community (Guest, 1999). In Meredith's own words: "the true aim of a compensation law is to provide for the injured workman and his dependants and to prevent him becoming a charge upon his relatives or friends, or upon the community at large" (Ontario, 1913, p. vii). Hence, the residual model's emphasis on personal responsibility and moral failure evaporates in the face of workers' compensation.

As such, these goals underscore a tacit acknowledgement that capitalist production had developed to a point where an increased risk of accidents was seen as inevitable (Guest, 1999; Jennissen, 1981; Risk, 1983; Rose, 2017; Storey, 2011). Opting for a no-fault system is another

[4] Some employers, such as the major railways, refused to partake in a system of collective liability. Meredith's response was to delineate two schedules of workplaces. Schedule 2 employers, which includes railways and municipalities are individually liable for workers' compensation costs. The rationale was that these employers are large enough and stable enough to manage their individual liability for workers' compensation.

acknowledgement of the systemic causes of work injury (Guest, 1999; Risk, 1983; Storey, 2011). As Storey (2011) puts it, "if [the risks] were inevitable, how could anyone … be at fault?" (p. 4). Other historians of workers' compensation argue, however, that accidents were not inevitable, but largely preventable, but no less the product of capitalist relations of production (Piva, 1975). It should be emphasized, furthermore, that a no-fault system does not mean no one is at fault. Rather, injured workers no longer had to prove an employer's negligence to attain compensation for work injury (Jennissen, 1981; Piva, 1975; Risk, 1983, Storey, 2011, Tucker, 1984). Thus, this principle is intimately related to the principle that the system be non-adversarial, because it removed the need for what Meredith called "this nuisance of litigation" (Risk, 1983).

The no-fault provision of the program is significant, because it is a marked departure from not only the common law doctrine, but also the doctrine of personal responsibility. Risk (1983) describes the relationship between common law and personal responsibility this way:

> At the centre was a belief that the law should establish and encourage individual autonomy by setting generous spheres for living in which each individual was free from interference from other persons or from the state and conversely by setting limits on the conduct of all individuals and the state. (p. 421)

This philosophy puts personal responsibility at the heart of the common law. Thus, before workers' compensation legislation, employers were liable for work-related illness and accidents only if it could be shown in court that the employer was negligent. Specifically, the employer had to have known or could reasonably be expected to have known about the hazard that caused the illness or accident, while the employee did not (Risk, 1983). In addition to this defence, three other common law defences combined to make it very difficult for an injured worker to win in

court, assuming that the injured worker had the financial means to go to court in the first place. The three defences were known as “assumption of risk”, “contributory risk” and “common employment” or the “fellow-servant rule”. The assumption of risk, as the name implies, posits that a person accepts the risks of employment when entering the employment contract. The only circumstance where this principle did not apply was if the employer failed to guard dangerous machinery. Contributory negligence refers to the principle that if the worker contributed in any way to the cause of the accident through some kind of negligence or carelessness, the employer was not liable for compensating the worker for the injury. Furthermore, the common employment principle absolved the employer of any liability if a worker’s co-worker was found to be negligent or careless in the cause of the accident (Guest, 1999; Jennissen, 1981; Piva, 1975; Risk, 1983, Tucker, 1984). In the face of these barriers, very few of the total number of accidents were tried in court and even fewer resulted in compensation for work injury. Even if the worker did win the lawsuit, the cost of pursuing it often consumed much of the settlement (Jennissen, 1981).

The situation for injured workers changed somewhat after the passage of the 1886 *Workmen's Compensation for Injuries Act.* Despite the name, this piece of legislation was not based on the principles of compensation as such. Rather, it was an employer’s liability law that limited the common law defences, particularly the common employment principle. Under this legislation, employers could be held responsible for accidents caused by people under their employment who had responsibility for machinery or authority over workers (Jennissen, 1981; Risk, 1983, Tucker, 1984).

The collective liability approach also reflects the erosion of the personal responsibility doctrine. A collective liability approach to workers’ compensation allows for benefits to be paid

to the injured worker, regardless of the financial situation of any individual employer, suggesting that the benefits are awarded as a right, not a privilege or a matter of charitable discretion (Guest, 1999). Nor was there a means-test for benefits. Finally, the reasoning behind replacing the tort system with a workers' compensation system was to ensure that all injuries were covered, not just those proven in court, suggesting that workers' compensation was seen as "the primary defense" against hardship caused by work injury for as long as the disability lasts, rather than as a last resort. Although injured workers were not guaranteed benefits (Jennissen, 1981), when entitlement was established, payment was to be automatic (Guest, 1999; Piva, 1975). Indeed, the provision for automatic payment came at the cost of labour agreeing to give up the right to sue (Jennissen, 1981; Piva, 1975). Jennissen (1981) argues that the trade-off was unfair because the Board was given "sweeping powers" (Piva, 1975, p. 53), including the right to gather evidence and call witnesses (Risk, 1983). However, the significance of the automatic payment of workers' compensation benefits is best understood in comparison to another welfare program emerging around this time, the Mother's Pension. Eligibility for Mother's Pension involved a strict means-test and was highly discretionary in that women had to show that they were of "good character—a throwback to Poor-Law concerns about distinguishing between worthy and unworthy applicants" (Guest, 1999, p. 60; see also Nelson, 1990; Struthers, 2006).

That the system was to be administered publicly also underscores that the "private troubles" incurred by work injuries should be recognized as "public issues." Thus, workers' compensation, as conceived by the Meredith Principles, meets the criteria of an institutional conception of social security at a time when social security didn't exist (Guest, 1999). It should be noted, however, that workers' compensation did not qualify as a universal welfare program. Only certain industries were included; for example, workers working in farming, merchandizing,

and domestic labour were excluded (Guest, 1999; Risk, 1983). Despite the name "workmen's" compensation, women and children were always covered by the *Act* (Guest, 1999), but the exclusion of domestic labour would disproportionately exclude women and people of colour. Nor did coverage extend to textile work in sweatshops, office work, education, and health, in which women workers predominated (Storey, 2009a; see also Piva, 1979).

Meredith's only reason for not including all occupations was that he felt "public opinion" would not be favourable to a more comprehensive scheme (Guest, 1999; Storey, 2009a). Guest (1999) argues, "It is reasonable to wonder whose 'public opinion' was in mind" (p. 46).

Furthermore, workers' compensation cannot be considered a universal program because it covers only work-related disability, but not disability or unemployment caused by other means, even though these could be equally devastating to individuals and families (Guest, 1999, Risk, 1983). Risk (1983) raises an interesting point in this regard. Although workers' compensation was touted as "social legislation", implying "social obligation" (p. 461), if social welfare were the main concern, why not provide security from unemployment from other causes, including disability caused outside the workplace? Noting that this limitation of the program was not discussed in any significant way during the Royal Commission headed by Meredith, Risk (1983) speculates, "To the extent that both [unemployment and workplace accidents] were considered to be inevitable, perhaps accidents were made distinctive by the impact of visible physical injury and suffering" (p. 463). Jennissen (1981), however, argues that the motivations behind workers' compensation had less to do with what we think of today as social welfare, and more to do with attaining labour peace and predictable costs for employers.

Early History of Ontario Workers' Compensation

The early history of workers' compensation is well documented (Babcock, 2006; Finkel, 2006; Guest, 1999; Ison, 1996; Jennissen, 1981; Piva, 1975; Risk, 1983; Storey, 2009a, Storey, 2011; Tucker, 1984), as are the conditions of intense industrialization, urbanization, and unionization beginning in the late nineteenth century (Bliss, 1974; Jennissen, 1981; Kealey, 1973) and continuing into the early twentieth century (Piva, 1975). An important factor behind this rapid industrialization was protective tariffs initiated in 1879, a key component of the Macdonald government's National Policy (Bliss, 1974; Guest, 1999; Jennissen, 1981; Kealey, 1973). The other components of the National Policy were with population growth through increased immigration and infrastructure development, especially a national railroad (Belshaw, 2016) and all deliberately at the expenses of Indigenous people's land, sovereignty, and often their existence. The National Policy was meant to develop the capitalist economic development to the political infrastructure laid out in the *British North America Act* of 1967.

Bliss (1974) quotes an estimate of the general growth rate of the economy as a 4% increase in Gross National Product between 1873 and 1896. Guest (1999) quotes contemporary observers as saying that the factory system in Canada "sprang into existence almost at one bound" because of the impact of the tariffs (p. 20). With this rapid growth, however, came "the social problems and conflicts that seemed everywhere a consequence of the Industrial Revolution" (Bliss, 1974, p. 55).

Kealey (1973) describes the 1880s as "the years in which Canadians began to cope with the meaning of their emerging industrial society" (p. ix)—a society that would also become increasingly urban. Quoting J.S. Woodsworth, Guest notes that between 1851 and 1901, the

population of Ontario more than doubled, whereas the population of Toronto increased by over six times (Guest, 1999). With this urbanization came a breakdown in traditional, rural means of social welfare that were rooted in families and communities. It also brought the development of difficult working conditions and squalid living conditions for many working-class people (Guest, 1999).

Not surprisingly then, "The same decade saw the resurgence of an articulate and angry labor movement" (Kealey, 1973; p. ix; see also Guest, 1999). The Knights of Labor, a particularly dominant labour organization, organized over 300 locals in Canada between 1881 and 1890, most in Ontario (Bliss, 1974; Kealey, 1973). According to Kealey (1973), "The Knights of Labor effectively controlled the Trades and Labour Congress of Canada…. [and] published most of the early Canadian labor papers" (p. xxii) in which they advocated that "public intervention (as well as direct action) was absolutely necessary to protect the welfare of the workingman" (Bliss, 1974, p. 55).

The Macdonald government responded to these conditions with a series of investigations, culminating in the Royal Commission on the Relations of Labor and Capital in 1886, commonly known as the Labor Commission. This Commission had the broad mandate to enquire into "all questions arising out of the conflict between labor and capital" (Macdonald, 1886, p. 22). During a wide-ranging speech before the Workingman's Liberal Association of Ottawa and La Cercle LaFontaine, Macdonald proposed the Commission, promising that "the working classes shall be fully represented…and not [by] mere amateur workmen but [by] real artisans working at their trade, who will bring practical knowledge and long experience in their various employments…" (Macdonald, 1886, p. 22). The workers who were ultimately appointed may not have been "amateurs", but they were "Tory workers" or sufficiently in line with Tory policies like the

National Policy (Kealey, 1973). The party affiliations of the worker Commissioners were sufficiently apparent that the Toronto Trades and Labor Council and the Central Labor Union of Hamilton boycotted the Commission (Kealey, 1973).

After extensive travel across the country and hearing the testimony of 1,800 witnesses (Bliss, 1974; Guest, 1999; Kealey, 1973), the presence of these workers as Commissioners resulted in the Commission producing two reports signed off by two different sets of Commissioners. Kealey (1973) argues that this split in the Commission can be understood as evidence of "a particular case of growing working class identity" as it "mirrors the conflict that was emerging in Canadian society at large, and which the Commission itself had been designed to ameliorate" (p. xix). Both reports documented and condemned the conditions and abuses they found in workplaces across the country. These included dangerous working conditions, low wages, long hours, widespread use of women and children as workers, and harsh discipline including fines for lateness and corporal punishment.

The minority "capitalist" *First Report*,[5] however, denoted a paternalism that the working-class members of the Commission resented (Guest, 1999, Kealey, 1973). This paternalism showed itself in the Commissioners' questioning the morality of the working class and suggesting that any legislation arising from the Commission "must come from the top as a charitable gesture" rather than as the result of vociferous criticism from the working-class members of the Commission (Kealey, 1973, p. xviii). The *Second Report* wanted federal factory legislation arguing that the provincial legislation that existed was ineffective, affirmed the high moral character of the working classes, and was more positive towards unions and cooperatives. The *First Report* supported public education to produce a more highly skilled workforce whereas

[5] Kealey (1973) provides an introduction to the first and second reports of the Commission, which are included in their entirety. Information regarding the reports thus comes from the transcripts and reports themselves.

the labour faction's *Second Report* supported it for educating children for its own sake (Kealey, 1973).

Both reports also recommended some form of workers' compensation, having heard ample, if conflicting, evidence of the incidence of workplace accidents. Consider this exchange between the Commissioners and a woodworker:

Q. Are there any boys running machinery in your shop?

A. Yes.

Q. What kind of machinery do they run?

A. They work on the planer, the rip-saw, the cross-cut saw, sand-papering machines and jointers; in fact, there are boys who can run almost any machine. Every week or two an accident happens.

Q. The boys get hurt?

A. Yes; their fingers are cut off.

Q. What becomes of the boys when their fingers are cut off?

A. I saw a case of an apprentice to the woodworking business running a machine; probably he had never seen a machine before, and four of his fingers were cut off…. [T]he firm kept him about a month and then discharged him, and this boy is now working at painting (Kealey, 1973, p. 129.)

Employer representatives, however, had different estimates of the incidence and causes of workplace accidents. The owner of a large, Toronto, woodworking shop testified:

Q. The accidents you have had have occurred through the carelessness of the men?

A. Most of them; though I do not think there is a wood-working shop in the city which has more than half the number of machines we have…. Other places have had accidents, but we have not had one for months….

Q. Would it surprise you if one of your old hands should make affidavit that accidents take place about twice a month?

A. I should simply say the man is a liar. I can prove it. I should not be surprised if they should say accidents occur daily, or something of that sort. I have heard some of our former employés saying they occurred every day…. (Kealey, 1973, p. 95)

Indeed, accurate numbers of workplace accidents at this time are impossible to get because statistics on workplace accidents were not collected until 1900 (Babcock, 2006), and even after that, the accuracy of statistics collected is questionable due to non-compliance with the legislation that required their reporting (Babcock, 2006; Jennissen, 1981; Risk, 1983).

In response to testimony like this, the *Second Report* recommended a federal law that would "cover the case of all accidents to workmen", but added the qualification, "which are not caused by their own carelessness or negligence" (Kealey, 1973, p. 33). Interestingly, it is the "capitalist" *First Report* that recommends that "compensation should be recoverable even in cases where negligence on the part of the employer or his agents, or defect in machinery, has not caused the accident" (Kealey, 1973, p. 33), opening the door to the no-fault principle that underpins the modern workers' compensation system. The *First Report* also recommended a public system: a "governmental system of payment" to the families of "persons killed by accident" and that the government "invite tenders from insurance companies…for securing payment during disability to persons sustaining accidental injuries" (Kealey, 1973, p. 17).

The reports and the testimony stand as documentation of the differing perceptions of employers and workers and provide vivid insights into working-class life and culture (Kealey, 1973), but were ineffective in addressing working conditions in general and workplace injury and compensation in particular. Despite 5,000 pages of testimony and several abortive attempts at factory legislation, the only recommendation that was implemented was to establish Labour Day as a holiday and that didn't happen until 1894 (Bliss, 1974; Kealey, 1973).

Workers' Compensation in the Early Twentieth Century

Workers' compensation was the subject of its own enquiry in 1900. The Mavor Commission, headed by Professor James Mavor of the University of Toronto, was the government's response to organized labour's dissatisfaction with the 1886 *Workers' Compensation for Injuries Act* (Jennissen, 1981). The report from the Commission is an extensive review of workers' compensation schemes in England and Europe that ultimately recommends against a workers' compensation scheme for Ontario because it would be too much of a burden for business, especially small business (Jennissen, 1981; Ontario, 1900; Risk, 1983). Risk (1983) notes that the significance of the report is that it calls for an actuarial analysis to determine the "proposed burden" of such a scheme (Ontario, 1900, p. 45). According to Risk (1983),

> This was the first time this kind of economic analysis of the issue had appeared in Canada, and it reflected emerging perceptions of social issues. Considerations of individual morality and fault would no longer dominate debates about liability and compensation. (p. 453)

Despite Mavor's reluctance, the material conditions demanding a response to work injury continued apace. Industrialization intensified with an increase in capital investment in

manufacturing of over 600 % (Piva, 1979). The population of Toronto increased by over 70%, due to immigration mostly from the United Kingdom (Piva, 1979). Based on data from *The Labour Gazette*, Jennissen (1981) states that accident rates rose from 2.47 per 1,000 workers in 1900 to 3.55 per 1,000 in 1905 to 7.23 per 1,000 in 1913. She notes "an increase of 104% in the rate of accidents over an eight-year period" (Jennissen, 1981, p. 58), though Piva (1975) puts the increase at 300% between 1900 and 1904, without explaining where his data come from. Piva (1975) also notes that factory inspectors attributed at least some of this dramatic increase to better compliance with the *Factory Act* of 1886, which required employers to report accidents. Further, the number of cases taken to court also increased during this time, though the total number of cases is still quite small compared to the number of accidents. More important, injured workers were starting to win more cases. Jennissen (1981) reports that 21 cases were taken to court in 1901, with 48% of them found in favour of the injured worker. Subsequent years saw a range from 56% (1913) to 100% (1905), though that year had only six cases (Jennissen, 1981). Based on the outcomes of cases in one Ontario County, Risk (1983) found a general trend in which "[w]orkers lost almost all cases before 1886 and continued to lose most for a few years afterwards, but during the 1890s the results shifted and, from the late 1890s onwards, workers were successful in significantly more than half of the cases" (p. 432; see also Tucker, 1984). Juries tended to favour the injured worker, though sometimes judges found a legal reason to dismiss cases if they disagreed with the jury (Jennissen, 1981; Piva, 1975; Risk, 1983; Tucker 1984). Testimony from the 1913 Royal Commission captures the workers' perception that it was, in fact, difficult to win a workers' compensation case in court and the outcome did not adequately compensate the worker:

> If we get a verdict in one court and there is anything in favour of the workingman it is a dead sure thing that it will be put back to another court and if it is sustained in favour of the workingman then it is put to another court, till at last whatever compensation the man got or his family got would amount to nothing—the law costs had eaten it all up. (Ontario, 1912, p. 149)

Despite this perception, Jennissen (1981) argues that "the rising rate and the growing success of individual court cases of compensation for industrial accidents in the first decade of [the twentieth] century were of crucial importance in the movement for compensation" (p. 56). For evidence, she offers this quote from the testimony of the Canadian Manufacturer's Association (CMA) at Meredith's Royal Commission:

> the unscrupulous lawyer, who, the moment he hears of an accident, no matter where the fault may be, instantly rushes off to the bedside of the employee, and conjures and implores him to let him take up the case and conduct it for him, engaging to charge him nothing unless he gets his costs out of the defendant. This condition of affairs gradually got worse and worse until today it is almost proverbial, and consequently many manufacturers have been more or less against their own been driven into the position of taking out an insurance policy…. (as cited in Jennissen, 1981, p. 60)

Despite the rise in the number of workplace injuries, the issue of workers' compensation was not as widely discussed between 1900 and 1907 as it had been in the late nineteenth century. Risk (1983) states, "No substantial demand for change was made by labour, and none was considered by the government" (p. 454), though Babcock (2006) claims that workers' compensation was labour's "central issue" (p. 53), but does not specify a period. Jennissen

(1981) notes the labour journals kept the issue "within view" (p. 60), but the labour movement was more focused on the pressing issues of subsistence wages and working hours. According to Jennissen (1981), strike activity, particularly in manufacturing, was "relatively high" (p. 61) between 1900 and 1915 based on national Department of Labour statistics on strikes and lock-outs. The federal government convened a National Industrial Conference in September 1919 with representatives of employers, labour, and the general public to consider the recommendations of a Royal Commission into Industrial Relations (Canada, 1919). Documentation for this conference showed that in Ontario alone between 1901 and 1919, there were 924 labour disputes involving nearly 150,000 workers and resulting in over 2,000,000 lost working days. For Canada as a whole for the same period, over 14,000,000 working days were lost to labour disputes in over 2,000 disputes involving 620,000 workers (Canada, 1919, p. xxvii). For reference, the entire population of Canada was just over 7,000,000 in 1914 (Canada, 1915).

It was within this social context that organized labour reawakened to the issue of workers' compensation and was instrumental in the development of the Royal Commission. In January 1910, Conservative Premier Whitney and some of his cabinet received a delegation of the Dominion Trades Congress to hear their request for an enquiry into workers' compensation (Ontario, 1912; Risk, 1983).

Royal Commission into Workmen's Compensation, 1913

Risk (1983) considers Sir William Meredith to be the "crucial individual in the story of workers' compensation" (p. 454). Despite being a lawyer turned Conservative politician who led the party in Opposition to Oliver Mowat, he was sympathetic to urban workers and to the idea of "social legislation" at a time when very little existed. Indeed, he had introduced a workers' compensation Bill based on the British legislation in 1893, but it was unsuccessful. The

Dictionary of Canadian Biography Online calls him "the first clearly defined *progressive* Conservative in Ontario" (Dembski, 2004, emphasis added). Risk (1983) claims he even had the reputation of being a radical, though he doesn't say what this reputation was based on. Despite these leanings, however, he was clearly no socialist as he bristled at the idea of any "fundamental conflict between classes" (Risk, 1983, p. 463). According to Ison, (1996), Meredith was the ideal person to lead the Royal Commission because he had no political future, having led the Conservative Party unsuccessfully in four elections before becoming Ontario's Chief Justice. Risk (1983) also notes, however, in the hope of influencing the election, "[t]he first session [of the Commission] was held just before a provincial election and after a long delay—a small piece of evidence that Meredith had not entirely abandoned politics" (p. 487).

Meredith travelled to England, Belgium, France, Germany, various provinces, and parts of the United States to investigate their workers' compensation systems (Ontario, 1913). The Commission held 27 public hearings, mostly in Toronto, but also in smaller centres around the province. It heard testimony from seven expert witnesses, none of which represented organized labour, and from individual employers, workers, some with union affiliations, and injured workers. The two main participants, however, were F.W. Wegenast, a lawyer hired to represent the CMA and Fred Bancroft, Vice-President of the Trades and Labour Congress. Wegenast and Bancroft appeared at almost all of the hearings (Risk, 1983).

There is no doubt that employers had accepted the principle of compensation by the time the Commission started (Guest, 1999; Ontario, 1913; Piva, 1975; Risk, 1983). There were, however, specific points of dispute between representatives of employers and organized labour. Bancroft's brief and to-the-point submission not only laid out organized labour's position on workers' compensation, it highlighted some of the issues that would become matters of

contention during the Commission. These issues included who would pay for the system (and whether workers would contribute), the issue of negligence, and the nature and level of payment.

The labour submission had wide support among labour unions; it was signed by representatives of the Trades and Labour Congress of Canada, the Toronto District Trades and Labour Council, the Metal Trades Council of Toronto, the Building Trades Council of Toronto, the Brotherhood of Carpenters, and the Joint Executive Board of Carpenters Organizations of Toronto. It is important to add, however, that at this time under 10% of workers were represented by unions (White, 2007). This was a period of craft unionism, meaning that unions organized only skilled workers in workplaces (Das Gupta, 2007; Drache, 1984; White, 2007). Drache (1984) notes that "the skilled craftsmen—the dominant voice of the Trades and Labour Congress—were Orange Protestants" (p. 61) with the colonial mentality behind immigration policy favoured English-speaking immigrants. Thus, the Canadian working class at this time was fragmented, along "economic, social, ethnic, national [and] religious" lines (Drache, 1984, p. 45), and the union movement itself supported "the explicit exclusion of workers of colour from unions" (Das Gupta, 2007, p. 183).

Labour's submission envisioned a compulsory workers' compensation system, administered by a "Provincial Department of Insurance" with three Commissioners and paid for entirely by the employer. Despite the divisions within the working class described above, labour's version of the system would cover "All employments, the employees of the Province, Municipality, County, or other administrative bodies in the Province to be covered the same as employees in industries" for injuries and occupational disease "arising out of, and in the course of employment" (Ontario, 1912, p. 8). Further, labour's position was that the "doctrine of negligence on the part of the employee or employer, fellow-servant or otherwise, shall have no

place in the new legislation" (Ontario, 1912, p. 8). The submission also highlights that compensation should be provided for "being disabled" (Ontario, 1912, p. 8), suggesting permanent pensions for permanent disabilities. In the case of fatal accidents, the workers' dependents should be the beneficiaries.

To back up the argument for an employer-funded system, the submission lists eight European countries and the number of workers covered by employer-funded systems. The labour movement was so insistent that employers bear the cost of the system that it went so far as to distinguish different types of social insurance, though with no discussion of the consequences of disability originating outside the workplace. The following statement shows the deep roots of the distinction between disability caused by work and "invalidity" and it appears to rest, at least in part, on the issue of whether workers should have to contribute to the scheme.

> There are those who confuse contributory schemes of sick insurance, invalidity, and old age, with compensation legislation, but this Commission is not dealing with social insurance, only so far as it affects compensation for accidents, fatal or otherwise, out of or in the course of employment and we, therefore, deal with it as such. (Ontario, 1912, p. 9)

Bancroft noted that in many jurisdictions with waiting periods for workers' compensation, contributory sick schemes could be accessed during the waiting period, but there was no such scheme in Ontario (Ontario, 1912). He further pointed out that a workers' compensation scheme with benefits set at 55% of wages means the worker effectively contributes 45% in lost wages (Piva, 1975). Another way in which workers contributed to the cost of accidents is through the increased price of consumer goods (Piva, 1975). Meredith was quite clear that he expected that manufacturers would pass the increased cost of workers' compensation onto consumers in the

prices they charged for their goods, making workplace injury a social cost for everyone (Ontario, 1913; Piva, 1975; Risk, 1983). Bancroft further pointed out that injured workers contribute through the suffering incurred through the injury.

The submission also called for the categorization and taxation of industries according to risk, based on what would turn out to be a faulty notion for the prevention of workplace injuries. Arguing that prevention was "more important than compensation", the submission reasoned, "The taxing of industries, according to their respective risks, is an incentive to the employers to reduce the risks, which means a reduction in the yearly premium" (Ontario, 1912, p. 10).

The issue of prevention was also front and centre in the employers' much longer and more detailed submission to the Commission. The first item in the condensed summary of the brief argued, "For reasons both humanitarian and economic, the prevention of accidents should be a prime consideration in any scheme of workmen's compensation…" (Ontario, 1912, p. 57). Furthermore, the employers' representative proposed that "the system of compensation should be associated with a system of inspection with a view to the prevention of accidents…" (Ontario, 1912, p. 57). However, the brief equivocated somewhat on the extent of coverage by specifying that coverage should include "wage-workers in every industry or calling involving any occupational risk" (Ontario, 1912, p. 57), requiring the need for judgement about whether an occupation was hazardous. Although the CMA brief clearly stated that there should be no role for the courts and that employers should not accrue any additional liability once compensation had been awarded, it still had a role for negligence arguing that "gross carelessness, drunkenness, or intentional wrong on the part of the workman should be penalized in some way" (Ontario, 1912, p. 57). Similarly, the employer could be held liable for gross negligence or intentional wrongdoing in the CMA's version of what the system would be.

Regarding benefits, the brief did recognize that compensation should be based on wages: "The relief should be as far as practicable a substitution for the wages of which the injured workman and his dependents are deprived by the injury" (Ontario, 1912, p. 57). Bancroft proposed the establishment of a minimum amount of compensation that would keep injured workers and their dependents out of poverty, which Meredith rejected. Wegenast, on the other hand, proposed a pension of "$20 per month (to be increased to a maximum of $35 per month for dependent wives and children) or 50% of wages, whichever was less" (Risk, 1983, pp. 469–470). In the end, Meredith also rejected this proposal and the benefits were set at 55% of wages.

More contentious, for the CMA in any case, was the issue of permanent pensions for life for permanent disabilities. Meredith was adamantly opposed to imposing any limit on the length of time a worker would receive a pension for a permanent disability which brought vehement objection in the hearings from Wegenast for being "oppressive" for employers (Risk, 1983, p. 470). In his *Final Report*, Meredith makes the case based on statistics from compensation cases in Great Britain that most cases would incur fewer than 14 weeks of compensation and "those causing permanent disability, total and partial, will be comparatively few" (Ontario, 1913, p. xviii).

An Evaluation of the *Workmen's Compensation Act* of 1915

Risk (1983) summarizes the relative contributions and successes of employers and labour to the Commission, and consequently to the legislation, in this way:

> [Wegenast] contributed far more effort and imagination to the hearings than any other participant. He raised all the issues in his brief and focused much of the discussion, but he failed on all of the substantial and disputed issues. In contrast, Bancroft contributed little

> initiative and imagination to the design of the scheme. His function was to be a constant reminder to Meredith of labourers' interests and political power, and he performed it well. (p. 471)

The employers' failure did not necessarily translate into labour's success, however. Although labour won its contention that workers do not contribute directly to the assessments levied on companies, the legislation did stipulate a seven-day waiting period without compensation after an accident, which amounts to a financial contribution on the part of the worker who must bear the costs of lost wages for those seven days (Guest, 1999). Guest (1999) offers an estimate that a one-week waiting period could exclude as many as 47% of injured workers from receiving benefits because of the short duration of injuries. The issue of negligence also was not resolved completely in labour's favour in that compensation could be denied if the Board was convinced that there had been gross negligence or misconduct on the part of the injured worker (Guest, 1999; Piva, 1975).

Most importantly, labour supported the legislation, despite their contention that the level of benefits at 55% of wages was too low (Guest, 1999; Jennissen, 1981; Piva, 1975; Risk, 1983), which indeed it was if it was to fully decommodify their labour and allow a decent standard of living (Guest, 1999, Storey, 2009a). Indeed, Piva's (1979) detailed study of the conditions of the Toronto working class in the first two decades of the twentieth century strongly suggests that only the best-paid workers could have a decent standard of living on full wages. By piecing together data on wages and living costs from various government bureaus and departments, taking seasonal employment into account and integrating these with data on living costs, Piva created a "real wage index" that showed a decline in real wages over the period, particularly during the high inflation period of wartime. Piva's (1979) data for 1914 show that the average

weekly wage in manufacturing jobs was $11.11 whereas the costs of food, shelter, fuel, and light for a family of five was $14.58. (The average household size in Toronto during this period was 4.42.) Further, the expenditure amount is incomplete, because it does not include clothing and other essential items such as furniture, and certainly includes no luxuries or leisure items—not that working people had much leisure time when a 60-hour, five and a half-day work week was common. Piva (1979) concludes that the only way for working-class families in this situation could escape poverty was to have a second wage-earner in the family, which no doubt contributed to the prevalence of child labour. It is clear that a 45% drop in income while receiving workers' compensation benefits would greatly deepen the poverty of working-class families.

Thus, workers' compensation served to mirror and further ensconce existing inequalities. It established that it is socially acceptable that people with disabilities should be expected to live on less money than their peers, despite the likelihood of increased costs associated with the disability. Guest (1999) attributes this in part to the "strength of the notion that higher benefit rates would seriously impair the incentive to work" (p. 46; see also Rose, 2017), though he further notes that this notion is somewhat misplaced, given that injured workers were already part of the labour force. Rose (2017), however, argues that workers' compensation benefits had a "perverse" effect, not on the incentive to work, but on the incentive to hire disabled workers. Rose's (2017) study uses the United States' experience of workers' compensation and makes a persuasive argument that the trend of hiring disabled workers, which began to wane in the 1880s, was greatly exacerbated by employers' actions to avoid workers' compensation claims. The "dismemberment schedule" or "meat chart", introduced in Ontario in 1917, allowed for greater compensation for more serious injuries. Thus, if a disabled worker were injured on the job, there

was a good chance that a serious level of disability would result. Rose (2017) offers the example of a worker who is blind in one eye. If the other eye is blinded in the course of employment, the worker in Ontario could claim for a permanent pension for a serious disability. Employers not only stopped hiring disabled workers, they often fired existing employees with disabilities for fear of the liability of a "second injury."

Within a few years of the legislation's passing, medical and rehabilitative services were included in workers' compensation, due to labour's activity on the issue (Jennissen, 1981). Labour was also able to win higher pensions for women and children by 1919 and "in 1920 the rates of compensation increased to 66 2/3% of a worker's annual weekly earnings" (Jennissen, 1981). This improvement did not, however, meet labour's original goal, which was that an injured worker should be no worse off financially than if the injury had never occurred (Tucker, 2017).

Further, the fact that pensions for women and children were different from those of men further indicates the gendered nature of workers' compensation in its origins. Indeed, because income replacement was based on a percentage of earnings and because women earned less, often considerably less, than men, women and other low-paid workers were systematically disadvantaged, both reflecting and enshrining the notion that women's labour power was worth less than men's (Storey, 2009a). Guest (1999) notes a further gendering of workers' compensation benefits in that widow's pensions were $20 per month with an additional $5 per child up to a maximum of $40 per month. The maximum amount effectively limited the number of children covered to four children. Furthermore, for those with permanent disabilities, the assumption was the costs and labour for caring for disabled family members (husbands and sons) would be absorbed by the family and therefore, fall largely to women (Storey, 2009a).

Accounting for the Emergence of the *Workmen's Compensation Act*

Despite its shortcomings and gendered and racialized nature, workers' compensation legislation, was nevertheless ahead of its time. How do we account for this?

The 1915 workers' compensation legislation is the outcome of a confluence of the interests of organized labour, employers, and the state. The literature is unanimous on organized labour's "rising militancy" in the early twentieth century (Finkel, 2006, p. 82). The level of strike activity during this period has already been documented. Further, this was a pre-revolutionary period in Europe and a time of the formation of socialist parties and organizations such as the Industrial Workers of the World (Finkel, 2006). As noted in an earlier chapter, Abbott and DeViney (1992) suggested that socialism had an impact on the timing of the emergence of workers' compensation (see also Rose, 2017).

Thus, this rising militancy and radicalism gave the state a stake in the resolution of the workers' compensation issue, as workers sought political action in addition to their actions at the point of production. The various Commissions indicate that the issue had caught the government's attention in a significant way. While Risk (1983) tends to focus on Meredith's proclivities to explain the sympathetic hearing that labour received, Tucker (1984) offers insight into the role of law, and by extension, that of Meredith, in his analysis of the contradictory role of the state in capitalist society. He argues that the state must "facilitate the reproduction of capitalist relations of production and, at the same time, legitimate those relations. It performs this legitimating task by appealing to popular ideas of justice and ensuring that minimal levels of welfare are maintained" (Tucker, 1984, p. 269). Certainly, Meredith was clear in his intentions for quelling social unrest when he concluded his Final Report with the following:

> In these days of social and industrial unrest it is, in my judgment, of the gravest importance to the community that every proved injustice to any section or class resulting from bad or unfair laws should be promptly removed by the enactment of remedial legislation and I do not doubt that the country whose Legislature is quick to discern and prompt to remove injustice will enjoy, and that deservedly, the blessing of industrial peace and freedom from social unrest. (Ontario, 1913, p. xix)

There is also consensus in the literature that business interests were well served by workers' compensation (Babcock, 2006; Guest, 1999; Jennissen, 1981; Piva, 1975; Risk, 1983). Employers were freed from liability lawsuits and from individual liability—liability which in the case of some small businesses could spell ruin. They were also free of the acrimony inherent in adversarial lawsuits with their employees. The costs of "inevitable" workplace injury were now predictable and stable, covered by state insurance that would prove to be less expensive than private liability insurance (Piva, 1975). Some like Jennissen (1981) go so far as to say that the legislation was structured "in the interests of business" (p. 69), as evidenced by the low rates of income replacement and the fact that it was expected that businesses would pass the cost of workplace accidents onto the consumer through higher prices for goods. She notes that, although labour had been fighting for workers' compensation for decades, the issue was acted on only once employers became involved (Jennissen, 1981).

However, Tucker (2017) offers the most satisfying conceptualization for explaining why workers' compensation emerged how and when it did. He argues

> At certain points in time, workers view [the] exploitation of their labour power, and the laws that enable or tolerate it, as normatively unfair, and they resist it at the point of

> production and/or through political action, producing a commodification-decommodification dialectic driven by the politics of class conflict. (pp. 190–191)

Applying the concept of dialectic as those aspects of social phenomena that are "*necessarily* yet *contradictorily* interrelated" (Applebaum, 1978. p. 76, original emphasis), we can see how what Tucker (2017) calls the "politics of social protection" (p. 192) play out with workers' compensation. On the one hand, capitalism is driven to commodify labour power to maximize profit, but the high rates of industrial injuries and labour unrest engendered, not to mention increasingly successful lawsuits for injured workers, disrupted this process. This disruption is rooted in the materiality of disability because, as Tucker (2017) points out, "labour power is not an ordinary commodity" (p. 190). Labour power cannot be separated from the human being that sells it: "when a worker is injured or killed at work, it is not just the worker's labour power that is damaged or destroyed but the human being" (Tucker, 2017, p. 192).

Another distinction between labour power and other commodities is that it is (re)produced outside the market. Thus, work injury also impacted social reproduction when dependent families were left to fend for themselves or at the mercy of charity (Tucker, 2017). Also in the realm of social reproduction, urban reformers took up the issue of working conditions for women and children, fearing "the unrestrained pursuit of profit was creating physical and moral dangers that were interfering with the reproduction of the next generation" (Tucker, 2017, p. 194).

Under these circumstances, some kind of relief in the form of partially decommodifying labour becomes beneficial, even essential, to the survival of the capitalist economy that is creating those circumstances in the first place (Tucker, 2017). Thus, it is not surprising that workers' compensation emerged not only first among social protection programs but also

conceptually ahead of its time. As such, workers' compensation can be seen as a means of social control over disabled working bodies in that, although it partially decommodified their labour power, it was meant to bolster the underlying structure of capital accumulation through labour peace. The synthesis of this dialectic was the fledgling modern welfare state.

Finally, it is important to note that workers' compensation emerged during a recession, unlike the period of economic growth that ushered in the expansion of the welfare state after World War II. GDP growth dropped by 6.7% in 1915 and fell even more during a brief recession in the early 1920s (Bonham, 2017). Jennissen (1981) noted that the number of workplace injuries actually declined in 1914 and 1915, before rising again, because a recession had reduced employment and productivity. Several factors can be considered to account for this: the effectiveness of labour militancy, the fact that workers' compensation was actually a good deal for employers, and the fact that the cost of the program was covered by employers and higher prices for consumers, rather than tax revenues.

Concepts of Disability in Workers' Compensation

A materialist conception of disability holds that the experience and conceptualization of disability are socially constructed by the material and ideological conditions of capitalism (Oliver & Barnes, 1998), and in particular, in relation to the ability to be exploitable in the Marxist sense of the word (Russell, 2019). As the first disability-related social legislation, workers' compensation helped to set the tone for a conceptualization of disability in public policy, contributing to the commodification, individualization, and medicalization of disability.

The concept of disability underlying workers' compensation is manifestly based on labour force participation, thus, "commodifying the loss suffered by the worker" (Tucker, 2017, p. 201). Indeed, compensation was to be based on income replacement alone; there was no

provision for pain and suffering, as there had been under the common law (Risk, 1983) or any other "'social' factors that might make the worker less employable and result in additional wage losses" (Tucker, 2017, p. 201). As Rose (2017) argues, it isn't really a concept of disability at all:

> …labor reformers and legislators understood the social problem of workplace mishaps…as causing workers to lose wages, leaving households without breadwinners, and potentially leading respectable working-class families to depend on public aid…. In effect, they saw the problem of industrial accidents as one of dependency, not disability. Indeed, legislators had hardly recognized that they were making disability policy. (p. 138)

The ironic implications of this underlying conceptualization of the social problem of industrial accidents are that the workers' compensation program failed to serve permanently injured, that is, disabled workers (an issue that continues currently) and encouraged employers to discriminate against those same disabled workers, for reasons discussed above (Rose, 2017). Rose's (2017) work refers to workers' compensation in the United States, where entitlements were different. For example, pensions for permanent disability were not designed to last as long as the disability did. However, in state jurisdictions and Ontario alike, income-replacement rates were 50% to 67% of wages, too low to fully decommodify an injured worker's labour power and secure a decent standard of living. So, those with permanent disabilities who were unable to work were condemned to a much lower standard of living and possibly poverty, particularly in the United States where there was a limit on the time that a pension could be paid out.

There is another irony here in that workers' compensation was predicated on a new understanding of the cause of workplace injury and disease as socioeconomic rather than individual; yet, the doctrine that work injury was caused by individual carelessness and not poor

design or speed of work, persisted, according to Rose (2017). If a worker had been injured on the job, employers often presumed that the worker was at fault and therefore, likely to re-injure, causing the "second injury" issue for employers, discussed above. Rose (2017) chronicles many stories of successful disabled workers and a successful program to hire and retain disabled workers at Ford Motor Company in the early part of the twentieth century. Despite this evidence of success, however, disabled workers became "inefficient" in the eyes of many employers (Rose, 2017) and thus, "they faced discrimination in the capitalist labour market because employers anticipated that less surplus value could be extracted from them" (Tucker, 2017, p. 200).

Furthermore, the process of workers' compensation has the effect of taking the social problem of work injury and dealing with it as individual cases (Jennissen, 1981). Despite the prominence of the issue of prevention in both labour and the employers' briefs to the Royal Commission, Jennissen (1981) notes that the workers' compensation scheme was an "unconditional failure" as a prevention measure. There was no evidence that the incidence of workplace injury decreased after it was implemented (Jennissen, 1981). If anything, the number of reported accidents increased after the legislation was passed, though this could have been due, in part, to greater compliance with reporting requirements. The magnitude of the increase, however, is significant. As reported by Jennissen (1981), the accident rate rose from 5.35 per 1,000 workers in 1915 to 24 per 1,000 workers in 1924 (p. 68).

At the same time, the approach to disability in workers' compensation is not individual enough. From his Foucauldian perspective, Doran (1994) is concerned with the "disciplinary" aspects of workers' compensation. He notes, "Workers must describe their injuries for the board, but in terms which have already been preformed by the board such that description itself

constitutes a disciplinary technique" (p. 453). In addition to concerns of social control thus exercised by workers' compensation, his observations help to show how the system's focus on the monetary aspects of work injury also serves to obscure the complexity of disability as a human experience. Administratively, the "embodied experience" becomes "codified…into the state scientific discourse of workers' compensation" (Doran, 1994, p. 450). In short, work injury and disability had to be medicalized for the workers' compensation system to operate. Rose (2017) argues that this lack of understanding of the complexity of the disability experience helps to account for some of the perverse outcomes of workers' compensation for disabled workers. "Like other public policies, compensation laws sought to generalize specific conditions, but disability's immense complexity posed great hurdles" (Rose, 2017, p. 162). For example, a codified approach failed to take all personal circumstances into account such as the role of family support, or lack thereof, in a disabled worker's capacity for earning an income. Similarly, disability is not static; the experience of disability evolves (Rose, 2017).

Another important and gendered irony of the recognition of work-related disability as a social phenomenon is the fact that once the disability occurred, caregiving remained a private matter in the home, with the work mostly borne by women (Rose, 2017; Storey, 2009a), again mirroring and magnifying existing gender inequalities.

There seems to be little room for disability as a positive identity in the realm of workers' compensation. The system came about largely through the anger and frustration of the labour movement with the high rates of workplace injury and disease, though some argue that employers were the main benefactors. Further, the whole notion of compensation for disability caused by work injury characterizes disability as a loss to be recompensed, as discussed in an earlier chapter. That is not to say, however, that disability was not part of working-class identity.

The ubiquity of missing fingers and limbs and other disabilities and chronic illnesses among workers became "markers of poverty, if not class", and in the early days of growing work injury, served as a sign of experience and skill in certain jobs (Rose, 2017, p. 112). Quiggin (2018) argues that, "Through at least the early 1920s—and longer in dangerous industries—disabling injuries were an expected, if feared, aspect of working-class life…" (p. 112). Thus, impairment was a fact of the working class, whereas disability associated with dependency was socially constructed with the aid of workers' compensation.

Conclusion

This chapter establishes workers' compensation as an institutional conception of social security during a time of residualism. The characteristics of workers' compensation that qualify it as an institutional conception include its no-fault approach that theoretically at least, turned away from notions of personal responsibility and failure as the cause of need and recognized the socioeconomic origins of workplace injury and disease. Payments were to be automatic, once the injury or illness was medically established, rather than relying on discretionary judgements of "good character" or "morality" or even a means-test. As such, payments were understood as entitlements as a matter of right and not as a last resort against adversity.

Although firmly rooted in industrialization and urbanization and part of a widespread phenomenon, industrialization and urbanization alone do not account for the development of this institutional social program. This is better explained through an understanding of the complex contradictions of the commodification and decommodification of labour power under capitalism, combined with the agency of a strong and growing labour movement. Work injury and labour's reaction to it became a threat to the smooth reproduction of capitalist economic relations and workers' compensation, although partially decommodifying labour power, also served the

interests of capital for predictable costing associated with work injury. Because work injury was problematized as a matter of dependency rather than disability, the realm of social reproduction figured prominently in the calculation of this piece of social legislation as families were left without the earnings of the "male breadwinner". The state, in its contradictory role of furthering capitalist productive and reproductive relations while legitimating them, played a significant role in the development of a workers' compensation system that aimed to de-fuse unrest and placate employers simultaneously. From the state's point of view, workers' compensation also had the advantage of reducing a recognized social problem to one of codifying disability to be dealt with as individual cases.

As an aid in the reproduction of capitalism, workers' compensation also mirrored and enhanced existing inequalities and helped to cement a new one: discrimination against disabled workers in employment. The workers' compensation system was gendered and racialized by the industries that were not included for coverage, by compensation as a percentage of wages that were already lower than those of White men, by entitlement based on marital status for widows, and by the care of disabled workers in the private realm of the home.

Finally, the material conditions underlying workers' compensation set the tone for a negative conceptualization of disability as a loss—yet that loss was to be endured on less income than before the disability occurred. Thus, the conceptual tensions and differences between the injured workers' movement and the disability rights movement, discussed in the literature review, have deep and foundational roots.

Chapter 5: Benefits for "Incurables" and "Invalids"

Canada and Ontario would not see a general disability benefits program for nearly forty years after the inception of workers' compensation, though various categorical benefits for distinct groups of disabled people did occur. Table 2 provides a chronology of the relevant pieces of legislation and significant events in this history. From Table 2, it is clear that the Canadian welfare state was built incrementally program by program in response to various pressures at various times (Rice & Prince, 2000). Further, scholars have observed no comprehensive or overarching philosophy behind the development of the welfare state beyond "a growing belief that governments could solve some of the problems facing Canadians" (Rice & Prince, 2000, p. 56).

The *British North America Act* or *Constitution Act* of 1867 laid the political groundwork for the colonial, capitalist project of Canada. While the "founding fathers" made much of the unity of the French and British colonizers to bring it about—a false unity as history would show—there was no mention of the Indigenous peoples they would conquer to achieve their vision (Shipley, 2020). In the context of this colonial project, the *Act* also broadly laid out the jurisdictions of the federal and provincial governments in Canada. As any scholar of Canadian public policy knows, the issue of jurisdiction has long been a source of debate and conflict. Generally, areas considered to be in the national interest, such as immigration, defence, and postal services fall under federal jurisdiction, whereas areas of local interest such as health and education fall under provincial jurisdiction. Matters of social welfare are usually considered "local and private" and therefore under provincial jurisdiction (Rice & Prince, 2000, p. 34). Although the first general disability program was indeed provincial, the issue of disability has been addressed by all three levels of government, depending on the circumstances. As well, the

first disability program in Ontario was followed quickly by a similar, cost-shared federal program, into which the provincial program was folded. Because of these jurisdictional issues, it is difficult to consider the development of disability income supports solely at the provincial level. This chapter describes and analyzes the development of benefits available to the general population of disabled people, specifically those under the *Allowances for Disabled Persons Act* of 1952 in Ontario and the federal *Disabled Persons Act* of 1954. The purpose of this description is to allow for comparison with workers' compensation. For coherence and context, however, all disability income programs, such as veterans' pensions and pensions for blind people, are also described in varying depths in this chapter.

The conceptual tools already discussed—residualism, institutionalism, and universalism—will be brought to bear in the description and analysis of these income security programs. These concepts require elaboration, particularly universalism. As noted, a residual approach to social welfare treats social assistance as a last resort, usually stigmatizing those who need it as failures. Benefits tend to be means- or needs-tested, often involving much intrusion into and judgement about the lives of those receiving them (Guest, 1999). Benefits also tend to be meagre, loosely based on the "less eligibility" principle that has its roots in the British Poor Law of 1834. This principle holds that the dependent poor should have a standard of living less favourable than that of the lowest-paid labourer (Guest, 1999; see also Rice & Prince, 2000). This approach tends to use selective, categorical programs as policy instruments.

An institutional approach recognizes social assistance as a legitimate social obligation to remediate socioeconomic causes of hardship. Social insurance schemes, which include contributions from eventual beneficiaries, are considered an institutional policy instrument. There is a certain dignity to receiving the benefit because recipients contribute to the cost of the

program through mandatory contributions, which encourages “a feeling of self-dependence” Prince, 2016b, p. 74). Indeed, Guest (1999) points to the introduction of unemployment insurance in 1940 as cementing “one of the more enduring myths of the welfare state…in Canada—that benefits as of right are inseparably linked to contributions” (p. 106). The policy implications of this idea are enormous for people with disabilities who may have little or no labour force attachment. As will be discussed, debates about the merits and problems with these two policy instruments figure prominently in the public discussions during the development of the Canadian welfare state.

Universal programs are provided based on citizenship to those who are included in certain demographics, regardless of financial situation and without a means- or needs-test. Nor are monetary contributions to the specific program necessary to qualify for the benefits of a universal program. Examples of universal programs include public education and Medicare (Rice & Prince, 2000). Universal programs tend to be funded through general tax revenues and can be more costly than other approaches.

Based on the social welfare literature, Rice and Prince (2000) argue that “[t]he theoretical core of universality consists of five propositions” (p. 170). The first proposition is essentially an argument against selective (targeted) programs because they tend to be stigmatizing and of poor quality, creating social divisions because of the prejudices associated with them.

The second proposition is that universal programs play a number of positive roles in “social recognition, investment, economic stabilization, prevention, social integration, and stigma avoidance” (Rice & Prince, 2000, p. 171). As we will see in the case of veterans’ pensions, universal programs recognize non-monetary contributions such as service and sacrifice, an important consideration regarding concepts of disability that underly income

security programs. Universal programs such as public health and Medicare are examples of social investment in well-being and prevention. Universal programs enhance economic stabilization through the Keynesian notion of supporting consumer purchasing power through government transfers. Finally, related to the first proposition, universal programs prevent stigma and increase social integration "by avoiding punitive eligibility tests, by treating all clients more or less alike, and by establishing spheres of common interest and experience" (Rice & Prince, 2000, p. 171).

The third proposition of universality is that by including those across different social classes, universal programs are more likely to enjoy wide public support because more people have a stake in keeping and improving them. Indeed, this proposition suggests that the wide public support for universal programs creates a context for supporting progressive improvements.

The fourth proposition is related to the third in that wide public support for universal programs also makes them less vulnerable to cutbacks. Rice and Prince (2000) attribute this resilience to the political power of the so-called middle class compared with that of smaller, weaker constituencies (such as poor people with disabilities) that tend to be the targets of selective programs.

The fifth proposition posits that universality is necessary but not sufficient for creating greater social equality. This perspective argues that high-quality selective programs must also be part of the social policy mix to reduce social inequities, but, in my opinion, does not offer a convincing argument for why that is the case.

Thus, analysis of welfare schemes has created something of a hierarchy of policy instruments, with universal programs seen as the most beneficial from the recipients' viewpoint

and for broader social goals. As noted, they also tend to be the costliest. It is precisely this mix of policy approaches to disability income support that is our focus here as we try to tease out why different programs for different groups developed as they did and when they did. Guest (1999) argues that workers' compensation and the other early income security programs discussed in this chapter merely represented a "hairline crack" in the "residual mould" of Canada's social security system (p. 102). Not even the catastrophic and clearly structural unemployment of the Great Depression was enough to break the mould wide open, though Rice and Prince (2000) argue that the depression "left no doubt in the minds of Canadians that social conditions rather than individual behaviours determined the fate of most families" (p. 14). However, it was the Second World War that acted as the catalyst for a qualitative change in how governments approached social security (Guest, 1999). Before looking more closely at the impact of the Second World War on social security, however, it is worth noting an important development in the jurisdictional issues that Canada faced at this time.

Royal Commission on Dominion-Federal Relations

The 1937 Royal Commission on Dominion-Federal Relations, or the Rowell-Sirois Commission as it is also known, was the federal government's response to a constitutional and economic crisis. The provincial governments of Manitoba and Saskatchewan had been particularly hard hit by the depression and by droughts and were unable to provide essential social services (Rice & Prince, 2000). The Commission's mandate was to "conduct a 're-examination of the economic and financial basis of Confederation and of the distribution of legislative powers in the light of the economic and social developments of the last seventy years'" (Cassidy, 1937, p, 3). Social services figured prominently in this review "through their effects on public finance" (Cassidy, 1937, p. 9). Through supplementary reports to the Commission, all social programs were reviewed including "social services, old age pensions,

widows' pensions, mothers' allowances, health care, social insurance, and education" (Rice & Prince, 2000, p. 59). It is hard to imagine that a review as large as the Rowell-Sirois Report, which produced over 500 pages, would not discuss disability at some point. However, any mention of disability is absent from the 36-page Summary reviewed for this research. The significance of this Royal Commission rests in it putting forward the idea that there should be national standards for social programs and that the federal government should develop a "system for equalizing the fiscal capacity of the provinces", the latter being enshrined in the Constitution in 1982 (Rice & Prince, 2000, p. 59). As Rice and Prince (2000) note, "[c]ontemporary debate about…national standards in social policy can…be traced to this landmark study of public finance and Canadian federalism" (p. 60).

Impact of the Second World War

World War II would change the conditions behind the constitutional crisis. Like the period leading up to the enactment of workers' compensation, the war period was one of intense industrialization and urbanization. Also like the period leading up to workers' compensation, union membership increased dramatically "from 358,967 in 1939 to 724,188 in 1944" (Guest, 1999, p. 103.) The number of women in the workforce doubled and the proportion of waged earners was at its highest point since 1918 (Guest, 1999). The skills and urgency required for producing "planes, ships, tanks, and armaments" created a skilled workforce and increased productive capacity (Guest, 1999, p. 103). The unemployment of the depression evaporated and the provinces that had been so indebted to the federal government for the costs of unemployment relief saw improved fiscal situations. According to Guest (1999), with this new fiscal and productive position, provinces "adopted an independent stance that was to affect the course of social security in Canada" (p. 104).

The role of the federal government also changed radically during the war. One contemporary observer noted that the powers available to the federal government under the *War Measures Act* converted Canada overnight from a confederation into a unitary state:" the government over-rode or supplanted most of the normal procedures of peace; it became the largest and most influential employer of labour; it used its fiscal and monetary power to effect maximum war production, borrowing billions, raising billions by taxation..." (Eggleston, 1945, p. 360). These powers were, of course, temporary war measures and would be tempered by the constitutional position and fiscal solvency of the provinces. However, the war gave the federal government experience and comfort with managing the needs of the armed forces, administering allowances for their dependents, building housing where necessary, and subsidizing day care programs to allow women to work in the paid labour force. Broader interventions were also required to ration goods and to control wages, prices, and rents during this period. Thus, governments "came to understand that social services…were a vital element in the smooth functioning of the wartime economy…" (Guest, 1999, p. 104). This reality created the space for starting a public discussion of a comprehensive social security system, including disability policy, manifested in several reports. Before turning to these reports, however, it is important to understand what disability supports were available before the Second World War.

Other than workers' compensation and the categorical disability income programs discussed below, there was no system of social insurance for illness and disability in Canada before the Second World War. People with disabilities without an income would have to rely on public assistance and public institutions, mostly operated at the municipal level of government (Prince, 2016b). Having established workers' compensation as an institutional approach in

Chapter 3, it is noteworthy that the other major disability income security program at that time, veterans' pensions, was the first and only universal program.

Veterans' Pensions

The second major piece of disability-related policy legislation, after the *Workmen's Compensation Act* of 1915 was the *Pensions Act* of 1919. This *Act* provided the legislative foundation to a universal program of pensions that Robert Borden's Conservative government put in place in 1916. The *Act* represented a legislative commitment to provide pensions for disabled veterans of World War I and their dependents based on degree of disability and military rank (Prince, 2016b). Prince (2016b) notes that this was the federal government's "earliest lasting involvement in disability-related income security" (p. 67). He describes the scope of the program in its early development: "By 1918, fifteen thousand disability pensions and ten thousand dependents' pensions were being paid" (Prince, 2016b, p. 67).

Although veteran's pensions are not the subject of the comparative-historical analysis of this research, a brief comparison to workers' compensation is warranted, because there are striking parallels between the two. First, both programs were ahead of their time, veterans' pensions perhaps more so as a universal program developed during a period when residualism was still the dominant approach to social welfare. Second, both programs developed during a time of heated social unrest and socialist organizing. Fearing a post-war recession, the government found the prospect of returning war veterans, disabled or otherwise, forming a mass of discontented unemployed to be daunting and threatening (Guest, 1999). As such, returning soldiers, like injured workers, were firmly rooted in the class struggles occurring at the time. Further, returning soldiers, like injured workers, were a visible group and, like injured workers, were organized through their veterans' associations. Also like injured workers, veterans had a moral claim on society through their contributions. Both income security programs recognized

the disability itself as contribution enough and did not require recipients to contribute monetarily to the program.

Moreover, veterans' moral claim challenged prevailing notions of disability because the disability was acquired through service to the nation. Withers (2016) explains, "There was a conflict between eugenic constructions of disability as morally and physically unfit and the moral framing of soldiers as heroes for the nation: the 'fit' had become 'unfit'" (p. 36). Consequently, veterans "populated the emerging category of the fit disabled" (Withers, 2016, p. 37).

In 1930, the *War Veterans Allowance Act* was passed to recognize war veterans who had been "pre-aged" or otherwise "burnt-out" by their war experiences and related disabilities. This benefit provided a means-tested allowance to veterans over the age of 60 who were unemployable (Guest, 1999; Prince, 2002). Benefits were minimal and the government referred to them as "allowances" to differentiate them as a discretionary, residual policy instrument as opposed to the universal pensions already in place for veterans (Guest, 1999). This distinction was not lost on critics at the time, who accused the government of creating a two-tier system for veterans (Guest, 1999). Guest (1999) argues that these so-called burnt-out veterans were actually part of a larger problem of older workers being squeezed out of the labour force by mechanization and ageism.

Blind Persons' Allowances

After "persistent lobbying by the Canadian National Institute for the Blind, …the Canadian Council of the Blind," and the Canadian Federation of the Blind, the *Old Age Pensions Act* of 1927 was amended in 1937 to allow for a means-tested pension for blind people over the age of 40 who were in need (Prince, 2016b, p. 70; see also Guest, 1999). Guest (1999) notes that this effectively "bracketed" blind people over 40 with people over 70 (the eligible age for the old

age pension) and ignored those under 40 (p. 97). This was the case until the 1940s when the eligibility age was lowered to 21 and modest increases to the pension were made.

For purposes of the legislation, blindness was defined as visual impairment severe enough to prevent the ability to do "any work for which eyesight is essential" (Prince, 2016b, p. 70). The funding of these pensions was modelled on the old age pension of the time, with the federal government covering 75% of the cost as an inducement to provinces to develop blind pensions within their jurisdiction of social welfare. The amount of the pension was also the same as that for the old age pension, ($20 per month), but the total income that a blind person was allowed to earn from other sources was higher than that for the old age pension (Guest, 1999; Prince, 2016b). Any income from other sources over the allowable amount was deducted dollar for dollar, which acted as a disincentive to finding employment once the pension was granted (Guest, 1999). By 1945, nearly 7,000 blind persons in nine of the provinces were receiving pensions at a cost of over $1,000,000 to the federal government (Guest, 1999). During the 1940s, the age of eligibility was reduced to 21 and the amount of the pension was increased four times (Prince, 2016b).

In the early 1950s, the federal government opened the old age security debate and replaced the 1927 *Old Age Pension Act*. This also opened the door for a piece of legislation specific to blind persons. The blind persons' lobby had wanted a separate, specific piece of legislation all along, but had settled for an amendment to the *Old Age Pension Act* in 1937 (Guest, 1999; Prince, 2016b). In 1951, the *Blind Persons Act* was passed. Modelled on the program under the *Old Age Pension Act*, the costs were shared with the federal government paying 75% and the provinces paying 25%. The residency requirement was reduced from 20 years to 10. Indigenous people were no longer excluded (Guest, 1999; Prince, 2002; Prince,

2016b). Another change was in terminology. Under the *Old Age Pensions Act*, benefits to blind persons were called "pensions", but under the 1952 legislation, this term was changed to "allowances" "to emphasize that this was a social assistance program, not a contribution-based social insurance" (Prince, 2016b, p. 82).

Prince (2016b) accounts for the "special treatment" of the blind compared with others with disabilities by pointing to the fact the Canadian National Institute for the Blind was founded by war veterans, "which no doubt added to the political legitimacy and policy influence of the organization" (p. 85). Furthermore, the work of the organization meant that the blind population was well documented, allowing governments to estimate program costs fairly accurately (Prince, 2016b). Commenting on the fact that blind people in the United States also received similar "special treatment", Berkowitz (1989) argues, "The lack of stigma associated with blindness, the relative ease with which people could imagine and hence fear the state of blindness, and the long history of blindness all contributed to that special standing" (p. 206). Indeed, Stone (1984) claims that "blindness is treated well and recognized as worthy of social aid in almost every society" (p. 173).

Public Discussion about Social Security

A public debate over social security began in earnest after the release of the Beveridge Report in Great Britain in 1942. It took place in the context of planning for post-war reconstruction, specifically the demobilization of the military, the reunification of families, and the risk of unemployment that this entailed (Marsh, 2017). Beveridge was a British civil servant with a long history with welfare reform who recommended the integration of several different areas of income security into a unified system of compulsory social insurance to cover the whole population of the United Kingdom (Waddell, Aylward, & Sawney, 2002). The scheme was

meant to be comprehensive, "modestly" universal (Esping-Andersen, 1990), and to guarantee a minimum standard of living. Half a million copies of the report were sold in Britain, unheard of for a government technical report, and another 50,000 were sold in the United States (Moscovitch, 2017). There was also some availability of the report in Canada, and it received front-page coverage in *The Toronto Daily Star* when it was released (Moscovitch, 2017).

Leonard Marsh's *Report on social security in Canada* in 1942 is widely regarded as Canada's answer to the Beveridge Report (Guest, 1999, Moscovitch, 2017, Prince, 2016b). Marsh was a British academic, who had worked and studied under Beveridge in Britain before he emigrated to Canada, where he became the director of research for the McGill Social Sciences Research Project (Moscovitch, 2017). Influenced by the views of the British Fabian Society, Marsh was known for his social democratic views (Moscovitch, 2017). He was appointed to study social security in Canada in December 1942 and produced the first draft of the report in less than a month. The report included material from the Rowell-Sirois Report, other Royal Commissions, Marsh's own research that he had conducted at McGill, research from a contemporary University of Toronto academic, Harry Cassidy, reports from various welfare councils, and material from the reform group called the League for Social Reconstruction, of which Marsh was an active member (Guest, 1999; Moscovitch, 2017). It was presented to the House of Commons Committee on Reconstruction and Rehabilitation on March 15, 1943, though significantly, it was never tabled in Parliament (Guest, 1999). Guest (1999) feels

> The contemporary press and some critics made too much of the speed with which the report was written [because it was] …the distillation of the research, writing, thinking, and planning in social security and related fields that had been going on in Canada, the United States, Britain, and elsewhere during the preceding decade and longer. (p. 109)

That said, the haste with which the report was prepared certainly would not have allowed for public consultation, including with disabled people, as we know it today. Indeed, Guest (1999) describes the Marsh Report and the two other contemporary reports discussed later as “largely the work of individuals” (p. 117).

Marsh’s chief policy instrument for social security was contributory social insurance, though he also saw the need for allowances funded by general tax revenues. His reasoning was predicated on three principles: life under capitalism poses certain hazards and risks that are beyond the control of individuals; wages generally are not high enough to allow for families to save to meet these contingencies should they occur; and related to the first two, social insurance allowed for the collective pooling of these risks (Marsh, 2017). He also gave a nod to social cohesion arguing that “The basic soundness of social insurance is that it is underwritten by the community as a whole” (Marsh, 2017, p. 13). Further,

> The genius of social insurance is that it enlists the direct support of the classes most likely to benefit, and at the same time as it avoids the evil of pauperization, and the undemocratic influence of excessive state philanthropy. (Marsh, 2017, p. 15.)

Marsh characterized social risks as “universal” vs. “employment”. For universal risks, he proposed medical insurance to cover services, universal child maintenance allowances, funeral benefits, permanent disability pensions, widows’ and orphans’ pensions, and old age pensions. Indeed, Marsh made it clear that medical insurance was integral to the entire plan.

For employment risks, all employees would be covered for unemployment, sickness, maternity, and industrial disability and accidental death, the latter under the existing workers’ compensation scheme (Marsh, 2017). As such, sickness benefits would act as temporary

disability benefits, so Marsh saw them as a logical adjunct to unemployment insurance (Marsh, 2017).

Further, his proposals were also predicated on a billion-dollar investment of tax revenues in a full employment program consisting of investments in public infrastructure, as well as "training and guidance facilities" for employment and "unemployment assistance projects" (Marsh, 2017, p. 196). In his introduction to a recent publication of the Marsh Report, Moscovitch (2017) argues "In many ways, it is this call for peacetime spending on a scale similar to that precipitated by the war that is the most radical recommendation in the report" (p. xxv).

Disability-specific Programs in the Marsh Report

Although the report received little attention from the government at the time (Guest, 1999), Moscovitch (2017) argues that "Over the next 25 years, the ideas contained in [the report] became the basis of much of the Canadian welfare state" (p. xxviii). For this reason, it is worth looking at the disability-specific proposals in some depth.

Permanent disability pensions would be funded through insurance premiums imposed on employers, as in workers' compensation, and available to "all gainfully occupied persons" and their dependents, not just wage earners, by which he meant to include farmers and the self-employed (Marsh, 2017; Prince, 2016b). Also similar to workers' compensation, benefits would be related to wages. Unlike workers' compensation, the program would be administered federally as an adjunct to the old age pension scheme (which would also be a federal responsibility) (Marsh, 2017; Prince, 2016b). For those deemed unemployable due to disability, Marsh proposed a flat-rate benefit at around the mid-point of the unemployment benefit scales, to be funded by employers and the federal government (Marsh, 2017; Prince, 2016b). As with workers' compensation, living on less money with possibly more expenses after disability is justified in terms of the cost to the system. Marsh (2017) offers the following reasoning:

> Payments in respect of disability, widowhood, old age, are essentially continuous. Since they are continuous, they are relatively costly, and from the national point of view it is not possible to set an objective higher than the maintenance of the minimum.… Moreover, they relate to a situation in which it is reasonable to expect some adjustment must be made…. The situation is perhaps clearest for the group (an exceptional rather than inevitable group) who become disability pensioners…. The straightforward case is that a minimum, obtainable as of right and in the company of all citizens, is immeasurably better than uncertain aid from relatives, charitable institutions or the state. (Marsh, 2017, pp. 198–199)

Note that in this line of reasoning, the onus for "adjustment" to the reality of living with a disability is squarely on the individual, who apparently should be prepared for a minimum, because it is better than nothing.

Thus, "Marsh set out a template, now familiar to Canadians, for linking broad income levels with premium contribution levels to finance health insurance, disability insurance, and other social security programs" (Prince, 2016b, p. 75). However, social insurance disadvantages those people with disabilities without any labour force attachment. Social assistance was the only avenue open to this group of people.

Regarding workers' compensation, Marsh was reluctant to change a system that was, by all accounts, working (Marsh, 2017), though he expected that coverage would eventually be extended to cover more workers (Marsh, 2017; Prince, 2016b). He estimated that workers' compensation covered only about two-thirds of the people who would need it under the intensification of industry caused by the war (Marsh, 2017).

Marsh (2017) also comments on the difference between workers' compensation and general disability benefits. First, he cites a contemporary statistic based on American data that estimates that "non-industrial disability of workers themselves is about fifteen times as large as industrial disability" (Marsh, 2017, p. 110). He then notes the differences and in doing so, not only seems to justify a different system for work injury, but reinforces the notion that it is reasonable to expect persons with disabilities to live on less than they had before the disability.

> The industrial benefit is compensation, a species of damages for harm suffered at the hands of industry. The debtor to the non-industrial invalid is the community of other insured persons; they expect the invalid to do his best to get along without a pension and conserve the funds. In terms of the detail of physical handicaps, the differences can also be illustrated. Industrial permanent disability consists typically of obvious mutilations, the effect of which on earning capacity can be assessed according to tables which are reasonably systematic. But non-industrial permanent disability consists typically of internal disease—of the heart, lungs, etc.—for which no objective methods of assessing the degree of reduction of earning-capacity have been devised. (Marsh, 2017, p. 125)

It is also clear from this quote that disability, however caused, is to be considered primarily in terms of its impact on earning capacity. This is perhaps understandable since we are talking about income security, but is not without implications for the complex lived experience of disability. As was shown with workers' compensation legislation, one of its unintended consequences was to increase hiring discrimination against permanently disabled workers.

Prince (2016b) touches on this issue when he discusses "two core goals of social security: income maintenance for all at a minimum level, and a reasonable opportunity for personal development" (Prince, 2016b, pp. 72–73). This approach to social security might have a better

chance of recognizing the complexity of the lived experience of disability, though one might question whether "income maintenance at a minimum level" is truly compatible with "opportunity for personal development." Prince (2016b) discusses these two core goals in the context of Harry Cassidy's work on social security. A contemporary of Marsh, Cassidy was a University of Toronto social work professor and "one of the most experienced observers of Canadian social services" (Guest, 1999, p. 115). He wrote *Social security and reconstruction in Canada*, also in 1943, analyzing current programs and outlining a plan for a social security system, apparently with the two goals in mind. His recommendations for disability benefits combined a national social insurance program for disability with public assistance, presumably to address the problem of those without labour force attachment. That said, Cassidy was not in favour of a universal approach to social security (Prince, 2016b). Rather, he felt the contributory aspect of social insurance was a positive measure against citizens expecting "something for nothing," although he did agree with Marsh that benefits should be received as a right of citizenship (Prince, 2016b).

The Progressive Conservative Party also commissioned a response to the Marsh Report from the well-known social reformer Charlotte Whitton (Moscovitch, 2017, Prince, 2016b). Whitton had been executive director of the Canadian Welfare Council and a leading voice in the social work profession. Her book, *The dawn of ampler life*, was a sharp critique of the Marsh Report, arguing that it relied too heavily on the Beveridge Report, which represented ideas from Europe that were inappropriate for Canada's vast geography and still widely rural economy (Guest, 1999; Prince, 2016b). She argued that Marsh's heavy reliance on social insurance as a policy instrument would not serve the needs of low-wage and self-employed rural workers (Prince, 2016b). Her plan was predicated on a "living wage plan" meant to guarantee high

enough wages for the male breadwinner to support a family (Guest, 1999). As such, Whitton's primary preference for income security was gainful employment (Prince, 2016b). Her plan also relied on the expansion of "social utilities" by which she meant community services such as schools, hospitals, public health, vocational training, and child welfare (Guest, 1999; Prince, 2016b) and tax deductions for dependent children rather than Marsh's family allowances (Guest, 1999). She did not eschew social insurance completely, arguing for coverage of "all wage earners and self-employed whose earnings exceeded the income tax threshold" (Guest, 1999, p. 115). These would provide a flat-rate benefit in times of income interruption, but set low enough that it would have to be supplemented by personal savings, private insurance, or social assistance (Guest, 1999). However, she favoured the expansion of discretionary provincial and municipal social assistance programs over comprehensive social insurance, arguing for "general and specialized forms of social assistance" (Prince, 2016b, p. 77; see also Guest, 1999).

Guest (1999) comments on the "strong residual flavour" (p. 116) of Whitton's recommendations and Prince (2016b) frames them as an example of classic liberal welfarism. Yet, there is a certain irony here in that Marsh's proposals are considered the most progressive of the three reports, in part, because of his heavy reliance on social insurance rather than public assistance; however, as noted above, social insurance disadvantages those with no labour force attachment, which undoubtedly would have included many people with congenital disabilities who were unable to work or discriminated against in hiring. Given her political views and recommendations, it seems unlikely that Whitton's expansion of social assistance would afford a life of dignity for disabled persons, yet the disadvantage of tying benefits to labour force attachment remains.

Allowances for Disabled Persons Act, 1952 and the Disabled Persons' Act, 1954

Indeed, the first disability benefit program in Canada implicitly recognized this problem in that it was not contributory. In 1952**,** nearly forty years after the enactment of workers' compensation in Ontario and in the context of this incremental history of the development of social security in Canada, Leslie Frost's Progressive Conservative government introduced a means-tested disability allowance for permanently and totally disabled persons under the *Allowances for Disabled Persons Act* in Ontario. The Minister of Public Welfare, William A. Goodfellow, described the legislation as "pioneering" when he introduced it to the Ontario Legislature (Goodfellow, *Hansard,* 26 March 1952, p. A-5). Then in 1954, the federal government offered a 50/50 cost-share arrangement for a disability allowance under the *Disabled Persons Act* (Bryden, 1974; Guest, 1999; Prince, 2002; Prince, 2016b). Bilateral agreements between the federal government and all of the provinces and territories were put in place within two years of enactment (Prince, 2016b).

Despite the pioneering nature of these pieces of legislation, however, it appears that their social history has yet to be written. The Ontario program gets scant mention in the literature and the federal program little more. Thus, the descriptions offered here have been gleaned from contemporary newspaper articles and parliamentary debates on the two pieces of legislation.

As the first benefits program of its kind, the Ontario program did indeed influence the first federally funded disability benefits program. National Health and Welfare Minister, Paul Martin Sr. noted that the federal government had "followed very closely" the Ontario program in its design of the first federally funded general disability benefits program (Martin, *Hansard,* 8 June 1954, p. 5633). In fact, the Ontario program and the federal program were virtually identical, as were the debates in the two levels of government that preceded their passing.

Because of their proximity in time and similarity in content, the two programs will be described together. Indeed, the Ontario program was folded into the federal cost-sharing scheme.

Eligibility for the means-tested benefit of $40 a month included a 10-year residency requirement, a minimum age of 18 years to a maximum of 65 years when eligibility for old age pensions began, and that the recipient have a permanent and total disability. The income ceiling for the means-test was also the same as that for the old age pension (Martin, 1 June 1954, *Hansard*, p. 5326) $720 annually, including the benefit, for a single person and $1,200 annually for a couple ("Cash allowances", 1953, March 7). Under the federal program, people were ineligible if they were receiving benefits under any other program. Nor were people with disabilities who were living in some kind of institution eligible for the benefit under either program. Provinces, could, however, make adjustments to the basic program cost-shared by the federal government. According to a *Globe and Mail* report, Ontario introduced an amendment to the *Act* that would allow those receiving workers' compensation and veterans' pensions to also receive the disability allowance ("Bill would aid", 1954). A later article suggests that it did not pass ("$3,000,000 in benefits", 1954). Further, in Ontario, much was made of the fact a person receiving a disability allowance may also qualify for an additional amount of municipal relief based on need as determined by the municipality. The Minister explained to the House:

> In respect to disabled persons, there is nothing to prevent a municipality at the present time supplementing the $40, and we will be only too glad to share 50% with the municipality. If, for instance, they were to pay an additional $10, we will subsidize them to the extent of $5. (Goodfellow, *Hansard*, 7 April 1952, p. FF-5)

Interestingly, the Ontario program also took steps to avoid what was called a "double means-test" in that benefits were to be awarded to individuals, not based on family income. Thus, a disabled person could be living with family whose means surpassed the means-test and still be eligible to receive the benefit (Goodfellow, *Hansard,* 7 April 1952, p. GG-3).

The debates in Parliament focused on the adequacy of the amount of the benefit and the definition of "permanent and total disability" and hence, how wide the coverage of the disabled population would be. Issues of coverage were also raised concerning the age requirements and residency requirement for the benefit.

In introducing the Bill, the Ontario Minister of Public Welfare gave a broad definition of "permanent and total disability" as

> one who is physically or mentally impaired to an extent that he is unable to care for himself and is dependent on other persons. This legislation will not apply to persons who are partially disabled or are able to earn a livelihood for themselves or who would respond to rehabilitation. (Goodfellow, *Hansard*, 26 March 1952, pp. A-5-A-6)

The Minister was reticent to name "what type or types of disabilities could be considered as permanent, until we have had administrative experience which can only be secured through practical application" (Goodfellow, *Hansard*, 26 March 1952, p. A5). That said, the Minister was confident, contrary to Marsh's concerns about determining disability, that the experience gained in assessing the disabled husbands of women applying for Mothers' Allowance would provide the necessary experience and expertise for administering the program (Goodfellow, *Hansard*, 26 March 1952, p. A-6). The medicalization of disability was inherent in the program, in that the Minister announced that a Medical Board would be set up for the determination of permanent

and total disability, decisions that were subject to appeal and review (Goodfellow, *Hansard,* 26 March 1952, p. A6).

Interestingly, it is the federal debates that shed more light on the nature of the administration of the Ontario program. When questioned about the issue of the definition of permanent and total disability in the federal Act, the National Health and Welfare Minister, Paul Martin Sr., turned to the Ontario experience.

> It is the Ontario pamphlet which says the disability must be permanent in the sense that it cannot be corrected in the foreseeable future and total in the sense that the person cannot perform the ordinary activities of daily living without the assistance of another person…. but it is not an exclusive definition…. Because of the lack of a detailed definition, what they have done in Ontario and Alberta is to use good judgement in each case, to look at the context and to see whether in that context, having in mind all the circumstances, the person comes within [this] general rule. (Martin, *Hansard,* 8 June 1954, p. 5633)

As such, the Minister extols the virtues of allowing caseworkers wide discretion in administering the benefit, a hallmark of the residual approach to welfare administration. Also consistent with a residual approach, deservingness entered the conversation with this paternalistic remark from the Ontario Minister of Public Welfare:

> It's apparent that, in many respects, this disabled group is more deserving than some of those provided for by other forms of public assistance. I am sure it is the hope of every hon. member of this House that this legislation will bring to those individuals who qualify, a sense of security which they have never known before. (Goodfellow, *Hansard,* 26 March 1952, p. A-4)

One parliamentary critic of the Ontario Bill described the definition of disability as "terribly restrictive" (Grummett, *Hansard*, 4 March 1952, p. C-3) and demonstrated some insight into the complexity of disability. He offered the (gendered) example of a person who has a stroke: "Is he totally and permanently disabled?' No. The doctor will undoubtedly say he may recover. He may recover in six months; he may recover in two years, but in the meantime, he gets no assistance — not under this *Act* (Grummett, *Hansard*, 4 March 1952, p. C-3). He goes on to argue that

> Under this Act you may rest assured that very, very few will receive assistance; in other words, the Act is merely an empty shell, an empty promise, and it will not do the work that we expected or which the government promised. (Grummett, *Hansard*, 4 March 1952, p. C-3)

The government did not deny that the program would be restrictive. The Minister of Public Welfare justified these restrictions, saying, "We are pioneering in this field and must, of necessity, be careful not to get beyond ourselves financially in providing assistance to every person who suffers from some form of disability or incapacitation" (Goodfellow, *Hansard,* 7 April 1952, p. HH-12). Premier Frost was even more explicit about the restrictiveness, with a telling remark about the nature of the welfare state in Ontario:

> This is not a "hand-out" to anybody to enable everybody to get on these rolls. This will be strictly administered. May I say to hon. members opposite, if you do not do that, then you will have to increase taxes. People will know what taxes are as the 30th day of April approaches, when we pay income tax, and many people are groaning over the amount of

> income taxes today. All you need to do to increase it is just to leave common sense aside and go into the welfare state idea; then you will have plenty of taxes and you will be in plenty of difficulty. (Frost, *Hansard,* 7 April 1952, p. GG-4)

Nor would the Ontario government hazard a guess as to how many people would be assisted by the benefit. As it turned out, according to a *Globe and Mail* report, the program had paid out $3,000,000 by October 1954 with 6,053 disabled people approved for the benefit. Medical services were also covered ("Province to pay $40", 1952; "Cash allowances", 1953). Another *Globe and Mail* article at the beginning of 1954 indicated that about one-third of recipients were people with mental disabilities, about 20 percent were "paralytics", with a similar number living with disabling arthritis and heart conditions (Kimmond, 1954).

The first article also reported that the "[s]uccess of the program has prompted the Federal Government" to cost share on a 50-50 basis, though Ontario would have to continue to pay the full cost of medical coverage ("Province to pay $40", 1952). The federal Minister of Health and Welfare had the benefit of a survey (Baldwin, 1950) and Ontario's and Alberta's experience with a disability allowance, so he was willing to estimate that 25,000 to 35,000 people would be covered nationally (Martin, *Hansard,* 1 June 1954, p. 5326).

As mentioned, the federal program did define "permanent and total disability" in regulation, much to the chagrin of some opposition members who wanted to know exactly what they were supporting and how generously it would be applied. The regulation stated the definition as follows:

> (a) the person is suffering from a major physiological, anatomical or psychological impairment, verified by objective medical findings; (b) the impairment is likely to

> continue without substantial improvement during the lifetime of the person and is one to which the concept of cure cannot be applied; and (c) as a result of such impairment, the person is severely limited in activities pertaining to self-care and normal living. (Disabled persons regulations, 1953, p. 984.)

If, however, a disabled person had a "favourable rehabilitation prognosis" or if rehabilitation measures had been recommended and were available, the person was not considered to be permanently and totally disabled (Disabled Persons Regulations, 1953).

Other factors that restricted coverage were age and residency requirement. Members of Parliament at both levels pointed out that the 18-year age requirement left a gap of two years between the time when other benefit programs for children, such as family allowances and under certain circumstances, Mothers' Allowances, ended and the disability benefit began. In the federal debate, the Cooperative Commonwealth Federation's (CCF) Stanley Knowles described this restriction as "the most unkindest [sic] cut of all" (Knowles, *Hansard,* 8 June 1954, p. 5628). Another federal member argued that the

> Bill should provide for payments from the time of birth in certain cases, or later, in the specific cases where these children or these young people undergo medical treatment for rehabilitation… [T]his procedure would facilitate rehabilitation, which, I can well imagine, is the ultimate dream of the Minister of National Health and Welfare (Poulin, *Hansard,* 1 June 1954, p. 5352)

Both levels of government, however, stood firm on both the age and residency requirements with Ontario offering the rather weak argument that they needed to gain experience with the program before making changes (Goodfellow, *Hansard,* 7 April 1952, p. EE-9).

Another point of contention was the adequacy of the benefit, the amount of which had been set to ensure no loss of income during the transition from the disability allowance to the old age pension. The CCF argued that the amount should be $60.00 (Knowles, *Hansard*, 8 June 1954, p. 5639). Ironically, even in his critique of the adequacy of the amount, another member fell back on one of Marsh's arguments: that something was better than nothing. He argued that despite the inadequacy of the amount,

> We see this Bill as certainly a step in the right direction. Those people who have received nothing to date in the way of direct payments will receive $40 a month, and it will look like a fortune to many of them. (Shaw, *Hansard*, 1 June 1954, p. 5350)

The concerns about the adequacy of the benefit appear to be well-founded when the amount is compared to wage rates at the time. The average *weekly* wage in Ontario in 1952 was $56.00. Lower-paid industrial workers, that is, those in service industries such as hotels and restaurants, received an average *weekly* wage of $31.25 (Canada, 1953). Unfortunately, data on the cost of goods and services at this time were not available, but it seems safe to say that a monthly amount that is less than the average weekly wage would afford little decommodification. Indeed, the commodification/decommodification dialectic does not play out concerning general disability benefits. Recall that this dialectic operates around the contradiction of the drive to commodify labour and the impact of that commodification on the people who embody that labour. In the case of general disability benefits, there is no disruption in the commodification of labour and capital accumulation, because the target population for the benefit was not employed in the first place.

Despite how meagre the benefit was in relation to waged labour, however, there were high expectations for the independence of disabled persons who receive the allowance. As Premier Frost stated,

> …that is, a person who is afflicted with a permanent and total disability, and instead of being a beggar and being [sic] just becoming driftwood, he is being put into a position where he will have a fair element of respectability and independence. That is the purpose. (Frost, *Hansard*, 7 April 1952, p. GG-4)

Moreover, the benefit was touted to "relieve those who have had the responsibility of caring for dependents who are disabled through physical or mental impairment" (Goodfellow, *Hansard*, 26 March 1952, p. A-4). The federal Minister of National Health and Welfare concurred, though was perhaps more realistic about how far the benefit would go in "relieving" caregivers. Mr. Martin argued, "[W]e can at least by this measure agree to share some part of the financial burden of caring for the afflicted member [of the family] (Martin, *Hansard*, 1 June 1954, p. 5324).

Concepts of Disability

Within these debates, and through the language that was used at the time, we get more than a glimpse of the concepts of disability underlying the new benefit program. In addition to the inherent medicalization of disability as a problem to be rehabilitated, Members of Parliament at both levels of government consistently described disability as a personal tragedy that strikes an individual. The existence of the benefit thus transformed a very private trouble into the social "problem" of disability. In speaking in favour of the legislation, one provincial member made a link between war veterans and people with disabilities: "In battle we take care of our casualties;

life is a battle, and these poor unfortunate people who are struck down should be given care, and I want to commend the Government. I think this is a grand thing." (Allen, *Hansard*, 7 April 1952, p. FF-10)

As such, disabled people need care. From the view of feminist political economy, it is interesting to see the recognition of the unpaid and emotional labour associated with disability, though it is characterized as a "burden": "To see a young man or a young woman stricken suddenly with some heart-rending disability is a tragedy whose burden can never be fully lifted from the shoulders of those families on whom this misfortune falls …" (Martin, *Hansard*, 1 June 1954, p. 5324).

Nor was there any doubt on whose shoulders that "burden" fell. In the following comment supporting the legislation for recognizing this unpaid and emotional labour of women in particular, this federal Member of Parliament also offers a comment on the institutionalization of disabled children.

> Sometimes the invalid case starts at birth, and it is impossible to describe the devotion of the mothers of these handicapped children. They want to look after them. There are hospitals that take care of invalids…. Many people are interested in the invalids but those who are most interested in them are the mothers who give birth to handicapped children. We must notice that because of that motherly love they do not want their handicapped children to go to hospitals. They prefer to take care of themselves. (Howe, *Hansard*, 8 June 1954, p. 5628)

As such, an earlier eligibility age would be able "to help the parents take care of these handicapped children at home" (Howe, *Hansard*, 8 June 1954, p. 5628). The member goes on to

give his own example of a deserving mother of 10 children, five of whom are disabled, in his mind, representing "one of the saddest cases" (Howe, *Hansard,* 8 June 1954, p. 5628).

Support for both of these pieces of legislation and its underlying concept of disability appears to have been unanimous. One *Globe and Mail* report indicated that in one federal session, "Twenty-six members of the Commons joined in the day-long debate without a single voice being raised in opposition" (Baldwin, 1951). Further, members indicated widespread popular support for these measures, though they offer little in the way of concrete evidence. In the second reading of the Ontario Bill, the Minister of Public Welfare stated,

> …I little realized the appeal which is made by this type of legislation, as evidenced by the reception it has had from the citizens of this Province…. I have never been privileged to present a measure which has had so popular a response. (Goodfellow, *Hansard*, 7 April 1952, p. DD-2)

At the federal level, it is CCF member, Stanley Knowles, who sums up the operative concept of disability, along with his perception of the popular support for the benefit.

> I am quite satisfied that in supporting this measure the House of Commons and the parliament of Canada is carrying out the desire, the wish, and the will of the Canadian people that we give a decent break to those among our fellow citizens who are afflicted with disabilities and incurable diseases which blight their lives and make things so difficult for them. (Knowles, *Hansard,* 1 June 1954, p. 5333)

Thus, in keeping with a concept of disability as personal tragedy, the legislative response can be characterized as humanitarian.

Impetus for the Legislation

Given the vagueness of these statements about popular support for the benefit, it is difficult to judge how much of a role it played. Indeed, one statement from Goodfellow, the Ontario Minister of Public Welfare, sounds as if the idea of a disability benefit just dawned on him one day. Continuing the "unfortunate burden" theme, he stated,

> I realized there was a gap in our public assistance program and I have hoped for some time that it would be possible to alleviate the lack of security which this unfortunate group has experienced, and that these disabled would be able to attain a feeling of security and realize they are not entirely a burden upon other persons or on the community at large. (Goodfellow, *Hansard,* 26 March 1952, p. A-7)

What is clear from the debates, however, is that the impetus for this measure came from both outside and inside the ruling parties at their respective levels of government. More than one Member of Parliament at both levels of government claimed credit for having contributed to the Bill. The Ontario leader of the opposition was quick to point out,

> As the Minister will no doubt recall, it was Members from all sides of the House who over the last 5 or 6 years have urged the creation of such legislation as this, culminating as it does today in the Bill we have before us. (Oliver, *Hansard,* 7 April 1952, p. DD-5)

A master's thesis on disability allowances written in 1957 claims that one federal Member of Parliament had been introducing a Bill for disability allowances every year from 1946, though unfortunately does not give a source for this claim (Bodlak, 1957).

A federal CCF representative is more forthcoming about the impetus for the federal benefits program when he charges that "after incessant prodding by people outside the Liberal

party, and after incessant prodding from organizations all over Canada, the government finally and reluctantly brings in a most inadequate measure to deal with the present social problem..." (Cameron, *Hansard*, 1 June 1954, p. 5364). He goes on to say:

> This measure has been introduced, and the party to which I belong [CCF] is prepared to support it…. It is not prepared to pretend that this is an adequate measure. It is not prepared to pretend that it is an indication of public-spiritedness on the part of the government; because it is very obvious that all that has happened here today is what has happened time and again since this very party assumed power in Canada; when pressure becomes irresistible, then finally they move. When they move they demand tremendous credit and accolades for having moved in the face of irresistible pressure. (Cameron, *Hansard*, 1 June 1954, p. 5364)

Further, it is the CCF, in the person of Stanley Knowles, who indicates who was behind this "irresistible pressure":

> I think we must also pay tribute to the group…the Canadian Association of Incurables who, at great sacrifice, great cost, and great pain, have tried across the years to make known to the people of Canada and to the government of this country their need for assistance along these lines. (Knowles, *Hansard*, 1 June 1954, p. 5333)

Information about the Canadian Association for Incurables is scant. The organization caught the attention of the Manitoba Medical Association when one of its members requested information about it. A short piece in the *Manitoba medical review*, based on information from the Winnipeg Better Business Bureau, indicates that the association was formed in May 1947 for the express purpose of pursuing disability pensions through legislation (Canadian Association of

Incurables, 1950, p. 339). At the time of the publication of the *Manitoba medical review* article, Manitoba did not have a representative for The Canadian Association of Incurables, but the organization was reported to have a presence in Nova Scotia, Ontario, and Saskatchewan. An article in *The Globe and Mail* about when and which wildflowers to pick tangentially mentions other organizations working with the association: Shut-In's Day Association, Crippled Civilians Society and Shut-In's Friends' Association (Purser, 1950). One 1950 article in *The Toronto Daily Star* also mentions the support of the Community Welfare Council of Ontario for a disability benefit ("Aid to the handicapped", 1950).

The Rt. Reverend H. R. Ragg, the Anglican Bishop of Calgary at the time, was the Honorary President and the organization seems to have had religious overtones. The elected president was Eva Warden, a polio survivor described as a paraplegic from the age of 19. Her obituary in a local weekly newspaper appears on the "Religion" page and notes that she both attended and taught at different Alberta Bible Schools. It also notes, "Being a paraplegic didn't stop her love of life or her love for Jesus" ("Obituaries", 1993). An entry in a religious publication called *The End Times* makes a more explicit link between the association and religious work. It reads,

> During the first three weeks of December 1951, we had with us Brother Isaac Thompson, of Lacombe, Alta. This brother has a rich teaching ministry, and in spite of his physical handicap, is diligently pressing deeper into God's Word…. Because he is Dominion Field Representative for The Canadian Association of Incurables, he makes numerous contacts for Christ everywhere he goes. (Martin, n.d.)

As well, this evidence makes it clear that the association was led by disabled people. The organization was funded by donations, though none of its officers received any pay, as evidenced by a note in the minutes of the United Farm Women of Alberta (UFWA), which endorsed the association. (United Farm Women of Alberta, 1948). (The UFWA was an auxiliary wing of the United Farmers of Alberta, a farming lobby group. The group campaigned for public health, education, women's rights, and ironically, was a strong supporter of the eugenics movement. Indeed, they were influential in supporting Alberta's *Sexual Sterilization Act* of 1928 [Ball, 2013]).

There was no membership fee (Canadian Association of Incurables, 1950) and none of the evidence indicates the size of the membership. In May of 1950, they sent a delegation of 22 members to Ottawa to "interview the Prime Minister, the Minister of Health, some Cabinet ministers and the party heads" about pensions for disabled people "whom doctors will certify to be incurable" (Warden, 1950, May 11). Four delegates were from Alberta and the rest were from Ontario, (Warden, 1950, July 13) and from a *Globe and Mail* report, appear to have been predominantly wheelchair users (Baldwin, 1950). This access was facilitated by Rev. Ernest G. Hansell, MP, Social Credit member for the riding of Macleod, Alberta, whom Eva Warden describes in her report on the delegation as having a "very real interest in our cause" (Warden, 1950, July 13, p. 2). Hansell also presented a petition signed by over 20,000 "incurables" to the House during the delegation's visit and the association was invited to present it directly to the government. Chairs in the House had to be removed to accommodate the wheel chairs of the members of the delegation (Warden, 1950, July 13, p. 2).

Warden's report of the delegation's visit in her local newspaper offers a number of insights into how disability benefits came to be. In visiting all the parties, the association was

keen to show they were non-partisan and even apolitical. She wrote, “We went to our interviews with unbiased political views as a delegation. We did not try to ‘pressurize’ any political party” (Warden, 1950, July 13, p. 2). They were rewarded for these efforts by securing support across party lines, reflected in the quick, unanimous passage of the Bill.

Less clear is how much of a role the association played in the passing of the first piece of legislation in Ontario. With the heavy representation from Ontario in the delegation, they must have been aware of the Ontario program. Further, Warden’s report comments cryptically that “An unfortunate incident with the Ontario government in providing assistance for incurables was discussed” during one of their interviews (Warden, 1950, July 13, p. 2). However, the context of the incident and the association’s direct role in it is not clear because of the comment that follows: “Apparently they do not mind looking after one or two Incurables, but not all of them. We want to get to the bottom of this as well.” The report also identifies the next steps as working “with the Provincial Governments as we have been doing with the Federal Government” (Warden, 1950, July 13, p. 2), followed by a fundraising pitch:

> This will take time and money. Both are limited. We will make up the time by earnest endeavour and consolidation of our efforts. We are leaving it up to … the friends of our association to supply us with the necessary funds. Our trip to Ottawa drained our bank account; we know you will not fail us. (Warden, 1950, July 13, p. 2)

Warden’s report also indicates the National Health and Welfare Minister, Paul Martin Sr. had a personal interest in disability. His son, Paul, a polio survivor, attended the interview. Warden’s comments on him indicate that the association shared the government’s view of disability as personal tragedy and weren’t averse to exploiting it for the cause:

> Mr. Martin is deeply grateful, as we all are, that [his son] escaped life as a cripple in a wheel chair. I think he will prove his gratitude by placing all his weight as the Minister of Health and Welfare behind our cause. (Warden, 1950, July 13, p. 2)

Elsewhere in the report, commenting on their first interview, Warden writes, "I think anyone, however poised, would have been deeply shocked at the first sight of our delegation. Mr. Drew was visibly moved by our group as was everyone else we interviewed thereafter" (Warden, 1950, July 13, p. 2). At the same time, she noted of that same interview, "At no point did he talk down to us. I could see that this attitude inspired confidence in our delegation which never failed them" Warden, 1950, July 13, p. 2). At one point, Warden likens the plight of disabled people to a national disaster.

> I mentioned at almost every interview that our government proved herself equal to the National Disaster localized in Manitoba. Our incurables have been in a state of National Disaster for years and will continue to remain so unless that same compassion is exhibited on their behalf. We may well ask ourselves, what is the reason for speedily alleviating evident suffering on behalf of some individuals while completely ignoring it on the part of others…? Yet it is true that hundreds of our incurables are dying in poverty and actual starvation and no one is alarmed. (Warden, 1950, July 13, p. 2)

It is difficult to assess the impact of this advocacy on the government's decisions. Despite the CCF's comment about "irresistible pressure" being brought to bear, as early as 1948, Mr. Martin Sr. declared himself "seized of the importance of this problem" of disability benefits in a *Globe and Mail* article (Hickey, 1948). The article goes on to comment, "Progressive

Conservative and CCF members for once agreed and members of both parties pressed for disability allowances" (Hickey, 1948, p. 1). Two years later, The *Globe and Mail* reported that "A delegation of wheel-chair invalids visited Parliament Hill not long ago and made a profound impression on members" (Baldwin, 1950). This passing reference to the delegation appears to be the only national coverage that it received. This comment is contained in an article announcing the launch of a national "sickness survey" to determine the number of people with incurable diseases who were not earning an income, which suggests that the government was starting to get serious about setting up a benefit program (Baldwin, 1950).

Unfortunately, there is also little evidence about how the benefit was received by people with disabilities, that is, whether they considered the amount a "fortune" as one Member of Parliament suggested or whether they felt short-changed in comparison to benefits for veterans, for example.

It is also noteworthy that disability allowances came on the heels of pension reform in 1951. Bryden (1974) cites several factors that led to the rise of old age pensions as a pressing political issue, which may apply to disability allowances. "The greatest war in history, following hard after the greatest depression in history, created a strong sentiment in the western world…that there could be no return to the conditions of the 1930s" (Bryden, 1974, p. 109; see also Guest, 1999). Furthermore, the 1940s saw economic expansion and the "Keynesian revolution in economics" (Bryden, 1974, p. 109), which provided the material and intellectual means to act on this sentiment. Similar to the advocacy for disability allowances, private Members of Parliament and the constituent group, in this case, old age pensioners, provided the political advocacy for pension reform. Notably, trade unions were very involved in advocating for old age pensions, (Bryden, 1974), but they appear to be absent from the disability allowance

debate, based on the available evidence. Thus, it appears that the addition of disability allowances to the Canadian welfare state arose from a combination of community advocacy, political will, and the general expansion of the welfare state.

Conclusion

Jongbloed (2006) wrote, “The questions of what it means to have a disability and what society owes people with disabilities have been answered in different ways at different times” (p. 246). The material in this chapter offers ample illustration for this argument. As Ville (2010, 2019) observed in France, there is a sharp distinction between what she calls civil disability, the result of nature or chance and disability perceived to be a loss or sacrifice. In Canada, war veterans were the subject of the first federal, universal benefit program at a time when residualism was dominant. For people whose disabilities were seen as a personal tragedy, the benefits program was firmly residual, even though it was developed at a time when the “residual mould” had been cracked and the welfare state was expanding.

In keeping with the concept of disability as personal tragedy, the issue of disability benefits seemed to be treated as a motherhood issue. The debates in Parliament at both levels of government saw members tripping over one another to support the legislation and even vying to take credit for it. Thus, it is difficult to know if the program came about because of the high-level advocacy of disabled people or if the program was bound to happen in any case. What is clear, however, is that, analytically, the issue of general disability benefits falls firmly in the realm of social reproduction: the discussion at all levels focused on caregiving and the impact of disability on families, women in particular. Further, there was the expectation that those receiving the benefit would not be part of the labour market.

Table 2

Major Developments in Social Security, 1915-1954 (disability-specific in bold)

Date	Legislation/Program/Event	Jurisdiction
1915	***Workmen's Compensation Act***	Provincial
1916	**War veterans' pension program**	Federal
1919	***Pension Act* (legislation for veterans' pensions)**	Federal
1920	Mothers' Allowances **(provisions for disabled husbands)**	Provincial
1927	*Old Age Pensions Act*	Federal
1930	***War Veterans Allowance Act***	Federal
1937	***Old Age Pensions Act* amended to include Blind Persons**	Federal
1940	*Unemployment Insurance Act*	Federal
1942	Beveridge Report	-
1943	Marsh, Cassidy, and Whitton Reports	-
1944	*Family Allowances Act*	Federal
1951	***Blind Persons Act***	Federal
1952	*Old Age Security Act* *Old Age Assistance Act* ***Allowances for Disabled Persons Act***	Federal Federal/Provincial Provincial
1954	***Disabled Persons Act***	Federal

Chapter 6: Who Got the Better Deal?

We have established workers' compensation as an institutional welfare instrument that emerged during a time of residualism and general disability benefits as a residual program in the time of the "Keynesian-consensus" (Osberg, 2020). Through a structured and focused comparison of the findings of the historical narrative, this chapter summarizes the key findings of the historical narrative and considers the following question: based on factors such as eligibility criteria, the extent of coverage of the disabled population, and the level of decommodification offered by each program, which group of disabled people achieved the better income security program and why? Further, this comparison offers insights into the nature of the state under capitalism and its implications for the struggle of disabled people to achieve income security. Thus, this comparative analysis proceeds at two levels: a side-by-side analysis of the two programs as welfare policy and a broader social analysis of the sources of political power for people with disabilities.

Policy Analysis

As we have seen, the "private trouble" that became a "public issue" was not so much disability, but dependence on charity, community, and family as the result of a disability. This is reflected in both of the stated rationales for each of the programs as expressed by Meredith in the case of workers' compensation and more pejoratively by Frost in his "driftwood" comment. Meredith is equally clear, however, that one purpose of workers' compensation legislation was also labour peace.

Eligibility

A key factor in the eligibility for workers' compensation is that eligibility is automatic once the injury or disease is medically verified as work-related. However, this eligibility criterion does not preclude contestation over whether the injury or disease is work-related. This is an increasingly important issue as the nature of workplace injury and disease changes over time, discussed in the next chapter. For general disability benefits, disability is predetermined by a definition of disability. The debate about the definition of disability and the restrictiveness of the program reveals how different the eligibility criteria are from each other. Recall the Minister of Health and Welfare's remarks about the need to contextualize each case of disability to render a judgement about eligibility. In her analysis of the difference between workers' compensation and mothers' allowances, Nelson (1990) points out how this process of contextualization can involve much intrusion into the personal affairs of the potential recipient and that the judgement exercised can be a moral judgement of character. Given the concerns expressed in the debates about deservingness with regard to disability benefits, the possibility for intrusion and moral judgement is also present in such a restrictive, discretionary welfare program.

Coverage of the Disabled Population

Guest (1999) assesses the implications of a restrictive, discretionary program for coverage of the disabled population. Based on statistics from the *Canadian Sickness Survey* of 1950-51, the estimated number of severely or totally impaired people was 236,000. Of this number, it was estimated that 51% depended on family income, 26% depended on savings, industrial or public pensions, and public assistance, and 23% had employment income. If we consider the 51% depending on family income as having no income of their own, 120,360 disabled people were without income. However, two years after the *Disabled Persons Act*, only 31,835 disabled people were receiving benefits: 13% of the total disabled population and 26% of

the population in need. In other words, 74% of the population in need was not covered (Guest, 1999). Guest (1999) considers this fact "an indication of how a policy of 'helping those in greatest need,' the hallmark of the residual approach, may become a method of severely rationing help rather than extending assistance to meet genuine need" (p. 138).

The extent of workers' compensation coverage is more difficult to calculate. The Labour Force Survey did not start until 1945, so the decennial censuses were the only reliable source of statistics on the workforce (Denton & Ostry, 1967). No census was conducted in 1915, so the following numbers are based on the 1921 census. Based on the total number of workers in Ontario in 1921, excluding agriculture, trade (to cover retail workers), finance, domestic servers, and "owners, managers, and superintendents", it can be estimated that workers' compensation covered about 53% of the workforce (Canada, 1929). This is likely an overestimate because a number of categories of workers were not covered if they worked in establishments with a small number of employees (under four in some instances, under six in others) (Ontario, 1950). It was not possible to discern the size of the workplace from the census data. Nevertheless, even with a substantial margin of error, the injured worker population had much better coverage than those whose disabilities were not work-related.

Decommodification

As we have seen, neither program would have been successful in decommodifying the disabled person's labour power to a point of comfort, but clearly, workers' compensation was a better deal for the recipient than the general disability benefit. Workers' compensation benefits were set at 55% of pre-injury earned wages, quickly rising to 66 2/3%. At a flat rate of $40 per

month, general disability benefits represented about 18% of the average monthly wage and 32% of a low industrial monthly wage in 1952 (Canada, 1953). [6]

Thus, based on these three criteria for policy analysis—eligibility, population coverage, and decommodification of labour, workers' compensation is a better program from the recipient's viewpoint.

Broader Social Considerations

Both benefit programs emerged during periods of economic growth, though in different contexts: workers' compensation at a time of intense union and socialist organizing (Heron & Smith, 2020; Malhotra & Isitt, 2021) and general disability benefits during what Guest (1999) calls "the conservative decade" of the fifties when anti-communist activity was at its height (MacKenzie, 2018). Gough (1979) points to two major changes in the aftermath of World War II: a more interventionist role for the state, normalized by its expanded role during the war and by the dominance of Keynesian economics already mentioned, and a "post-war settlement" between capital and labour. In Ontario, this settlement was rooted in a landmark court decision that allowed for mandatory union dues from all workers in a unionized workplace, the Rand Formula. The "agreement" constituted a suite of semi-formal agreements among employers, organized labour, and the state aimed at maintaining labour peace through the labour movement's self-policing of rank-and-file militancy (McInnis, 2016). In this context, the emergence of the welfare state "was a general phenomenon of this period" (Gough, 1979, p. 70).

Another important difference rests in the understanding of the private and public spheres. Workers' compensation, with its focus on those already in the workforce, often in a male breadwinner role, was in the public realm; whereas general disability benefits, with its focus on

[6] This was calculated by multiplying the average weekly wage in each category by 4 to find a monthly amount. Thus 40/(56x4) =18 and 40/ (31.25x4) =32.

"helping out" those who were unable to work was in the private realm. The conceptual separation of private and public spheres dates back to ancient Greek philosophy and also found its way into liberal philosophy. The public sphere, as the realm of "rationality, moral choice, culture and…intellectual endeavour" is considered superior to the private realm of emotion, nature, and nurture associated with women and the family (Baker, 2018, p. 5). We can see how this ideology implicitly played out in the development of an inferior disability benefit for those in the private realm, frequently without labour force attachment and frequently cared for by unpaid women. Baker (2018) argues that this socially constructed dichotomy has "structured a political theory and practice of democracy and citizenship that has marginalized women" in the modern welfare state (p. 7). As noted, Nelson (1990) documented the marginalization of women receiving Mothers' Allowances, compared to those receiving workers' compensation. To this marginalization, we can add disabled people whose disabilities were not the result of work injury based on the marked difference between the two benefit programs.

Perhaps the key difference between the origins of the two benefit programs rests in social location. The struggle for workers' compensation was decidedly class-based and therefore, concentrated and organized through the labour movement; whereas the struggle for general disability benefits was more diverse, based on a shared identity that crossed classes. For example, The Canadian Association of Incurables leaders were a teacher and a clergyman, unlikely to qualify for benefits. Recall as well, that the benefit was available regardless of family income, so some potentially eligible people could be from higher income families. This is not to say a shared identity had the same significance it would gain in the later disability rights movement. Nor would the approach of the groups calling for a general disability benefit qualify as "identity politics" that emerged in the 1960s. Nor was their approach to identity in keeping

with the role identity played in other social movements of the period. Nicholson (2008) points to a role for identity in the struggles for equality among African-American and women of this period. She argues that "mostly such struggles had involved denying that blacks and women were naturally different from whites and men, and thus naturally unable to live and work in those places open to whites and to men" (Nicholson, 2008, p. 1). On the contrary, The Canadian Association of Incurables emphasized the differences between disabled and non-disabled—though, again, not in a postmodern sense of difference. Rather than seeking to establish disability as a positive identity or desirable difference, the groups advocating for general disability benefits emphasized the hardship of disability. As such, their experience highlights an ongoing conundrum for disabled people seeking income security through benefits: the contradiction between maintaining a positive identity and establishing a legitimate need based on the difficulties and barriers associated with disability. Nonetheless, advocacy based on a shared identity had implications for the policy outcome.

I argue that the historical narrative demonstrates that work injury and its impact on families was situated at the heart of the production of wealth and the reproduction of the working class; whereas the welfare of disabled people with no labour force attachment and no expectation of labour attachment marginalized the struggle for the general disability benefit. As Tucker (2017) points out in his discussion of the commodification/decommodification dialectic, workers struggling for workers' compensation could resist both at the point of production and through political action. Workers also had access to tort law before the introduction of workers' compensation. The historical narrative shows that the pressure for change coincided with workers' increased success in winning lawsuits. The historical narrative further shows that a workers' compensation system also served the interests of employers by rationalizing costs

related to work injury. Recall Jennissen's (1991) observation that despite decades of workers' struggle for compensation, action was taken only when employers became involved in the discussion.

On the other hand, businesses appear to have paid little attention to allowances for disabled people. A search of the *Canadian Business & Current Affairs* database with the search terms "Disabled Persons Act" or "allowances for disabled" or "disability benefits" anywhere in the article for the period January 1, 1950, to December 31, 1960, yielded no articles—only one advertisement for a private disability benefits plan. This database provides access to a wide range of Canadian periodicals, including peer-reviewed academic journals, trade publications, magazines, reports, radio and television transcripts, news, and dissertations. Nor were there any objections raised on behalf of the business community in the debates in Parliament about the two pieces of legislation—apart from Frost's warning about high taxes, and that was not raised a concern specific to capital. Labour was also absent from the discussion of a general disability benefit, based on the available evidence.

Thus, the struggle for workers' compensation, rooted in the underlying capitalist production, could affect employers directly through labour disruptions, tort law, and a threat to the reproduction of the labour force. Those demanding general disability benefits, on the other hand, could use only political action and had to appeal directly to the state. As such, understanding the nature of the state in general, and the welfare state in particular, is essential for analyzing the income security situation of disabled people.

The State

A Marxist analysis of the role of the state poses a bit of a challenge, because "[i]t is commonplace that Marx did not offer a theoretical analysis of the capitalist state to match the scope and rigour of *Das Kapital*" (Jessop, 1977, p. 354). That is not to say that Marx and Engels did not comment on the state. Rather, their "work on the state comprises a fragmented and unsystematic series of philosophical reflections, contemporary history, journalism and incidental remarks" (Jessop, 1977, p. 354). This has led some to conclude that "there is no Marxist theory of the state" (Hay, 1999, p. 171), but that sentiment has not stopped scholars from trying to develop one that is more sophisticated than the "simple equation: state = coercive power = class rule" (Hobsbawm, 2011, p. 53). The debates about a Marxist theory of the state will not be settled here, but examining those debates, even in simplistic terms, allows for insights into our question of how and why each benefit program developed as it did.

In theoretical discussions of the state, even its definition is contested (Barrow, 1993). However, one definition is that the state is a set of institutions that, taken together, form a system comprising both the political (elected) and administrative (bureaucratic) areas of government, the repressive apparatus, such as the military and police, the judiciary as well as an array of "public corporations, central banks, regulatory commissions, etc. [that are] concerned with the management of the economic, social, cultural and other activities in which that state is now directly or indirectly involved" (Miliband, 1973, p. 47; see also Gough, 1979). Although Miliband (1973) cautions against equating the "state" with the "government" alone, the government in general and the welfare state, in particular, are our interests here.

Theories of the State

Gough (1979) argues that the capitalist state must fulfill two basic, but often contradictory functions: capital accumulation and legitimization. These two state functions have already been explored in the previous discussion of the commodification/decommodification dialect, concerning workers' compensation. By creating a system of compensation that allowed for shared liability and predictable costs for employers (supporting capital accumulation) while offering a modicum of income security to injured workers (legitimating the situation), the state was able to fulfill these functions. In addition, legitimation was achieved by "appealing to popular ideas of justice" (Tucker, 1984, p. 269); in the case of work injury, ideas of popular justice demanded prevention and compensation of injuries and an end to the tort system of liability.

There appears to be agreement on these functions of the capitalist state, but very little agreement on how and why these functions are achieved. As Barrow (1993) puts it, the "antinomies" of the various approaches cannot be synthesized because critical theories of the state fundamentally diverge on the question of the mechanisms for *how* the state realizes the interests of the capitalist class and *why* it does so. A discussion of some of the different viewpoints and proposed mechanisms follows.

Discussions of a Marxist theory of the state often begin with the famed, and apparently much misrepresented, Miliband-Poulantzas debate in *New Left Review* in the late 1960s and early 1970s. This debate revolved around the respective roles of human agency or structure in the workings of the modern, capitalist state, as well as the issue of the state's "relative autonomy" from the dominant, capitalist class (Barrow, 1993). An "instrumentalist" view of the state in a capitalist society, associated with Miliband, understands the state as an instrument of the ruling class that allows that class to dominate society and ensure the reproduction of these class

relations and the continuance of the capitalist mode of production (Barrow, 1993; Hay, 1999; Jessop, 1977). Within this view, we can hear echoes of Marx and Engels's famous statement that "[t]he executive of the modern state is but a committee for managing the common affairs of the whole bourgeoisie" in The *communist manifesto* (Marx & Engels, 1848, para. 16). Human agency is very important in the instrumentalist view, as it focuses on the personal and social ties between individuals with economic power and the state elite and the social processes moulding the ideology of both of these groups (Hay, 1999; Miliband, 1973). In short, the state is capitalist because capitalists control the state. Further, "*[p]ositional control of the state apparatus is particularly important in instrumentalist theory, because the theory locates state power within the state's institutional apparatus*" (Barrow, 1993, p. 25, emphasis in the original.) Two underlying assumptions of the instrumentalist view are 1) the state is an autonomous instrument that can be seized by a different class to dominate society and 2) the dominant capitalist class makes up a coherent ruling class. There is evidence to support these assumptions. Barrow (1993) uses examples of interlocking boards of directors and policy-planning networks of capitalists and allied intellectuals as evidence of the coherence and coordination among capitalists. As to the idea of the state as an instrument of class influence, research also supports the idea that the nature of the welfare state, whether it is liberal or social democratic, depends heavily on the strength of the labour movement and the success of leftist parties in gaining and maintaining positions in the state apparatus (Barrow, 1993; Huber & Stephens, 2001).

The political implication of this approach is that a peaceful, democratic path to socialism is possible, which is anathema to revolutionary Marxists (Barrow, 1993; Hay, 1999). Critics also point out that the theory in this simple formulation cannot account for those situations in which non-dominant classes have made "real inroads" through the state (Barrow, 1993, p. 26). Again,

the gains made in social democratic welfare states come to mind. As such, the instrumentalist view is criticized as not sufficiently taking the class struggle into its account of how the state works. As well, studies of the constitution of state actors have indicated that the actual personnel of the state are often not of the ruling capitalist class (Barrow, 1993; Hay, 1999), though the instrumentalist rejoinder is that capitalists often hold a few key positions that afford decisive influence (Barrow, 1993).

In later work, Block (2020) offers a plausible explanation, as well as a mechanism, for why state actors who are not capitalists themselves would facilitate the state's use by the ruling capitalist class. Arguing that "the ruling class does not rule", Block (2020) maintains a conceptual separation of the ruling class and those he calls "state managers" (politicians and bureaucrats) who actively control the work of the state.

> Those who accumulate capital are conscious of their interests as capitalists, but, in general, they are not conscious of what is necessary to reproduce the social order in changing circumstances. Those who manage the state apparatus, however, are forced to concern themselves to a greater degree with the reproduction of the social order because their continued power rests on the maintenance of political and economic order. (p. 4)

Block (2020) argues that the threat of capital flight disciplines state actors whose revenues depend on taxation in a healthy economy (see also Gough, 1979). Offe (1984b) makes a similar observation. Noting that because capital is privately owned, he points out the state is effectively excluded from the decisions regarding "the concrete use of the means of production" (p. 120). Thus, "[t]hose who occupy positions of power in a capitalist state are in fact powerless *unless* the

volume of the accumulation process allows them to derive (through taxation) the material resources necessary to promote *any* political ends" (p. 120, emphasis in original).

The opposing view in this debate, advanced by Poulantzas, has been dubbed "structuralism". Structuralism, as the name suggests, "asserts the causal priority of structures over agents and their intentions" (Hay, 1999, p. 167). "State institutions…exist only by virtue of their functional role in capitalist society…[implying] that neither the state nor state elites should be seen as historical agents capable of exercising political power toward non-capitalist objectives" (Barrow, 1993, pp. 57–8). Thus, the fact that capitalists or those representing capitalist interests as individuals control the state is the *effect* of capitalist class domination in society, not the cause (Barrow, 1993). For Poulantzas, real power resides in capitalist relations of production, outside of the state apparatus, as shown by how the threat of capital flight and other business decisions can discipline state actors and actions. As such, overthrowing capitalism requires control of the means of production, not the mere seizure of the state apparatus (Barrow, 1993).

It is also important to note that the structuralist position holds that the state is conceptualized as a social relation. Jessop (1991) argues that "This means that state power must be analysed as the power of the social forces which act in and through it" (p. 256). Further, structures cannot be reduced to the various concrete economic, political, and ideological institutions of the state (Barrow, 1993). Rather, Gold, Lo, and Wright describe these institutions in terms of "*the systematic, functional interrelationships among these institutions"* (as cited in Barrow, 1993, emphasis in original).

Structuralists work on the assumption that capitalism is inherently prone to crisis and "outbreaks of class war" due to economic crises of accumulation, class struggle, and the uneven

development of capitalism (Barrow, 1993, p. 51). Thus, the role of the state in capitalist society is to protect and reproduce the social structure that allows for capitalist relations of production with policy interventions and attempts to mediate the class struggle and other crises (Barrow, 1993). As such, the state, through its policies, constitutes a "factor of cohesion" among the various classes in the social formation of capitalism (Barrow, 1993, p. 54), which requires the state to have a degree of "relative autonomy" from the ruling class. A structuralist position holds that within the chaos of competition, with individual capitalists looking to secure their own, often short-term, interests, the ruling class does not have the level of class consciousness to collectively use the state as its instrument. Sometimes the state must act in the long-term interests of capitalism to the detriment of individual capitalists (Barrow, 1993; Block, 2020).

Jessop (2012) sums up a key critique of the structuralist approach as the "fallacy that capital reproduces itself quasi-automatically and without the need of human action" (p. 9). Indeed, as Barrow (1993) points out, the existence of the mechanisms that instrumentalism documents, such as pro-business lobby groups and corporate campaign donations to pro-business parties, suggests that the state is not inevitably held captive by the market. People feel the need to influence the state. The fact that both social democratic and corporatist welfare states enable policies that defy the threat of capital flight and other disciplinary decisions of capital also points to the role of human agency in the face of the mechanisms of market relations.

Hay (1999) contends that the Miliband-Poulantzas debate did not do much to advance the Marxist theorization of the state, but it did provide a starting point for the further development of more synthetic and dialectical conceptualizations. For a time, the derivationist analysis of the state was seen as a possibility to transcend the Miliband-Poulantzas debate (Barrow, 1993). Derivationists, "as the label would imply sought to *derive* the form and function of the capitalist

state from the requirements of the capitalist mode of production" (Hay, 1999, p. 156). Barrow (1993) explains that the approach sought to provide an analysis of the relationship between the state and society as it arises from the contradictions inherent in the capitalist mode of production. They argued that the state must perform certain tasks that capital could not perform or would not perform because they are not profitable and that these tasks comprise the "general interests" of capital. This concept would allow scholars to assess the success or failure of the state in "realizing the general interests of the capitalist class" (Barrow, 1993, p. 79) and thus allow for historically concrete analyses, rather than simply relying on the notion that the state simply reproduces the relations of production.

The derivationist approach identified four conditions necessary for capital accumulation, and through these, the tasks for the state comprising the general interests of capital. First, the state must provide a legal system that protects private property. Second, it must provide a judicial apparatus to mediate the class struggle. This apparatus includes the coercive arm of the state, such as the police, as well as its persuasive aspect in the form of ideology. Third, it must supply the military because of the global expansion of capital that requires "nationally based capital within foreign markets" (Barrow, 1993, p. 80). Finally, the state must provide the infrastructure that individual capitals cannot or will not create for themselves. "Thus, these conditions analytically define a general type of state that can be called capitalist" (Barrow, 1993, p. 80). The derivationist approach also argued that the form in which these conditions are met will vary with historical circumstances. This analysis is sometimes called the "capital logic" approach and rests on the hypothesis that "as capitalism undergoes stages of development, the form in which the state must fulfil its role also changes" (Barrow, 1993, p. 80). The main critique of the derivationist approach appears to be in its application. According to Barrow (1993), "[t]he

derivationist approach sought to unite Marx's capital logic with historical and empirical analysis, but most derivationists have been extremely short on history" (p. 94).

It is worth noting that both Miliband and Poulantzas "moved towards more dialectical conceptions of the relationship between structure and agency in their later work, locating political actors as strategic subjects within complex and densely structured state apparatuses" (Hay, 1999, p. 168). A more dialectical conception of the state, as Lukes (2005) points out, considers "the complex interrelations" between human agency and structure to "allow for the obvious fact that individuals act together and upon one another within groups and organizations and that the explanation of their behaviour and interaction is unlikely to be reducible merely to their individual motivations" (p. 56). Indeed, Barker (2013) argues that "Marx construes agency and structure as dialectical poles of an ongoing and developing unity" (p. 46–47).

Power and the State

Where do these debates leave us concerning the nature of the capitalist state? The material point for our purposes here is that the various approaches agree that the state *does* function to ensure the reproduction of the capitalist system and offer a number of plausible mechanisms and motivations for doing so. As Gough (1979) puts it,

> What distinguishes Marxist theory is not the view that a particular class dominates the institution of the state (though this is the normal state of affairs), but that whoever occupies these positions is constrained by the imperatives of the capital accumulation process. (p. 44)

This has the effect of making capitalism a "*class society dominated by capital*" (Offe, 1984b, p. 120, emphasis in original). Thus, "a theory of the state is also a theory of…the distribution of power in…society" (Miliband, 1973, p. 4), which is of interest here. The state is central in a

Marxist analysis of power, not only political power, narrowly defined as the machinations of governments, but also economic power rooted in the relations of production. “For the state is seen as responsible for overall structural integration and social cohesion of a ‘society divided into classes’” (Jessop, 2012, p. 5). A third focus for a Marxist analysis of power is ideological domination. According to Jessop (2012), some Marxist analyses see political and ideological domination as growing out of economic domination, while others “emphasize the complexity of relations among these three sites or modes of class domination” (p. 5).

The question of the distribution and nature of power in a Marxist theory of the state is clarified by contrasting it with an influential competing theory: pluralism. Pluralism posits that power in democracies is “competitive, fragmented and diffused” (Miliband, 1973, p. 4) because of the many rights that citizenship brings, such as the right to vote in regular elections, the right of free speech and association, a free political culture that allows opposition, equal protection under the law, and an independent judiciary. These rights allow for organized “interest groups” or “pressure groups” that compete freely with one another to influence the outcome of policy decisions as if all pressure groups were created equal (Gough, 1979; Miliband, 1973; Signal, 1988; Wenman, 2003). In later pluralist theorizing, however, its key proponents recognized “the persistent dominance of ‘business interests’” in this competitive process (Wenman, 2003, p. 58). Nonetheless, a pluralist approach posits that the state is a neutral arbiter in the competition of ideas and causes (Gough, 1979).

How then would a pluralist approach account for the differences in the policy outcomes for the two groups of people with disabilities that have been documented here? Both groups represent large numbers of people, with people with disabilities caused outside the workplace estimated to outnumber injured workers by about 15 times (Marsh, 2017). Both groups faced

poverty and dependence without a benefits program. The political actions (as opposed to extra-political actions such as strikes and legal suits) were similar between the two groups. Both groups were able to reach the top of the political structure in their advocacy (the Ontario Premier for injured workers and the Prime Minister for disabled people). Yet, the outcomes for each group were so different, with one appearing ahead of its time and the other barely keeping up with its time. Indeed, the fact that it took an additional forty years before general disability benefits were implemented suggests a disparity in influence.

How would a Marxist theory of the state explain the phenomenon of general disability benefits? After all, we have established that employers and their representatives showed little or no concern about general disability benefits. The historical narrative suggests that general disability benefits were a humanitarian act, and we have surmised that the Minister of Health and Welfare's personal experience with disability may have played a role in the warm reception received by disability benefits advocates. As such, the phenomenon of general disability benefits is a good example of both human agency in the state apparatus and the relative autonomy of the state from the dominant class posited in a Marxist theory of the state. The relative autonomy of the state allowed for it to act on humanitarian grounds, which had the effect of legitimating both the state itself and the social relations within which it operated without significantly challenging those social relations.

Ultimately, however, a Marxist theory of the state can explain the difference in policy outcomes through the analysis of social power. Unlike injured workers and their allies in the labour movement, disabled people without a connection to the relations of production could appeal to only state power, which is biased in favour of reproducing the capitalist relations of production. Thus, it was not simply a matter that injured workers and labour had more "tools in

the toolbox" (strikes, lawsuits, and political lobbying), but the very nature of those tools gave them an advantage over people disabled through other means. Recall Lewis's contention that class, as opposed to other vectors of oppression, is the "foundation, the point where profit is extracted and the point where it can be challenged. The centrality of class is tactical, not moral" (Lewis, 2016, pp. 274–275).

That is not to say that groups outside of the direct relations of production, such as people with disabilities, have no recourse, as a rich history of social movements can attest. Through human agency, including advocacy, and the relative autonomy of the state, the government was able to introduce a general disability benefits program with no apparent material benefit to capital and no interest from labour. At the same time, because the benefits were so meagre, the program also posed no threat to capital in the form of high taxation or the decommodification of labour power. To understand the role of capitalist social relations and the nature of the state, then, is to understand the limitations placed on such a benefits program with regard to actually eliminating poverty. Though it was not discussed much outside of Premier Frost's comments about the welfare state and raising taxes, the *Canada Year Book* notes that the prevailing thinking at the time was that "high war-time taxes reduced incentive to work and to invest" (Canada, 1954, p. 1063). Indeed, one Marxist approach to the welfare state concurs. Gough (1979) explains the dialectic embedded in the political economy of the welfare state this way:

> On the one hand, rising levels of state expenditure on social services and other items are necessary to sustain the accumulation and reproduction of capital; on the other hand, the very growth of the state inhibits the accumulation of capital. (p. l05)

Another Marxist opinion, however, is that "even at its strongest, the welfare state has not impinged upon the *basic* conditions of capital accumulation" (Matthews, 2018, p. 33, emphasis added). Certainly, Esping-Andersen's (1990) welfare state typology shows us that there is flexibility in these limitations because social democratic welfare states generate much higher taxes and lower rates of poverty than liberal welfare states, but still allow for capital accumulation. Indeed, corporate tax in the 1953–54 federal budget was *reduced* to 18% (from 20%) on the first $20,000 of profits and to 47% (from a whopping 50%) on profits over $20,000 (Canada, 1954, p. 1064). These corporate tax rates were high by today's neoliberal standards, yet economic growth during this period was also high during this period. The *Canadian Encyclopedia* reports, "The rate of growth of real gross national product in Canada was 5.1% in 1950–73, 3.4% in 1973–86 and 2% in 1986-96" (Davenport, 2015, para. 33), thus showing a decline in growth *after* the neoliberal obsession with lower taxes became the norm in the 1970s. The debate on the impact of taxation on economic growth will not be settled here, but suffice it to say that the *perception* that high taxes are a hindrance to growth, common in liberal welfare states, creates barriers to substantial income security for people with disabilities from the state.

That said, an understanding of the capitalist state as class-based also throws light on struggles for welfare state development. If the state is class-based, then efforts to expand the welfare state can be understood as an important part of the larger class struggle and allow us to locate disabled people, without labour force attachment, in that struggle. I argue that the welfare state is a site of class struggle where disabled people without labour force attachment can participate in political-economic struggles as "a form of collective agency, which consciously attempts to determine social life" (Matthews, 2018, p. 34). Lavalette and Mooney (2000) argue that embedded in struggles for welfare, "we can witness, in embryo, the unifying themes of a

universalist politics of human need" (p. 9), which stands in contrast to the individualism and self-interest of liberal values. While the evidence on The Canadian Association of Incurables, with their non-partisan, polite campaign, does not suggest a nascent anti-capitalist disability movement, it is possible to see their collective attempt to determine social life and a valorization of human need in their work. Nor is this not to suggest that the welfare state is a peaceful road to socialism or that a generous welfare state constitutes socialism, only that the process of participating in the struggle for welfare state development can have a politicizing effect on those participating.

Concepts of Disability and Social Acceptability

How did the disparity between the two income security programs come to be socially acceptable? Jongbloed (2003) posits that "Adoption of veterans' benefits and workers' compensation programs reflected an assumption that those whose disabilities resulted from serving the economic or military interests of the nation deserved government assistance more than those whose disabilities had arisen in other ways" (p. 205). Given the disparity in the benefit programs, we can add to this assumption: those who contribute to the political economy are also deserving of *more* assistance than those who do not. It is important to add that this was a largely unspoken assumption in Ontario's case. In the literature review, Ville (2010) described a backlash among what she called the "civil" disabled regarding the granting of veterans' benefits and workers' compensation in France in the early twentieth century when no similar benefits for others were available. This backlash led to the development of disabled persons' associations that gained influence in determining income security policy. There is no evidence of such a backlash in Ontario. In the documentation available on The Canadian Association of Incurables,

no comparisons were made between benefits for the civil disabled and those for veterans and injured workers as part of their arguments for a general disability benefit. None of the press coverage in the major dailies and the various small-town newspapers that discussed general disability benefits noted any connection or made any comparison among these programs. Furthermore, the general question of the adequacy of the benefit was never discussed in the press or the material on The Canadian Association of Incurables, only in the parliamentary debates. Therefore, the only reason given against a higher benefit amount was cost, but the debates showed no awareness of the discrepancy in the benefit levels between workers' compensation and general disability benefits. The amount of the benefit no doubt earned some legitimacy because it was set at the same level as the old age pension, but there is no indication of what the disability advocates thought about whether or not it was adequate.

From the evidence compiled for the historical narratives of each benefit program, the only place where they were discussed together was in the Marsh Report. Recall that Marsh (2017) made the argument that workers' compensation was a different "species" of benefit because it was for a loss incurred at the hands of industry and paid for by industry. Marsh's (2017) seemingly uncontested justification for a lower, flat-rate benefit for disability social insurance was that such a program relied on the larger "community of other insured persons" for the cost of the program and because such a program was likely to be costly, people with disabilities could not expect more than the minimum. He even goes so far as to suggest that this community of insurers expects the "invalid" to get along without a pension, to conserve the funds in the pooled program. He also justified the difference by arguing that disabilities from work injury were more easily quantified in terms of loss of function and loss of earnings, compared with disabilities caused by disease and other infirmities. Both the Marsh Report and

the parliamentary debates explicitly stated that for the civil disabled population, something was better than nothing.

Thus, we can see that the social acceptability of each program is rooted in the conceptualization of disability that underlies each and how that conceptualization rests in political economy. Injured workers, in the traditionally male breadwinner role in the public realm, had lost something and had to be compensated whereas others with disabilities had merely encountered personal tragedy, so it was justifiable that the benefit should "help out" rather than replace a breadwinner's income. Disabled people reside in the private realm of social reproduction, which is generally overlooked for its value to capitalism and therefore socially devalued. The expectation that disabled people should expect to live on less, with little discussion of the increased costs of living with a disability, also reflects a concept of disability as an individual, medical problem.

Conclusion

Based on ease of eligibility, coverage of the disabled population, and generosity of benefits, injured workers got the better benefit deal, including permanently injured workers whose benefits were to last as long as the disability. Furthermore, workers' compensation was the first benefits program and general disability benefits were one of the last, nearly 40 years later. For reasons that are not clear, the discrepancies between the two benefit programs bore little public discussion and no apparent backlash from disabled people themselves. Nor was the inadequacy of the disability benefit given much discussion outside of the parliamentary debates. We have no evidence of how the disabled community saw this benefit or if there was anger over the restrictive eligibility. Nor do we have any evidence regarding how the disabled community

felt about the adequacy of the benefit and their feelings about the dominant ideology that something was better than nothing.

The reasons for the discrepancies between the two programs are clearer: they were firmly rooted in political economy. In an economy dominated by capital, injured workers could exert both economic pressure and political pressure, whereas other disabled people could exert only political pressure. Furthermore, the economic pressure that injured workers could exert was right at the point of production and the impact of work injury also surfaced in the realm of social reproduction as families were unable to support themselves. Other disabled people's issues were seen as a personal tragedy, deserving of a kindly, humanitarian response by a state ideologically and practically committed to ensuring the reproduction of capitalist social relations.

Both programs were inadequate to decommodify disabled persons' labour to the point of a comfortable life and neither adequately took into account the additional expenses associated with disability. Indeed, with the focus on dependency rather than disability per se, the programs could not take into account the complex reality of living with a disability. Rather, the nature of both programs suggests an ideology of disability as "less than".

Chapter 7: Workers' Compensation After Meredith

We have established workers' compensation as a superior program to general disability benefits from a policy perspective. This should by no means imply that it was not without its problems. Indeed, situated as it is at the heart of the class struggle, the history of workers' compensation is riddled with conflicts, Royal Commissions, task forces, audits, and reviews. Workers' compensation has been the subject of more Royal Commissions than any other topic (Gunderson & Hyatt, 2000). Table 3 provides a timeline of the major events and developments that will be discussed here. Further, the injured workers' movement developed directly in response to the problems they perceived with the workers' compensation system (Storey, 2008). This chapter chronicles some of workers' compensation's major conflicts to show how its institutional character has been eroded over the years regarding compensation for permanently disabled injured workers.

Despite the continual struggle and review, the principles of the Ontario workers' compensation system remained substantially unchanged from the original legislation until the 1980s (King, 2014; McCombie, 1984), though the percentage of wages replaced changed significantly. Consequently, the cost of the system also increased. Gunderson and Hyatt (2000) document a 600% increase in real terms between 1961 and 1993 despite a declining number of total injury and illness claims (Gunderson & Hyatt, 2000).

In 1950, the percentage of replaced wages, up to a ceiling that also increased with time, was raised to 75% of *gross* average wages, which is where it stayed until changes in the mid-1980s. At that point, they were changed to 90% of *net* wages. Benefits were then decreased to 85% of net wages in 1998, which is where they stand today. As this chapter will detail,

significant legislative and programmatic changes accompanied the changes in benefit level. Table 4 summarizes these changes for reference in the discussion that follows.

Pre-1990 Permanent Disability Pensions

Under the pension program before 1990, a pension for partial or total permanent disability was medically assessed by Board doctors according to the standardized clinical rating known as the "meat chart". This standardized clinical rating would award a percentage for a particular disability, such as the loss of a limb, as a measure of the loss of earning capacity. That percentage was multiplied by pre-injury earnings to derive a pension amount. Lifetime pensions were awarded, regardless of the actual impact of the injury on the injured worker's earnings (Storey, 2006). This rating process itself was a point of contention. For example, a back injury might be awarded a 20% disability pension, but for a semi-literate construction worker in his fifties, the loss of earning capacity was likely 100% (McCombie, 1984). Thus, many injured workers felt pensions were inadequate. Total permanent disability pensions, that is, a 100% rating, were rare.

In addition, recipients were allowed to collect other disability benefits without penalty, usually the CPP-D benefit and/or top-ups from those employers who provided such benefits. It is also important to note that when workers' compensation was first introduced, there were no income taxes or statutory benefits, and workers' compensation benefits remain tax-free to this day. This situation and the nature of the pensions led to concerns that benefits were "grossly excessive" (Storey, 2006, p.74). If injured workers returned to work, theoretically they could have more disposable income from workers' compensation pensions and earnings than they had before the injury. There was no awareness that this might be a just situation since it is likely that there would also be disability-related expenses that didn't exist before the injury. Instead, the concern of "overcompensation" is recurring theme in the history of workers' compensation in

Ontario. Because this history is so rich, the account here is necessarily selective. Events and topics have been chosen for their direct impact on the eligibility and generosity of benefits, their commentary on the difference between workers' compensation and "social legislation", and their insights into concepts of disability. It should be noted that the body of literature on the history of workers' compensation in Ontario remains relatively small, particularly for the most recent years, so this account relies on several primary sources.

Royal Commissions

Middleton Commission

The first major review of the *Workmen's Compensation Act* occurred in 1932 under the auspices of Justice W. E. Middleton. Evidence is scant for what prompted this Royal Commission during the era of the Great Depression, but an unpublished doctoral dissertation offers a plausible reason based on primary sources. Employers enduring tough economic times were looking to cut costs wherever they could and lobbied the Workmen's Compensation Board (WCB) to reduce their costs. At the same, labour was demanding an increase in benefits, now set at 66.6% of average wages, as well as improvements in survivors' benefits and permanent disability pensions. Labour was also looking to expand coverage of the scheme (Campbell, 1981; Compensation Act to be investigated, 1931). Campbell (1981) argues,

> Although the issue of workmen's compensation did not enter directly into the growing of surplus value going to fund workmen's compensation in a period characterized by a declining mass of surplus value production served to reinforce and sharpen the general level of class conflict. (p. 443)

Middleton himself saw things very differently. His 17-page report, which dealt with "comparatively minor" though "important" matters (Ontario, 1932, p. 4), gave a glowing review

of the benefits scheme. He opines, “This scheme of compensation in the place of legal liability based on negligence has worked well and has given complete satisfaction to all those concerned” (Ontario, 1932, p. 4). He bases this opinion on the evidence presented to him in the course of the enquiry, noting “That the Act has given satisfaction to the workmen is indicated … by the cordial endorsation of the scheme by those representing them before me” (Ontario, 1932, p. 4). He quotes a 1927 report from the Trades and Labour Congress of Canada as saying, “…over 97 percent of the claims have been adjusted without any difficulty and … less than 3 percent are regarded as ‘problem’ cases” (Ontario, 1932, p. 4). Ultimately, he dismisses most of labour’s demands as too much of a cost burden to industry, though he does recommend expanding the number of conditions to be recognized as occupational diseases (Ontario, 1932).

Roach Commission

The post-war boom and intensification of industrialization resulted in higher rates of industrial accidents and more demands on the workers’ compensation system (Storey, 2009b). By 1950, when Justice W. D. Roach conducted his enquiry, benefit levels had been raised to replace 75% of average gross wages. The *Globe and Mail* reported that the Ontario Federation of Labour (OFL) expressed surprise at the calling of the enquiry, saying, “The complaints that have been made and that have resulted in the establishment of this Commission must have come from some other interested party outside the ranks of labour” (Compensation too high, 1949, p. 15), which suggests that employers provided the impetus for the inquiry.

Roach’s 125-page report similarly made recommendations that would not fundamentally alter the nature of the system. Those recommendations included expanding workers’ compensation coverage to include volunteer firefighters and police and raising the ceiling for annual benefits from $3,000 to $4,000. He also recommended shortening the waiting period—a

point of contention for labour—to four days, and establishing joint committees to facilitate the prevention of accidents (Ontario, 1950).

Roach also felt the need to reiterate the distinction between workers' compensation and social assistance several times. For example, he wrote,

> This Act should be considered for what it is and was originally intended to be, namely a scheme by which compensation is provided in respect of injuries to workers in industry. It is not a system for dispensing charity. It is not unemployment insurance. It is not social legislation for the purpose of elevating the standard of one group in society at the expense of another. (Ontario, 1950, p. 12)

Although the general disability benefit was not yet in effect, Roach's comment reflects the sentiment that such "social legislation" has its roots in charity, whereas a worker pays into workers' compensation through the waiting period, the wage loss, and increased prices on consumer products (Ontario, 1950), not to mention the loss of the right to sue and lower wages.

McGillivray Commission

Economic growth continued and the number of injuries and claims made to the WCB increased, such that once again, the *Workmen's Compensation Act* was deemed in need of a public enquiry. The WCB reported 213,592 injury claims in 1961. By 1966 the number of claims rose to 320,180 (Storey, 2008). Importantly, the types of disabilities also changed, with a dramatic increase in invisible disabilities, such as back injuries (Storey, 2008). Once again, employer complaints about costs were a driving factor behind the enquiry (Storey, 2009b), though another source cites heightened political activity among workers as the reason for the Commission (Maton, 1991). Indeed, according to Maton (1991), the response to the McGillivray Commission was the beginning of injured workers organizing independently of the trade union

movement, where they had felt excluded. Maton (1991) makes the further observation that this development of organization outside of the labour movement effectively located the struggle within "society" as opposed to being limited to the workplace. This had the effect of making the government more responsive to the issues. (This resistance of injured workers is explored in more detail below.)

The Royal Commission in 1966–67 was headed by George A. McGillivray and was more extensive than those of Middleton and Roach, producing 3,000 pages of testimony and a 217-page report (Ontario, 1967; Storey, 2008, 2009b). By his own admission, however, his "major recommendations in the end [had] been few" (Ontario, 1967, p. 195), because he was able to conclude that the system was "operating smoothly" (Ontario, 1967, p. xv). He noted that the main criticisms of the Board's operation related to the appeals procedure and "purported leniency in allowing doubtful claims" (Ontario, 1967, p. xiv). Among his 41 recommendations were those to increase the earnings ceiling, increase widows' and dependents' benefits, increase benefits for burial, and decrease the waiting period to one day (Ontario, 1967). He also recommended that injured workers be allowed to have the initial choice of practitioner, as opposed to Board doctors, and that an independent "workmen's advisor" be appointed to aid with appeals (Ontario, 1967, p. 192). Interestingly, he also called for a review of "overlapping benefits" (Ontario, 1967, p. 191), an issue that would be raised years later when reform of the *Workmen's Compensation Act* would begin in earnest. Indeed, these three Commissions foreshadowed many of the issues that would become the subject of reform.

Task Force on the Workmen's Compensation Board

Workers' compensation became the subject of yet another review in 1973. A series of articles in *The Globe and Mail* painted a picture of the WCB in Ontario as a militaristic organization plagued with internal conflicts and low staff morale (McAuliffe, 1972e). Indeed, the

chairman of the Board at the time was Brigadier-General Bruce Jarvis Legge, and other top officials had military connections as well (McAuliffe, 1972c). Articles also pointed to questionable financial practices (McAuliffe, 1972a, 1972b), and depicted Board staff as unresponsive, inconsistent, insensitive, and even discriminatory to injured worker claimants (McAuliffe, 1972c). *The Globe and Mail* called for a full judicial inquiry (Now—full judicial inquiry, 1972) and the possibility of yet another Royal Commission was bandied about (Manthorpe, 1972). Instead, Bill Davis's Conservative government appointed a three-man Task Force to investigate, without representation from either employers or labour. Unlike the previous Royal Commissions, whose mandates were to review all but "detail administration" of the Board, the Task Force was to focus on administrative issues specifically. The report, titled *The administration of workmen's compensation in Ontario,* came to be known as the "Aird Report" for the name of the chairperson of the Task Force, A.R. Aird. The Task Force did not allow its narrow mandate to preclude observations about workers' compensation benefits that are of interest here. They note, "Benefits—their nature and level—were not in the defined terms of reference of the Task Force. Our observations on this subject are restricted to matters which, because of clear public concern, deserve mention" (Aird et al., 1973, p. iii).

The Task Force reviewed the existing literature, undertook "in-depth studies" of operations and management, and interviewed Board staff, elected officials, civil servants, and representatives of employers and labour. It also received written submissions from employer groups, injured worker advocates, and individuals. It produced a 117-page report with 29 recommendations that amounted to "nothing less than a major reorganization" (Aird et al., 1973, p. xiv), including the need to develop a "service orientation" (Aird et al., 1973, p. xxvi).

Contrary to the reports of the Royal Commissions that stressed the distinction between workers' compensation and welfare, the Aird Report argued, "[I]t is important that occupational accident insurance, be *universally* regarded in the same light as other income maintenance programs—unemployment insurance and social welfare payments" (Aird et al., 1973, p. xxv, original emphasis). Their reasoning was based on an observation that indicates an erosion of the automatic entitlement in the original design of the program: "Currently, the occupational accident insurance claimant faces more barriers in obtaining his or her *rights* than other forms of income maintenance. Workmen's compensation is not a charity" (Aird et al., 1973, p. xxv-xxvi, original emphasis). Presumably, the report is referring to the claims of "problematic 3%", and not routine claims, though that is not clear. The report later somewhat contradicts the notion of seeing all income maintenance programs "in the same light" with the following comment that reveals the stigma attached to general disability benefits: "…we found that most people do not view Workmen's Compensation as welfare income. Rather, it is viewed as legitimate and socially acceptable income—a *right* for the insured person following an occupational injury" (Aird et al., 1973, p. 108, original emphasis). Further, in marked contrast to the concerns of overcompensation that would emerge later in the same decade, the report adds that "Moreover, the benefits under Workmen's Compensation are not noticeably superior" (Aird et al., 1973. p. 108). Among its recommendations, the report calls for an elimination of the benefit ceiling and an increase in pensions consistent with the changes in the cost of living. In the case of partially but permanently disabled workers, the report found a rather generous use of declaring that an injured worker was capable of "light work", which would allow adjudicators to reduce the amount of the pension available to that worker. The report urged that this designation be

restricted and take factors into account such as education, language skills, labour market factors, and previous employment experience (Aird et al., 1973, 1973).

For our purposes, the Aird Report is significant for publicly exposing the issue of the Board's poor relationship with injured worker claimants and anticipating other issues such as the indexing of pensions, return-to-work (the "light work" discussion), and the role of Board doctors that would figure in the law reform that was to follow.

Law Reform

The Wyatt Report

In 1977, in its capacity as the Official Opposition, the New Democratic Party (NDP) organized a Task Force on workers' compensation that brought together injured workers, unions, and other injured worker advocates. The Task Force visited major cities to hear testimony and produced a report with a "barrage of grievances" (Storey, 2006, p. 73). The government responded by making "incremental changes" to the legislation, the most important of which was a supplementary pension for those injured workers who could show that their disabilities impaired their employment prospects more than was reflected in the standard rating of the meat chart (Storey, 2006, p. 73). It also commissioned a study by a private accounting firm, The Wyatt Company, to assess the overall fiscal health of the entire system (Storey, 2006). Although the 500-page *Wyatt Report*, as it became known, concluded that the system was on a good financial footing, it sewed the seeds of reform in response to employers' concerns about rising costs. The report recommended changes to benefits that would challenge the notion that injured workers had the right to a standard of living equivalent to their pre-injury standard of living. Supposedly, this situation provided the incentive for malingering (Storey, 2006). These recommendations found favour with both the government and the Board, with the latter issuing its own report to

follow the *Wyatt Report* (Storey, 2006). Authored by Ken Harding, secretary to the WCB, the report became known as the *Grey Paper* on workers' compensation.

The Grey Paper

The *Grey Paper* relied heavily on the *Wyatt Report* and reiterated the concern that disabled workers who were able to return to employment with full earning capacity were also eligible for a disability pension, such that some injured workers had more income after their injuries than they would have had without an injury (Harding, 1979; McCombie, 1984). There was the further concern that the generosity of benefits, then set at 75% of gross wages, created an incentive for workers to continue receiving benefits rather than returning to employment once they were fully recovered.

Storey (2006) argues that the *Grey Paper* articulated previously muted concerns of employers regarding the cost of the workers' compensation system. The *Grey Paper* argued, "the costs are nevertheless real and have a serious impact on the prices charged for … goods and services" (Harding, 1979, p. 2). Significantly, the spectre of higher prices again "brought 'society' directly into the debate…[placing] 'society' between and beyond the conflicting interests of labour and industry" (Storey, 2006, p. 75). The paper acknowledged public support for fair compensation and even recognized public support for higher benefits and universal coverage. It countered this acknowledgement with public concerns for the cost of goods, the danger of the public buying cheaper products made outside of Ontario, and a generalized concern about high unemployment that could be attributed to high production costs (Harding, 1979). The most significant changes that the *Grey Paper* recommended involved discontinuing the life-long pensions for permanent disabilities. Instead, there should be a "two-phase" approach. "The first provides a nominal lump sum related to the severity of the permanent handicap" (Harding, 1979, p. 10). The second phase would be ongoing payments that reflected the actual level of lost

earnings due to the injury. Actual earning power would be reviewed annually and pensions adjusted accordingly (Harding, 1979).

Injured worker advocates, sparked by the issues raised in the *Grey Paper*, particularly the dual-award system, called upon the government for a "broad enquiry of the whole system by an independent source" (McCombie, 1984, p. 136). They were severely disappointed with both the process and the outcome of what happened instead.

The Weiler Reports

Paul C. Weiler, a Harvard law professor and former chair of the British Columbia Labour Relations Board, was appointed by the longstanding Progressive Conservative government of Ontario with a "broad mandate to consider all aspects of workers' compensation legislation and administration" (McCombie, 1984, p. 139; see also Weiler, 1980). Much to the chagrin of injured workers' groups, instead of a Royal Commission to conduct a fulsome enquiry, Weiler proceeded informally by talking to interested groups and individuals, reviewing extant scholarly research, interviewing Canadian and American workers' compensation experts, and visiting three other provinces that had recently undergone reform (Weiler, 1980). According to King (2014), "He neither undertook nor commissioned any empirical research" (p. 54). An important implication of this approach, as legal scholar and workers' compensation expert Terrence Ison (1981) points out, is that "the inquiry did not include any factual analysis of the existence and scope of the problems" (p. 10) that it purported to solve. Weiler did, however, receive over 50 written briefs and held over 75 meetings with various groups in Toronto, Sudbury, and Windsor. He also spoke to "dozens of individual injured workers who had personal experience with the Workers' Compensation Board" (Weiler, 1980, p. 10) as well as to representatives of the Board itself.

Weiler's first report[7] in 1980 reiterated and solidified the idea of a dual-award system—the lump-sum payment for "non-economic loss" that recognized the disability and the "Future Economic Loss" benefit that would compensate the injured worker for "90% of the difference between his net disposable earnings before the injury (adjusted to take account of wage inflation) and his net disposable income afterward" (Weiler, 1980, p. 57). Weiler (1980) proposed the benefits be based on 90% of net earnings instead of 75% of gross earnings to take into account the fact that workers' compensation benefits are non-taxable. He reasoned it would be more straightforward to assess compensation on net wages than to change tax laws, which would involve the federal government. A key consideration behind this percentage is that benefits need to be less than earnings to provide an incentive for re-employment (Weiler, 1980), but Weiler also offers a rationale for why the replacement rate should be that high. He differentiates between workers' compensation and other income maintenance schemes such as social assistance or unemployment insurance, placing it between tort liability and welfare. He argues that, unlike tort liability law,

> …workers' compensation does not aim at full redress for all damages inflicted on the worker by his injury. But by contrast with the social welfare system…workers' compensation does aim to replace the bulk of the prior income lost by the injured claimant." (Weiler, 1980, p. 14)

The reason for this is that injured workers gave up the right to sue "enjoyed by everyone else" (Weiler, 1980, p. 15). "Since this is the bargain that has been struck," workers' compensation

[7] Weiler wrote two reports. *Protecting Workers from Disability: Challenges for the Eighties* focused on occupational disease and was released in April 1983.

benefits are different from social assistance schemes in which the claimant "must appeal to the generosity of the community conscience" (Weiler, 1980, p. 15).

It is noteworthy that the lump-sum payment was meant to recognize the impact of a permanent disability on life outside the workplace. This is a departure from the intention of the original scheme, which did not recognize "pain and suffering", only wage loss (McCombie, 1984). Weiler (1980) offered what he considered a "simple" rationale for this approach—a rationale that distinguished between disability and earning power—in this critique of the "meat chart" method of assessment:

> There is no necessary correlation between a particular form of physical impairment and its impact upon the worker's earnings…. A just compensation system must take account of the individual's age, job, education, skills, and the geographic and economic environment in which he lives and works. We must discard the traditional notion of average justice based on some presumed relationship between the degree of physical injury and the percentage of wages lost. (p. 57)

While this distinction between disability and earning power may sound welcome from a CDS perspective, the dual-award system represented the emergence of neoliberalism into workers' compensation. Under the wage-loss approach embodied in the dual-award system, benefits were no longer in the form of a fixed pension but tied to labour market forces, that is, benefits lasted for as long as the injured worker had not returned to employment (Maton, 1991). This made benefits more variable. If unemployment rates were high and workers had to stay on benefits longer, the system could actually be more costly than with a fixed pension approach. If unemployment rates were low, however, and the injured worker could return to some kind of

work, the cost of benefits would be reduced. Indeed, Maton (1991) posits that the reason for the delay in implementing the dual-award system was as much because of the deep recession of the early 1980s, with high unemployment rates, as it was the resistance of injured workers.

Further, with the wage-loss approach, Weiler introduced an increased measure of discretion and judgement on the part of the adjudicator. Weiler (1980) acknowledged the importance of these changes: "From the point of view of the injured worker, he loses his automatic entitlement to a fixed pension which is independent of the bureaucratic favor of a Board already distrusted by many of these permanently disabled workers" (p. 59).

This level of discretion was increased further in his recommendation that these wage-loss benefits be tied to the injured worker's efforts to return to work and willingness to accept "suitable and available employment". If the worker was seen as uncooperative or disagreed about the suitability of a particular job, the benefits could be reduced by the amount that could be earned through suitable and available employment. This practice has become known as "deeming" as per Weiler's (1980) own description:

> The Workers' Compensation Board should be empowered to determine whether the disabled worker is capable of doing suitable work, whether that work is available to him, and whether he has refused to take such a job. If the response to these questions is positive, the Board will *deem* that the worker had earned the income payable in this job for purposes of calculating the actual loss of income from his injury. Such a judgement by the Board would require a tangible indication that suitable work was in fact available to this worker…. (p. 62, original emphasis)

Weiler (1980) saw this practice as a solution to the overcompensation of permanently disabled workers who were able to return to work because benefits reflected actual wage loss (i.e., 90% of actual wage loss). If workers chose not to take lower-paying, lower-status jobs, at least they would be able to retain some of their benefits under this scheme. Thus, not only would Board adjudicators have more discretion, but that discretion would be ongoing. Injured workers would have to be monitored as to their actual wage losses as they traversed their working lives (Storey, 2006). Ison (1981) characterized this situation as "almost like a sentence of perpetual probation"[8] (p. 16), adding that this increased discretion has a political component. Noting that workers' compensation has always been "subject to political pressures" (as the number of Royal Commissions attest), he stated, "It would be a surprise to no one if the outcomes of the various judgmental factors…should vary with the political climate of the times" (Ison, 1981, p. 19). He also pointed out that forcing an injured worker to take a job that the Board finds "suitable" even if the injured worker does not agree, amounts to "a form of directed labour", which infringes on the personal liberty of the injured worker (Ison, 1981, p. 16). He further points out that this approach had been taken elsewhere with the result that "deemed earnings has been one of the greatest causes of anger and complaint in the history of workers' compensation" (Ison, 1981, p. 15).

Ison (1981) also laid out some of the implications of the loss of permanent pensions for rehabilitation. He argues that the uncertainty associated with the proposed system could create anxiety that could actually make the disability worse. At the very least, that uncertainty fosters a need to exaggerate the impairment to ensure continued benefits, while undermining "confidence

[8] When the dual-award system was actually implemented, the Board instituted a "lock-in" period at 60 months, after which benefits were no longer reviewed. Unfortunately for injured workers, they tend to be "locked-in" at the lower, deemed amount.

in the medical and rehabilitation staff…by fears that they are not there to promote the patient's interests, but rather to prepare a case against him" (Ison, 1981, p. 17). "Rehabilitation consultants would become more firmly entrenched as benefit control officers" (Ison, 1981, p. 19). Unfortunately, like Weiler, Ison offers no empirical research to support his arguments on rehabilitation.

Interestingly, the labour movement initially looked more favourably on Weiler's proposals than did Ison. The response from the OFL (1981) to Weiler's report concluded, "We are not advocating any radical change or departure from the report in this submission. Largely, our stance is supportive except in those areas indicated" (p. 12). Those areas included the recommendation that the level of benefits be changed from 75% of gross earnings to 90% of net earnings, which would "insure [sic] a loss to all" (Ontario Federation of Labour, [OFL] 1981, p. 3), and that workers' compensation benefits be integrated with CPP-D benefits. The Federation argued that workers contribute to both plans, albeit indirectly to workers' compensation, and therefore, the "total benefits accrued under each plan is the workers' entitlement, as they would be so entitled under a private insurance scheme" (OFL, 1981, p. 3). Unlike injured workers' groups, discussed below, they did not raise an alarm about the loss of permanent pensions under Weiler's proposed reforms, although they ask the following question:

> What will be the fate of the worker with a permanent disability such as a back problem if he should find himself out of a job, laid off or terminated? …This time he will have no pension at all, he received a lump sum. (OFL, 1981, p. 6)

In short, the OFL did not seem to fully grasp the implications of a wage-loss system for return to work and rehabilitation that Ison (1981) described. Indeed, they appear to have been persuaded

by the concept that an injured worker should receive replacement of actual earnings. According to McCombie (1984), an injured worker advocate active during this period, "While both the OFL and the NDP had questions and some problems with the Weiler Report, it was clear that there wasn't concerted opposition on their part" (p. 146). As will be discussed, this would change under the influence of injured worker organizing.

Workers' Compensation Appeals Tribunal

Another major recommendation from Weiler that would change the complexion of workers' compensation benefits concerned the development of a tripartite Appeals Tribunal separate from the Board. Labour and industry representatives were to be consulted on appointments to the Tribunal. Weiler (1980) reasoned that the sheer scope of the Board's work was problematic, because "any system of mass justice metes out comparatively rough justice" (p. 108). Thus, "[i]n the final analysis, we have to rely on the appeals structure in workers' compensation to provide natural justice[9] to injured workers and their employers" (Weiler, 1980, p. 108). Weiler (1980) noted the effectiveness of the extant internal appeals process, in which "fully 50% of adverse dispositions by the Claims Branch are changed in whole or in part to the advantage of the claimant" (p. 108). He concluded that "a remarkable measure of legal justice is now extended to injured workers within the current Board structure" (Weiler, 1980, p. 110). Nevertheless, given the distrust he observed among those injured workers whose claims were denied, he argued that what was "lacking in the current model is the perception of the structure for review in Workers' Compensation as truly *independent* of the administrative process" (Weiler, 1980, p. 110, original emphasis). The decisions of the Appeals Tribunal were to be

[9] Collins' dictionary defines "natural justice" as "the principles and procedures that govern the adjudication of disputes between persons or organizations, chief among which are that the adjudication should be unbiased and given in good faith, and that each party should have equal access to the tribunal and should be aware of arguments and documents adduced by the other" (Collins online dictionary, n.d.).

considered final and not reviewable by any court, although the Board of Directors of the WCB could review and overturn a decision if it deemed that a Tribunal decision was incompatible with the interpretation of the law or with the Board's established policies (King, 2014).

The Appeals Tribunal's mandate was to ensure the Board policies and directives complied with the law and to "help build a coherent jurisprudence" that would influence the Board's policy development (King, 2014, p. 59). The Tribunal was to augment the internal appeals process because, without the possibility of some kind of outside review of decisions, the Board was able to "pursue its own common sense view of what the Act meant" (Workers' Compensation Appeal Tribunal Annual Report 1985–86, as cited in King, 2014, p. 61). As such, the Appeals Tribunal could act as a check and balance to the increased discretion that the dual-award system and deeming would introduce into adjudication. As King (2014) puts it, "The creation of the Appeals Tribunal represented, in effect, a deliberate choice in favour of more law and less discretion" (p. 61). Consequently, this recommendation from Weiler was welcomed by the injured worker community. Indeed, Storey (2008) states categorically that the institution of an Appeals Tribunal was a clear victory for injured workers. Maton (1991) counters, however, that the Appeals Tribunal can be seen as a means of creating legitimacy in workers' compensation, not unlike the way concessions from the state legitimate the state and perpetuate the illusion of its neutrality in mediating class conflict. He argues that the workers' compensation system embodies the class struggle because of the inherent tussle in the fight for increased benefits on the one hand, and the pressures for decreased costs on the other, with the Board playing a mediating, though not necessarily neutral, role (Maton, 1991).

Key recommendations from Weiler would eventually become legislation. The recommendation to change the benefit level from 75% of gross wages to 90% of net wages

became law in 1984 through Bill 101 under a Conservative government. The Appeals Tribunal, described above, was also created at this time, along with offices of advisors to both workers and employers to help with appeals, established in the Ministry of Labour. Around this time, benefits were also fully indexed to inflation. The dual-award system, accompanied by a right to vocational rehabilitation and "an obligation on employers to re-employ injured workers in workplaces with twenty or more employees" (King, 2014, p. 57), was not implemented until 1990 under a Liberal government through Bill 162 (King, 2014). The delay was partly due to the resistance of the injured worker community, to which we now turn.

Injured Workers' Resistance

Surprisingly, the government did not proceed with amendments to the *Workmen's Compensation Act* that would implement Weiler's recommendations. Instead, they issued a *White Paper on Workers' Compensation* for discussion of the proposed changes. June 1, 1983, was set aside for injured workers to give testimony to the Ontario Legislature's Standing Committee on Resource Development about their experiences with work injury and the Board. About 3,000 injured workers and their families, mostly Italian immigrants, arrived at Queen's Park to tell their stories. There were so many injured workers that the room designated for the hearings had to be abandoned in favour of the steps of the Legislature— "the first and only time…an official meeting of one of the Standing Committees was held on the grounds of Queen's Park" (Storey, 2008, p. 100). From that day, June 1 became Injured Workers' Day, marked by demonstrations of injured workers and their families and advocates. When the legislation was introduced a year later in 1984, not only were pensions left untouched, but the independent Appeals Tribunal discussed above was established. Yet, only three years before, when Weiler's report was first issued in 1980, the injured workers' movement had been at its

nadir, with squabbles between injured worker advocacy groups and "distrust among injured workers and their advocates" (McCombie, 1984, p. 138). What follows is a brief history of the injured workers' movement and the story of how this situation turned itself around.

Union of Injured Workers and the Committee on the Weiler Study

According to Storey (2008) and McCombie (1984), dissatisfaction with the WCB as an institution was a critical ingredient in the transformation of private troubles into public issues. Storey (2008) notes, "Until the early 1970s…altercations [over benefits] were individual in nature and scope; in the overwhelming majority of instances, injured workers represented themselves in making accident claims and in following through with any appeal of a WCB decision" (p. 103). He goes on to argue that, "…the reason a collective response came to be understood as necessary was ever more apparent in the increasing number of workers being permanently disabled with a consequent loss of their jobs, hopes, and dreams" (p. 104). With this statement, Storey (2008) portrays the underlying concept of disability as a loss held by injured workers.

The representation of injured workers to the Board became a centrepiece for organizing efforts. With the growth of the number of claims came the growth of the Board itself. McCombie (1984) explains that, in the eyes of injured workers, it had "grown into a huge, autocratic bureaucracy which exercised its mandate in a paternalistic and defensive fashion" (p. 137). For example, injured workers were not allowed access to their files until they fought for that right and won in the early 1980s (McCombie, 1984).

Storey (2008) describes the early leadership of the injured workers' movement as a "short-lived marriage between injured workers and left-wing political activists" (p. 110). An injured worker named Al Baldwin had won the attention of political activists with a protest in February 1970. He threw himself in a full body cast onto the red carpet at the opening of the

Legislature, loudly proclaiming, “Workmen’s compensation, this is how they treat you!” He was removed from the Legislature and charged with trespassing, but went on, with the help of those activists, to establish Injured Workman’s Consultants to assist injured workers with their claims and appeals to the WCB (Storey, 2008). Within a couple of years, splits within Injured Workman’s Consultants created other injured worker organizations, including the similarly named Injured Workers’ Consultants (IWC), which would be instrumental in the development of a more “enduring” leadership of injured workers (Storey, 2008, p. 111): the Union of Injured Workers (UIW). With the involvement of IWC, the UIW was created in May 1974. Storey (2008) describes the scene:

> At its founding meeting in the auditorium of Bloor Street Collegiate High School, over 300 injured workers and their supporters, dressed in their Sunday best, adopted a constitution and hammered out what would become the four fundamental demands of the UIW: full compensation or job security; cost-of-living increases; no Board doctors; improved and enforced occupational health and safety laws. (p. 111)

The union grew over the next few years, developing locals in various cities around the province and becoming known for its militant demonstrations (Malarek, 1978; McCombie, 1984). Storey’s (2008) research reveals a certain comfort level with militancy and even socialist ideas on the part of injured worker activists because of their European roots, where traditions were “a lot more militant” than in Canada (p. 117).

On May 29, 1978, about 300 UIW demonstrators occupied the lobby of the Ministry of Labour demanding cost-of-living increases to workers’ compensation pensions. This led to a clash with about 30 police officers, three of whom were injured and had to be taken to hospital.

One union member was also sent to hospital with injuries and several were arrested and charged, including Phillip Biggin, the union's president (Malarek, 1978; McCombie, 1984). The court trials that followed absorbed most of the UIW's time, energy, and funds, resulting in less activity and a diluted militancy (McCombie, 1984). This situation also created rifts over its militant tactics within the union, such that

> a small group of UIW dissidents…in the dead of night, removed their files from the UIW office to a new location that quickly became the home of another legal clinic, the Industrial Accident Victims Group of Ontario (IAVGO). (Storey, 2008, p. 118)

Thus, the movement was rife with tensions, not only within the union itself but also between the union and the legal clinics and between legal clinics[10] (McCombie, 1984). To add to the situation, the injured-worker-led UIW had developed a "distrust [of] law students and community legal workers…as 'outsiders'" (McCombie, 1984, p. 138). It was in this context that a group of unionists, lawyers, law students, and community legal workers came together to form the Committee on the Weiler Study (CWS).

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[10] IWC and IAVGO became community legal clinics funded by the Ontario Legal Aid Plan in 1976 and 1975 respectively, with IAVGO considered the more "conservative" cousin that focused on individual case work and polite law reform activities (McCombie, 1984; Storey, 2008). Ontario first offered an organized legal aid program in 1951. Applicants would be served by volunteer lawyers. This voluntary program was in place until 1963 when the Ontario government and the Law Society of Upper Canada recognized it was inadequate to meet the needs of low-income people. In 1976, the Ontario government implemented the Ontario Legal Aid Plan to provide legal certificates to low-income individuals requiring legal representation. It soon became clear, however, that an individual-focused program was inadequate to fully address the legal needs of the poor—needs that often fell outside the traditional expertise of the private bar. Legal needs relating to income security, immigration, and housing became known as Poverty Law, an area requiring specific skills and expertise. Significantly, there was also the recognition that the legal problems facing the poor have their roots in systemic inequality. As such, community legal clinics are community-based organizations with a legislated mandate to provide not only individual legal services, but also law reform activities and community development. In the tradition of self-help, clinics are governed by boards of directors composed of representatives of the communities they serve. Also in this spirit, the clinics were staffed with community legal workers, that is, people with lived experience and grassroots expertise rather than legal training per se (Simcoe, Haliburton, Kawartha Lakes Community Legal Clinic. n.d.). With the ethical requirements of independence for legal representation, these clinics enjoy greater independence from the government than many government-funded organizations.

Realizing it lacked a solid base, the CWS made a conscious decision to play an educational and coordinating role regarding the Weiler study. Its primary role was to anticipate and publicize the issues that Weiler would likely raise based on the content of the *Grey Paper* and the collective experience of its members with workers' compensation representation. In addition to weekly pickets at the Ministry of Labour, the CWS produced a 53-page background document for a forum called *Will Injured Workers Get a Fair Hearing?* The forum was attended by about 80 injured workers and trade unionists. The hope was it would initiate the debate within the labour movement as to what their response to the Weiler study should be (McCombie, 1984). McCombie (1984) offers these important insights into both the role of the labour movement in the injured workers' movement at the time and the experience of disability as an injured worker.

> Organized labour has few officials knowledgeable, or particularly concerned about the problems of workers' compensation…. One of the major reasons for this is that the main victims of workers' compensation are the permanently disabled who, because of their disability, are unable to return to their former workplace and hence, their unions…. Injured workers are, almost by definition, an alienated constituency; alienated from the former workplace and co-workers, alienated from society at large by virtue of their disabilities and common poverty, and often alienated from one another by the stages of anger, despair, hope, and all the other moods to which they're prone. (McCombie, 1984, p. 142)

As we have already seen with labour's tepid response to the Weiler study when it was released, the CWS did not generate the debate within labour, nor did it engender the coalition between injured workers' advocates and labour that they had hoped for. McCombie (1984) notes that a coalition with labour "was a common theme over the next few years, and one that never

met with a great deal of success" (p. 142). Nor was the CWS successful in its other key objective: to challenge the informal process proposed for Weiler's study in favour of formal public hearings. Although the CWS was able to gain media coverage and even win some editorial support for the demand for public hearings, Weiler proceeded in the manner already described, with the injured worker constituency feeling like it had been unheard (McCombie, 1984).

The CWS's work was not without rewards, however. Their work helped to revive the leadership of the UIW, if only because it was afraid of being eclipsed by non-injured workers at a crucial time for workers' compensation. Members of the Committee gained valuable lobbying and media skills for future use, winning support for public hearings from "the opposition parties, organized labour, Toronto City Hall, two major newspapers and many others" (McCombie, 1984, p. 143). Perhaps most importantly, the work of the Committee defused some of the antagonisms among injured worker groups, laying the ground for the important alliance that would follow.

When the Weiler Report was released, the CWS responded immediately with a press conference. However, the injured worker community found the report to be "a long, rambling, philosophical musing" (McCombie, 1984, p. 144), so their initial reaction, by their own admission, was based on a "perfunctory understanding of the implication" (McCombie, 1984, p. 145) of the report's recommendations. With the indecisive response from labour and the NDP and an enthusiastic reaction from the business committee, the CWS quickly felt like it was "fighting a rearguard action, which seemed to be, at best, forestalling the inevitable" (McCombie, 1984, p. 147). It was at this point that the then Minister of Labour, Robert Elgie, issued the *White Paper on Workers' Compensation*, a move that would change the course of the

struggle of injured workers (McCombie, 1984). The *White Paper* opened Weiler's proposals for discussion, allowing the injured worker community to apply the scrutiny they felt was lacking through Weiler's process.

McCombie (1984) characterizes the *White Paper* as "the practical application of Weiler's theories" (p. 148). The report consisted of two parts: the first distilled Weiler's report into 21 major recommendations and the second part put those recommendations into legislative language (McCombie, 1984). It also included costing data, which McCombie (1984) calls "sketchy" (p. 148) and showed the Board saving nearly 7% in costs over the long term. Thus, the *White Paper* not only gave the injured worker community time to regroup, but it also clarified Weiler's report, confirming their worst fears about the proposals—that it represented a cut to benefits already perceived as inadequate by many injured workers. For example, in their analysis of the *White Paper*, the injured worker community calculated that the lump-sum payment would amount to about one-seventh of the value of a typical pension for permanent disability (McCombie, 1984).

Association of Injured Workers Groups

Issuing the *White Paper* also gave the fractured injured worker community time to build on the tentative "rapprochement" they had been developing, as well as a clear target for action (McCombie, 1984, p.149). The result was a formal coalition of six injured worker groups[11] called the Association of Injured Workers Groups (AIWG), including the UIW, the two feuding legal clinics, and the CWS (McCombie, 1984; see also Storey, 2008). With the *White Paper* and impending legislation as the focus, the "coalition didn't have time to thrash out principles, bases of unity, political positions" (McCombie, 1984, p. 149). Instead, they crafted a response to the

[11] Storey (2008) puts this number at seven groups, Union of Injured Workers, Industrial Accident Victim Group of Ontario, Injured Workers Consultants, the Association of Pensioners and Injured Workmen of Ontario, Central Toronto Community Legal Clinic, Mississauga Community Legal Services, and Centre for Spanish Speaking Peoples, based on interviews with group participants.

White Paper, continually sharing it in meetings with injured workers in several languages, both to inform the critique and to allow injured workers themselves to get to the point where they were comfortable with expressing that critique (Storey, 2008). One of Storey's (2008) interviewees described the grassroots techniques the AIWG used to get injured workers interested in this process, involving local church bulletins and the ethnic press such that there were meetings in several Toronto locations at a time.

With this foundation, several rallies and demonstrations were held, largely to protest the proposals of the *White Paper* specifically. These garnered the attention of provincial politicians, precisely because the protests were coming from injured workers themselves (McCombie, 1984). These actions and effective lobbying with the OFL, opposition parties, and Ministers of Labour registered the community's opposition to the proposals and convinced labour and the opposition parties that they would be a step backward for workers' compensation. The AIWG won the support of two high-profile politicians at the time, Sheila Copps of the Liberals and Bob Rae of the NDP. McCombie (1984) argues that their support lent the AIWG some credibility, but its real strength rested on the fact that it was a "well-organized, militant organization that consistently 'got the troops out'" (p. 154). He further argues that the AIWG's credibility and activity may have been responsible for the government's next move (McCombie, 1984). Again, rather than proceeding with legislative reform, the government referred the matter to the Standing Committee on Resource Development for discussion. These "hearings provided an opportunity for injured workers and the AIWG to make their points in a formal setting for the first time" (McCombie, 1984, p. 154). Perhaps most importantly, the experience solidified the relationship between injured workers and those advocating on their behalf, helping to dissolve the distrust

that had existed in previous years and marking the AIWG as an authentic voice for injured workers (McCombie, 1984).

Because of their organizing, the AIWG was accompanied at the Standing Committee hearings by about 600 injured workers, ten of whom gave moving and sometimes dramatic testimony as to their experience of disability and their treatment at the hands of the WCB (McCombie, 1984; Storey, 2008). Committee members heard recurring themes of "distrust and stolen dignity" from injured workers (Storey, 2008, p. 124)—themes that reflected the male, working-class, mostly Italian constitution of the injured workers' movement (McCombie, 1984; Storey, 2008). Injured workers told of the agony of being out of the workforce and diminished in the breadwinner role, complaining that the WCB did not

> understand what it means to be a breadwinner of the family, the provider of the family—the beautiful thing of being 100 percent able and the brutal thing of being disabled and being treated that way by those that don't understand the philosophy, the psychological effect of the injury to Injured Workers. (Injured worker testimony as quoted in Storey, 2008)

As Storey (2008) points out, "The banner 'Justice for Injured Workers' was carried by men (and, occasionally, women) who understood its message to be synonymous with reinstalling men in their proper role as the sole and respected breadwinners of their families" (p. 131). Indeed, early in the life of the UIW, the leadership staunchly refused to allow the development of a women's caucus (Storey, 2008).

These shortcomings aside, the movement did achieve a huge, if temporary success. Because of the AIWG's presence at the Standing Committee hearings, the Committee designated

a full day to hear from injured workers. Further, NDP MPP Jim Renwick was able to get a motion passed that the Committee ask the WCB to include notice of that designated day in its next mail-out of cheques. Consequently, about 50,000 claimants were notified, resulting in the huge turnout on June 1, 1983, described above. As a result of that day, when the legislative reform package for workers' compensation was finally introduced a year later without the dual-award system, Minister of Labour Russell Ramsay was forced to admit that the original "consensus" of support for Weiler's proposals had eroded since they were first introduced (McCombie, 1984; Storey, 2008). As Storey (2008) puts it, "In this historical moment the IWM [injured workers' movement] proved successful, if only temporarily, in restraining the gathering social, economic, and political forces of neo-liberalism" (p. 99). With the Harris Conservatives coming to power in Ontario in 1995, that restraint was temporary indeed.

The Unfunded Liability

The 1990s, amid a deep recession and the entrenchment of neoliberal ideology, raised the spectre of the WCB's "unfunded liability". The unfunded liability is the difference between the Board's current reserve funds and the projected future costs of the benefits owed to all the injured workers currently receiving benefits (Biggin, et al., 1998; Wilken, 1998). When the system was set up, the compensation fund was to have enough money to cover the costs of accidents during the year, plus a reserve, the amount of which was determined by the Board (Ontario, 1913). This model was favoured by employers and their representatives, because it would allow for lower assessments leaving more money for businesses to invest (Ontario, 1913). Employers changed their minds about their support for this model when in the 1980s, the Board created a surcharge, "the past claims cost", to pay down the unfunded liability (Singleton, 2018).

This meant that Ontario employers were paying the highest workers' compensation premiums in the country, thus making Ontario less competitive (Workplace Safety and Insurance Board [WSIB], n.d.a).

If the system were a fully funded model, it would have to ensure enough in the reserve fund to pay all current and future obligations. Private insurers, for example, are required to be fully funded. As Wilken (1998) explains, this is because they "cannot guarantee a future stream of income" in a competitive market. They could conceivably be out of business at some point and would have to wind up operations and pay out all their obligations. The WCB, however, is a monopoly insurer and participation in the scheme is mandatory; therefore, it is guaranteed ongoing funding unless the government decides to end the program. Because it had been designed as a current cost model, workers' compensation had operated with an unfunded liability since the 1930s. However, it was never in a position where it could not pay its obligations as they became due, even during the Great Depression and other recessions (Wilken, 1998). Indeed, all reviews and Commissions up to 1990 found the Board to be fiscally sound. That said, scholars have argued that an unfunded liability needs to be addressed because of its inequitable redistributive effect. As with all current cost systems of funding, responsibility for the future payments that make up the unfunded liability is shifted to future generations of business on the assumption that they will be willing to pay for the costs accrued (Gunderson & Hyatt, 2000). As well, different firms and industries have different injury rates and their workers' compensation premiums may not cover the true cost of the accidents in their firm. Thus, firms "contribute in different magnitudes (positive and negative) to the unfunded liabilities" (Gunderson & Hyatt, 2000, p. 174). Arthurs (2012) countered, however, that these intergenerational inequities are inherent in the way the system has been funded since its inception. He observed

> …that the present generation of employers has in fact inherited from its predecessors a significant burden of responsibility for "payments in respect of accidents in previous years," as has every generation of employers since the inception of workers' compensation in Ontario. (Arthurs, 2012, p. 27)

In 1980, when Weiler was conducting his review, the unfunded liability was 51% (King, 2014; Wilken, 1998). In other words, the Board had half of what it would need to pay all future obligations. Weiler (1980) stated that this ratio did not pose a "threat to the fiscal soundness of the program" (p. 82), though he did say the ratio should not go any higher (King, 2014). In fact, the unfunded liability did grow over the 1980s, because employer premiums were not raised to pay for cost-of-living increases to benefits won in 1985 (Gunderson & Hyatt, 2000; Wilken, 1998). Ontario had the largest unfunded liability in the country. Some provinces had managed to fully fund their workers' compensation systems and those that hadn't managed much better ratios at 90% (Jackson, 1996). It is important to note, however, that after 1993, small surpluses were slowly reducing the unfunded liability (Gunderson & Hyatt, 2000; see also Wilken, 1998).

The unfunded liability dominated the discourse about workers' compensation when the NDP came to power in 1990 (and would continue to do so until it was retired in 2018). Consequently, rather than fulfilling a promise to end deeming, the NDP government cut benefits by adopting a particular formula to be applied to the cost-of-living adjustments that had been won in 1985. Following these cuts, however, the NDP government then set up yet another Royal Commission into workers' compensation. This was promptly aborted when the Harris Conservatives came to power in 1995. In place of the "high profile, high cost" Commission, the Harris government appointed a Minister without Portfolio, Cam Jackson, to conduct a

comprehensive review of the system (Jackson, 1996, p. 3). That the unfunded liability was the driving force behind the Jackson review was clear. In the first paragraph of the report, the first argument for the need for reform is "eliminating the unfunded liability by the year 2014 and restoring the financial viability of the Workers' Compensation Board" (Jackson, 1996, p. 1). Thus, in this discourse, the very viability of the workers' compensation is at stake, despite the system's decades of successful operation with an unfunded liability. Critics argued that the government had manufactured a crisis to trim worker compensation benefits (Wilken, 1998). It is noteworthy that an increase in assessments on businesses was not considered as a means to retire the unfunded liability. Indeed, the government had already decreased assessments by 5% before the Jackson review had even begun (Wilken, 1998).

New Directions for Workers' Compensation Reform

The process for the "focused, time limited review" (Jackson, 1996, p. 3) that would replace the Royal Commission involved the release of a discussion document followed by consultations, including interviews with over 150 injured workers, and over 200 submissions from interested parties (Jackson, 1996). Jackson also hosted a conference of international workers' compensation experts to get a perspective on reforms happening in other jurisdictions (Jackson, 1996). Jackson's proposals, most of which were implemented by 1998 through Bill 99, represented radical reforms that essentially placed the workers' compensation system on its head. Rather than income security as the focus with a right to vocational rehabilitation, under Jackson's reforms, the first priority of workers' compensation became the prevention of accidents. As Jackson (1996) put it in his report, *New directions for workers' compensation reform*, the underlying principles of workers' compensation were to be "Prevention first, return to work if possible, rehabilitation when needed and compensation as required" (p. 6). Jackson (1996) proposed the "direct-payment" method as one way to promote prevention. Abandoning a

collectivist approach in favour of "self-reliance", Jackson proposed that employers pay their employees' compensation at legislatively predetermined rates for up to six weeks after the injury. The rationale was that this cost to the employer would provide an incentive to prevent accidents. However, critics pointed out that this system would require the employer to be the claims adjudicator and placed injured workers at the whim of the employer's "generosity". When Jackson's proposals were introduced as legislation in Bill 99, the direct-payment method was not included.

Other cuts to benefits were motivated by the principle that only work-related conditions should receive workers' compensation (Jackson, 1996). The report expressed the concern that compensation for conditions such as chronic stress and chronic pain resulted in compensating "multiple cause disabilities that presented difficult problems of proof of work-relatedness" (Jackson, 1996, p. 31). The solution was to eliminate the eligibility of chronic stress for compensation and restrict the compensation of chronic pain to "a limited period of time, based on the usual healing time of the injury" (Jackson, 1996, p. 32). Finally, all benefits other than 100% disability pensions and survivor benefits would no longer be indexed for protection against inflation.

Return to Work

Jackson's (1996) report also reflects an ongoing concern about the overcompensation of injured workers. One of his principles was that "no worker should receive more on compensation than the worker would from working" intertwined with a focus on return to "suitable" work (p. 7). Indeed, one enormously significant reform that occurred when the Jackson Report's proposals were implemented was that injured workers were required to accept "suitable" work. The word "available" was omitted (Dee, 1999; King, 2014). The implications of this within a policy that allows deeming are obvious: "This gave the Board adjudicators greater discretion to deem

unemployed permanently disabled workers to be able to earn income" (King, 2014, p. 74). As such, it allowed for neoliberal ideology to have it both ways. The fate of injured workers' incomes was still tied to market forces, but the problem of high unemployment rates potentially extending the length of time on benefits was eliminated. Injured workers could be deemed to be ready for "suitable" work, regardless of the availability of an actual job. This situation for injured workers was in direct contradiction to how Weiler had intended deeming to work since he was very clear that there had to be a process whereby it could be determined that a job had been available and the worker had declined it (Weiler, 1980). The reality of deeming is quite different. In 2003, an external audit of the Labour Market Re-entry program introduced at this time and discussed below showed that "of those injured workers who completed a program, 56% were deemed employable but were unemployed" (King, 2014, p. 119). Another external audit in 2009 found that 48% of workers were employed after their Labour Market Re-entry program was completed (King, 2014). Further, in cases where injured workers have been deemed to be able to get a minimum-wage job, their benefits can be reduced when there is an increase in the minimum wage.

As Ison (1981) predicted, deeming has been one of the most detested and contested aspects of Board policy among injured workers groups and labour. Indeed, the Ontario Network of Injured Workers Groups, (ONIWG)[12] founded in 1991, made a submission to the United Nations arguing that deeming is a violation of the right to social security without discrimination based on disability in the Convention on the Rights of Persons with Disabilities. At the same

[12] The Ontario Network of Injured Workers (ONIWG) is an umbrella organization of 22 local injured workers groups across Ontario. The Union of Injured Workers was a member of ONIWG until its demise in the 1990s. With that demise, ONIWG has become the key injured workers advocacy group in the province. Space does not allow for describing all of its advocacy work on the issues and changes presented here. Robert Storey is currently working with ONIWG to write its history.

time, deeming is clearly central to the cost-containment strategies of the Board and the government and consequently, to the erosion of the institutional nature of workers' compensation as an income security program. Tying benefits to "cooperation" with job retraining and seeking employment introduces a workfare orientation to workers' compensation. Though this requirement was not new in the changes introduced by Jackson, the emphasis on early and safe return to work and the elimination of the term "available" served to intensify its effects.

In keeping with the shift to "self-reliance", Jackson (1996) proposed a duty on the accident employer to develop a return-to-work plan for any injured worker who lost more than five days of work time. This plan would have to be filed with the WCB within 20 days, and employers could be penalized for failure to do so. The Board's role should be minimal except in situations where conflict arises. Injured workers could also be penalized in the form of suspension of benefits if they did not "cooperate" with the return-to-work plan. To incentivize return to work further, Jackson (1996) proposed that benefits be cut from 90% of net wages to 85%. When these proposals were implemented, the structure of the benefits also changed, retaining the benefit for non-economic loss, but streamlining the categories for the Future Economic Loss benefits into one "loss of earnings" benefit. (See Table 4). The latter benefit continued to be based on the wage-loss principle introduced by Weiler. In cases where workers could not return to working for the accident employer, the last resort was eligibility for one "Labour Market Re-entry" assessment, "with a fixed duration and cost" to evaluate skills, education, and functional abilities (Jackson, 1996, p. 21; King, 2014). The assessment would determine the next steps: either help with job search or retraining, effectively replacing the right to vocational rehabilitation (King, 2014). The WSIB outsourced the services for Labour Market Re-entry assessments and had outside providers bid on contracts to provide services.

Further, the emphasis in Jackson's report is on a "timely" return to work. The report pointed out that "workers' compensation benefits have been steadily enriched to enhance both the income-replacement and rehabilitation services provided to injured workers with no improvement in return-to-work outcomes" (Jackson, 1996, p. 2). Maton (1991) points to the decommodifying effect of the right to paid vocational rehabilitation that had been established; that is, injured workers could spend a longer period without relying on the market for income if they cooperated with a vocational rehabilitation program. Clearly, this was a factor that the Jackson proposals were looking to weaken by removing the right to vocational rehabilitation and replacing it with a "self-reliance" model for return to work.

The policy and practice of "early and safe return to work" are based on a large body of literature that shows that the longer a person is away from work due to illness or injury, the less likely it is that a successful return to work will be achieved. This approach promotes a return to work before full recovery on the premise that experiencing pain is not necessarily detrimental to recovery and is overshadowed by the importance of a prompt return to work and daily activities (Eakin et al., 2003; MacEachen et al., 2007). As MacEachen et al. (2007) point out, however, most of the research in this area focuses on "outcomes such as cost and duration of time away from work, and only rarely on quality of life" (p. 76). While there is evidence that early return to work shortens the duration of time away from work and reduces costs, (Franche et al., 2005) research that focuses on quality-of-life issues tells a different story. This research reveals excessive reliance on painkillers, sometimes to the point of addiction (MacEachen et al., 2006). It also describes the development of toxic workplace relationships between both employers and co-workers, often centring on suspicions of injured worker fraud (Eakin et al., 2003) and resentment on the part of co-workers of injured workers' lighter duties and time off (MacEachen

et al., 2006). In short, research shows that much of the success of a return-to-work program depends on the underlying culture of the workplace, including intangible factors such as goodwill and motivation of an array of participants: supervisors, co-workers, health professionals, unions, and the compensation system itself (MacEachen et al., 2006). Researchers also question whether returning to meaningless or demeaning work, as modified work sometimes is, fits with the evidence that shows improved outcomes with an early return to work (Mojtehedzadeh, 2016, September 12).

Finally, much of the research on early return to work focused on back injuries but has been extrapolated to all injuries and illnesses. Nor was there adequate research at this time on the long-term outcomes and the sustainability of return to work (MacEachen et al., 2007). MacEachen et al. (2007) further point out this body of literature contains caveats to adopting early return to work in all cases and circumstances. These caveats regarding working conditions and the quality of employer-employee relationships, however, are missing from the WSIB's presentation of the evidence.

Moreover, the issue of whether a return to work is sustainable for a disabled worker can also be obscured unless long-term outcomes are considered. A seminal and widely cited study from 1995 did consider long-term outcomes by looking at the 1990 employment status of workers injured in 1974. The study found that 85% of injured workers initially returned to work, but in the long term, only 50% were still employed (Butler et al., 1995). Although research on long-term employment outcomes after disability is scant (Gensby et al., 2012), more recent studies corroborate that return to work after disability is a complex process, which can include work interruptions and lost income. Using administrative data, including workers' compensation data from Washington State, Sears et al. (2021) found a relationship between the severity of

impairment and poor employment outcomes. Injured workers rated at greater than 10% impairment took longer to return to work, experienced work interruptions sooner, and had a higher rate of work interruptions sometimes with no income, than those with less or no permanent impairment. Berecki-Gisolf et al. (2012) analyzed Australian workers' compensation claims data to find that although 94% of claimants had one return to work, only 79% were able to sustain it during the two-year follow-up period.

Experience Rating

The issue of sustainable return to work raises another important topic: experience rating. In the original design of workers' compensation, premium rates were sector-specific based on how hazardous the particular industry was. This was meant to distribute the costs of workers' compensation premiums more equitably so that the most hazardous industries paid the highest premiums. Experience rating was introduced in Ontario in the 1970s and Weiler (1980) recommended that the practice be expanded. Experience rating is a method of setting workers' compensation premiums at the company level, in addition to the sector level, premised on the idea that those employers with better safety records should be rewarded with lower premiums and those with worse safety records should be penalized with higher premiums (Mansfield et al., 2012, Tompa et al., 2012). Ontario also has a system of rebates and surcharges that are awarded or imposed based on safety records, measured by the number of compensation claims generated. Experience rating is meant to introduce a financial incentive for employers to improve health and safety conditions and thereby reduce injuries and illnesses. The evidence to support this premise is mixed (Tompa et al., 2012). A 2007 systematic review of the evidence on experience rating found "moderate evidence" that experience rating reduces the number of injuries (Tompa et al., 2007). The same article also identified "perverse incentives" possibly associated with experience rating, specifically reducing the number of claims, as opposed to

actual accidents, through claims suppression, excessive numbers of appeals, and pertinent to this discussion, pressuring workers to return to work too early (Tompa et al., 2007; see also Ison, 2015; Mansfield et al., 2012). Claims suppression, by its nature, is difficult to assess and researchers are quick to point out that the estimated rates of overt and subtle claims suppression, as opposed to errors or lack of knowledge about reporting, are not definitive (Costante et al., 2014). A 2013 report prepared for the WSIB concluded that "20% is a plausible estimate of the proportion of likely compensable, work-related injuries or illness for which workers do not submit claims" (Prism Economics and Analysis, 2013, p. 4). Possible claims suppression is cited as one reason for this, along with "perceptions about the time required to claim compensation benefits, uncertainty about eligibility, perceptions that the injury or illness is not severe, and preference for other forms for income support, such as sick leave plans or wage continuation" as reasons that claims are not filed (Prism, 2013, p. 4). Another study that sought to identify claims suppression specifically used worker and employer surveys and reviews of claims data to estimate a 3.7 to 13% rate of claims suppression in the British Columbia workers' compensation system (Saunders et al., 2021). This estimate is distinct from rates of underclaiming in general where overt or subtle suppression cannot be established. Underclaiming for lost-time benefits (e.g., characterizing an injury as no lost-time when time off was involved) ranges from 40% to 65% across studies (Saunders et al., 2021). (Both of these findings point to the problematic nature of using workers' compensation claims data to determine the incidence of workplace injuries and illness, but it is widely used for that purpose.) Further to our discussion of return to work, MacEachen et al. (2012a) found that "Employers were motivated to keep injured workers in the workplace, doing modified work,

until the end of the firms 3 year financial liability window for experience rating related to that accident" (p. 110). Then they were often sent to the Work Transition program after that time.

Failure of Self-Reliance

When Bill 99 was passed to implement these changes (other than the direct-payment method), it also changed the name of the Board to the Workplace Safety and Insurance Board (WSIB) to reflect the changed priority on prevention. The Appeals Tribunal received a similar name change, Workplace Safety and Insurance Appeals Tribunal, and was also a target for reform. In the name of efficiency, tripartite panels were discouraged except for exceptional cases. Generally, appeals were heard by a single vice-chair of the Tribunal. Also in the name of efficiency, the Tribunal was no longer the place of appeal for certain matters, such as employer requests for access to an injured worker's medical information. Most importantly, the Tribunal was instructed to abide by Board policy, regardless of its views on that policy, thus diminishing its influence in changing policy through jurisprudence (King, 2014). Concern about the growing number of appeals each year led to putting a six-month limit on the time that an injured worker could appeal a claim. This introduced an element of liability into injured worker advocacy and threw the injured worker advocacy community into a frenzy of making sure that all injured workers who needed appeals applied by the deadline (Dee, 1999).

The Jackson reforms had the opposite effect of what was intended. Under the self-reliance regime, the number of permanently disabled workers who were under or unemployed and in need of ongoing wage-loss benefits actually increased. A study of the Board's administrative data done in a collaboration between the Board and the Institute for Work and Health showed a decline in the number of long-term claimants until 1997. Right after the Jackson reforms, they started to increase (King, 2014). The correlation between the increasing number of long-term claims and the timing of the Jackson reforms was corroborated in a value-for-money

audit conducted by KPMG in 2011 (King, 2014). In December 2012, the WSIB website explained why a new program under the "Work Reintegration Policy" had been adopted. It bluntly admitted that the Labour Market Re-entry program had not worked and that the number of long-term claimants had risen during its operation (King, 2014). By that time, the word "available" once again appeared with "suitable" for determining wage loss (King, 2014). "Prevention, the centre piece of the Jackson reforms, is removed from the mandate of WSIB in 2011" (King, 2014, p. 53).

"The Marshall Plan", 2010–2015

The emphasis on early and safe return to work and the preoccupation with the unfunded liability persisted. In 2009, the Auditor General highlighted the unfunded liability as a serious problem that had to be resolved (Auditor General of Ontario, 2009). The Auditor General even went so far as to suggest that the WSIB's unfunded liability be added to the general liability of the province unless it was addressed urgently (Marshall, 2014). This prompted the WSIB, in 2010, to appoint Harry Arthurs to oversee a funding review with a mandate to look at six areas of concern, the unfunded liability being the first, but also including issues of premiums and rates grouping of industries and the indexation of benefits for partially disabled injured workers. Arthurs is a former Dean of Osgoode Law School and president of York University. His report, *Funding fairness*, made detailed recommendations in all six areas, including adopting a funding strategy that would bring the WSIB to full funding within 20 years (Arthurs, 2010).

Also in 2010, the Liberal government of the day appointed I. David Marshall to be president and CEO of the WSIB. Marshall's résumé included stints as a deputy minister and auditor, as well as banking and diplomatic experience. According to the Deputy Minister of Labour at the time, Marshall had "a clear mandate…to improve the WSIB's efficiency and

effectiveness, and to address its finances, specifically, the unfunded liability" (Morton, *Hansard,* 24 February 2010, p. 475). In speaking to the Ontario Parliament shortly after his appointment, Marshall described his job as developing "a plan…that brings us to a fully funded position within a reasonable amount of time" while warning that this plan would "have some tough proposals in it" (Marshall, *Hansard,* 24 February 2010, p. P-490). According to a commentary in *The Toronto Star* by former Board chair, Oduardo Di Santo, "In 2011, Marshall was granted the unprecedented authority to change autocratically most WSIB policies without board approval" (Di Santo, 2014, para 15).

One mechanism to address the unfunded liability was, in Marshall's own words, "…to reduce our long-term beneficiaries by half" (Marshall, *Hansard,* 24 February 2010, p. P-481). Moreover, if he achieved this target, he would receive a 20% bonus in addition to his $400,000 annual stipend (Di Santo, 2014; Marshall, *Hansard,* 24 February 2010, p. P-490) Thus, the story of the "Marshall Plan", as it was dubbed by injured worker activists, is the story of how the unfunded liability was eventually eliminated in 2018 well ahead of Arthurs's proposed timeline, and importantly, who bore the brunt of its elimination.

According to the WSIB, "[p]remiums were the most important factor in eliminating the UFL [unfunded liability]", especially the past claims cost WSIB, n.d.a, p. 4). This claim is incongruous with Marshall's observation that the WSIB had an expense problem, not a revenue problem (Marshall, 2014). Premiums saw "modest" increases of 2% in 2011 and 2012 and 2.5% in 2013 (WSIB, n.d.a). With these increases, the WSIB generated a small surplus in 2011, thus precluding the need to dip into investments to pay current costs. This surplus situation combined with a more diversified portfolio for investment "allowed the fund to grow at a compound rate" (WSIB, n.d.a, p. 5).

In addition to premiums and improved investments, the third pillar of the plan was to once again increase the focus on return to work. The Board insourced those services that had been outsourced, hiring 300 return-to-work specialists. According to Board statistics, the percentage of people returning to work at pre-injury wages rose from 85% in 2009 to 91% in 2017 and, the percentage of people employed after completing a" work transition program" rose from 36% in 2009 to 88% in 2017 (WSIB, n.d.b, p. 7). Another measure that the Board cites for reducing costs and the incidence of work disability is their change to an integrated health care program that gets injured workers specialist care faster and more efficiently. The WSIB reported that they were able to increase the number of injured workers receiving integrated care (discussed in more detail below) from 18% to 41% (WSIB, n.d.a, p. 7). Furthermore, the Board contends that the "historic milestone" of reaching full funding was achieved despite meeting its obligations to pay for legislated increases to benefits. Specifically, in 2016, first responders were granted presumptive entitlement[13] for post-traumatic stress disorder and in 2018, the Board was obliged to recognize claims for chronic mental stress.

The Board claimed to have achieved the elimination of the unfunded liability without having to deny more claims. In 2015, the *Daily Commercial News* reported, based on a speech by Marshall, that the WSIB accepted about 80% of claims, the same as it had 15 years previous (Gilbert, 2015), though WSIB statistics do show a 9% drop in the number accepted lost-time claims between 2011 and 2015. (See Table 5).

Finally, the Board points to better health outcomes for injured workers, resulting in a reduction of both the incidence of permanent impairments and the size of the awards granted. In 2010, 9% of injuries were recognized as resulting in permanent impairments and the average

[13] Presumptive entitlement in this case offers an automatic presumption that the injury or illness is work-related, based on the nature of the work, unless it can be proven otherwise.

non-economic loss award was about 15%. By 2015, the incidence of permanent impairments was down to just less than 6% of injuries, and the average award was just under 10% (Singleton & IAVGO, 2017).

Needless to say, injured worker advocates tell a different story both in terms of their experiences with the new approaches and by researching and unpacking some of the Board's claims. We have already seen some of the problems with using WSIB administrative data to determine the incidence of workplace injuries and illness in the discussion regarding experience rating and claims suppression. Critics argue that the WSIB is conflating the measure of incidence with its own adjudication practices (Singleton & IAVGO, 2017). One major change in adjudication was the consideration of pre-existing conditions when calculating a non-economic loss amount (the amount meant to recognize a permanent disability), a policy adopted in 2014. This policy allows adjudicators to assess how much a pre-existing condition contributes to the degree of permanent impairment. Before the adoption of this policy, decisions were governed by the "thin skull doctrine", an established principle in common law that holds even if a victim is particularly vulnerable, a perpetrator is fully liable for damages (Legalknowledgebase.com, 2022). In the case of workers' compensation, this meant that if a pre-existing condition was not causing symptoms or interfering with function before the injury, benefits could not be denied because of it (Mojtehedzadeh, 2016, July 21). With the policy change, non-economic loss awards could be reduced by determining how much the pre-existing condition contributed to the permanent impairment. Thus, the apparent reduction in the severity of permanent impairment, as reflected in the awards granted, could be seen as an artifact of the new adjudication policy. These same critics claim that pre-existing conditions were also used to end benefits that had been awarded before this policy change (Singleton & IAVGO, 2017). Injured workers and their

advocates interpreted this as a cut to benefits (Singleton & IAVGO, 2017) and legal advocates interpreted it as a violation of the rule of law. Ron Ellis, a legal scholar who served as the first chair of the Workers' Compensation Appeals Tribunal from 1985 to 1997, said publicly, "The impact on the injured workers it affects is dramatic, but the rest of us should be ashamed of it from a rule-of-law perspective" (Mojtehedzadeh, 2016, July 21, para. 5). Toronto compensation lawyer, Richard Fink, filed a class action suit against the policy in 2014. The policy was reversed in late 2017 (Mojtehedzadeh, 2017).

Another cost-cutting strategy implemented during the Marshall years was the Narcotics Strategy. Recall that workers' compensation benefits cover injured workers' health care costs, as opposed to being covered by the public social insurance system. One important factor in health care benefits is drug coverage. Based on WSIB data, Singleton and the IAVGO Community Legal Clinic (2017) documented that the cost of drug benefits decreased by one-third over the six years from 2010 to 2015. The WSIB attributed this drop to its strategy of having injured workers use more generic drugs for pain relief and to the overall reduction in the number of claims during this period. Singleton and IAVGO (2017), however, point again to adjudication. They note that "In 2010, the number of claims with drug benefits was 38 percent of the total of allowed claims entering the system; by 2015, that reduced to 27 percent" (Singleton & IAVGO, 2017, p. 5). They estimate that about 18,000 injured workers were no longer covered by drug benefits. As Figure 1 shows, the percentage of claims that included drug coverage declined more sharply than the declining total number of claims.

Health care integration was another strategy for reducing costs. This was essentially the process of redirecting injured workers from their own fee-for-service health care providers to providers under contract to the WSIB. Through setting up Regional Evaluation Centres in

hospitals, the WSIB was able to contact an injured worker's family doctor and offer specialized care for the injury, usually sooner than specialty care would be available through regular referrals. However, the family doctor would lose control of the injured worker's care. Contracted providers would follow protocols developed by the WSIB that capped the length of treatment with a flat fee that diminishes with time. For example, a provider is paid one fee for the first four weeks of treatment and a lower fee for any subsequent weeks. After the set number of treatments is given, the availability of further treatment is determined by an adjudicator (Singleton & IAVGO, 2017). Providers were also paid different fees depending on the outcome of the treatment. If the injured worker is assessed as able to return to work, the fee is higher than if they are not able to return to work. Furthermore, an assessment that the injured worker can return to work allows the adjudicator to end benefits and close the file (Singleton & IAVGO, 2017). In short, as Ison (1981) predicted, "[h]ealth care spending has progressively shifted away from services whose sole focus is patient welfare, and towards services that are structured to drive down the cost of benefits paid to injured workers" (Singleton & IAVGO, 2017, p. 5).

As to living up to obligations to new legislated benefits, a *Toronto Star* investigation in 2018 found that 94% of chronic mental stress claims were denied since the legislation was instituted. This information was obtained through an internal WSIB audit (Mojtehedzadeh, 2018).

Perhaps the most significant measure adopted by the Board for reducing costs was the aggressive return-to-work policy. Injured worker advocates and researchers have long been demonstrating the disconnect between the actual experience of returning to work and the impression portrayed by numbers alone, as discussed above.

Impact of the Changes on Income Security

The Board is not legally required to collect and report statistics. Under the pension system, employment outcomes for permanently disabled workers were not a concern for the workers' compensation system because injured workers received a pension for life based on the rating of impairment (King, 2014). Despite repeated pleas from injured worker advocates and researchers, the Board has not implemented a tracking system for long-term outcomes for permanently disabled injured workers. This job has been left to independent researchers.

The perception of injured worker advocates is that the changes described here, deeming in particular, have led to an increase in the poverty of injured workers. Acting on this perception, ONIWG conducted a survey, with my help, in 2010 (ONIWG, 2012). As an organization of injured worker groups, with no funding and no access to WSIB administrative data, ONIWG facilitated the recruitment of a purposive sample of 291 respondents with self-perceived workplace injuries or illnesses; that is, workers did not have to have a successful WSIB claim to be considered eligible. More than 80% of participants had received workers' compensation benefits at some point. Survey questions were developed with a committee of injured workers and focused on measures they could relate to. The survey found a 57% unemployment rate among participants. Most (51%) respondents reported their personal annual incomes as between $25,000 to $49,999 before the injury with only 14% reporting earnings of less than $25,000 per year. After the injury, this situation is reversed with 66% reporting personal annual incomes of less than $25,000; that is, there was a 52% increase in the number of people in the lowest income category offered in the questionnaire. Nearly one in five injured workers lost their homes after injury and nearly one-quarter had moved in with family or friends at some point after their injuries. One in five could no longer afford a car and food bank use rose from 5 to 77 people

after a work injury. While injured workers and their advocates felt vindicated by these results, the survey was, of course, limited due to the purposive nature of the sample. However, it represented community-initiated participation in the emerging conversation about the poverty of injured workers.

Concurrent with the community-based survey, Ballantyne et al. (2015) conducted a survey on health care utilization and health outcomes with a sample recruited through the WSIB and then later used those data to analyze poverty status. Participants were identified by WSIB through file review and telephone confirmation of eligibility. After the initial sampling frame was established, participation was voluntary, subject to meeting the inclusion criteria. One criterion was that participants had to have been awarded a non-economic loss amount, indicating the recognition of permanent impairment. The final sample of 494 somewhat overrepresented women, but closely matched the age distribution when compared with the sampling frame. Using the before-tax Low-Income Measure of Poverty (LIM), the study found that 46% of participants lived in or close to poverty and 9% lived in deep poverty. Thirty-eight percent of those in the poor group reported having had no employment since the time of the injury. Even in the non-poor group, this rate was 21%. The authors conclude that data limitations preclude being able to specify that becoming injured with a permanent impairment "caused" the poverty, but "the analyses indicate substantially lower incomes and higher levels of 'personal poverty' in the post- as compared to the pre-injury period" (Ballantyne et al., 2015, p. 13). They also note that their poverty estimates "reflect the greater likelihood of poverty among people with disabilities" (Ballantyne et al., 2015, p. 14).

The most comprehensive study of the poverty outcomes for injured workers was funded by the WSIB Research Advisory Council and conducted by the Institute for Work and Health in

2010. It was then updated with data from claimants who were injured between 1998 and 2002 after the Jackson reforms.[14] To determine income, these studies used data from the Longitudinal Administrative Databank, which is a 20% random sample of Canadian tax filers. Workers' compensation administrative data were used to identify workers' compensation claimants. Claimants were matched with 10 uninjured controls. With these data, researchers were able to compare the earnings trajectories of injured workers over 10 years and compare the outcomes for the three different benefits programs described in this chapter. (Table 4 summarizes the three programs for easy reference.) To measure poverty, this study used the after-tax Low-Income Measure and categorized levels of poverty as deep poverty, poor, near poverty, and above poverty. Labour-market earnings, workers' compensation benefits, and all other sources of family income were included in income.

A 2014 report on the study lays out the three hypotheses. The first was that "the prevalence of poverty has increased over time amongst permanently impaired injured workers by a larger amount than amongst able-bodied workers" (Tompa et al., 2014, p. 2). Overall, the results showed no difference in the poverty of injured workers in any program compared with that of the non-injured controls. Up to 2% of the sample were in deep poverty, 2 to 6% of the sample were in poverty, and 6 to 12% of the sample were in near poverty. The study did find, however, that the proportion of those in poverty in each cohort increased with time after the injury (Tompa et al., 2014).

Regarding the comparison of poverty outcomes across programs, researchers posed two more hypotheses. The second hypothesis was that "programmatic features bear on the probability of being in poverty for injured workers…" (Tompa et al., 2014, p. 3). They did find higher levels

[14] The information presented here is compiled from a report and "issues briefings" on these studies, rather than the published papers.

of poverty among injured workers relative to controls in the more recent programs, with the most recent Loss of Earnings (LOE) program (post-1998) having the highest differences, followed by the Future Economic Loss (FEL)/Non-Economic Loss (NEL) (1990-1997) program. They concluded that there is some support for the hypothesis that the features of the program influence the levels of poverty.

The third hypothesis was that "the probability of poverty for injured workers will be higher in the more recent time periods and will also be related to the program under which the benefits are received" (Tompa et al., 2014, p. 4). Only the FEL/NEL and the pre-1990 Permanent Disability pension (PD) programs were compared using regression analyses. Despite the findings above, the researchers concluded that there is little support for this hypothesis. Without taking controls into account, the families of injured women in the FEL/NEL program were slightly more likely to be in poverty than those in the PD program, but for men, the reserve was true. Indeed, "near poverty levels were higher in the PD program for both women and men" (Tompa et al., 2014, p. 4). Injured workers in the FEL/NEL program had a slightly higher probability of being in the above poverty category. When controls were included in the analysis, "the odds of being in near poverty category are significantly higher for injured worker families than for control families" in both the FEL/NEL and PD programs (Tompa et al., 2014, p. 4). Despite this, the researchers concluded that poverty levels were low for injured workers across the programs considered in the study and that workers' compensation benefits were an important part of the earnings that kept injured workers out of poverty.

Some of the specific findings point to the negative impact of an injury on earning capacity. It is worth noting that the study found claimants had lower market earnings than the controls (Saunders, 2011; Tompa et al., 2016). Recall also the finding that the proportion of

those in poverty in each cohort increased with time after the injury. Also, the odds of being in near poverty for one of the cohorts were significantly higher than for controls, meaning even if these injured workers were not driven into deep poverty, their earning capacity had been affected.

Key findings were also expressed as a percentage of after-tax earnings replacement and these findings shed more light on the issue of the adequacy of workers' compensation benefits. The studies found that replacement earnings for permanently impaired workers, when labour market earnings and workers' compensation benefits were combined, were adequate *on average* (Tompa et al., 2016). The average rate of replacement earnings, compared to controls was 99% for both the pre-1990 program and the post-1990 program (Saunders, 2011). The average rate of replacement earnings, compared with controls in the follow-up study for the post-1998 LOE program was 104% (Tompa et al., 2016). Although the WSIB took these results as an indication of the adequacy of workers' compensation benefits, the numbers warrant a closer look. Importantly, there was variation around this average replacement rate: only 50% of claimants in the pre-1990 PD program achieved a 90% net earnings replacement rate when benefits were set at 75% of *gross* average earnings. Only 54% achieved a 90% net earnings replacement rate in the post-1990 FEL/NEL program when benefit levels were set at 90% of net average earnings. In both Ontario programs, about one-third of claimants with a less than 50% impairment had earnings replacement rates less than 75%. In the updated study covering the years 1998 to 2002, when benefits were set at 85% of net average earnings, one-quarter of claimants had earnings replacement of less than 75% with 9% replacing less than 50% of earnings (Tompa et al., 2016). In light of these large proportions of claimants who were not receiving enough benefits to bring them up to the legislated earnings replacement levels, the use of averages is misleading. The

studies do not raise any questions as to why earnings replacement rates would fall below legislated levels for so many injured workers. As such, the conclusions of these studies point to an underlying ideology that a certain amount of poverty is expected, even socially acceptable—even among people who are participating in a program that is supposed to keep them out of poverty! These conclusions also point to the ideology, discussed previously, that disabled people should expect to live with less by virtue of that disability. Most importantly, as Storey (2021) puts it: what is lost in the numbers is "the painful understanding that these injuries, illnesses, diseases, and fatalities happen to real—flesh-and-blood—working women and men who pay with their bodies the price of everyday hazardous working conditions and exploitative social relations of production" (p. 161).

Conclusion

The principles and operation of workers' compensation remained consistent for 40 years, despite the scrutiny of three Royal Commissions. In these Commissions and the many other reviews that followed, we can see the state playing out its mediating and legitimating, though not necessarily neutral, role. Benefit levels continued to increase until they reached a tipping point in the commodification/decommodification dialectic, with pressure to contain costs for employers and incentivize return to work as constant features in the process of capital accumulation. We can also see the relative autonomy of the state reflected in the benefit level increases and the fleeting victories of injured worker resistance.

Law reform began in earnest in the 1980s. Underpinned by neoliberal concerns with benefit generosity, disincentives to work, and a current cost program design, this reform fundamentally changed the nature of the system for injured workers with permanent disabilities. As such, the history of workers' compensation benefits in Ontario is the story of the erosion of

an institutional social program into a kind of institutional/residual hybrid. The system continues to function like an institutional program for the vast majority of claimants who experience temporary injuries and disabilities. Benefits, designed to replace the bulk of earnings, are automatically granted as a matter of right. Ironically, the dual-award system recognized, for the first time, the impact of disability beyond the workplace and earnings, but removed the permanent pension that could be maintained along with earnings if the injured worker was able to return to work. While the concept of benefits that replace actual wage loss has some intellectual appeal, its implementation required that injured workers be monitored and that they could be disentitled for lack of "cooperation" as determined by adjudicators and rehabilitation professionals. Thus, for the "problematic 3%"—those with permanent disabilities, long-term claimants, those who do not return to work—the residualism of workfare, surveillance, and judgement, and the stigma it induces, have been introduced into the workers' compensation system.

While the social and personal impact of this residualism in the system has been well captured in qualitative research on quality-of-life issues, the evidence on the economic impact is mixed. Injured workers and their advocates remain convinced that the changes to the system have produced more poverty among injured workers, but quantitative studies suggest that the poverty level among injured workers is consistent with that of the general population. On this point, however, advocates point to the "absurdity of comparing multiple groups of people living at unacceptable levels of poverty and declaring it a victory" in a letter to the chair of the Board, Elizabeth Witmer. They further point out the polarization in the data, with large proportions of injured workers with earnings replacement below the legislated benefit levels (ONIWG, 2015).

With this polarization, the “victory” of “adequate earnings replacement on average” is hollow, indeed.

Table 3

Major Changes in Workers' Compensation, 1932 to 2018

Year	Event	Description
1932	Middleton Commission	Reduced waiting period recommended
1950		Full benefits increased to 75% of gross wages
1950	Roach Commission	Expansion of coverage to volunteer firefighters
1967	McGillivray Commission	System deemed to be "operating smoothly"
1973	Aird Task Force	Recommends major reorganization of WCB
1974	Union of Injured Workers	Beginning of organized injured worker resistance
1977	NDP Task Force	Pension supplements introduced
1978	Wyatt Report	Introduction of the idea for dual-award system
1980	Grey Paper Weiler Report	Development of the idea for dual-award system
1981	White Paper Assoc. of IW Groups	Injured workers resist the implementation of the Weiler Report
1984	Bill 101	Full benefits changed to 90% of net wages Appeals Tribunal and Offices of Worker and Employer Advisors established
1985	Bill 81	Full indexation of benefits to cost of living
1990	Bill 162	Implementation of dual-award system (Weiler Report)
1991	Ontario Network of Injured Workers Groups	Coalition of injured workers groups across Ontario, including the Union of Injured Workers, formed
1994	Bill 165	Friedland formula for indexing benefits (reduction)
1996	Jackson Report	Introduction of self-reliance model
1998	Bill 99	Full benefits decreased to 85% of net wages
2010-15	"Marshall Plan"	Measures to eliminate the unfunded liability
2018		Elimination of the unfunded liability

Table 4

Major Changes in Workers' Compensation Benefit Programs, 1915 to 1998

	Pre-1990	**1990-1998**	**1998 and beyond**
Benefit Level	75% of average before-tax earnings	90% of average after-tax earnings	85% of average after-tax earnings
Types of Benefits	• Pensions for permanent disability (PD) • Temporary partial disability benefits	• Non-economic loss (NEL) award for permanent disability, usually a lump sum • Future economic loss (FEL) ongoing benefits	• Non-economic loss (NEL) award for permanent disability, usually a lump sum • Loss of earnings benefits (LOE) ongoing benefits

Table 5

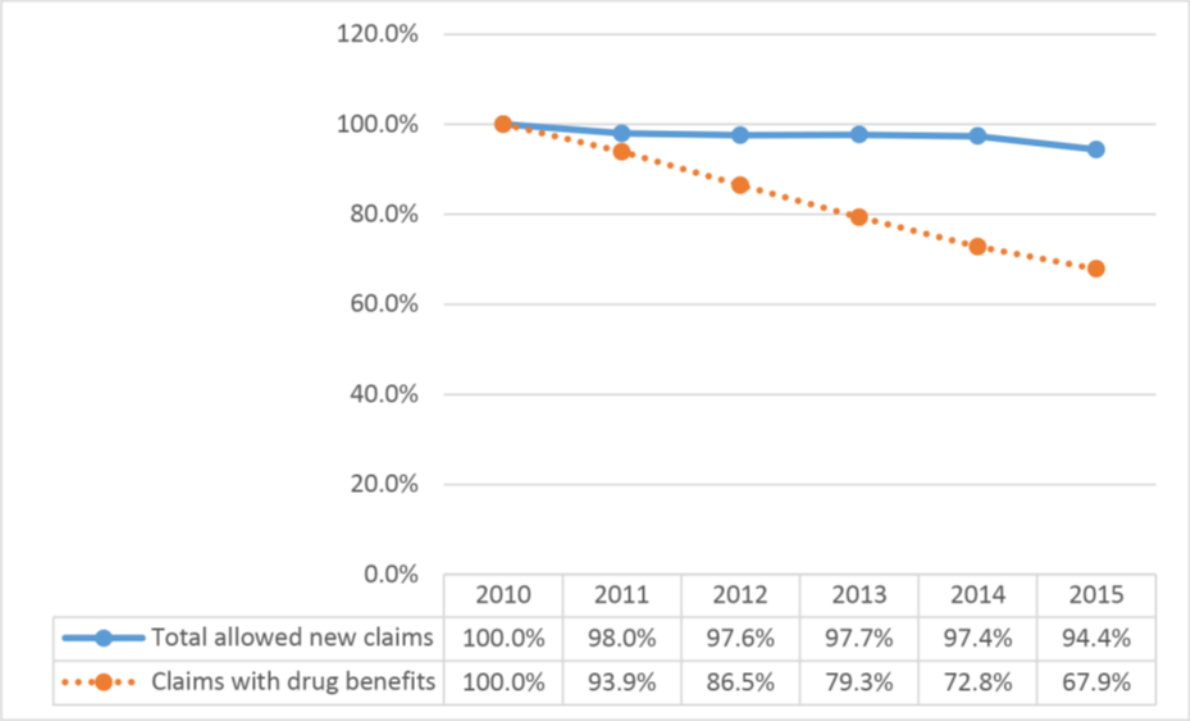
Percentage decrease in accepted claims, 2011 to 2015

	2011	2012	2013	2014	2015	% Decrease 2011 to 2015
Total Lost-time Claims	56672	55525	54430	53688	51570	9.00
Total No Lost-time Claims	123675	124019	125328	125524	122133	1.25
Total claims	**180347**	**179544**	**179758**	**179212**	**173703**	**3.68**

Source: WSIB Enterprise Information Warehouse (By the Numbers Report Generator)

Figure 1

Claims in allowed new claims entering the system vs. claims with entitlement to drugs, as a percentage of 2010 claim counts, 2010 to 2015 (Schedule 1)



	2010	2011	2012	2013	2014	2015
Total allowed new claims	100.0%	98.0%	97.6%	97.7%	97.4%	94.4%
Claims with drug benefits	100.0%	93.9%	86.5%	79.3%	72.8%	67.9%

Note: Reprinted from *Bad medicine: A report on the transformation of WSIB's health care spending* (p. 27) by A. Singleton, A., & Industrial Accidents Victims Group of Ontario (IAVGO), 2017, IAVGO. Copyright 2017 by IAVGO

Chapter 8: Disability Benefits: Complexity and Inadequacy

To say that disability income security policy is complex is both a statement of the obvious and an understatement. Although our focus here is on cash benefits paid directly to claimants, we need to be mindful of the piecemeal disability policy context of these benefits, which includes not only concerns for employment and rehabilitation but also considerations of social inclusion and discrimination. General disability benefits are also inextricably tied to developments in social security and social assistance more broadly. Further, as we have already seen, the issue of jurisdiction weighs heavily on the discussion of general disability benefits, unlike that of workers' compensation, which is wholly under provincial jurisdiction. Indeed, much of the impetus for Canadian disability policy originated at the federal or even international level (McColl, 2015), with implications for provincial benefit programs. At the core of this complexity, however, is the conundrum that disability benefits pose for a capitalist economy grounded in commodified labour: what to do with people who cannot work or are prevented from working in a culture that has elevated paid employment to a moral calling. That this situation poses a conundrum for capitalism is reflected in the countless reviews, studies, and task forces that grappled with this question, none of which changed the persistent poverty faced by people who rely on disability benefits or significantly improved employment outcomes. By examining some of the major examples of this public musing in their political-economic contexts, this chapter provides a historical narrative of changing concepts of disability and employability as they relate to provincial disability benefits programs after their inception in 1952 to the development of the ODSP, currently in place. This narrative illustrates the previously discussed state-centred nature of disability advocacy and the role of the state in reproducing capitalist social relations while identifying and regulating the "surplus" population.

Canada Assistance Plan, 1966 to 1996

The 1960s and early 1970s experienced welfare state expansion, with the Canada Pension Plan in 1966, the Guaranteed Income Supplement in 1967, universal health insurance in 1968, and improvements to unemployment insurance in 1971. The latter included sickness and temporary disability benefits (Guest, 1999; Haddow, 1993; Irving, 1987). Haddow (1993) argued that these developments "reflected a move to the left by the governing Liberal party…in a conscious effort to contain the NDP" (p. 84–85).

The most significant change to disability benefits came in 1966 in the context of a sweeping policy change that created the Canada Assistance Plan (CAP). Indeed, Prince (2002) argued that "[m]uch of the CAP's origins lie in disability policy" (p. 39), because it consolidated categorical programs like the allowances for blind persons and disabled persons into one comprehensive need-based program (Dyck, 1976; Guest, 1999; Prince, 2002). The CAP went beyond these benefits, however, to include "a broad range of health services, counselling, assessment, and referral services, homemaker and day care services, costs of nursing home care and welfare institutions for children, prescribed items incidental to carrying on a trade or other employment, and other special needs of any kind" (Guest, 1999, p. 146). It also allowed, for the first time, a federal contribution to Mothers' Allowances, which had been solely funded by the provinces to this point (Dyck, 1976; Irving, 1987). It is described as the "ultimate in cooperative federalism" (Dyck, 1976) because the federal government agreed to pay for half of the costs of delivering and administering these services with no upper limit on the federal contribution. Provinces were free to decide which services and how much financial assistance to provide (Guest, 1999). Federal funding was, however, conditional on provinces operating on a needs-test, as opposed to a means-test, basis. Determined by a provincial needs-test, this "budget-deficit

method" was to provide the difference between "budgetary requirements" and resources available to the individual or family (Crichton & Jongbloed, 1998; Struthers, 1994; Torjman, 1988). Significantly, another condition of the CAP was that people could not be forced to work for welfare (Pulkingham & Ternowetsky, 1996).

The federal government also required that provinces set up an appeals procedure and that any residency requirements be removed (Dyck, 1976; Guest, 1999, Struthers, 1994). As Struthers (1994) pointed out, "The ability to appeal…was critical to establishing the concept that welfare was indeed a legal right, not merely charity" (p. 245).

Beyond these requirements, however, the federal government did not try to set national standards for assistance programs. For example, there were no minimum or maximum benefit levels set out in the legislation. Prince (2002) writes that, consequently, Canada had ten or more different welfare systems resulting in considerable disparity among provinces. Guest (1999) considers this lack of standards a serious flaw in the CAP and a major cause of its ultimate failure to address poverty in Canada. Despite the advantages of the CAP, a Poor-Law mentality remained, and with it, inadequate rates of social assistance, especially for those who were employed or deemed employable (Guest, 1999). Indeed, although the federal legislation did not set maximums, Ontario introduced maximums through regulation. These maximums effectively defined the notion of adequacy. Critics pointed out that these ceilings amounted to only 60% of the poverty line for a family of four living in Toronto, according to an analysis by the Toronto Social Planning Council at the time (Struthers, 1994). Nor did provinces index benefits to the cost of living. Moreover, "local welfare departments…never revealed the basis on which they calculated the specific amount of a recipient's entitlement, even for the basic necessities…"

(Struthers, 1994, p. 239). That said, welfare rates in Ontario did increase by 15% to 20% as a result of the new legislation (Struthers, 1994).

At the same time, having to provide details of income and expenses to qualify made the application process even more intrusive and discretionary than it had been under the *Allowances for Disabled Persons Act*. An individualized, budget-deficit approach also opens the door to administrative error and discretion that could result in inequities based on the "gatekeeper's" assessment of need. People with similar needs may have received different levels of benefits based on discretionary assessment (Crichton & Jongbloed, 1998).

Disability Benefits in Ontario under the CAP

Despite the non-categorical, needs-tested approach of the CAP, Ontario did have a special program under the Family Benefits Program for disabled people, the Guaranteed Annual Income System for the Disabled or GAINS-D. In 1988, Shelley Torjman authored a study of Canada's disability income system for the Roeher Institute using data from interviews with individuals using the income programs, key informants, and a questionnaire of government representatives. The following description and analysis of GAINS-D are derived from this study. The study also identified several issues that are recurring themes throughout the history of disability income support policy: employability, disincentives to employment (including "clawbacks" of earnings), program complexity, lack of coordination among various programs, and adequacy of benefits.

Eligibility criteria under the GAINS-D were age over 18 years and having a permanent disability defined as a "major physical or mental disability that severely limits…ability to carry out normal living activities" (Torjman, 1988, p. 129). To qualify, disabled people had to be designated "unemployable over an extended period of time" or "permanently unemployable" (Torjman, 1988, p. 17), a term study participants found objectionable. The unemployable

designation could also be applied to people able to carry out normal activities, but who had long-term medical difficulties that prevented them from working. People in this program were not expected to look for work, but they might be expected to take part in vocational rehabilitation. People with temporary disabilities were eligible for General Welfare Assistance, which paid less in benefits and was administered by the municipality (Torjman, 1988).

Eligibility was also determined by the amount of liquid assets a person had. A disabled person was allowed $3,000 in liquid assets, slightly more than a non-disabled person, in 1988 (Torjman, 1988). Couples and those with dependent children had higher exemption limits. People would have to reduce their liquid assets to the threshold amount to qualify for assistance (Torjman, 1988).

Unlike Family Benefits that were variable based on need, GAINS-D recipients received a flat rate depending on family size and type of accommodation. A shelter subsidy of up to 80% of the excess cost of housing, subject to a cap, was also available when housing costs exceeded the base amount provided in the flat rate. Recipients were also eligible for "in-kind" services such as prescription drugs, dental services, eyeglasses, hearing aids, certain children's clothing, house repairs for homeowners, and discharge allowances for those being discharged from a covered institution (Torjman, 1988). Unlike allowances under the *Allowances for Disabled Persons Act*, people living in certain institutions were eligible for benefits under Family Benefits. They could receive an amount to cover the per diem cost of the institution and a comforts allowance.

GAINS-D recipients could also apply for "supplementary aid" from the municipal level of government for items such as special diets, special transportation, medical supplies, and moving costs. These benefits were granted at the discretion of the municipality, should that municipality actually have such a program. In Ontario, the supplementary aids program was

cost-shared 50/50 between the municipality and the federal government, whereas in other provinces the provincial government also contributed (Torjman, 1988).

Despite the "permanently unemployable" label, recipients were also potentially eligible for a flat-rate work expenses allowance ($50 per month in 1988) if they were able to work. There was also an extra work expenses allowance for age- or disability-related expenses ($40 per month in 1988).

Those *not* deemed "permanently unemployable", and presumably this included people with various disabilities who did not meet the disability criterion, could receive benefits under the Family Benefits Act under similar eligibility guidelines. They were allowed to earn income up to a threshold. In 1988, the threshold for a single person was $75 per month and $100 per month for families. Recipients were then allowed to keep 50% of the next $100. Respondents in the Roeher Institute study criticized the high percentage of the clawback amount as a disincentive to work (Torjman, 1988).

The Roeher Institute's top criticism of the program, however, was its complexity. With housing subsidies in social housing settings, the Assistive Devices Program, and CPP-D at the federal level (if applicable), the complexity of obtaining an income while managing a disability only increased. This is before considering the impact of the various tax credits and exemptions that were also available concurrent with these other programs.

A second criticism was the lack of coordination among programs. For example, an increase in the amount available from CPP-D could end up disqualifying a recipient for special allowances for expensive medical supplies that they rely on (Torjman, 1988).

The Roeher Institute study (Torjman, 1988) also provided an analysis of the adequacy of benefits. Because of the various special assistance components, conditional benefits, possible

earnings, and in-kind services, it is impossible to determine a benefit rate that would apply to the whole disabled population receiving benefits. To get around these difficulties, the study did a province-by-province analysis using the maximum benefit of basic assistance with no special allowances. Thus, the amount used was an underestimate because it does not include benefits for transportation, medication, etc., but it was also potentially an overestimate because it assumed the maximum benefit. The study measured the benefit amount as a percentage of the Statistics Canada Low-Income Cut-Off (LICO). The cut-off at the time was 58.5%, meaning that if a family was spending more than 58.5% of its income on basic necessities such as food, shelter, and clothing, they would be considered to be in "straitened circumstances". (Unfortunately, the study does not indicate whether they were using the "before-tax" or "after-tax" LICO.) Based on this rate of assistance[15], the study found that the income of a single, disabled person in Ontario would be at 75.4% of the LICO. It should be noted that this percentage was the highest among the provinces (Torjman, 1988). The study also estimated the relationship to the LICO of the maximum benefit amount plus the maximum allowable income a disabled recipient could earn and found that this would raise the amount of income to 93.5% of the LICO (Torjman, 1988). This indicated that a single person who received the maximum benefit, earned the maximum income, and received special allowances could theoretically come close to the poverty line as measured by the LICO.

The Roeher Institute study report (Torjman, 1988) described both incremental and comprehensive reforms that were discussed at the time of these programs. Incremental reforms included the following: tinkering with eligibility criteria by eliminating the "permanently unemployable" label to make employment supports available to all welfare recipients; raising

[15] Rates include federal and provincial tax credits.

benefit rates to the level of the LICO and indexing them to the cost of living; allowing higher liquid assets limits for people with disabilities to recognize the additional costs associated with living with a disability; and changing earnings exemptions to allow recipients to keep more of their employment income (Torjman, 1988). As this narrative will show, these incremental reforms are often revisited in the absence of comprehensive reforms. However, comprehensive reform has been the subject of several major reviews and reports that centred on some form of guaranteed annual income.

Social Assistance Reform and the Guaranteed Annual Income

Despite the promise of the CAP as "the best anti-poverty program achievable within the narrow confines of the social assistance approach" (Haddow, 1993, p. 12), it did not preclude debate and controversy about social security. Indeed, the CAP was in effect during a period characterized by what scholars have called the "rediscovery of poverty" (Guest, 1999; Haddow, 1993). This rediscovery led to a "spate of studies on poverty in Canada", including one from a Special Senate Committee, *Poverty in Canada*, released in 1971 (Guest, 1999, p. 153). The study's key finding was that although welfare programs were spending $6 billion per year on assistance programs, one in five Canadians was still considered poor (Guest, 1999). This helped to stir a desire for comprehensive reform that would move away from existing social assistance programs to a consideration of a guaranteed annual income (Haddow, 1993). The 1971 Senate report was one of the first to propose a guaranteed annual income as a mechanism for social assistance reform.

Social Security Review 1973 to 1976

The Social Security Review that took place from 1973 to 1976 garnered one of the most significant discussions of guaranteed annual income in Canada. In April 1973, the Minister of

National Health and Welfare released an Orange Paper called *Working Paper on Social Security in Canada.* The review proposed a number of options for a guaranteed annual income, but one, in particular, was considered the most viable. It comprised two tiers, a support tier, and a supplementation tier. The support tier was directed at people who were "unemployable" or not expected to work, including "the disabled". The support tier would have replaced social assistance and eligibility, set by the provinces, and again, was based on need (Guest, 1999). Again, despite the label of "unemployable", recipients would be able to earn income that would be taxed back at the rate of 75%. The supplementation tier was intended to aid the working poor. Benefit rates would be set so low that other sources of income would be necessary to survive, and that income would be taxed back at the rate of 33.3% (Grady & Kapsalis, 1995; Guest, 1999; Torjman, 1988).

That a two-tiered approach to a guaranteed annual income was the favoured option of the Social Security Review offers evidence for Guest's (1999) contention that [w]hat emerged from the rediscovery of poverty…was an attack on the principle of universality—in effect, a resurgence of the residual concept in social security policy" (p. 160). On the guaranteed annual income specifically, he argued that it was a residual initiative because it targeted the poor and reemphasized the cause of need (Guest, 1999). Haddow (1993) concurred, arguing that the guaranteed annual income was a selective program in keeping with a liberal welfare state. The two-tier approach maintained the distinction between the deserving and undeserving poor and the marginalization that this infers, not to mention introducing the problem of determining who is "unemployable". Further, in times of high unemployment, those deemed employable who could not find work would still be left with benefit amounts below subsistence (Austin, 1996). A two-tier approach undermined the potential of an annual guaranteed income to reduce stigma and

encourage uptake. In some respects, then, the guaranteed annual income proposal represented a step backwards from the CAP, which emphasized the fact of need, as opposed to the cause of need (Guest, 1999).

The guaranteed annual income was not implemented and broader social security reform collapsed under jurisdictional wrangling and burgeoning deficits (Guest, 1999; Haddow, 1993). Guest (1999) attributed the denouement of social security reform to the oil crisis of 1973 with its attendant inflation in 1974 and 1975, which led to the curtailment of universal programs and a general cutback in government spending at all levels of government (see also Haddow, 1993; Torjman, 1988). Constitutional and jurisdictional issues were only aggravated by the election of a separatist government in Quebec, though Ontario's objection to the cost of the guaranteed income "was probably most decisive in shelving the proposals" (Guest, 1999, p. 181). In addition, the oil crisis and high inflation had a broader impact on the social security discussion, signalling as it did the emergence of neoliberal ideology and a resurgence of residualism.

Social Assistance Review Committee (Ontario)

The emergence of neoliberal ideology in income security policy was not, however, uniform and unremitting, at least in Ontario. Although the Conservatives won a minority government in 1985, they were swiftly defeated on a non-confidence motion, allowing the second-place Liberals to form a minority government that included a formal accord with the NDP, thus ending over 40 years of Conservative rule. The Liberals came to power during a period of strong economic growth, and the unemployment rate averaged about 6% annually during their time in office (Klassen & Buchanan, 2006; Maxwell, 2009).

In 1986, the Liberal government created the Social Assistance Review Committee chaired by Judge George Thomson, with the mandate to provide the government with recommendations for social assistance reform and ways to address poverty. Some of the

motivation for this review came from the fact that the economic boom seemed to have little effect on the rate of people in Ontario receiving social assistance (Klassen & Buchanan, 2006; Stapleton, 2004). The Committee considered 1,500 submissions and held 23 public hearings across the province (Klassen & Buchanan, 2006). It also sparked the development of several anti-poverty organizations that came together to participate in the review (Maxwell, 2009). Community activity continued after the Committee released its report, *Transitions*, in 1988 to formulate a response to the 274 recommendations (Maxwell, 2009). The government, now a Liberal majority since the 1987 provincial election with no need of support from the NDP, formed the Advisory Group on New Social Assistance Legislation, a community-based group, to help translate the report's recommendations into legislation (Maxwell, 2009). According to Stapleton (2004), the process created "however briefly, a broad, political consensus on what to do about poverty in Canada's largest province" (p. 1). That consensus included "enhancing benefits to create a guaranteed annual income and improving incentives for social assistance recipients to earn some income from employment without being penalized" (Klassen & Buchanan, 2006, p. 191). Specifically, the report recommended increasing benefit levels to achieve better adequacy, increasing earnings exemptions, and lowering the clawback rate to 66% from 100% (Thompson-Harry, 1989–1990), Torjman, 1988). The number of categories for eligibility should be reduced to simplify the system. It also recommended legislative change to replace the *General Welfare Act* and the *Family Benefits Act* with one piece of legislation that would eliminate the two tiers and further simplify the system (Torjman, 1988).

Even before the report was released, the Liberals had begun to increase social assistance rates annually and at a rate above the consumer price index. Throughout their time in power, they increased rates by 4.1%. They also repealed the "spouse in the house" rule while the review was

underway so that a couple would have to be living together for three years before having to show that they were not in a spousal relationship. This had the effect of easing eligibility for benefits (Klassen & Buchanan, 2006). Klassen and Buchanan (2006) argued that these measures, taken together, accounted for the maintenance of caseload levels.

The *Transitions* report also recommended comprehensive reform through a redesigned social assistance system focused on temporary, emergency relief for able-bodied adults—in other words, making it the residual system that it was meant to be (Stapleton, 2004). Children and disabled people were to be "taken out" of the welfare system and provided for through other income security programs and tax measures (Stapleton, 2004; Thompson-Harry, 1989–1990). For people with disabilities, the report proposed a comprehensive no-fault disability insurance plan to provide benefits for full-time, part-time, and self-employed workers, regardless of the cause of the disability. As such, it would integrate both workers' compensation and CPP-D. As social insurance, the benefits would replace income. The report recommended that income-replacement levels be set at 80–85% of net average earnings. This would mean a benefit level higher than that offered by CPP-D, but somewhat less than the 90% of net income paid by workers' compensation at the time. Like workers' compensation, the right to sue, for example, in the case of motor vehicle accidents, would be eliminated or limited. Benefits would be fully indexed to inflation. Private insurance would be allowed for temporary or short-term disability or to top up the public plan (Thompson-Harry, 1989; Torjman, 1996). For those disabled people with little or no labour market attachment, the report recommended a disability benefit pegged at the same rate as the Old Age Security, the Guaranteed Income Supplement, and the Guaranteed Annual Income Supplement (Thompson-Harry, 1989, Torjman, 1996). Torjman (1996) pointed out, however, that using these programs as a benchmark would still leave disability income

benefits well below the poverty line for those in major urban areas. To finance this plan would require contributions from employers, premiums for employees, premiums for automobile users, a premium on other hazardous activities, and a contribution from government coffers. The preferred method of financing in the report was premiums, but in recognition that flat-rate premiums would be proportionately more expensive for low-income households, it suggested a sliding scale or a premium subsidy (Torjman, 1996). This would not be the only proposal for a comprehensive disability insurance and benefits program, but as we know, no such program has ever been implemented.

The recommendations of the *Transitions* report continued to influence government policy on social assistance into the early 1990s, with the newly elected NDP fulfilling its campaign promise to increase benefit rates. In keeping with the NDP's initial and short-lived Keynesian approach to governing, social assistance rates were raised by 7% and the housing allowance by 10%. They also extended eligibility to refugees and homeless people and enhanced earnings exemptions (Klassen & Buchanan, 2006; Maxwell, 2009). The government went so far as to commit to an overhaul of the system by 1995, including the implementation of legislative changes recommended in *Transitions* to create a one-tier system (Maxwell, 2009).

Ideology proved to be no match for the political economy of the deep recession of the early 1990s however. In the first year of the NDP's tenure, the unemployment rate rose to 9.6%, over 3 percentage points higher than the previous year, peaking at about 11% in 1992 and 1993. This level of unemployment translated into falling government revenues and increasing demands on social assistance, with the caseload climbing "at an unprecedented rate, peaking in 1993 and 1994 at 9.5% and 9.6% of the working-age population, representing approximately 1.3 million beneficiaries" (Klassen & Buchanan, 2006, p. 196). Further compounding the situation, the

Auditor General reported up to $100 million lost in welfare fraud. This contention was challenged by the National Welfare Council as a matter of overpayment in error, but left the public with the idea that abuse and waste were rampant in the system (Maxwell, 2009). Under these conditions, the NDP's policy on social assistance, and indeed all government spending, underwent a reversal to focus on reducing expenditures. Ignoring the advice of the Advisory Group on New Social Assistance Legislation, the government issued its own report on social assistance, *Turning Point*, which "marked a profound change in centralizing decision-making and excluding stakeholders from social assistance policy, a trend that was to continue and become stronger during the remainder of the decade and into the twenty-first century" (Klassen & Buchanan, 2006, p. 198).

The NDP's fiscal troubles and social assistance policy must also be seen in the light of shifts in federal policy. Over the period 1985 to 1990, federal payments to the provinces under the CAP had increased at an annual rate of 6.5%. To constrain its costs, Brian Mulroney's Conservative government imposed a "cap on CAP" of 5% annually for two years starting in 1990 to 1991, but only for the "have" provinces, which included Ontario. The cap on CAP was then extended to 1994–1995 by the Liberals (Guest, 1999). These cuts to funding initiated reforms to all provincial social assistance programs, not just those in Ontario (Boyce et al., 2006). The cap on CAP must be understood in the context of broader welfare state retrenchment—itself contextualized by the recession and high unemployment of the early 1990s. At the same time, reforms of the Canada Pension Plan and EI made eligibility more difficult (Boyce et al., 2006; Guest, 1999), which "worked to the systematic disadvantage of people with disabilities" (Boyce et al., 2006, p. 256). For example, disqualification for EI benefits was automatic for those who voluntarily quit their jobs, were fired, or refused suitable employment.

People with disabilities might be forced to quit their jobs if their conditions and capabilities changed, making the work environment inaccessible, or if they were experiencing harassment or discrimination. Further, eligibility for EI was based on the number of hours worked and the amount of money made in the period before the benefit claim, which disadvantaged those working part-time or episodically due to disability. These reforms, combined with high levels of unemployment despite a return to economic growth in the mid-1990s after the recession, served to put pressure on social assistance in the early 1990s (Boyce et al., 2006; Guest, 1999; Pulkingham & Ternowetsky, 1996).

Social Security Review 1994

Such were the economic circumstances, including ballooning debt and deficits and high rates of poverty, that saw another federal social security review in 1994. Billed by then Minister of Human Resources Development, Lloyd Axworthy, as the "rebuilding of social security", the review released a discussion paper, *Improving social security in Canada,* and appointed a Parliamentary Standing Committee on Human Resource Development. The Committee toured Canada for five months to hear public reaction to the discussion paper through approximately 1,400 submissions, town hall meetings sponsored by 200 Members of Parliament, and 25,000 responses to a consultation workbook that the review had distributed. Indeed, it was the view of the Committee that it had been one of the most comprehensive reviews of social security ever undertaken (Pulkingham & Ternowetsky, 1996).

The Committee then produced its report, and the Bloc Quebecois and the Reform Party produced their minority reports. These reports were presented to Axworthy and released to the public in early 1995, even though just days earlier, Axworthy announced that the review was terminated. Like its predecessor of the 1970s, the review was shelved, once again in the name of reducing the deficit and preserving national unity. The Quebec government had announced its

plan to hold a referendum on independence, which made the introduction of contentious reforms to social programs untimely from the federal government's viewpoint (Guest, 1999). The 1995 federal budget announced "significant cuts and changes to unemployment insurance" and "cost-saving changes" to transfer payments for provincial social assistance programs funded under the CAP that would save about $1.5 billion in 1996 (Guest, 1999, p. 251). As such, the 1995 budget represented the continuation of a practice that had been repeatedly criticized, that is, effectively allowing the Ministry of Finance to determine social policy (Guest, 1999). However, as Guest (1999) points out, the process of the review meant that "the outline for profound modification in Canadian social security had been drafted and widely discussed" (p. 252), so it is worth looking at the reform proposals and their implications for social assistance.

Improving social security in Canada proposed reforms in three broad areas: Working, Learning, and Security. The proposals of most interest to this research fall under the "Security" heading, focusing on the CAP and employment supports. The discussion paper identified removing the work disincentives embedded in social assistance as a primary goal, including any disincentive for disabled people who wanted to work. Recall that the CAP funding rules prevented the use of funds for employment supports or any type of workfare, and these provisions were targeted in the discussion paper. The thrust of the proposed reform of the CAP "was based upon the government's conversion to 'active' as opposed to 'passive' income support programs" (Guest, 1999, p. 268; see also Pulkingham & Ternowetsky, 1996). In other words, income support programs should be vehicles for returning people to paid employment. Returning social assistance to its original purpose of supplying aid in emergencies, rather than as a long-term prospect for people, would begin to correct the "passivity" of social assistance. Indeed, policy critics and community groups also advocated for this, as evidenced by the

recommendations in *Transitions*, but with an expansion, not a contraction, of social security. This expansion included comprehensive disability insurance, initiatives to increase the demand for labour, and "a range of universalist family policies" (Guest, 1999, p, 267). *Improving Social Security in Canada*, however, offered an "impeccably neoconservative prescription for restoring the country's economic health"—looking to the private sector for job creation and economic growth, cutting government spending, and emphasizing "self-reliance" in the population (Guest, 1999, p. 253). Guest (1999) points out that the government's emphasis on supply-side employment development policies placed the blame for joblessness "squarely on the unemployed", rather than the recession and structural changes in the labour market (p. 253).

Ralph (1994) indicates that of over a hundred briefs submitted to the review, only six were supportive of the proposals in the discussion paper. In briefs from organizations such as the Canadian Labour Congress, National Action Committee on the Status of Women, the National Anti-Poverty Organization, the Native Council of Canada, and the Council of Canadians with Disabilities, the "overwhelming majority of briefs…recommended expanding the government's commitment to universal social programs" (Ralph, 1994, p. 59). The Council of Canadians with Disabilities called for a "comprehensive disability insurance system providing adequate income regardless of the cause of disability" (Ralph, 1994, p. 74). Furthermore, the Council's clear message was for integrated programs and systems, not separate programs geared to people with disabilities. They also favoured eliminating the "unemployable" category but cautioned that more employment of disabled people depended on accessible transportation and supports like interpretation and attendant care (Ralph, 1994).

Despite its ultimate demise, the 1994 Social Security Review influenced the public conversation about social assistance, making the argument against universality and in favour of

workfare, with a “focus on employability rather than employment” (Kerans, 1994, p. 119). Indeed, full employment policies are a cornerstone of a robust welfare state, but governments of all stripes during the 1980s and 1990s abdicated their role in full employment to the market (Rice & Prince, 2000), even amid the realities of jobless economic growth and the emergence of the “gig” economy. Thus, some marked the death of any vestiges of the Keynesian welfare state with the shift in thinking represented by the Social Security Review (Kerans, 1994; Pulkingham & Ternowetsky, 1996). Crucially, it also started to build the case against the CAP funding model (Guest, 1999), opening the door to block funding for federal transfer payments under the Canada Health and Social Transfer (CHST).

The Canada Health and Social Transfer

In 1995, the CHST eliminated the CAP and another long-established funding program called Established Programs Financing. Provinces now had to cover health, postsecondary education, welfare, and social services from one block fund. Furthermore, the cost of these programs would have to be covered with significantly fewer dollars. The 1995–1996 allocation for the CAP and the Established Programs Financing was $29.7 billion. The 1996–1997 CHST allocation was $26.9 billion, a 9.4% decrease. By 1997–1998, the CHST was to be cut to $25.1 billion, a further decrease of 6.7% (Pulkingham & Ternowetsky, 1996). Gone was any pretense of national standards, including the requirement to have an appeal procedure and protection from workfare (Morrison & Pearce, 1995). The only federal condition was that there be no residency requirement to access services. Provinces could decide how much to allot to each area with no guidance from the federal government, opening the potential to further exacerbate the inequities in social assistance rates from province to province. Indeed, Guest (1999) went so far as to argue

that the announcement of the CHST "imping[ed] upon the nature of Canadian federalism itself by carrying decentralization to the point of balkanization" (p. 277).

Regarding disability benefits, Ontario's response to these cuts and changes was the development of the ODSP. Before turning to that topic, however, it is important to examine the paradigm-shifting discussion of disability that was also taking place during these changes to social security in the 1980s and 1990s.

Shifting Paradigms: Disability Community Engagement

Starting in 1981, there was no shortage of public discussion about inclusion and citizenship rights for disabled people. Several major reports and follow-up reports were issued with varying degrees of participation and consultation of the disability community. This section highlights some of the major reports and reviews during this period leading up to the implementation of the ODSP, with an emphasis on their implications for income security for disabled people.

Obstacles Report

Although the study was a federal initiative, the *Obstacles* report is included here because it is considered a landmark report (McColl et al., 2010). It was paradigm-shifting in that it used a socio-political model of disability (Bickenbach, 1993; Porter, 2016), that is, a paradigm that focuses on the removal of environmental and social barriers rather than on the social functioning of disabled people. Implicit in this paradigm is the notion that disabled people should have more control over their own lives and the resources available to them. Importantly, this control and the changes in the environment are understood as a right of citizenship, rather than charity or altruism (Crichton & Jongbloed, 1998; Peters, 2003). Bickenbach's (1993) assessment of the

Obstacles report is that it called for "the transformation of disability issues from an ill-defined collection of social problems to the object of social policy analysis" (p. 4).

In 1981, in response to the United Nations' declaration of the International Year of the Disabled, the federal government appointed an all-party Special Parliamentary Committee on the Disabled and Handicapped. The Committee visited 18 cities across Canada to hear from disabled people and organizations that focused on disabled people, as well as other interested individuals (Stienstra, 2003). It produced a wide-ranging report that offered 130 recommendations with policy objectives covering adequate income, access to public buildings, equal access to employment, housing, education, transportation, recreation, communication, and information, and the reduction or elimination of institutional care through community supports (Canada, 1981; Crichton & Jongbloed, 1998). Members of this Parliamentary Committee were so persuaded by the disability lobby that they became "relentless in their efforts to convince their political colleagues to the amendment" to the Charter that would explicitly feature disability (Peters, 2003, p. 131).

Obstacles called for comprehensive income security reform, as well as interim measures for reform, which will be the focus of the discussion here. According to Guest (1999), the report "recommended a comprehensive national disability insurance program for people both in and out of the workforce" (p. 358n) through coverage of "all disabled employees, spouses, and dependents" (Canada, 1981, p 53). The program would be paid for through "an expanded premium structure and CPP/QPP", but the report offers no further details on the funding or how those outside the workforce would be included except as spouses and dependents of the employee (Canada, 1981, p. 53). The level of benefit would be that of a "full pension" to offset the additional costs often associated with disability (Canada, 1981, p. 53), though dollar amounts

were not specified. It also called for unspecified "incentives to the disabled person to encourage maximum rehabilitation and re-entry" (which again seem to be focused on employed persons) and went so far as to recommend that these rehabilitation efforts be integrated with provincial workers' compensation systems (Canada, 1981). The report was silent on how a comprehensive disability insurance program would integrate with or replace existing income security programs.

Interim measures, until a comprehensive insurance program could be set up, included expanding the definition of disability under the CPP-D, providing an income-tested supplementary allowance to offset the extra costs associated with disability, increasing the liquid asset exemption under social assistance for people with disabilities, increasing the earnings exemption under social assistance for people with disabilities, allowing a longer transition period from social assistance to employment, providing an extended benefit period and higher wage replacement rate for people with disabilities under unemployment insurance, as well as changes to tax laws (Canada, 1981). None of the recommendations were implemented.

Obstacles is also significant for the role played by the disability community in its creation. As noted, consultation was open, extensive, and ultimately persuasive. Further, Jim Derksen, a staff member of the Coalition of Provincial Organizations of the Handicapped (COPOH), served as a paid consultant to the special Parliamentary Committee. In this pioneering role, he was able to "gather information on the political landscape in Ottawa and on key policy issues, and relay that knowledge to COPOH" (Prince, 2009, p. 25). The COPOH, formed in 1976, brought together many of the organizations of disabled people that had sprung up in all Canadian provinces and was the only national multi-disability organization in Canada at the time. The COPOH did not provide direct services; rather, it acted as a voice to advocate for governments to provide accessible services to disabled people (Driedger, 1989). Driedger (1989)

described the politics of this and other disability organizations at the time as one of "consumerism", resting on the belief that "disabled people as consumers of services have a right to monitor the quality of … services" (p. 23). Neufeldt (2003), however, sees the development of the COPOH (now the Council of Canadians with Disabilities) as a departure from the consumerist orientation of disability-specific organizations at the time, whose primary concern was finding "cures" and interventions for the groups they represented. The COPOH was distinct in that it was consumer-led, cross-disability, and pursued "change in public policy to accomplish the societal inclusion of disabled people" (Neufeldt, 2003, p. 24).

Despite the extensiveness and openness of the consultation, Stienstra (2003) noted some "significant shortcomings" with the process (p. 40). The government provided no funding to facilitate access to the hearings. The very openness of the hearings meant that there was no attempt to give prominence to organizations of disabled people over any interested individual. Similarly, none of the witnesses called to speak before the Committee represented disabled people's organizations since they were not considered "experts" on disability (Stienstra, 2003). Despite these shortcomings, the *Obstacles* report is widely considered to mark a turning point in framing disability in the public imagination.

The Scott Task Force, 1996

In May 1996, the Ministers of Human Resources Development, Finance, Revenue, and Justice mandated four Members of Parliament to conduct a Task Force on disability issues. Chaired by Member of Parliament Andy Scott, it became known as the Scott Task Force. The Task Force heard from about 2,000 people in 15 meetings across the country and received 200 submissions (Stienstra, 2003). The consultation model for this Task Force included a large reference group with representatives from 22 organizations. The reference group helped to refine the six issues that the Task Force would look at: "civil infrastructure, legislative reform, labour

market integration, income support, the cost of disability/tax, and Aboriginal peoples" (Stienstra, 2003, p. 43). In working groups, some members of the reference group, with researchers from the disability community, developed background papers on these six areas. The reference group also appointed three members as observers for the public meetings held by the Task Force. Stienstra's (2003) assessment was that the reference group structure and the prominence given to disability organizations represented marked improvements over the consultation process for the *Obstacles* report, and that "many disability advocates felt they had been listened to during the Task Force process" (p. 45).

The report that the Task Force produced, *Equal citizenship for Canadians with disabilities: The will to act,* emphasized "the gap between 'saying' and 'doing'" (Canada, 1996, p. 1), acknowledging the work of the reports that had preceded it, such as *Obstacles*. It stated categorically that "[a] secure income is fundamental to the ability to enjoy the rights of citizenship" (Canada, 1996, p. 72). However, when it comes to action, it stated, "[t]he immediate need is for dialogue" (Canada, 1996, p. 77), largely because of the jurisdictional complications concerning social assistance. After documenting the fragmentation in disability income supports, its tepid recommendation allowed the gap between saying and doing to keep yawning. The report recommended the following:

> The Government of Canada should **initiate a process** to work towards putting in place a coherent, comprehensive and sustainable approach to providing income to people with disabilities. The process should include serious consideration of ways to move towards a disability insurance program that covers all Canadians. (Canada, 1996, p. 78, original emphasis)

This comprehensive disability insurance program would provide coverage regardless of age, the cause of the disability, and importantly, previous labour force attachment. It would also "lead to appropriate compensation for disability-related costs, independent from any income support" (Canada, 1996, p. 76). However, the report went on to argue that it may not be the appropriate time for a comprehensive program, citing "many reasons" but offering only one concretely: "fiscal constraints" (Canada, 1996, p. 77).

In the meantime, the report recommended that the federal government work with the provinces to "rationalize and maximize the effectiveness" of existing programs, including income-replacement programs like workers' compensation, "so that they **enable participation in the labour force** and ensure basic safety and security" (Canada, 1996, p. 80, original emphasis). Indeed, in the section on income support, the report paid as much, if not more, attention to workforce participation and work disincentives as it did to income support. The guiding principles it outlined for the development or reform of income supports were first, "disability income programs should **provide incentives** for people with disabilities to move into the labour market" (Canada, 1996, p. 77, original emphasis); and second, should "**remove disincentives** to employment" (p. 78, original emphasis). In short, income support should be linked to vocational rehabilitation and employment supports. One recommendation for dealing with work disincentives was a low-income tax credit. Ultimately, according to the report, "the best form of income support is a job" (Canada, 1996, p. 81).

Recall the economic context for the Scott Report: it came a year after the CHST and devastating cuts to transfers. The same year that the Scott Report was released, provinces had come together under the Federal/Provincial/Territorial Council on Social Policy Renewal, with the goal of recovering the millions of dollars represented by those cuts. McColl et al. (2010)

maintained that "disability issues took very high place among the priorities of the First Ministers within this agenda" (p. 18), as evidenced by the next "landmark" report, *In Unison: A Canadian Approach to Disability Issues—A Vision Paper,* compiled on behalf of the Federal/Provincial/Territorial Ministers Responsible for Social Services.

In Unison: A Canadian Approach to Disability Issues—A Vision Paper

As a follow-up to the Scott Report, the 1998 report, *In Unison,* was meant to provide "some guiding principles for ensuring full citizenship to Canadians with disabilities" (Phillips, 2003, p. 211). The stated way to achieve full citizenship was by making all domains of Canadian society as inclusive as possible and mobilizing all sectors to enhance the full and equal participation of persons with disabilities (Canada, 1998). Notably, the stated "policy direction" for full citizenship was to "promote access to generic programs and services for all Canadians, including persons with disabilities" (Canada, 1998), giving a nod to desegregation called for by the Council of Canadians with Disabilities during the 1994 Social Security Review (Ralph, 1994).

In his discourse analysis of *In Unison*, however, Vellacott (2011) found this move to generic programs problematic. He raised the concern that this approach to equality could be construed as one in which everyone is treated the same, "regardless of specific needs or differences" (Vellacott, 2011, p. 260). Vellacott (2011) contended, "This tendency to reference services for people with disabilities within the context of generic services for all citizens is a common feature of neoliberal social policy approaches" (p. 56). Similarly, Rioux (1994) has argued that concepts of formal equality (equal treatment) and liberal equality of opportunity do not adequately address the inequalities faced by disabled people. She posited a concept of "equality of well-being", which entitles everyone to be considered equal, but able to participate in society, despite and according to their differences.

The three "building blocks" for full citizenship, according to *In Unison*, are disability supports, employment, and income. Disability supports refers to a variety of supports such as technical devices and equipment; services such as interpretation, homemaking, personal attendants, and respite care; and health services such as physiotherapy and occupational therapy. Employment refers to enhancing the employability of persons with disabilities through flexible education and training programs, encouraging labour market attachment, facilitating workplace accommodations, and promoting work and volunteer opportunities. Income recognizes the need for income support for some individuals with disabilities, but interestingly, the report argued that income support should reward "individual work efforts to the greatest extent possible— [while providing] financial assistance if self-support is impossible or insufficient to meet basic needs" (Canada, 1998).

Vellacott (2011), in his discourse analysis of *In Unison*, noted two related discourses: independence and employability. He observed an abrupt transition in the middle of the document from a broad notion of independence that recognized "that disability and independence are social constructs and encompass a wide range of social and societal issues and barriers" to one that emphasized "economic self-sufficiency" (p. 129). After this transition, he then notes a subsequent dominance of the employability discourse. He offers several passages that illustrate this transition and then focuses on the three building blocks described above: disability supports, employment, and last and only, if necessary, income support. As Vellacott (2011) pointed out, the first bullet under the topic of "Employment" described the policy objective, "to reduce reliance on income support programs", implying that reliance on income support programs is negative and "needs to be minimized to the greatest degree possible" (p. 138). He argued that

this statement serves to divide disabled people between those who are able to work (desirable) and those who need income support (undesirable).

Vellacott (2011) suggests that this limited approach to the building blocks of inclusion and citizenship could reflect the jurisdictional limitations of the authors of the report, that is, ministers responsible for social services. However, the document is meant to portray a vision and a Canadian approach to achieving full citizenship for people with disabilities. Jurisdiction seems a weak reason to exclude issues of "housing, transportation, education, access to health services, discrimination, racism, etc." (Vellacott, 2011, p. 136) that impact achieving full citizenship. Instead, this discourse "solidifies the idea that our lives under capitalism revolve around our work…. The political economy demands that we maintain our health to make our labor power fully available, lest we be marked and doomed as surplus" (Adler-Bolton & Vierkant, 2022, p. 57).

These reports, their many follow-ups, and other reports on disability during this period are recognized as evidence of a shift in the public conception of disability—a shift usually portrayed as a positive one—from "unemployable cripple" to "functioning citizen". It is also clear, however, that the shift in the conception of disability pairs well with neoliberal incursions on notions of social security, with its emphasis on "active" programs and its focus on "employability", with commodified labour sold in the market as the key source of income.

Ontario Disability Support Program

Thus, we have the context for the emergence of the ODSP: entrenched neoliberalism with a narrative of scarcity and austerity, the demise of the CAP and the associated cuts in federal spending, the tail end of a deep recession, and a public discourse on disability that emphasizes citizenship and employability. Another contextual factor worth noting is the backlash against

welfare recipients that was evident by the mid-1990s. Rising numbers of social assistance recipients, from about 4.5% of the population in 1985 to 12. 2% in 1994, with the accompanying $6 billion in expenditure, made welfare a key issue in the 1995 Ontario election (Morrison, 1998). Acting on a campaign promise to "get tough" with welfare recipients (Beatty, 1999; Maxwell, 2009; Morrison, 1998), the Mike Harris Conservative government introduced the *Social Assistance Reform Act* in 1997. This *Act* would allow for the creation of the *Ontario Works Act* and the *Ontario Disability Support Program Act (ODSPA)* to replace the *General Welfare Assistance Act, Family Benefits Act,* and *Vocational Rehabilitation Services Act.* This legislative change separated the income security program for people with disabilities from the welfare system where, according to the then Minister of Community and Social Services, "they never should have been in the first place" (Ecker, *Hansard*, 2 June 1998; Hyland, 2001). Indeed, there was stated support for a separate program from the opposition parties during the debates. Coming on the heels of a 21.6% cut to welfare benefits to all but disability beneficiaries under Family Benefits (Beatty, 1999; Morrison, 1998), this separation emphasized disabled people as the "deserving poor" in an effort to deeply stigmatize welfare recipients. As Beatty (1999) notes:

> By improving ODSP over the provisions of the former FB [Family Benefits] system which applied to persons with disabilities, the Government's intent was to get the approval of a community which commands considerable public support. Opinion polls consistently show that persons with disabilities have more support with respect to their issues than do other disadvantaged groups…. People with disabilities…would be taken out of welfare so that welfare could be cut. (Beatty, 1999, p. 3, 4)

Change and Continuity under the Ontario Disability Support Program

Disability benefits would be substantially higher than general welfare benefits under ODSP, and benefit levels would continue to be needs-tested, taking account of budgetary needs and available resources. A portion of the benefit is for "basic needs" such as "food, clothing, and other necessary personal items". The other portion is a shelter allowance, based on actual costs and the number of people in the family. Interestingly, the wording on the current ODSP website states that these portions are meant to "help cover" these costs as if there are other sources of income (Ontario, 2022a).

The improvements to the *Family Benefits Act* that Beatty (1999) refers to reflect some of the recommendations of policy reformers discussed above. As under Family Benefits, the assets limit for disabled people continued to be higher than that for social assistance recipients: up to $5,000 for a single person and $7,500 for a family, up from $3,000 for a single person and $5,000 for a family under the *Family Benefits Act*. In addition, ODSP recipients would be allowed to retain the cash surrender value of a life insurance policy up to $100,000 and would be allowed to accept gifts from families up to $4,000 per year, without affecting benefits. Beatty (1999) pointed out that this improvement, although requested by the community, was directed at those families with the means to offer this kind of support. The rules for keeping funds from trusts and settlements were also made more favourable to recipients (Beatty, 1999; Hyland, 2001). Recipients would be allowed to own a primary vehicle of any value, whereas there had been a maximum on the value of a vehicle under Family Benefits. This was an important improvement because of the high value of adapted vans for wheelchair users (Beatty, 1999). Currently, other exempted assets include a primary residence, a Registered Disability Savings Plan, and a Registered Education Savings Plan (Ontario, 2022b).

In addition, the 25% co-pay for assistive devices under the Assistive Devices Program would be covered, though Beatty (1999) points out that this covered only the amount *approved* by the Assistive Devices Program, which is sometimes lower than the actual cost of the equipment needed. ODSP recipients would continue to receive health and dental benefits.

In its effort to improve employment among disability benefits recipients, ODSP also introduced a "rapid reinstatement" provision for those who left the program for employment but had to return if employment didn't work out. ODSP also allowed a higher level of business assets for self-employed people (Beatty, 1999).

On the other hand, the "spouse in the house" rule that had been relaxed in the late 1980s was tightened so that a couple living together was automatically considered to be in a common-law relationship, regardless of the length of time of the relationship (Hyland, 2001, Maxwell, 2009, Morrison & Pearce, 1995). The new rules also placed a maximum on the amount available for an approved special diet, whereas there had been no maximum under Family Benefits (Hyland, 2001), though under Family Benefits, only those with very high special diet costs were eligible (Beatty, 1999). New enforcement measures, such as in-depth file reviews, finger scanning, snitch lines for the public to report fraud, and extensive investigative powers for the Ministry overseeing ODSP were also features of the program (Beatty, 1999). It should be noted, however, that in these measures, the Harris Conservatives were building on the "Enhanced Verification and Caseload Investigation" initiative of the previous NDP government's "campaign against supposedly rampant welfare fraud" (Morrison & Pearce, 1995, p. 4).

Exemplifying the judgemental tone of the reforms, the original legislation excluded alcoholics. Following the protest of addictions and mental health organizations, the wording was changed so that "a substance user who qualified as a 'person with a disability' would qualify for

ODSP income supports so long as the disability was not attributable to the current or recent use (or cessation) of the substance" (Beatty, 1999, p. 21). This section of the *ODSPA* was later challenged by two denied applicants, Norman Werbeski and Robert Tranchemontagne, who appealed their cases to the Social Benefits Tribunal. They argued that this provision of the *ODSPA* violated their rights under the *Ontario Human Rights Code*. At first, the Tribunal decided that it did not have jurisdiction to consider such a human rights challenge, so the case was referred to the courts. It eventually made its way to the Supreme Court, which ruled that the Tribunal did have jurisdiction in human rights challenges. When the Tribunal reconsidered the case, it concluded that the provision to exclude alcoholics was discriminatory and contrary to the *Ontario Human Rights Code* (Hales-Ricalis, 2010). The government appealed the ruling, but the Divisional Court agreed with the Tribunal's ruling (Saint-Cyr, 2010). The sections of the *ODSPA* referring to alcohol abuse have been repealed (*Ontario Disability Support Program Act*, 1997).

Beatty's (1999) thorough description of the changes does not mention the level of earning exemptions at the inception of ODSP, only that it was increased for couples as an incentive to employment. Over the years, the program has allowed a flat-rate earnings exemption, that is, an amount of money that can be earned and kept before earnings are clawed back. This amount and the amount of the clawback have been adjusted over time, most recently by the Ford Conservative government.

An important feature that did not change in the transition from Family Benefits to ODSP is the design of the program as a benefit of last resort. Applicants must first apply to all other possible sources of income they might be entitled to such as CPP-D, EI, veterans' allowances, or workers' compensation. The amounts received under these benefit programs are deducted dollar for dollar from ODSP benefits. (For workers' compensation, the ongoing LOE benefit and pre-

1990 pensions are considered income, but not the one-time NEL payment.) Savings in a Registered Retirement Savings Plan that are not in a locked-in account must also be liquidated to the allowed asset level. Spousal support payments are also deducted dollar for dollar, but as of 2017, child support payments are not treated as income. Benefits may be denied or suspended if anyone in the "benefit unit"[16] fails to make a serious attempt to access these programs (Ontario, 2022b).

Unfortunately, the design of ODSP as a program of last resort offering temporary aid does not reflect the reality of many disabled people's interaction with the system. Prince (2019) referred to the design of disability benefits as a "form of entrenched residualism: welfare is no longer a temporary and last-resort program but a permanent reality" (p. 126). Using data from the Survey of Labour and Income Dynamics conducted by Statistics Canada, Crawford (2013) found government transfers account for over two-thirds of the total income of working-age, low-income people with disabilities, and social assistance is the highest share of this income by far at 35%. Working-age low-income people without disabilities derive most of their income (71%) from market income.

The overall character of ODSP has not changed substantially since it was first introduced (Smith-Carrier et al, 2020), despite various reviews and public political commitments to "transform" social assistance, some of which are discussed below. Even the structural changes currently under implementation, detailed later in this chapter, do not change ODSP from a residual program of last resort with benefits inadequate to keep disabled people from poverty. The available history of ODSP relates largely to changes to the rules for the various elements of the program such as asset allowances, earnings exemptions, and benefit levels. Rather than

[16] A benefit unit is defined in the *ODSPA* as "a person and all of his or her dependants on behalf of whom the person receives or applies for income support".

document every change in the rules and the attempts to address various policy concerns, the following describes some of the most substantial changes in the context of the issues raised in the literature. The extant literature on ODSP raises various issues at specific times, usually from the recipient's perspective, but it appears that a fulsome history of ODSP has yet to be written. There is no overall account of when all the changes occurred and what the impact of specific community actions had in creating those changes. Such a history would need to go beyond documentary evidence to include interviews with the key participants, including the broader anti-poverty movement. Within the confines of the methods of this research, however, we must rely on documentary evidence for insight into some of the advocacy work that has been done. One ready source for documentary evidence of advocacy used here is the community legal clinic system. Given their poverty law mandate, legal clinics are active in representing disabled people concerning ODSP. In addition, two specialty clinics, the ARCH Disability Law Centre and the Income Security Advocacy Centre work more specifically on policy advocacy. Before turning to the changes in ODSP over the years, however, we consider the issue of the definition of disability guiding eligibility for ODSP.

Concepts and Definitions of Disability

According to the Harris government, their motivation for the changes to disability benefits was rooted in the paradigm shift in conceptualizing disability. In introducing the Bill for the legislation, Ecker declared, "The *Ontario Disability Support Program Act* deals separately and justifiably with people with disabilities…. They do not ask and do not want charity. They do require full recognition of their abilities and their needs" (Ecker, *Hansard,* 19 August 1997). Indeed, government members repeated that the impetus for a separate program for disability came from the consultations they had done with the disability community. They described this

consultation as “extensive”, speaking to over 100 groups representing or working with disabled people, such as Goodwill, March of Dimes, Ontario Association for Community Living, CNIB, Canadian Hearing Society, AIDS Action Now, People with AIDS Foundation, Canadian Mental Health Association, Learning Disabilities Association of Ontario, Income Maintenance Group, Ontario Schizophrenia Association, Hemophilia Ontario, and the Ontario Council on Alternative Business (Carroll, *Hansard*, 4 September 1997). One service provider who was consulted, Peter McGrath from the Ottawa-Carleton Independent Living Centre, was quoted in *Hansard* to say there had been “a fundamental shift in the way the government has been thinking about people with disabilities. Instead of saying we're going to be taking care of you, we're saying we recognize you have a role to play" (Carroll, *Hansard*, 4 September 1997). A government member depicted this fundamental shift in a statement to the House: “[t]he vital lesson we, as a society, have learned is one of the value of each individual human life, not based on some government formula, but growing out of the innate worth of each and every individual” (Ross, *Hansard*, 25 November 1997). Ecker’s stated objectives for the program: “[i]t recognizes unique needs; it supports independence; it supports employment” (Ecker, *Hansard*, 19 August 1997).

It should be noted that this shift in perspective was not uniform and did not eliminate the discussion of the “vulnerability” of disabled people. Just one example of opposition to the Bill: “We need to make certain that the suffering of the most vulnerable in our society is not increased, as seems quite possible from our reading of the Bill and that of the experts we have spoken to” (Morin, *Hansard*, 19 August 1997**)**. This debate points to one of the contradictions of the new disability paradigm: in striving to achieve a positive representation of disabled people, the notion of vulnerability may be shunned, which can ignore the nature of disability oppression in relation to economic and social conditions beyond the control of any individual.

Despite this supposed paradigm shift to a socio-political concept of disability, furthermore, the definition of disability for the purposes of ODSP continues to rely heavily on medical and individual dimensions of disability. The definition in the *ODSPA* reads as follows:

> (a) the person has a substantial physical or mental impairment that is continuous or recurrent and expected to last one year or more;
>
> (b) the direct and cumulative effect of the impairment on the person's ability to attend to his or her personal care, function in the community and function in a workplace, results in a substantial restriction in one or more of these activities of daily living; and
>
> (c) the impairment and its likely duration and the restriction in the person's activities of daily living have been verified by a person with the prescribed qualifications. (*Ontario Disability Support Program Act*, 1997).

The government had moved from a definition that required a "severe" disability to one that required the "substantial" disability. The definition was also amended to clarify that only one of the three areas, personal care, community functioning, or workplace functioning had to be affected for a person to qualify. The use of the word "recurrent" was meant to explicitly recognize episodic impairments, such as multiple sclerosis and various mental health issues (Beatty, 1999). There is limited evidence, however, that the inclusion of the word "recurrent" in the definition of disability did not necessarily remove barriers to obtaining benefits for those with episodic disabilities (Chouinard, 2006; Lightman et al., 2009). Through in-depth interviews with decision-makers in Ontario and Australia, McAllister (2020) identified that they are more comfortable awarding benefits to an "ideal type" of disability, that is, one that is visible, easily recognizable as a medical illness with clear proof, permanent, and perceived to be externally caused (as opposed to being perceived as self-inflicted like substance addiction). Although

mental illness would seem not to fit this ideal type, in fact, people with mental illnesses comprise the largest portion of ODSP recipients, usually documented at just over 50% (Auditor General of Ontario, 2021).

In general, advocates were concerned that the "definition of disability combined with the more flexible eligibility criteria for employment supports puts many people in a double bind position of being too disabled to work but not disabled enough for income support" (Income Maintenance Group [IMG], 1997, pp. 2–3). Those deemed "permanently unemployable" under the previous system were to be automatically transferred to ODSP (Beatty, 1999). The worry was that some people with disabilities applying to the new program for the first time would be disqualified from the higher benefits offered under ODSP and forced to rely on Ontario Works, with its mandatory workfare provisions (IMG, 1997).

As it turned out, these concerns were not without foundation. Although those designated "permanently unemployable" for the GAINS-D program under Family Benefits did automatically receive benefits under ODSP, new applicants were faced with stricter eligibility criteria. In 2004[17], Deb Matthews, in her capacity as Parliamentary Assistant to the Minister of Community and Social Services, conducted a review of social assistance employment supports programs. Matthews was part of a newly elected Liberal government in 2003, the first after eight years of the staunchly neoliberal governments of Mike Harris and Ernie Eves, so no doubt there was some political motivation to differentiate from the Conservatives in the report. It found that "42% of the current ODSP caseload is composed of people who were grandfathered in under the

[17] In 2004, the federal government restructured the way it funds provinces again. The CHST was divided into two transfers, the Canada Health Transfer and the Canada Social Transfer, which included tax transfers in addition to cash transfers. Hick (2007) wrote that critics of this move "believed that the move would enable the federal government to take credit for increases in funding to popular health care programs while allowing social programs to remain underfunded" (p. 49).

"permanently unemployable" category when the changes to the system were made in 1998" (Matthews, 2004, p. 10). Importantly, it also found that "[p]eople who would have qualified as permanently unemployable prior to 1998 no longer qualify for assistance through ODSP, and thus remain on the OW [Ontario Works] caseload" (Matthews, 2004, p. 10).

That said, Ontario's definition of disability is less restrictive than some of the other provincial definitions and that of CPP-D. Hyland (2001) remarks that Ontario's definition allows for more individualized application because the impairment must impact only one of the three areas: personal care, workplace activity, or activities of daily living. She argues,

> FBA [*Family Benefits Act*] legislation did not explicitly state what normal living activities were therefore eligibility decisions were often arbitrary and could vary from each applicant. By recognizing in legislation that persons with disabilities confronted barriers to participating in their community, in the labour market and in attending to their personal care, the Ontario government has decided to recognize persons with disabilities as whole individuals, who have the right to participate as full citizens of Ontario, with the assistance of ODSP. (Hyland, 2001, p. 49)

Indeed, when faced with the prospect of Ontario's changing the definition of disability in 2018, advocates argued that the current definition "has been applied in a broad and flexible manner" (Wintermute, 2019) by courts and tribunals. Ontario's Conservative government announced its plans for social assistance reform at this time, including a plan to align its definition of disability more closely with the more restrictive definition used by the CCP-D program. To qualify for CCP-D, a person must have a severe and prolonged disability that prevents any kind of gainful employment (Canada, 2023). Critics were quick to point out that this change would exclude

many who currently qualify for ODSP, though the government assured the public that current recipients would be "grandfathered" into the new program (Boisvert & Xing, 2018). In October 2019, the Ford government announced that it had reversed its plans, with little explanation, though one news report suggested that the change of heart came in the context of other reversals at a time when the Premier's approval ratings were starting to sag (Montsebraaten, 2019).

Application Process and Eligibility

Although it was outside of her mandate, Matthews (2004) felt compelled by what she heard from the community to point out another barrier to receiving ODSP benefits: the complexity of the application process itself. She noted that there were "approximately 800 rules and regulations within the system that must be applied before a client's eligibility and the amount of their monthly cheque can be determined" (Matthews, 2004, p. 24; see also Sheikh, 2015).

The disability community, through the Income Security Advocacy Centre, had identified these problems in a report in 2003. The report, *Denial by design,* characterized the process as "exceedingly complex" requiring "lengthy medical reports" and imposing "tight timelines" while offering no supports to those applying (Fraser et al., 2003, p. 1). The report stated that caseworkers were permitted to hand out the application package and perhaps make a referral to a community agency, but no more. It observed:

> Ironically, the complexity of the package, the lack of any resources to provide support to applicants or even to reasonably accommodate the very disabilities that underlie the program, make the program least accessible to those who are most vulnerable. The Province justifies its approach as one that emphasizes "self-reliance". The reality is that many disabled persons simply fall through the cracks and are unable to make or

> effectively complete the application process. In the 2000/2001 fiscal year, almost 40% of applicants referred to the DAU [Disability Adjudication Unit] did not, ultimately, submit a DDP [application] package. (Fraser et al., 2003, p. 11)

Indeed, disability advocates found that even "experienced and well-educated doctors" had difficulties in navigating the complex application process, finding the forms confusing and time-consuming (Mayson et al., 2006).

Denial by design painted of picture of long delays for decisions, uneven and opaque adjudication, and a lack of accommodations for various disabilities. For example, intake interviews at the time were conducted exclusively through telephone interviews. The in-person application was no longer available. The most glaring problem with this is that low-income people may lack access to a telephone, but the report pointed to more subtle problems. For those with language barriers, the absence of body language, documents, and other communication aids would be a disadvantage. The report claimed that few intake units were equipped with teletype technology and that a productive telephone interview may be impossible for those with mental illness, cognitive difficulties, and attention and memory issues. These problems were recognized, and currently, people can apply for ODSP in person, online, by mail, or by telephone (Ontario, 2023b).

Providing support for completing applications fell to community organizations, in particular community legal clinics. *Denial by design* described the impact on legal clinics, as well as some of the advocacy it inspired. Using Legal Aid Ontario data, the reports noted that disability-related cases in legal clinics represented about 14% of all new cases before the enactment of the *ODSPA* in 1997. In 2001, these cases represented one-third of all new cases (Fraser et al., 2003). The report described a community "desperate to find a way to make the

ODSP system work" (Fraser et al., 2003, p. 31), holding forums across the province in many cities, including Hamilton, Windsor, Thunder Bay, Toronto, London, Kitchener, and Sarnia.

> A forum in Toronto in early 2002 attracted 125 participants from 87 local organizations and legal clinics. The ODSP forum held in Windsor was attended by approximately 70 community members, and the forum in Hamilton included 57 participants from over 30 community agencies. (Fraser et al., 2003, pp. 30–31)

Noting that these agencies are publicly funded, the report pointed out that the government is "one way or another paying for the inadequacies of the ODSP system" (Fraser et al., 2003, p. 30). In 2003, the Ministry of Community and Social Services responded by convening an Applications Working group "consisting of community and clinic advocates, some individual municipal social service administrators, as well as representatives from the Ontario Municipal Social Services Association, and Ministry staff" (Mayson et al., 2006, p. 7).

No doubt there have been other consultations since, because there have been several attempts to streamline the process, the most recent in 2021. These changes appear to be primarily to the forms. As the Community Legal Education Ontario, a legal clinic, noted in October 2021, all the forms have changed, but "the legal test that decides whether a person is eligible for ODSP has **not** changed" (Community Legal Education Ontario, [CLEO] 2021a). Nor has the overall process changed much since *Denial by design* was written. Similar to what was described in *Denial by design*, the current process is still a two-step process. A person must first qualify financially by sharing information such as family size, jobs and income, housing situation, immigration status, and assets. If the application is denied at this point, the applicant has 30 days to ask for an internal review. An internal review is the first step in the appeal process. (This

internal review was added by the Harris government.) The second step is to establish medical eligibility by providing a health report, an activities of daily living index, a medical consent form, and a self-report. Applicants must complete the items in the package, ensuring that it includes reports from health professionals, within 90 days. If they fail to meet the deadline, they must start the process anew. Again, a person must request an internal review of a denied application within 30 days (CLEO, 2021b).

It is important to note a conflicting account of the application and eligibility for ODSP. Contrary to the experience of the disability advocacy community, the 2021 Provincial Audit of ODSP concluded "the Ministry's systems and processes are not effective to ensure that only eligible applicants qualify for the program and receive income support" (Auditor General of Ontario, 2021, p. 512). The report confirmed the community's perception that adjudication is uneven and decisions are often opaque but painted a very different, and from the Auditor's perspective, worsening picture regarding the ease of accessing benefits. In 2003, no doubt in response to criticism at the time, the Ministry introduced a triage system to rapidly identify those applicants who qualified as disabled to expedite their applications. The remaining applicants undergo a more detailed adjudication process (Auditor General of Ontario, 2004). The 2021 audit report found that over 40% of applicants were confirmed as disabled through the initial, "cursory" review of this triage process, up 56% from the previous audit in 2009 (Auditor General of Ontario, 2021). Moreover, 80% of applicants were approved for benefits for life, with no medical review. Indeed, the report expressed the concern that the Ministry "rarely sets medical reviews as required by legislation" (Auditor General, 2021, p. 514). Medical reviews are set at the discretion of the medical adjudicator at the time the application for benefits is approved and only for those people whose disabilities may improve. When a review has been scheduled,

usually two to five years after a successful application, recipients receive a notice in the mail and have 90 days to complete the medical review package. Failure to do so results in the cancellation of benefits. People then have to re-apply anew. Decisions are subject to the appeal process (Ontario, 2022b). The Income Security Advocacy Centre described the medical review process "as the same as the process for applying to ODSP in the first place" (Income Security Advocacy Centre [ISAC], 2015, p. 2.) They also found, however, that diligence in conducting these reviews was inconsistent. In information to recipients, dated April 2015, they noted that the Ministry had not been conducting these reviews for several years, resulting in a large backlog, but would be significantly increasing its oversight that month (ISAC, 2015). Then, in 2016, in response to years of advocacy, the Ministry announced that it would work with advocates to streamline and simplify the process (ISAC, 2017a). These changes included making the forms easy to use and understand and allowing health professionals to succinctly identify whether or not there have been any "clinically significant" improvements. The Ministry also introduced the rather obvious step of reviewing its own files of those scheduled for review to determine if any new information was required. If not, the review could be pre-empted (ISAC, 2017a). While these changes may have made the process less stressful for recipients, the Provincial Auditor was not impressed. The 2021 report raised the concern that the number of applications approved without setting a medical review increased from 51% in 2009 to 80% in 2019 when the audit was conducted, though the reasons for this increase were not clear (Auditor General of Ontario, 2021).

The Auditor's Report also told of inadequate verification of financial eligibility, because caseworkers did not perform checks with third-party information, such as tax returns and credit scores. Nor were there adequate checks of ongoing eligibility. In more than half of the files audited, there had been no contact with clients for over five years, and some of them were found

ineligible when they were contacted, resulting in overpayments that would have to be paid back. More than 42,000 allegations of fraud were not investigated within the time frames required, and staff had not been trained to do so for over 10 years. Non-disabled people in the family unit of recipients are required to participate in employment supports programs, but Ministry data indicated that 75% of them were not doing so because they had never been referred by caseworkers. Furthermore, the Ministry had no mechanisms in place to monitor, evaluate, and remediate these various concerns identified by the Auditor. Thus, rather than the intrusive, demeaning role of the program often depicted in the literature, the Auditor suggests lax oversight. Interestingly, although the report described an overloaded and sometimes under-trained caseworker staff, there were no recommendations for more resources, just a recommendation for an assessment of caseloads and the development of a "roadmap" that "clearly identifies the Ministry's intermediate and longer-term actions to improve the ability of caseworkers to handle ODSP cases" (Auditor General of Ontario, 2021, p. 556). One thing that the Provincial Auditor and the community agreed on is that there are unacceptable delays in processing applications.

How do we reconcile these drastically different assessments of access and eligibility to ODSP? Applying for disability benefits in the context of residualism is an inherently demeaning process, so it is no surprise that people would be dissatisfied with the process, especially since it is complex. Further, community legal clinics and other advocates hear from those who have been denied or are otherwise experiencing problems with the process—to the point where they felt overwhelmed in the early 2000s (Fraser et al., 2003). Indeed, ODSP application appeals continue to be a large proportion of the work of community legal clinics. The 2018 Provincial Auditor's Report stated that this work comprised 44% of the cases undertaken by clinics (Auditor General

of Ontario, 2018). In a 2019 CBC report, the Sudbury Community Legal Clinic's executive director estimated this proportion at 60% for his clinic, noting an 80% success rate with appeals (White, 2019). Researchers also study those who experience difficulties. Thus, even if those represented by advocates and in the research do not represent the whole picture, they reflect the experiences of large numbers of people dealing with ODSP.

Caseloads

The Provincial Auditor was particularly concerned with soaring caseloads and the associated costs, another contradiction of the community's perception of tight eligibility. Between 2008/2009 and 2018/2019, the ODSP caseload increased by 50% from about 247,500 to 370,000, while the population of Ontario increased by 12% during this period (Auditor General of Ontario, 2021). Caseload growth occurs when the number of new recipients exceeds the number leaving the program. Though it does not say so explicitly, the implication in the Auditor's Report seemed to be that the caseload was growing due to insufficient gatekeeping by caseworkers (Auditor General of Ontario, 2021).

Researchers, however, offer other explanations for rising ODSP caseloads, which point to a growing need and reliance on disability benefits. Some possible drivers include an aging population, high unemployment rates among disabled people due to discrimination, a decline in "standard" employment that offers access to work-based disability benefits, wider acceptance and diagnosis of mental illness, and a "slight upturn" in the number of persons migrating from Ontario Works to ODSP (Kerr et al, 2019, p. 14; Stapleton, 2013).

The influence of an aging population is straightforward: as the population ages, the incidence of disability increases, though Kerr et al. (2017) quantified the impact of demography (aging and population growth) on the ODSP caseload at a moderate 28%. At the same time, older disabled workers are less likely to be hired leading to longer-term reliance on disability benefits.

Notably, since 2001, the number of people receiving Ontario Works benefits remained relatively stable, even declined slightly, as the ODSP caseload continued to increase (Kerr et al., 2017). Kerr et al. (2017) argue the impact of an aging population has had an offsetting effect in that it has led to a growth in ODSP cases with the opposite effect on Ontario Works. Researchers have also documented an increase in the number of long-term Ontario Works recipients migrating to ODSP. They suggest that we should look to the link between the social determinants of health for the reason, given the well-documented impact of severe poverty on physical and mental health (Kerr et al., 2019).

Labour market conditions refer to the well-documented high unemployment rates of disabled people, as well as the increasing precarity of jobs, which limits access to work-based disability benefits, including workers' compensation. Furthermore, even for those who can access private disability insurance and public programs such as EI Sick Benefits, these benefits have time limits. As shown in the last chapter, the WSIB has also taken measures to limit the length of time that injured workers can collect benefits. Stapleton (2013) considers labour market conditions with precarious jobs and more part-time and fewer full-time positions, as the most significant factor affecting ODSP caseloads. According to Stapleton (2013), this is particularly true of worker's compensation due to the changes discussed in the previous chapter. Using data from the Survey on Labour and Income Dynamics database, he showed that the proportion of the population receiving workers' compensation benefits declined steadily between 1992 and 2009. At the same time, the proportion of social assistance recipients who were receiving benefits from other public programs such as CPP-D and workers' compensation increased from 5% to more than 10%. Stapleton (2013) refers to this as the 'welfarization" of disability income, suggesting that the increase in the ODSP caseload can be explained, in part, by other sources of disability

income becoming less accessible, though he cautions that more research is needed. We will return to some of these issues in the next chapter.

Social Benefits Tribunal

Another consideration related to the issues of eligibility and caseload, and one also of great concern to the Provincial Auditor, is the appeals process. As with the workers' compensation system, the right to appeal constitutes a means for the administration of "natural justice". Just as Weiler (1980) argued regarding workers' compensation, Ellis and Laird (2010) offer a similar argument for ODSP: the program must expedite a large number of applications so it "must be allowed to cut some adjudicative corners" (p. 240). This cutting of corners can be legitimized through the process whereby applicants who are denied have the right to a "full review…by an experienced, independent Tribunal…in conformity with the principles of natural justice" (Ellis & Laird, 2010, p. 240). Morrison (1997) further put the right to appeal into the context of social citizenship, arguing that tribunals allow for social rights to be enforced: "The existence of entitlements in theory means little if disputes over entitlement cannot be resolved through a fair, accessible and independent mechanism, and if there are no external checks on the discretionary powers of those administering programs" (p. 75).

The Social Benefits Tribunal was established under the *Ontario Works Act* in 1997, through which the Harris government instituted reforms to an appeals system it had criticized as "complicit in the 'abuses' of the [welfare] system" (Morrison, 1997, p. 76). The *ODSPA* instituted that a mandatory internal review of a denial must precede an appeal to the Tribunal (Beatty, 1999), thus extending the time an applicant would have to wait for a resolution. As with the changes to the appeals system for workers' compensation, the new Tribunal was no longer able to interpret the law to ensure that Ministry policies were acting in accordance; rather, it was obliged to simply follow the policies. Unlike the Social Assistance Review Board, which it

replaced, the Social Benefits Tribunal was not mandated to opine whether a law regarding welfare contravenes the Constitution or the Charter of Rights (Baker Collins, 1998; Beatty, 1999). A decision to deny employment supports was no longer subject to appeal, but a decision to impose trusteeship, not appealable under the previous law, could now be appealed (Beatty, 1999). The Tribunal was allowed to dismiss any case that it considered frivolous (Baker Collins, 1998). Even more concerning to critics at the time of the transition, however, was the apparent disregard for the independence of the Tribunal, as demonstrated by the appointment of four people close to the Conservative Party without following the standard appointment process or even consulting the chair (Morrison, 1997; Weiler, 1997).

Despite changes to the Tribunal system under Harris, however, Tribunal decisions still tend to favour denied applicants. The 2004 Provincial Auditor's Report found that the Tribunal overturned eligibility decisions in about 80% of the cases that came before it (Auditor General of Ontario, 2004). The community attributed this high rate of successful appeals to problems with the disability adjudication process and the lack of resources for applicants to navigate the application process (Mayson et al., 2006). The Provincial Auditor, however, faulted the Tribunal process. The Auditor's Report makes a pointed comment that initial decisions were made by health practitioners, whereas those of the Tribunal were made by lay people (Auditor General of Ontario, 2004). Ellis and Laird (2010) interpreted this as evidence that the Auditor was concerned that the Tribunal's decisions were faulty. Although these authors agreed that an 80% rate of overturned decisions suggests a problem in the system, they offer several reasons why the Tribunal process may not be the cause.

First, they argue that the decision as to what constitutes a disability is, in this instance, a legal question, not a medical one; that is, "the adjudicator makes findings of fact based on

medical and other evidence and then applies the law to those facts" (Ellis & Laird, 2010, p. 241). Thus, the medical qualifications of the Tribunal members were not relevant. Second, they pointed out that those making appeals often have the advantage of having a representative. In the case of community legal clinics, these representatives have access to funds to pay for additional medical reports. Mayson et al. (2006) point out that the Auditor's Report identified that a common reason for the denial of an application was an incomplete or inadequate Disability Determination Package. Thus, many of the decisions were overturned based on more complete or additional medical evidence (Ellis & Laird, 2010; Mayson et al., 2006). Another factor identified is that Tribunal hearings allow for oral presentations, whereas the application process is entirely paper-driven (Ellis & Laird, 2010).

Ellis and Laird (2010) made an interesting observation regarding the Auditor's concerns that the Ministry's procedures must ensure that only eligible applicants are approved for disability benefits. The authors point out that the Auditor could have expressed the concern "that the Ministry's procedures were adequate to *ensure* that no person who is eligible for the assistance *failed* to receive it" (Ellis & Laird, 2010, p. 243, original emphasis). As lawyers, Ellis and Laird analyzed this in terms of legal standards of proof, but this observation is also telling from a philosophical perspective and highlights well the residual nature of ODSP.

The Provincial Auditor repeated this concern that Ministry procedures are inadequate to ensure that only eligible applicants are successful in subsequent reviews of ODSP, including the one in 2021. It also repeated its concern for the high rate of overturned disability determination decisions by the Tribunal (60% in 2019). Once again, it implied that the Tribunal's process was faulty, noting that "the rate of overturning Ministry decisions at the Tribunal varied from as low as 28% for one member to 93% in the case of another member" (Auditor General of Ontario,

2021, p. 514). The report once again noted that "there is no internal review of decisions for quality or consistency (Auditor General of Ontario, 2021, p. 515). Ellis and Laird (2010) point out, however, that the Ministry has the legal right to have the courts review decisions for quality. They argue that this is the appropriate process for review, since the Ministry would be in a conflict of interest to conduct such a review itself. This is because the Ministry determines the Tribunal's budget and the Tribunal's decisions impact the Ministry's cost of running the benefits program. Thus, "[t]he need to respect the norms of adjudicative independence is particularly critical in the case of the ODSP regime because the overall structure is already compromised by that unusually complex set of relationships" (Ellis & Laird, 2010, p. 239).

Some observers fear for the future of the Social Benefits Tribunal and other Ontario tribunals. Tribunals Watch Ontario is a group of people with experience as members of tribunals or as advocates appearing before tribunals, who have come together out of concern for the integrity of Ontario's Tribunal system. They interpret the failure to replace or re-appoint "respected members" to the Social Benefits Tribunal as a signal that the government may be considering its elimination, or at the very least, intends to curtail its activities. Certainly, the smaller number of members has resulted in very long delays for appeals to be heard (Tribunal Watch Ontario, 2022).

Employment Supports

ODSP recipients are exempt from the workfare provisions imposed on welfare recipients under the Ontario Works program. Instead, disability benefit recipients are "encouraged" to take advantage of "employment supports" offered under a separate program. After discussion with the recipient, caseworkers can refer them to the program. The 2021 Provincial Auditor's Report showed that fewer than 2% of ODSP recipients are referred for these supports and that

employment supports accounted for less than 1% of ODSP expenditures (Auditor General of Ontario, 2021).

Under ODSP, the category of "permanently unemployable" is eliminated. Ecker claimed that the disability community had repeatedly called for this measure (Beatty, 1997, 1999). However, implementing it just happened to suit neoliberal ideology for market solutions to the question of poverty and income security—solutions that emphasize self-reliance and ignore broader social factors. Beatty (1999) discussed the dilemma that the disability community faced on this issue.

> On the one hand, if income were based on 'unemployability', the work disincentive effect was inevitable…. On the other hand, … considering whether a person is "unemployable" leads to a consideration of the economic and social realities of his or her situation, in a way in which an exclusive focus on "functional limitations" due to disability does not. For many people, their disabilities or health problems are compounded in the labour market by their age, illiteracy, lack of education and a wide range of other economic and social factors [including the availability of suitable work]. (p. 22)

Employment supports, however, tend to focus on supply-side activities, such as résumé writing, coaching, and training.

Eligibility for employment supports is open to anyone over the age of 16 whose disability poses a substantial barrier to employment, both in seeking it and in maintaining it. Applicants must be capable of preparing for, obtaining, and maintaining competitive employment. Competitive employment is defined as a minimum-wage job or self-employment. Applicants do

not have to be receiving ODSP income support to be eligible, though the vast majority of participants are also benefit recipients (Gewurtz, 2011).

Before 2005, there was a flat-rate earning exemption of $160 per month, that is, recipients could keep $160 of their earnings before it affected their benefits. Above that amount, 75% of earnings were deducted from the benefit amount. The deduction amount was reduced to 50% and a Work-Related Benefit of $100 per month was introduced as an incentive to work in 2006. The Work-Related Benefit is not affected by the amount of employment income earned. The earnings exemption amount was raised to $200 per month. The Work-Related Benefit remained at $100.00. Over time, the program also introduced an Employment Start-up Benefit of $200 to cover the costs of starting a new job (Vance, 2016).

As under Family Benefits, critics consider the earnings exemption a disincentive to work. Stapleton et al. (2011) explain that the "earnings deductions lead to a person's hourly wage diminishing as work hours increase. As a recipient earns more money, their entitlement to ODSP is gradually reduced to zero" (Stapleton et al., 2011, p. 10). They further explain the dilemma involved in lowering the earnings exemption.

> [At 50%] recipients… receiving $12,000 per year in ODSP…have to earn approximately $24,000 in employment earnings before their earnings reduce their ODSP entitlement to zero…. Decreasing the percentage to 40% would extend the point at which ODSP entitlement hits zero to $30,000 a year. A 25% clawback would extend the point at which ODSP entitlement hits zero to $50,000 a year—so high that the program would begin to provide supports to persons who are demonstrably not in need. (Stapleton et al., 2011, p. 12)

Because benefits are low and wages are clawed back, people find they cannot accumulate enough money to make leaving ODSP feasible. Stapleton et al. (2011) enumerate other disincentives to work that ODSP recipients have identified, including a monthly reporting system that they find onerous and negative interactions between earnings and other benefits, such as subsidized housing. For example, if a month has three pay periods, it appears that the person's income has increased and the amount of rent geared to income rises.

Ironically, another disincentive that has been identified is inadequate supports for leaving the program (Gewurtz et al., 2015; Lahey et al., 2021; Stapleton et al., 2011). Rather than the detailed assessment and counselling required under the previous vocational rehabilitation program, ODSP was designed to offer employment planning as the first step and provided a detailed assessment only as needed (Beatty, 1999). When the program began in 1999, the process entailed the completion of an employment plan, which allowed access to a range of potential employment supports, including skills training, training support, interpreter and intervenor services, transportation assistance, ongoing job coaching, and job placement (Beatty, 1999; Gewurtz, 2011). Gewurtz (2011) notes, however, that in the original policy, job placement was "a very small component" (p. 90). Indeed, the issue of job placement services led to significant changes in the delivery of the program in 2006.

Service provision for the program was originally outsourced to community-based providers primarily on a fee-for-service basis. Gewurtz's (2011) research on ODSP beneficiaries with mental health issues found these service providers emphasized pre-employment services, in part, because "[t]here was a financial benefit to service providers to hold on to their clients and offer them every possible service available" ahead of job placement (p. 92). Facing poor employment outcomes while investing a substantial amount of money ($35 million), the Ministry

of Community and Social Services changed tack in 2006 with a switch to an outcomes-based program. The key change was in the way employment services providers were funded. Rather than paying for the process of providing pre-employment services, service providers were paid a flat fee of $6,000 if they were able to place a beneficiary in a job, and the beneficiary was able to retain the position for 13 weeks. Targets were set in consultation with regional offices overseeing the employment supports program (Gewurtz, 2011; Gewurtz et al., 2015).

Gewurtz's (2011; Gewurtz et al. 2015) research found that this change refocused the work of service providers toward job placement and retention and less on pre-vocational programs. The change in funding made it more difficult to access funds for training because all expenses had to be covered by the $6,000. Consequently, the shift in focus from pre-employment supports to job placement resulted in "placing clients into jobs that are often unrelated to their interests, skills or career ambitions, and may not provide opportunities for growth, development and career advancement" (Gewurtz, 2011, p. 116; see also Gewurtz et al., 2015). Under this model, it is also more difficult to fund ongoing employment supports for those people with complex barriers to employment, such as those with mental health issues in Gewurtz's study. (It should be noted that people with mental health and psychiatric issues comprised the largest group of ODSP beneficiaries at this time [Gewurtz et al., 2015] and continue to be a large proportion of the caseload [Auditor General of Ontario, 2021]). The service providers interviewed by Gewurtz admitted that to stay profitable, they had to "balance" the number of high-need clients with those who were more "straightforward", that is, more job-ready. Thus, the funding model contained a perverse incentive for service providers to serve those clients who need the least support, a phenomenon known as "creaming" (Grover, 2015; Schram, 2018). Gewurtz (2011) found that those most successful in leaving ODSP were also the most successful

in garnering supports from family and community organizations, independently of the employment support program.

Chouinard and Crooks (2005) referred to these changes as a kind of state "disciplining" of disabled people and as evidence of the shift in the assumptions underpinning the liberal welfare state. As discussed in previous chapters, the welfare state emerged with workers' compensation in recognition of capitalism's inherent instability and inability to meet all of the population's needs at all times. Chouinard and Crooks (2005) argued, "[c]ontemporary neo-liberal states have turned this political logic on its head by restructuring social programs, policies and implementation practices so as to replace the onus of responsibility for economic welfare firmly upon individual subjects of state power," ignoring social and economic factors beyond any one individual's control (p. 21). Thus, "individuals are no longer regarded as deserving of state assistance or full citizenship as 'of right', but only to the extent that they demonstrate that they have taken individual moral and political responsibility for their own economic fates" (Chouinard & Crooks, 2005, p. 21). Gewurtz (2011) noted that this focus on self-sufficiency and the changing assumptions about the ability of disabled persons to work in paid employment reflect a more progressive socio-political understanding of disability. However, in policy application, this focus can occlude an obsession to reduce social assistance costs and create "a belief that people with disabilities should work" (Gewurtz, 2011, p. 109). Both Gewurtz (2011) and Chouinard and Crooks (2005) pointed to another irony: this disciplining of disabled people under ableist notions of citizenship serves to "blur the distinction between the deserving and undeserving poor" (Gewurtz, 2011, p. 110), despite the Harris Conservative government's intentions in funding a separate program for disability benefits. It is important to reiterate,

however, that only a very small percentage of ODSP recipients participate in the employment support program (Auditor General of Ontario, 2021).

Likely in response to the identification of various barriers to employment and to leaving ODSP, the current program now includes other benefits meant to support employment including coverage of child care costs, the Employment and Training Start-up Benefit, and the Employment Transition Benefit. The Employment and Training Start-up Benefit offers an amount of up to $500 in a 12-month period for the recipient or other family members to cover the cost of items like uniforms, work boots, tools, grooming costs, transportation, and licences or professional fees. The Employment Transition Benefit provides $500 per 12-month period for those leaving ODSP for paid employment and the money can be as recipients see fit. Recipients must apply for these benefits. Also recognizing previous criticism, ODSP provides an Extended Health Benefit when a recipient no longer qualifies for ODSP because of income from other sources if the recipient's health care costs are high. Dental coverage for family members under 17 years of age continues under another program. Recipients can also apply for a Transitional Health Benefit that allows for coverage of health costs until a person is eligible for employment-related health benefits (Ontario, 2022b). The 2021 Provincial Auditor's Report detailed how the funding for employment supports has evolved, such that providers receive $1,000 when a person is placed in employment for six weeks, $6,000 after 13 weeks of cumulative employment, and up to 33 job retention payments for each month the person is competitively employed (Auditor General of Ontario, 2021).

Ultimately, the question of the effectiveness of programs such as ODSP's employment supports remains. There was some anecdotal evidence among service providers at the time of Gewurtz's (2011) study that employment outcomes improved with the policy shift to an

outcomes-based approach, though it was too early to measure when the research was conducted. Gewurtz et al. (2015) recommended "further study through the collection and analysis of employment outcomes including the number of job placements achieved, the types of jobs secured, job retention, and client and employer satisfaction" (p. 27). However, a recent scoping review of English research on active labour market policies similar to those in the employment supports program of ODSP found little evidence of their effectiveness for disabled people receiving benefits who are seeking employment (Lahey et al., 2019). The review searched for but did not find any studies on Canadian active labour market programming, which suggests that little evaluation of ODSP employment supports has been done. The 2021 Provincial Auditor's Report mentioned an evaluation commissioned by the Ministry in 2012 that showed that only 1.5% of disabled people accessing employment supports were able to earn enough money to no longer qualify for benefits. Other than that, according to the Provincial Auditor, the Ministry does not track the outcomes of the employment supports program (Auditor General of Ontario, 2021). Certainly, persistently high unemployment rates among disabled people and those who rely on ODSP suggest support for Lahey et al.'s (2019) findings on the lack of effectiveness of active labour market policies.

Undeterred by poor outcomes, in June 2021, the Ontario government announced a new employment supports system, under the umbrella of Employment Ontario and overseen by the Ministry of Labour, Training and Skills Development (Ontario, 2021b). The new system amalgamates services for disabled people with three other programs available to those with barriers to employment. This change is the first step towards "social assistance renewal" discussed later in the chapter. Key to the new approach is the introduction of a "Service System Manager (SSM)" role. These SSMs may be non-profit or for-profit service providers or

municipalities and are to oversee the work of employment services providers within a catchment area. Three prototype regions (Peel, Hamilton-Niagara, and Muskoka-Kawarthas) started piloting this approach in 2022. Service System Managers were selected through a multi-stage, competitive bid process. Two of the SSMs in the prototype regions are large international companies and one is a community college. The bidding process for SSMs for the remaining catchment areas is expected to be complete by the end of 2023 (Young, 2022).

The available material is a little vague on the role of the SSM. For example, in an evaluation of the first year of transition to the new system in the prototypes, they are described as having a "focused mandate on enhancing the effectiveness of the sector" (First Work, 2022, p. 28). Indeed, one of the recommendations of the evaluation report was to clarify the role of the SSM, noting that the organizations providing this oversight are also allowed to offer employment services, potentially putting them into competition with the local employment service providers they are meant to manage and support (First Work, 2022). In short, it seems that the government has introduced another layer into the system to lean on local employment services providers to improve outcomes.

The service providers under this new delivery approach will offer similar supply-side services to those offered under the previous program, including job searching, placement, and coaching. However, there will also be services for employers to help them find workers and coordinate training (Ontario, 2021b). Funding for these service providers will be decided within a "Performance Management Framework" set out by the government. Within this framework, SSMs must develop targets that take into account local labour market conditions that are then tracked against (complicated) key performance indicators. About 20% of funding will be "performance-based funding" based on clients' job retention, and the rest will be operational and

funding for employment-related financial supports (Thompson, 2022a). The evaluation report mentioned earlier referred to the "introduction" of a performance-based funding model as one of the major changes; however, the model described by Gewurtz (2011, 2015) above was also performance-based. Thus, this is a continuous feature of employment services, as are community concerns of disabled people being forced into unsuitable or undesirable jobs (Thompson, 2022b). Critics decry the contracting out of employment support services as privatization (PressProgress, 2021). However, Gewurtz's (2011) research indicates that employment services have long been contracted out, but the new system opens the door to large, multinational corporations.

The evaluation report noted that some of the employment services providers reported better communication and coordination between themselves and ODSP offices, leading to "more coordinated wrap-around supports" for job seekers (First Work, 2022, p. 48). At the same time, the report recommended that government "enhance programming and resources to serve and fully meet the needs of highly barriered, ODSP and OW clients" (First Work, 2022, p. 7). Moreover, it stated that some employment service providers that did not work with OSDP clients previously are now required to accept these referrals, sometimes leading to an increase in "negative client interactions" (First Work, 2022, p. 66). In a telling paragraph about providers having to work with "unmotivated" and "uncooperative" clients, the report called for "training and upskilling including motivational interviewing, social determinants of health, inclusivity and racism, and non-violent crisis intervention" (First Work, 2022, p. 66). Although the tone of the report was positive overall, the subtext suggested an ill-prepared workforce of service providers with inadequate resources, increased pressure, and unclear management structures.

Adequacy of Benefits

That disability benefit income is inadequate for keeping people out of poverty is well recognized. Boyce et al. (2006) provided an analysis of average disability benefits in Ontario in

1991, which would have been under the CAP, with those in 2001, which would have been under ODSP. Using National Welfare Council statistics and 2002 dollars, they showed that average annual disability benefits in 1991 were $13,000 per year, at 75% of the poverty line. (They do not specify which method they used to determine the poverty line.) In 2001, the average annual disability benefits were $11.446 per year, at 62% of the poverty line. Social assistance recipients fared even worse, with benefits at 46% of the poverty line in 1991 and 36% of the poverty line in 2001 (Boyce et al., 2006).

The Maytree Foundation, a progressive think tank "committed to advancing systemic solutions to poverty and strengthening civic communities" (Maytree, 2023), provides an annual analysis of welfare incomes in Canada. Using the Market Basket Measure (MBM) of poverty, they assess the adequacy of income for a single, childless person derived from ODSP, taking into account federal and provincial tax benefits and credits. (Single disabled people comprise the vast majority of the ODSP caseload.) Because the MBM varies by location and size of the community, their analysis of adequacy is based on Toronto data. Households with disposable income less than 75% of the MBM are considered to be in deep poverty. The MBM does not take into account the additional costs of living with a disability. In 2021, the income of a single disabled person on ODSP was 60% of the poverty threshold as measured by the MBM and 81% of the deep poverty threshold using the same measure. Furthermore, that income has decreased by 18 percentage points since 2002. Disability benefit income was above the deep poverty threshold in 2002 at 78% of the poverty line but fell to 62% in 2018 (taking into account a rebasing of the MBM.) Thus, disability income benefit income started the period of 2002–2021 above the deep poverty threshold, but fell below it in 2008, so disabled people living on

disability benefit income have been in deep poverty for 14 of the past 20 years when this calculation was made (Maytree, 2020).

Recent Reform Initiatives

As this chapter documents, social assistance seems to be under perpetual review. One such review in 2017 referred to "countless reports and recommendations over the past 30 years" that tend to document problems rather than lead to action (Ontario, 2017a, p. 164). However, the first major review of social assistance since the *Transitions* report in 1988 began in 2010 in the context of the Liberal government's 2008 Poverty Reduction Strategy. Community advocates had been pushing for a review, and the government even convened a Social Assistance Review Advisory Council composed of 11 community-based advocates and experts to help set the terms of reference (ISAC, 2012). That said, the review was also driven by rising caseloads and costs (Sheikh, 2015). In 2010, the government established the Commission for the Review of Social Assistance in Ontario led by former NDP politician Francis Lankin and economist Munir Sheikh. Sheikh (2015) summarized the terms of reference for the review: "to recommend ways to improve work-related outcomes while providing appropriate income supports and access to opportunities that will enable participation and attachment to the labour market, and guarantee security for those who cannot work" (p. 1). These terms of reference, particularly the emphasis on moving people into the labour force, were considerably narrower than the community-based advisory council had recommended—they had recommended a review of income security more broadly, including all federal and provincial programs and employment supports (ISAC, 2012; Ontario Social Assistance Review Advisory Council, 2010). Consultation with the Commission was done through an elaborate and extensive two-phase process around two discussion papers. The community was provided with multiple options for responding to the papers including

online, email, written submissions, and voicemail. The Commissioners visited 11 communities and held meetings with interested parties, including recipients. They also consulted extensively with Indigenous organizations and communities (Lankin & Sheikh, 2012). In October 2012, the Commission submitted a report to the Ontario government with 108 recommendations that focused on the benefit structure, employment supports, and system accountability (Sheikh, 2015) to "transform" social assistance in Ontario.

Had the report's recommendations been implemented, ODSP would indeed have been transformed. The report was quite comprehensive, taking into account other income security programs and tax measures, but what follows is a very brief discussion of some of the proposed changes to disability benefits.

Brighter prospects: Transforming social assistance in Ontario, as the report was called, proposed to integrate Ontario Works and ODSP into one system to be administered by municipalities and First Nations. In addition to social assistance, the program would offer a disability supplement. (Supplements would also be available for sole-support parents and children.) The Commissioners were concerned with streamlining a complex system, including the benefit structure. They noted that within social assistance as a whole, there were over 240 rates and various combinations of rates for basic needs and housing. The benefit structure would consist of a standard rate for all recipients, which the Commission recommended should be set at the current rate for Ontario Works plus an increase of $100 per month. This flat rate would replace the basic needs and shelter allowances and not require monthly receipts for housing costs. People living with other adults, regardless of the nature of the relationship, would receive 86% of the standard amount to recognize the savings afforded by sharing costs. The amount of the disability supplement would bring the benefit level to that of the ODSP benefit at the time. In

other words, there was no increase in the amount of income a disabled person would receive. Furthermore, the funding of the increase to the standard amount was to come at the expense of eliminating the Special Diet Allowance and the Work-Related Benefit. Importantly, in the fully transformed system that they proposed for the future, disability benefits would operate outside of the social assistance system and be available to all low-income people with disabilities. Similarly, the coverage of prescription drugs, dental care, and other health benefits would also be available to all low-income people.

Regarding employment supports, the report made several general observations and recommendations, starting with the "premise that everyone should be able to participate in the workforce to the maximum of his or her abilities" (Lankin & Sheikh, 2012, p. 49). This premise is questionable in so far as it assumes full employment and considerable flexibility on the part of employers. That said, the report recognized the additional barriers to employment that disabled people face and called for more intensive case management and wrap-around supports, such as help with access to housing. The report paid special attention to the needs of those with mental health issues, referring to a current provincial mental health strategy as a means to "develop service models that integrate treatment and employment programs" (Lankin & Sheikh, 2012, p. 49). It also made a rather vague recommendation regarding "increased flexibility" for First Nations to develop their own approaches. Moreover, it recommended developing a "distance from the labour market" approach in providing services, that is, an approach based on the variability in job readiness among social assistance recipients, who therefore require individualized services. The report also included a shout-out to social enterprises and self-employment as alternative forms of employment for disabled people. The report attempted to address demand-side employment issues with a nod to the anti-discrimination legislation, a

discussion of making the system easier to navigate for employers, and a recommendation for the development of employer councils to assist in the design of a renewed employment supports program. Under the recommended scheme, responsibility for these programs would be moved to municipalities. Probably the most radical, and certainly most controversial, recommendation was that a transformed social assistance program would require disabled recipients to participate in the employment supports program or risk reductions or loss of benefits (Lankin & Sheikh, 2012). Needless to say, this was not well received in the advocacy community (ISAC, 2012).

Finally, *Brighter prospects* called for greater accountability in the delivery and transformation of social assistance through the appointment of a provincial commissioner to champion the changes, the development of service agreements that include outcomes, targets, and performance measures for municipalities and First Nations delivering the program, and the public reporting of outcomes (ISAC, 2012; Lankin & Sheikh, 2012). One specific target that the report recommended caught the alarmed attention of the advocacy community: a target to reduce the number of people with disabilities receiving social assistance (Lankin & Sheikh, 2012). The report argued that a reduced social assistance caseload would free up funds for its proposed disability and health benefits for all low-income people. The advocacy community argued that caseload reduction should be achieved by successful outcomes from an improved program, not through arbitrary targets (ISAC, 2012).

Like most of its predecessors, *Brighter prospects* had little impact on social assistance. One advocate observed that there was “no wholesale endorsement” of the report by any of the interested parties, and that the Minister of Community and Social Services at that time seemed to distance himself from its recommendations almost as soon as the report was released (ISAC, 2012). Writing in 2015, one of the Commissioners commented on the government’s response to

the report, noting that the key recommendations for "transforming" the system had not been implemented, the high program costs that prompted the report continued to grow, and the program was as still complex (Sheikh, 2015.)

In 2017, the government produced another report, *Income security: Roadmap for change,* which was more along the lines of what advocates had been hoping for. At the request of the Liberal government, three working groups produced a strategy for reforming not only social assistance, but also other programs including EI, CPP, workers' compensation, veterans' programs, and supports for low-income wage earners. Two of the three working groups represented the interests of Indigenous people and the report reflected this in its "overarching themes": "investing in people", "addressing adequacy", and "recognizing the experience of Indigenous people" (Ontario, 2017a, pp. 2–3). Working groups comprised members from agencies, academia, health care, community organizations, and key Indigenous organizations. Their vision of an income security system included a housing benefit for all low-income people, supports for children, an enhanced working income tax benefit, core health benefits for all low-income people, and access to justice through the appeal systems. Regarding social assistance specifically, the report pointed to the need to move away from a culture of rules and surveillance to one of collaboration, trust, and problem-solving focused on improved outcomes for people on social assistance. They also recommended establishing a "First Nations-developed and implemented program" (Ontario, 2017a, p. 11). The report called for a revamped legislative framework to benefits achieve this.

Unlike the Commission's report, *Roadmap* called for a minimum income standard for Ontario to be achieved by combining supports across programs. Furthermore, the minimum recommended would bring people to the level of the LIM initially, that is 50% of the median

after-tax income in the province, and subsequently to a minimum determined by a made-in-Ontario, regionally adjusted MBM of poverty. For people with disabilities, this minimum would be 30% higher to reflect the additional costs of living with a disability. Indeed, with regard to disability benefits, the report recommended designing an "assured income" approach in consultation with disabled people. Features of this approach included allowing benefit stacking to achieve income adequacy, removing the assets limits so that eligibility was based on income alone, and using the tax-based definition of income so that financial gifts would no longer be considered income. They also recommended that First Nations be allowed to administer ODSP in their own communities, as they do Ontario Works. The report also repeated well-worn concerns about reducing the complexity of the application process and providing navigational support for applying, as well as introducing a flat-rate benefit. In contrast to the Commission's report and reflecting the disability community's concerns, the report recommended retaining the current definition of disability, keeping a distinct disability benefits program, and maintaining the Special Diet Allowance, the Work-Related Benefit, and other special benefits that the Commission would have eliminated to free up funding for increased benefits.

In contrast to *Brighter prospects, Income security: A Roadmap for change* was well received and endorsed in the disability advocacy community, with groups urging the government to implement the recommendations (Grinspun, 2018; ISAC, 2017b). The Liberal government started to implement some of the recommendations of the report, including several rule changes that disability advocates called "positive". These rule changes included increases to base benefit rates and amounts for various other allowances (ISAC, 2018). Ultimately, the impact of the report was denied by a change of government and the election of the Conservatives led by Doug Ford in 2018.

Reform under the Ford Government

Elected in June 2018, the Conservatives acted promptly with an announcement of a 100-day review of social assistance in July 2018. With this announcement of a "new direction" for social assistance, they paused the rule changes and cut a previously promised rate increase of 3% to 1.5%. They also eliminated the Transition Child Benefit, which provided up to $230 a month for social assistance recipients and other low-income people who do not qualify or who are waiting to receive tax-related child benefits. In November 2018, they made another announcement with more details, including a goal of reducing program costs by $720 million by 2021–22, and most significantly, a change in the definition of disability as discussed above (Mahboubi & Ragab, 2020). Just as they abandoned this move to change the definition of disability, they also walked back most of their reforms for changes in earnings exemptions and clawback amounts in the following year and maintained the Transition Child Benefit, likely in the face of protest and falling popularity (Mahboubi & Ragab, 2020; Monsebraaten, 2019).

The new government's social assistance reform began in earnest in early September 2020 with the announcement of its plan to modernize social assistance with the aim of moving more people into employment (Ontario, 2020). With a decidedly different tone from its initial attempt at reform, the government released *Recovery & renewal: Ontario's vision for social assistance transformation* in February 2021, with its vision for the renewed system:

> To create an efficient, effective and streamlined social services system that focuses on people, providing them with a range of services and supports to respond to their unique needs and address barriers to success so they can move towards employment and independence. (Ontario, 2021a)

As part of its reform initiative, in September 2022, the Conservative Ford government raised ODSP rates by 5%, with a first-time commitment to adjust them annually by an amount "tied to inflation" (Ontario, 2023a). Asset limits have been increased substantially to $40,000 for a single recipient and $50,000 for a couple. As mentioned, the earning exemption limit, as of February 2023, is now $1,000, with a clawback of 75% on earned income above that amount. The maximum monthly benefit amount for shelter and basic needs for a single person is currently $1,228 and $1,839 for a couple (ISAC, 2022).

Because the reforms are occurring in real-time, the documentary evidence of this reform initiative currently available consists of government announcements, internal memos, and presentations, as well as some early analysis from policy analysts. There is little material, such as submissions to consultations, on the websites of the Income Security Advocacy Centre and ARCH Disability Law Centre addressing these changes. Consequently, most of the available information is high level. Further, the focus is on social assistance broadly, so it is difficult to discern all the implications of these reforms for ODSP, except where it is mentioned specifically. That said, what is clear is that the reform initiative, with its focus on employment for social assistance recipients, rests on three key components: the overhaul of employment supports programs discussed previously; streamlining and digitizing the application and monitoring processes to free up the time of caseworkers; and shifting the focus of caseworkers from administration to intensive one-on-one supports, including referrals and coordination of "life stabilization" supports, also called "stability supports". The ultimate aim of the reform is to move towards a (rather vaguely defined) integrated "human services model". This means making intensive support available to all those who need it, even if they are not currently using social assistance, keeping the focus on gaining and maintaining employment and getting or keeping

people off social assistance (Kapoor, 2021, Ontario, 2021a). This transformation is to take place in three phases: late 2020 to 2022 to centralize and digitize the application process; 2022 to 2024 to see the realignment of service delivery to focus on providing stability supports and resource coordination; 2024 to move forward with developing the "human services model" (Azouz, 2021; Ministry of Children, Community and Social Services, [MCCSS], 2020). The government is "co-designing" the new system with ongoing consultation with clients, caseworkers, and municipalities (MCCSS, 2020; Ontario 2021a). While municipalities seem to be highly engaged, some recipients of Ontario Works and ODSP reported in 2021 that they had not been consulted (Amin, 2021).

The push for social assistance reform came in the face of the COVID-19 pandemic and a forecasted 21% increase in demand for social assistance in 2021–22 as the economy recovered and federal pandemic-related income supports ended (MCCSS, 2020, 2022; Sheehy, 2021). However, the often-repeated concerns about the low number of people able to leave social assistance and the high rate of return to the system were also cited (Ontario, 2021a). Much was made of the amount of caseworkers' time and energy devoted to paperwork and the need to streamline processes so that caseworkers could spend their time assisting clients. In his letter introducing the new vision, then Minister of Children, Community and Social Services, Todd Smith noted that ODSP offices generate 35,000 pieces of paper per day (Ontario 2021a).

On first blush, the emphasis placed on "life stabilization" supports, in recognition of the impact of precarious or absent housing, physical and mental health needs, and social exclusion on the probability of finding and retaining employment appears to augur a kinder, gentler social assistance system. Indeed, these are the kinds of changes that advocates have been calling for (Amin, 2021, Azouz, 2021). With this emphasis, the renewal framework relies heavily on the

role of caseworkers in facilitating this life stabilization through "hands-on assistance to help people navigate the broader system of community supports" regarding housing, primary health care, child care, mental health and addictions services, literacy, and the social assistance itself (Ontario, 2021a). Indeed, the amendment to the *Ontario Works Act* that provides the legislative authority for these changes redefines "assistance" to include "life stabilization assistance" meaning "the prescribed assistance to help a person become and stay employed" (Kobluk, 2021, p. 32). Because ODSP is regulated by its own *Act*, it is not clear what the implications of this are for disabled people receiving benefits.

In 2021, the social assistance reform initiative was renamed "Social Assistance Renewal" "to signify that this is a long-term endeavour that will transform the system for many years to come" (MCCSS, 2022, p. 3). "Life stabilization" became "stability supports" at this time, with the stated reason that "life stabilization" implies that services will lead to "a guaranteed outcome or end-state for clients" (MCCSS, 2022, p. 2). The new term does not presume "the impact on someone's circumstances" (MCCSS, 2022, p. 3). This might be a reaction to concerns raised in the advocacy community that "life stabilization" services had yet to be defined, and it wasn't clear if eligibility for benefits could be tied to participation in these services. The Income Security Advocacy Centre raised the concern that achieving "life stabilization" was unlikely for those living in the deep poverty afforded by social assistance benefits and navigating an increasingly precarious labour market (see also Stapleton & Soh, 2021). They worried that reforms created unrealistic expectations for support services to achieve, especially considering that these services, such as affordable housing and culturally appropriate addiction services, are in short supply in the first place (Kapoor, 2021; Kobluk, 2021). It is significant that in the documentation I saw, there was no mention of increased investments in these services, only a

call for better coordination of existing services. Nor did I see an answer to the question of whether participation in stability supports was tied to receiving benefits for either Ontario Works or ODSP recipients.

As mentioned, to make this caseworker time available, the initial phase of the renewal initiative began in late 2020 with centralizing, streamlining, and automating the application process for Ontario Works, and presumably ODSP, though it is not mentioned in the vision document. Certainly, the Disability Determination Package has been digitized, with input from health care providers, and access to an electronic messaging service for communication between clients and caseworkers has been expanded (MCCSS, 2022). Applications that are received through a new digital application process will undergo a "risk-based eligibility determination" process that automatically verifies applicants' information with third-party information, a process that the Provincial Auditor noted was lacking (Auditor General of Ontario, 2021). Those applicants deemed to be low or medium risk can be approved immediately, with a follow-up within 30 days. Those deemed high risk are still referred to local offices for further investigation (MCCSS, 2020.). Presumably, the financial eligibility for ODSP will be determined through this method. Another component of the streamlining process gives recipients access to a new electronic two-way communication portal called MyBenefits. This portal allows for direct communication with caseworkers, allows recipients to meet their various reporting requirements, such as reporting income and changes in their situation, and gives the recipient access to some of their records (City of Toronto, n.d.).

Because the changed role for caseworkers, from enforcer to enabler, is so critical to the success of the reforms, much weighs on the success of the streamlining and digitization of these functions, including the willingness and ability of applicants and recipients to use them. The

concerns raised earlier regarding the accessibility of the application process for those with mental health and developmental disabilities, as well as computer access and broadband availability in rural and remote areas, apply here. Advocates noted that 52% of low-income households do not have internet access (Stapleton & Soh, 2021). It seems unlikely that in-person and telephone applications will be completely replaced. Moreover, this strategy assumes that the technology will work as intended. (Anecdotally, a current discussion (February 12, 2023) on the listserv of the ODSP Action Coalition complains that the new portal is "buggy". The recipient wrote that she was unable to complete her reporting, so will have to follow up by phone in any case. Others expressed their reluctance to sign up for the new service. One policy advocate recently stated that about 25% of ODSP recipients have signed up for MyBenefits at this point [Social Assistance Coalition of Scarborough, 2023])

The most significant structural change in the program is that the administration of financial benefits is to be uploaded from municipalities to the province for Ontario Works (ODSP was already fully administered by the province), and municipalities will be responsible for providing "intensive support" (Ontario, 2021a) through case management for both Ontario Works and ODSP recipients (Kapoor, 2021).

Municipalities appear to be ready to take on this role. An August 2021 backgrounder from the Association of Municipalities Ontario (AMO) stated:

> Municipal governments are well positioned to provide integrated human services to people while the Ontario government is the appropriate primary funder for provincial income support programs. AMO is pleased with the government's commitment to co-design social assistance transformation in ways that meet the needs of communities and

> protect municipal governments from increasing social assistance costs which is an ongoing active effort. (Association of Municipalities Ontario, 2022)

Memos and regional newsletters available on the internet show regional municipalities taking the changes in stride. Similar to the statement of the Association of Ontario Municipalities, one City of Toronto memo echoed the sentiment that it is well positioned to work in the new system, noting that the focus on stability supports aligns with its own planning and initiatives, including its own poverty reduction plan (Azouz, 2021). The same memo, however, repeated the City of Toronto's call to increase benefit rates to reflect the local cost of living. It also noted that the inclusion of ODSP recipients represents a highly likely increase in the caseload of an unknown quantity. It further recognized that many of these additional people using services will have more complex needs than the pre-reform clientele, though beyond that there seems to be little concern for an increased workload for caseworkers. The memo did point out, however, that at the time it was written (2021), it wasn't clear if the centralization of administration and employment services would affect funding levels for the city's delivery of services. Nor was it clear what the impact would be on the client's experience as they are "handed off" among the three functions of application, employment services, and stability supports—not to mention their navigation between the new social assistance structure and other programs, such as child care subsidies, in which the city maintains its administrative role. Nevertheless, it concluded that the province's changes to the social assistance system are "positive and welcome" (Azouz, 2021, p. 15).

The Ontario Public Service Employees Union (OPSEU), which represents 5,000 workers in ODSP and Ontario Works across the province, was less sanguine. In 2021, the union predicted the changes would create "chaos and uncertainty" for ODSP recipients, especially with changes

coming in the middle of a pandemic (Ontario Public Service Employees Union [OPSEU], 2021). OPSEU objected to the digitization process, arguing that removing human interaction will lead to more errors. The union pointed out the access issues noted by other critics. It also voiced suspicions that the changes were designed to remove disabled beneficiaries from caseloads "under the guise of employment and independence" (OPSEU, 2021). OPSEU has long advocated for uploading social assistance programs rather than having "dozens of municipal governments" with varying capacities running them, so it is no surprise that the union would object to downloading the work of its members. Any campaign against the changes, however, appears to be muted, with little coverage on their website and no uproar in the media as the reform initiative is underway. Thus, little is available on the workload aspects for caseworkers that may result from these changes.

Repeated calls over the years for social assistance recipients to be treated with respect and dignity suggest that they haven't been so (Lankin & Sheikh, 2012; ODSP Action Coalition, 2011; Ontario, 2017a). Research at various times over the lifetime of ODSP has shown uneven and strained relationships between caseworkers and applicants and recipients, creating confusion, fear, and distrust in the rule-dominated realm of ODSP (Chouinard & Crooks, 2005; Gewurtz et al., 2019; Hyland, 2001). It will be interesting to see if uploading the enforcement of rules to the province and downloading the provision of supports to the municipalities has any impact on changing the culture, and ultimately, the experience and outcomes for ODSP applicants and beneficiaries.

Conclusion

Disability benefits have moved from a simple, flat-rate benefit available to a small portion of the disabled population deemed unemployable to a complex, rule-ridden program with

growing caseloads. (Indeed, this narrative provides only a partial depiction of that complexity.) Explanations for this rise in benefit use vary, with the Provincial Auditor almost suggesting the program is a free-for-all, and others pointing to an aging population, ongoing discrimination, and an increasingly precarious labour market that limits access to employment-based benefit programs.

Despite aspirations to "transform" the system to provide dignity and security, the history of disability benefits in Ontario tells a tale of tinkering rather than transformation. Governments have openly stated their aim as reducing caseloads, though couched in terms of "doing better" for recipients. Though more direct evidence is needed to make a rigorous claim that the community has influenced the substance of this tinkering, many changes reflect improvements recommended by the disability community and policy advocates. These measures include increased assets allowances and measures to incentivize employment such as higher earnings exemptions, lower clawback rates (until recently), rapid reinstatement after leaving the program for employment, and continued and extended health benefits while employed. Most recently, reforms even include long-demanded recognition of, though not investments in, the multiple barriers to employment and independence faced by people with disabilities, such as affordable housing and access to a host of services. These latest reforms are banking on the efficiency of technology combined with high expectations for one-on-one casework to shift the culture of social assistance, including disability benefits, to be more supportive and conducive to helping people find employment.

One demand that is always ignored, however, is increasing benefit levels to bring disabled recipients out of poverty. The response to this demand reflects the capitalist state's conundrum regarding social assistance more broadly: that the sanctity of commodified labour power and its role in capital accumulation must be protected, even if doing so creates misery.

Neither moral arguments nor "business-case" arguments that the reduction of poverty leads to lower costs in the health care and criminal justice systems have successfully challenged this ideology, at least in liberal welfare states. Adequate social assistance rates would also threaten to put upward pressure on wages if workers had reasonable alternatives to low-paid, precarious employment.

Indeed, the understanding of social security as a justified collective response to capitalism's shortcomings in consistently providing for all citizens has reverted to one of individual responsibility under neoliberal ideology. This should not be overstated; no doubt, receiving social assistance of any kind has always been stigmatized, and benefits have never been adequate to keep people out of poverty. However, the public discussion of social security in the late twentieth century seems to have dispensed with any notion of a universal and comprehensive approach in favour of residualism. Similarly, any federal role, however minimal, for ensuring national standards no longer applies.

As concepts of social security were changing, so too were concepts of disability. Governments eagerly paid lip service to a socio-political concept of disability, advocating for, as it does, the genuine desire of disabled people to work and contribute to society. However, a socio-political understanding of disability can have drawbacks in a capitalist economy. The double-edged discourse of employability removes the demeaning label of "unemployable" from the disability benefits process but also stigmatizes disabled people who feel they cannot work. There is also the potential to create pressure to accept unsuitable work. So far, access to disability benefits has not been tied to participation in employment supports in Ontario. For the moment, disabled beneficiaries continue to occupy the ambiguous position of the "deserving poor".

Chapter 9: Who has the Better Deal Today?

In light of the changes to workers' compensation and general disability benefits described in the historical narratives, how do the two programs compare today? The short answer to this question is that workers' compensation continues to be an institutional social program that provides reasonable income security (currently 85% of net average earnings) to a large majority of those who rely on it. The ODSP continues to be a residual program of last resort that fails to keep disabled people out of poverty. The long answer is, of course, more complex.

Significant changes to the workers' compensation system in the 1980s and 1990s have effectively created two systems: one for those temporarily unable to work due to injury or illness and another for injured workers with permanent impairments who cannot return to work. These changes, described in Chapter 7, were the replacement of pension awards with the dual-award system, the renewed emphasis on returning injured workers to the labour force, and deeming. General disability benefits have also seen significant changes, morphing from a lifetime pension only for those with the most severe impairments who cannot work into a complex, needs-based, rule-driven system available to people with a broader range of impairments.

As in Chapter 6, this comparative analysis proceeds at two levels: a side-by-side policy analysis of each program considering eligibility, population coverage, and decommodification and a broader social analysis. Some comparisons between the earlier and current versions of the programs are also included.

Policy Analysis

Eligibility and Population Coverage

Workers' Compensation

Workers' compensation is still mandatory for Schedule 1 and Schedule 2[18] employers, listed in the *Workplace Safety and Insurance Act,* Schedule 1 currently includes mining, manufacturing, transportation and storage, retail and wholesale trades, construction, and some service industries such as hospitality and full-time domestic workers (who were not covered under the original legislation). Temporary workers supplied by agencies are also covered. Schedule 2 includes provincial governments, municipal governments, railways, and telephone companies licensed by the federal government. (Some municipalities have chosen to become Schedule 1 employers.)

A worker who is eligible for coverage must be in a "contract *of* service" or apprenticeship, which means that the worker has agreed to do work for wages or salary. A worker operating under a contract *for* service, also known as an independent contractor, agrees to perform a specific job in return for payment and is not automatically covered (Office of the Worker Advisor, [OWA] 2013b). (However, in the construction industry, workers, independent operators, sole proprietors, partners in partnerships, and executive officers of corporations are automatically covered by workers' compensation [OWA, 2013a]). This distinction is important because of the rise of precarious employment, discussed below. Currently, if a worker's employment status is disputed regarding workers' compensation, the WSIB has the authority to determine eligibility. The decision is appealable (OWA, 2013b). According to Mustard et al. (2012), about 30% of Ontario workers work under employment relationships not covered by

[18] Recall that Schedule 2 employers do not take part in the collective liability aspect of workers' compensation. Instead, these employers are directly responsible for compensating injured workers. They also tend to be large, well-funded organizations with the legal resources to contest claims.

workers' compensation; thus, about 70% of Ontario's workforce is covered. More recently, MacEachen et al. (2021b) state that 75% of Ontario workers are covered for workers' compensation, based on information from the Association of Workers' Compensation Boards of Canada. As such, coverage of the population for workers' compensation has expanded from our earlier crude estimate of 53% in the program's early days. With the rise of precarious employment, however, structural changes to the economy that potentially threaten eligibility and population coverage for workers' compensation.

Precarious Employment. The extent of precarity in the labour force is a matter of debate and its impact on workers' compensation benefits coverage is relatively under-researched. Lewchuk (2021) claims that precarious work has transformed labour markets through changes in economic and labour policies starting in 1979, but acknowledges that there are a number of definitions of "gig" work. In one study, Statistics Canada used a broad definition of gig work as referring to those who are paid a negotiated amount of money to work under various contracts with firms or individuals to do specific tasks or to work for a specific period. The study included independent contractors or freelancers and "on-demand workers hired for jobs mediated through the growing number of online platforms" such as Uber and Task Rabbit, as gig workers (Jeon et al. 2021, p. 1639). Using administrative (tax) data, this study found that the proportion of gig workers among all workers rose from 5.5% in 2005 to 8.2% in 2016 and that women were slightly more likely to take part in gig work than men. Only about half of gig workers relied on gig work alone; that is, half were also employed for wages or salaries (Jeon et al, 2021). Koehoom et al. (2019) report that Statistics Canada's General Social Survey, an annual cross-sectional survey, showed that 80% of those employed at the time of the survey in 2016 were in regular employment relationships. However, a study by the Bank of Canada, also using survey

data, estimates that 30% of Canadian workers participated in “some form of paid informal employment in 2018” (Lewchuk, 2021, p. 192). Lewchuk (2021) drew from a 2017 Statistics Canada report that used census data. This report shows that “by 2015, the percentage of male employees aged 25–54 working full-time and full-year had fallen to 56.2% from 65.2% in 1980. For women, 43.7% were working full-time and full-year in 2015, down from 46.4% in 2005” (Lewchuk, 2021, p. 191). Thus, by 2015, less than half of Canadians aged 25 to 54 had full-time full-year employment since 1980 when Statistics Canada first started collecting these data (Lewchuk, 2021). Though low wages are a prominent concern in the literature on precarious employment, Lewchuk et al. (2014) document that precarious employment “has spread to even middle income occupations” (p. 52).

In Ontario specifically, a 2017 study done for the Ontario Ministry of Labour used data from the Statistics Canada Labour Force Survey to determine that over a quarter (26.6%) of the workforce was in non-standard employment in 2015. Non-standard employment here refers to temporary employees such as term/contract, seasonal, and casual workers, self-employed with no employees, and involuntary part-time employees (i.e., workers who would work full-time work if possible, and/or those holding multiple jobs). The report notes that non-standard employment grew from 23.1% of the workforce in 1997 to 26.6% in 2015, at an average annual rate of 2.3% per year, nearly twice as fast as standard employment (1.2%) (Ontario, 2017b).

There are, however, various employment relationships within the precarious economy, some of which still allow for workers’ compensation coverage. For example, workers contracted through Temporary Work Agencies are eligible for workers’ compensation. Temporary Work Agencies hire workers for placement with a third party, often because the third-party employer seeks to avoid human-resources management tasks and expenses. Since the 1990s, companies

have used Temporary Work Agencies to contract part of their labour force "as a medium- or long-term strategic alternative to direct employment" (MacEachen et al., 2012b, p. 79). In 2011, Lippel et al. (2011) noted there are more than 700,000 temporary workers in the Canadian economy. MacEachen et al., (2012b) argues that temporary agencies "are positioned to manage workers' compensation costs for the client employer by absorbing accident costs and liability, and by paying low premiums because of their classification in relatively favourable rate groups" (p. 84). This situation incentivizes the contracting out of the most hazardous work because if an injury occurs, the client employer's health and safety record, workers' compensation costs, and experience rating charges are protected (Lippel et al., 2011; MacEachen et al., 2012b). Lippel et al. (2011) describe other advantages enjoyed by agencies:

> If the [agency] is small or under-declares payroll, experience rating rules may differ, and the cost of the work accident may have fewer repercussions for the [agency], which may also reduce [workers' compensation] costs by paying workers less than they would be paid by a client employer offering the same job. (p. 75)

At the same time, however, the Temporary Work Agency is not in a position to effectively manage the health and safety conditions under which the contract workers are employed. Several international studies show a higher prevalence of work injuries among temporary workers (Lippel et al., 2011; MacEachen et al., 2012b). Despite the lack of control over workplace safety, Temporary Work Agencies are subject to experience rating, meaning that the cost of their WSIB premiums increases depending on their safety record. As discussed in Chapter 7, one of the concerns about experience rating is that it encourages claims suppression and the contestation of claims. Qualitative studies conducted by MacEachen et al. (2012b) and

Lippel et al. (2011) through interviews with agency operators, temporary workers, and Compensation Board staff found evidence of claims suppression and contestation. In addition to their own findings, Lippel et al. (2011) cite two U.S. studies that found claims were more likely to be contested by Temporary Work Agencies. (See also MacEachen et al., 2012b). Furthermore, Temporary Work Agencies employ some of the lowest-paid and most precarious workers who may not even realize that they are covered by workers' compensation and may not be willing to make claims and speak up about health and safety hazards (Lippel et al., 2011; MacEachen et al., 2012b). After all, the worker's next temporary job depends on a good relationship with the agency.

As such, precarity in the labour force potentially exacerbates an existing problem of claims suppression and under-reporting of injuries and illness. Not mentioned in the earlier discussion of claims suppression is the issue of abandoned claims, which as one report notes, merely "suggests a *risk* of claim suppression" (Prism, 2013, p. 4, original emphasis). The same report found that in 10% of the abandoned claims investigated, claimants were pursuing benefits under a different insurance or benefit program, an unlikely prospect for those precariously employed. Further, the report does not comment on the inappropriateness of this practice in terms of experience rating, collecting accurate data on occupational accidents and disease, and the social justice involved in ensuring that employers are financially accountable for workplace safety. According to WSIB data obtained through a freedom-of-information request by the Injured Workers Community Legal Clinic, over 27,000 claims (both lost-time and non-lost-time) were abandoned in 2020, representing nearly 14% of all claims that year. The same data shows that both the absolute and relative number of lost-time claims that were abandoned has increased. There were over 1,500 more abandoned lost-time claims in 2020 than in 1993, even though there

were 167,000 fewer registered claims in 2020 than in 1993. As a percentage of registered claims, the number of abandoned lost-time claims doubled from 1993 to 2020 (ONIWG, 2022).

Overall, it is difficult to quantify the specific impact of precarious employment on access to workers' compensation benefits. Recall Stapleton's (2013) analysis of the "welfarization" of disability incomes, which notes that the proportion of the Canadian population receiving workers' compensation benefits declined from 4.2% in 1992, to 2.4% in 2009, while the proportion of social assistance recipients also receiving benefits from other public programs such as CPP-D and workers' compensation increased from 5% to more than 10%. He attributes this, in part, to the lack of availability of workers' compensation benefits. Using data from the Canadian General Social Survey from 2016, Koehoom et al. (2019) note that 28% of those identified as precariously employed stated that they had no employment benefits. Only 6% of those in regular employment reported having no benefits. These authors found "the greatest disparity between precarious employment and no benefits" concerned disability insurance and supplemental medical benefits; whereas, "the least disparity was reported for workers' compensation benefits" (Koehoom et al., 2019, p. A37). They urged more research into this situation, but overall, it appears that a large majority of the working population is still covered by workers' compensation. As the discussion of claims suppression and abandonment shows, however, coverage does not necessarily translate into protection.

Adjudication. In addition to claims not filed for these various reasons, eligibility is also affected by whether a claim is accepted. Recall that, in 2015, former WSIB president and CEO David Marshall stated that 80% of claims were accepted (Gilbert, 2015), a claim supported by WSIB's statistics. The claims acceptance rate hovered between 77% and 79% for the years 2012 to 2021 (WSIB, n.d.b). WSIB's 2022 statistics, however, showed a drop to 70%, with 255,334

claims filed and 181,943 accepted (WSIB, n.d.b). (The number accepted includes both lost-time and no lost-time claims.)

Although eligibility continues to be automatic once it has been determined that injury or illness "arose and occurred" in the course of employment, the determination of work-relatedness is not always straightforward, particularly as the nature of workplace injury has changed with the evolution of work. An injury arises in the course of employment "when it is caused by the nature, conditions, or obligations of employment" and when it "happens at a time and place consistent with the obligations and expectations of employment" (Barnetson, 2010, p. 113). Barnetson (2010) notes that the time and place of the injury may not be strictly limited to regular hours of work and the workplace per se, but there must be some relationship between those factors and the occurrence of the injury. Further, the legal test of "causative significance" is applied, meaning that there must be evidence that employment played a significant role in the occurrence of the injury, though it does not have to be the only or predominant cause (Barnetson, 2010).

Adjudicators are expected to consider the "balance of probabilities" in assessing the work-relatedness of an injury, as distinct from a standard of scientific certitude. When the evidence of work-relatedness is equally weighted in favour or against, the determination is supposed to give the injured worker the benefit of the doubt. The assessment relies heavily on the biomedical approach to injury and disease that provides "objective" measures and tests, as opposed to workers' self-reports. As Barnetson (2010) points out, this type of assessment works well for traumatic injuries in which the time and place of the accident are clear, such as those that predominated when workers' compensation was developed. Many workplace injuries, and especially occupational diseases, no longer conform to these tests and haven't for decades.

Storey's (2006, 2008, 2009b) history of the injured workers' movement in Toronto described how injured workers' experiences with the "balance of probabilities" principle proved to be just the opposite of its intent. The increasing number of claims for invisible, difficult-to-diagnose conditions such as low-back pain, chronic pain, and mental health concerns often made many injured workers feel they "were guilty of falsehoods and malingering until they could prove otherwise" (Storey, 2006, p. 70). Storey (2008) writes of the discrimination faced by Italian workers in the 1970s and 1980s as "suspicions and prejudices…found a way into assessments through phrases such as… 'spaghetti' back", which was based on a dubious medical theory that people from Mediterranean countries had a disposition to weak backs (Storey, 2008, p. 112). Similarly, changes in technology, the intensification of work, and the growth of the service sector have been associated with an increase in work-related musculoskeletal disorders, such as sprains, strains, and repetitive strain injuries. Repetitive strain injuries, in particular, are cumulative and multifactorial, so can be difficult to associate directly with work requirements (Barnetson, 2010). Barnetson (2010) notes that there has been a tendency in North America to suggest a psychological origin for these injuries, further complicating the workers' compensation claim process. Thus, in addition to the policy changes described earlier that have increased the level of discretion involved in adjudicating workers' compensation claims, the changing nature of workplace injury also has an impact on the overall eligibility for workers' compensation.

Disability Benefits

Eligibility for provincial disability benefits has been discussed at length in the previous chapter, with contradictory conclusions. People in the disability and advocacy community portray a system that is difficult to access, while the Provincial Auditor suggests lax controls and a permissive appeals process. However, in the context of the expansion of social assistance more broadly, population coverage and eligibility for disability benefits have expanded since the days

of the *Allowances for Disabled Persons Act* of 1952. Recall that using Guest's (1999) analysis, we estimated that over 70% of the disabled population (about 236,000 in 1950–51) would be ineligible for the allowance, which was aimed at only those disabled people unable to work. Surprisingly, making a similar calculation for the current period is difficult due to the availability and comparability of data, so the following estimation is very crude. Currently, there are over 1.5 million disabled people in Ontario, based on 2017 data (Statistics Canada, 2022). Unfortunately, data for other measures are even older. Based on 2012 data, the participation rate of disabled people, that is, the number working or actively looking for work was nearly 53%. This includes about 68,000 unemployed. The number of disabled people not in the labour force, also based on 2012 data, was 449,520 (Statistics Canada, 2023a). Combining the unemployed and those not in the labour force, 517,520 disabled people were without employment income. Some disabled people may have income from other sources, such as settlements from motor vehicle accidents and other kinds of accidents, workers' compensation, private disability benefits, and CPP-D. Current ODSP caseload statistics peaked at about 370,000 from January 2022 to January 2023, allowing for a crude estimate that about 70% of disabled people without employment income are covered by public disability benefits, a considerable improvement over the 1952 estimate of 30%.

More recent data would likely influence this estimate if employment among disabled people has increased in Canada as it appears to have in the United States. There is some evidence in the United States that labour shortages and the growing acceptability of working remotely due to the pandemic have improved labour force participation rates for people with disabilities (Kessler Foundation, 2023; Ozimek, 2022). One study found that the employment rates of disabled people were rising faster than those of non-disabled people before the pandemic, which

suggests that both pandemic factors and a tight labour market are contributing to this trend (Ozimek, 2022). Disabled people maintained their participation rate during the pandemic and then saw it rise in 2021 and 2022. The year 2022 saw a historically high labour force participation rate of 37% for disabled people in the United States, up from 33% pre-pandemic. By contrast, the participation rate for non-disabled people was 77.3% pre-pandemic and still had not fully recovered by 2022 when it sat at 71.1% (Kessler Foundation, 2023). Despite being a historic high, 37% is still a very low participation rate and much lower than that provided by Statistics Canada for Ontario in 2017, but coming as it does at a time of labour shortages does lend some credibility to the notion that disabled people represent a reserve army of labour.

Technically any person in Ontario who is disabled enough and poor enough could qualify for disability benefits. Disability benefits programs limit the amount of liquid assets a recipient may keep, whereas workers' compensation does not. This highlights the targeted, residual nature of social assistance compared with the social insurance model of workers' compensation. Interestingly, the asset limits for disability benefits have changed dramatically over the lifespan of disability benefits in Ontario. When allowances for blind and disabled people were first introduced in the 1950s, asset levels were set very high at $50,000. The thinking behind this policy was that blind and disabled people's "requirements" may grow over time and they would need resources to meet them (Stapleton, 2009, p. 17). This was changed very suddenly with the introduction of the CAP in 1966. Allowed assets dropped precipitously from $50,000 to $1,000, though Ontario was forced to allow all disabled people to retain the level of assets allowed under the earlier programs as they were moved into the new programs (Stapleton, 2009). From there, asset limits had nowhere to go but up and increased from 1967 to 1981. In 1981, Ontario adopted the CAP guidelines for asset limits. Recall that the CAP did not impose many hard-and-fast rules

on the provinces, other than eliminating residency requirements, requiring an appeals procedure, and prohibiting workfare. It did, however, provide guidelines, along with a certain amount of "moral suasion" (Stapleton, 2009, p. 18). Stapleton (2009) described the adoption of the CAP guidelines for asset limits as the second "high water mark" for Ontario's asset rules for social assistance (the first being the limits under the original program) (p. 18). Then, under the Harris government in the mid-to-late 1990s, asset limits fell again. The current asset limits of $40,000 for a single disabled person and $50,000 for a couple are the third high watermark. I can find no documentation of the rationale for this increase, but perhaps it recognizes long-held policy advice that creating destitution by forcing people to divest themselves of liquid assets only makes it more difficult to leave social assistance or change location to find work, and creates poverty in old age (Stapleton, 2009).

As to being disabled enough, the definition of disability under the *ODSPA* has also been discussed in detail in the previous chapter. It is clear that there has been an expansion of eligibility for disability benefits over the years, but not uniformly. Recall that the previously discussed Matthews Report of 2004 determined that some who had qualified for disability benefits under the *Family Benefits Act* would no longer qualify for ODSP and would have to rely on Ontario Works. That said, the current definition of disability markedly improves on the 1952 version. Under the *ODSPA,* the duration of disability was changed from life-long to one that is "continuous or recurrent and expected to last one year or more" (*ODSPA,* 1997*).* In 1952, any possibility of rehabilitation ruled out eligibility; there is no similar restriction under the *ODSPA.* The word "severe" concerning the activities affected by the impairment was changed to "substantial" and the scope of those activities was specified from a vague concept of "normal

living" to outline three areas: personal care, functioning in the community, and functioning in the workplace. Furthermore, only one of these areas needs to be impacted to allow eligibility.

Despite any shortcomings of the current definition in Ontario, the disability advocacy community in Ontario vigorously objected to the Conservatives' proposed changes in 2018 by forming a new advocacy group called Defend Disability. Defend Disability is composed of "people with lived experience of disability and poverty, frontline health providers, social policy experts, legal practitioners, health-specific NGOs, community agencies and anti-poverty and disability rights advocates" (Defend Disability, n.d.). Advocates are now arguing for a move towards "functioning-based" assessments of disability as opposed to "impairments-based" assessments, pointing to other jurisdictions that have incorporated this approach. Functioning-based assessments recognize that the ability to function and participate in society depends on the nature of an impairment (episodic, recurrent, mental, physical, etc.) and the environment (service availability, the built environment, labour market conditions). In other words, this assessment better takes into account the specific barriers that disabled people face (Aldridge & Mah, 2020). Indeed, there seems to be some recognition of local barriers in the labour market within the decentralization of employment supports currently underway, as discussed in the previous chapter. Finally, advocates continue to call for simplifying the application process and providing navigation assistance for applicants, arguing that "a simplified assessment system would save time and money for applicants, medical professionals, legal clinics, adjudicators, and the Social Benefits Tribunal" and that "savings should be reinvested back into social assistance" (Aldridge & Mah, 2020, p. 17).

Stigma

The stigma associated with the receipt of social aid has been seen both as a necessary deterrent to excessive claiming and a form of social violence. Regardless of the opinions

regarding stigma, it has been part of the debate about social welfare for centuries (Baumberg, 2016). We have dealt indirectly with the stigma experienced by disability benefit recipients at the hands of caseworkers and during the application process. For injured workers, much of the literature on stigma focuses more on the issue of malingering (e.g., Kirsh et al., 2012), though injured workers have also been described as "working class people who [don't] like the idea of being on the dole of any kind" (Storey, 2008, p. 112). Here, the question is whether the stigma attached to both the process of applying for benefits and living as a recipient act to limit access to the benefit programs in the first place. This has been called "claims stigma", which has emerged in some qualitative research as the most powerful form of stigma of all (Baumberg, 2016).

According to van Oorschot (2002), there is a broad consensus in the literature that means-tested benefits programs stigmatize applicants. After all, one of the purposes of means-testing is to detect fraudulent claims, thus challenging the idea that the benefit is conferred as a social right. Citing studies that showed that large proportions of eligible populations do not receive means-tested benefits, van Oorschot (2002) argued that non-take-up of benefits is inherent in means-tested programs and should be seen as a serious policy concern. Specifically, the probability of non-take-up is higher in programs that are means-tested, have lots of complicated rules, have discretionary entitlement criteria, supplement other income sources, provide small amounts of benefits, leave the initiative to claim to the claimant, provide for a variety of expenses, and provide unstable entitlement (van Oorschot, 2002). ODSP has all of these characteristics. Further, even though workers' compensation is not means-tested, many of these characteristics, such as increased discretion, increasingly complicated rules, and smaller awards, have been introduced as shown in the historical narrative.

Despite a large literature on stigma and social protection benefits, few studies have attempted to quantify the impact of stigma on benefit uptake (Baumberg, 2015). Unfortunately, one of the few that does not include long-term disability benefits and workers' compensation specifically. Based on a nationally representative sample study, this British study assessed the impact of various conceptualizations of stigma on the uptake of certain tax credits, unemployment benefits that include short-term sickness benefits, support for single parents, and rent supplements. The various conceptualizations of stigma are personal stigma, stigmatization, and claims stigma. "'Personal stigma' is a person's own feeling that claiming benefits conveys a devalued identity" whereas, stigmatization "is the perception that other people will devalue your identity" for claiming benefits (Baumberg, 2015, p. 183). "Claims stigma" refers to the stigma experienced in the process of making a claim due to the invasion of privacy, long waiting periods, or treatment at the hands of suspicious caseworkers or adjudicators (Baumberg, 2015). To measure claims stigma, survey respondents were asked to agree or disagree with the statement that people are treated with respect when they claim benefits.

Feelings of stigma did vary according to the type of benefit but overall, one-third of claimants reported experiencing personal stigma and/or stigmatization. A majority of 58% of respondents disagreed that claimants are treated with respect. When asked whether stigma and shame would influence their decision to claim a benefit, 27% of respondents reported that "a shame-related reason would make them less likely to claim" (Baumberg, 2015, p. 193). This finding somewhat counters a much older, more intuitive finding from qualitative research: "The stigma of receiving welfare was almost meaningless in the face of pressing needs for food, shelter, diapers and other goods" (Rogers-Dillon, 1995, p. 445). Baumberg (2015) concludes, "stigma is part of the explanation—contentious in size, but not in existence for the non-take-up

of benefits by those who are in need and eligible, perpetuating hardships that the system was designed to avoid" (p. 195).

Decommodification

As the historical narrative clearly shows, calls for raising disability benefits to bring people out of poverty have been a constant in the history of disability benefits in Ontario. Disability benefits have never decommodified the labour power of disabled people to the point of protecting them from poverty. Instead, social policy has moved increasingly towards ways to facilitate disabled people to sell their labour power on the market.

For workers' compensation, on the other hand, the decommodification of injured workers' labour power is precisely what prompted the neoliberal reforms that began in the 1980s. Before 1990, permanently injured workers received a pension determined by the extent of the injury and unrelated to future earnings if the worker returned to paid employment. One researcher described this situation as having a "pure income effect" (Hyatt, 1996, p, 291). Injured workers were also able to "stack" workers' compensation with other disability benefits. Nor were workers' compensation benefits taxable, which is also currently the case. These circumstances combined to allow policymakers, such as Weiler (1980), though with little evidence provided, to conclude that injured workers' benefits were excessive. This claim was made despite many injured workers' objections that the amount of these pensions did not meet their needs. It also prompted research into the work disincentive effect of workers' compensation benefits in the early-to-mid-1980s, most of which "generally … found that the duration of time away from work is positively related to the generosity of workers' compensation benefits" (Hyatt, 1996, p. 292). Hyatt's (1996) research also concludes that "the generosity of workers' compensation permanent disability pension benefits, holding other factors constant, is negatively associated with post-injury employment" (p. 306–307).

Hence the introduction of the dual-award system, and even more significantly, deeming. Recall that deeming allows Board adjudicators to determine that an injured worker has reached the fullest extent of rehabilitation and retraining possible, declare what kind of job the worker is capable of, and deduct the amount the worker would earn at that work, regardless of whether employment is attained. At the same, the historical narrative on workers' compensation also showed the shift that emphasizes "safe and early return to work", that is, the recommodification of injured workers' labour power after pensions were eliminated and LOE (loss of earnings) benefits could be curtailed by a return to paid employment.

There is also evidence of decommodification even after the demise of pensions and with the additional changes introduced by the Harris government in 1998. Tompa et al. (2016) determined that workers' compensation benefits, when combined with other benefits and sources of income, fully compensated injured workers with permanent impairments—*on average* (Tompa et al., 2016). As discussed in Chapter 7, this finding obscured the fact that the study also found one-quarter of claimants had earnings replacement of less than 75% and 9% had earnings replacement of less than 50% of earnings. For advocates who now find themselves working on injured workers' ODSP applications, it also obscures the fact that nearly half of permanently impaired injured workers who have been through Work Transition programs are not employed (ONIWG, 2019, based on WSIB statistics obtained through a freedom-of-information request in 2016). This group is considered employable by the WSIB, meaning their benefits would have been reduced or eliminated by the deeming process. Workers can be deemed to have no LOE if the "suitable occupation" assigned to them after a Work Transition program generates wages at the same level as pre-injury wages. Not surprisingly, permanently impaired workers with

language barriers figure disproportionately among those who are unemployed, with only 27% of them finding employment after a Work Transition program (ONIWG, 2019).

What happens to permanently impaired workers who do not find employment post-injury and who have reduced or non-existent benefits is an under-studied problem. A 2017 literature review conducted for the Injured Workers Community Legal Clinic found no research on this question (Richards, 2017). Some may have access to CPP-D or private insurance (ONIWG, 2019). For others, there is no other option than social assistance or ODSP. In 2019, ONIWG obtained data through a freedom-of-information request to the Ministry of Community and Social Services on the number of people who were receiving both workers' compensation benefits and Ontario Works or ODSP. From 2003–04 to 2016–17, the number of people receiving both workers' compensation benefits and Ontario Works ranged from 492 to 755 or 0.2% to 0.3% of the caseload. For ODSP, numbers for the same period ranged from 3,148 to 3,377 or about 1% of the caseload. Numbers, especially for ODSP, are fairly constant over time, which suggests that the changes to workers' compensation in the mid-2010s did not impact the number of injured workers turning to social assistance.

While these proportions of the social assistance caseload are small, the proportion of permanently impaired workers they represent is much larger. Generally speaking, about 15,000 injured workers (about 6% of all injured workers) are permanently impaired annually (Ballantyne et al., 2015). Thus, for 2016–17, the 3,794 injured workers using Ontario Works and ODSP combined represent 25% of permanently impaired workers. Further, injured workers who are deemed to have no LOE or are disentitled for other reasons may also be turning to social assistance and would not be captured in these data. The ONIWG report estimates that nearly $48 million of public money is spent on injured workers using ODSP, based on an estimate of 3,300

people receiving the maximum (at the time) of about $1,200 per month (ONIWG, 2019). On the one hand, this could be an overestimate because workers' compensation benefits would be deducted from ODSP. On the other hand, it could be an underestimate of the cost since recipients may be entitled to some other benefits, such as dental coverage or the Special Diet Allowance. Regardless of the exact amount, this situation represents a significant shift in costs from WSIB to the public purse (ONIWG, 2019) and a large number of people relegated to the poverty of ODSP. Consider as well that injured workers would have to use their assets before applying for social assistance, generating more poverty. Thus, some injured workers with permanent impairments now find themselves alongside other persons with disabilities living in poverty. Drawing on the experience in the United Kingdom as evidence, Grover and Piggott (2005) argue that "changes to income maintenance and labour market policy that affect disabled people can be interpreted as attempting to construct disability benefit recipients as part of the reserve army of labour" (p. 714).

Income Security Benefits, Neoliberalism, and Capital Accumulation

According to Marx, the reserve army of labour is not merely a source of workers to access as the vagaries of labour markets demand. Rather, "[t]he relative surplus population is… the background against which the law of the demand and supply of labour does its work" (Marx, 1867/1990, p. 792), since "the general movements of wages are exclusively by the expansion and contraction of the industrial reserve army" (Marx, 1867/1990, p. 790). Within this dynamic, one role of the reserve is to put downward pressure on wages in the aid of capital accumulation (Greer, 2016; Grover, 2015; Grover & Piggott, 2005; Marx, 1867/1990). To achieve this effect, however, members of the reserve army must actively seek work and accept jobs at low wages (Grover & Piggott, 2005). Thus, the explicit rhetoric aimed at using the social assistance system

in general and disability benefits in particular as the entry or re-entry point to the labour market represents the state's attempts to regulate and discipline the reserve army of labour and "subordinate social policy to the needs of employers" (Greer, 2016, p. 163; Grover & Piggott, 2005; Schram, 2018).

Of course, disciplining poor and disabled populations is not new, as Marx's comments make clear. We need only to recall the Poor Laws, workhouses, and asylums to observe "the historical pattern…of periodically expanding and contracting relief rolls as the system performs its two main functions: maintaining civil order and enforcing work" (Piven & Cloward, 1993). Thus, it is more accurate to argue that recent welfare and workers' compensation reform aims to "subordinate social policy to the needs of employers" in a way specific to the historical and economic moment of neoliberalism.

As such, the emergence of neoliberalism and the decline of Keynesianism provide the broader context of the current manifestation of state regulation of the surplus population. Although there is considerable debate on the particulars, the overarching explanation for this change centres on the decline of Fordism as the dominant mode of capital accumulation. The period from post-World War II until the 1970s is considered the "Golden Age" of Fordism. It was characterized by semi-skilled labour associated with mass production, mass consumption, and the "post-war settlement" between capital and labour, discussed briefly in Chapter 6. In Canada, the right of private-sector workers to organize, strike, and bargain collectively was recognized in a 1944 federal Order-in-Council. It was later enshrined in the *Industrial Relations and Disputes Investigations Act* in 1948 for workers under federal jurisdiction. Over the next two decades, provincial governments followed suit for private-sector and municipal workers in their jurisdictions (Evans et al., 2023). This economic situation was, of course, accompanied by the

expansion of the Keynesian welfare state. According to Pierson (1994) "…the welfare state under Fordism was shaped by both the accumulation needs of capital (including mass consumption as an important component in the valorisation of capital) and the defensive strength of the organised working class" both of which allowed for the rise an "interventionist state" (p. 97). It was acceptable to both capital and labour for the state to intervene in managing the inequities of the market economy by establishing a minimum wage and supporting full employment policies because these measures sustained mass consumption and economic growth (Jessop, 1994; Pierson, 1994).

Particularly important in relation to our discussion here, Keynesian economics explicitly included managing consumer demand through state policies (Pierson, 1994). As such, it provided an economic underpinning for a growing welfare state that put money into the hands of those who would otherwise be without. The scale of the disability benefits program introduced in Ontario in 1952 would likely have had little impact on aggregate demand, but at least there were no economic or ideological impediments to implementing it in the name of humanitarianism. The expansion of social assistance, including disability benefits, that occurred with the CAP would also be in keeping with the demand-side economics of Keynesianism. "However, the crisis of Fordism which developed in the early 1970s was at the same time…a crisis of the Keynesian Welfare State" and its demand-side economics (Pierson, 1974, p. 95).

Harvey (1990) dates the beginning of the crisis of Fordism even earlier to 1965, pointing to a decrease in effective demand because of the saturation of markets, particularly in Western Europe and Japan, where post-war restorations were completed by this time. Declining employment in the United States due to "the success of Fordist rationalization" was also evident (Harvey, 1990, p. 141). Although the U.S. War on Poverty and economic activity associated with

the war in Vietnam offset declining demand to a certain extent, the rate of profit in advanced capitalist countries was falling. To satisfy the need for ever-expanding growth, multinational corporations made the “first big push” towards modern globalization, taking Fordist industrialization to developing countries where labour and environment standards were weak or non-existent (Harvey, 1990, p. 141). International competition intensified, challenging the economic hegemony of the United States “to the point where the Bretton Woods agreement cracked” meaning that fixed exchange rates for currency were replaced by those that were “[f]loating and often highly volatile” in 1971 (Harvey, 1990, p. 141; see also Harvey, 2005), further encouraging the international movement of capital (Evans et al., 2023).

Overall, the Fordist capital accumulation process was characterized by rigidity. Capital was locked into long-term fixed capital investments in the mass-production systems that had been developed. States were locked into the social security commitments of the expanding welfare state. The labour movement was relatively strong at this point, so could resist attempts to change the structures that had developed, adding another dimension to rigidity. Social movements had also gained influence at this time (Harvey, 1990), with increasing demands on the welfare state, as the cases of disability benefits and workers’ compensation demonstrate. Consequently, the state used the only tool for flexibility available to it: “monetary policy, in the capacity to print money at whatever rate appeared necessary to keep the economy stable” by stimulating demand (Harvey, 1990, p. 142). Harvey (1990) noted that “extraordinarily loose monetary policy” in the United States and the United Kingdom kept the post-war economic boom afloat in the late 1960s and early 1970s, but when combined with “diminished productive outlets for investment”, this led to strong inflation (p. 142). Add to this the oil crisis of 1973, when Arab oil-producing countries embargoed oil sales to the United States and other nations for

their support of Israel in the Yom Kippur War. Thus, the price of an essential input into much of production increased, intensifying inflation (Harvey, 1990; Quiggin, 2018). The underlying weaknesses in an economy in recession meant that high rates of unemployment, slow growth, and inflation combined to create stagflation, characterized by the unusual combination of slow growth and high inflation. Stagflation lasted through most of the 1970s (Harvey, 2005). These economic conditions opened the door to the political ideology of neoliberalism, which had been lurking not-so-patiently in the background since the 1930s (Evans et al, 2023; Harvey, 2005).

If the antidote to rigidity is flexibility, neoliberalism provided the economic rationale for that flexibility, particularly regarding labour markets (Harvey, 2005). Within neoliberal theory, all classes in society benefit from "liberating individual entrepreneurial freedoms and skills within an institutional framework characterized by strong private property rights, free markets, and free trade" (Harvey, 2005, p. 2). Evans et al. (2023) argue that "[s]o-called flexibility arrangements increased the use of shift work, short-term contracts, workplace speedups, evening and overnight work, part-time labour, weekend week, rotating and split shifts, variable schedules, as well as casual and seasonal employment" (p. 9). In short, the implementation of neoliberal economic policies has created the precarious and often low-wage economy described above, along with an assault on labour rights and a decline in union density in the private sector (Evans et al., 2023).

Neoliberalism also advocates supply-side economic policies, such as tax cuts for the wealthy to encourage investment, based on the assumption that the supply of goods and services is the impetus for economic growth. As such, the economic theory behind neoliberalism stands in stark contrast to Keynesian demand-side theories. However, Harvey (2005) also addresses the push for lower taxes as the political dimension of neoliberalism, specifically, the restoration of

class power. He argued that the post-war settlement under Keynesianism and the successes of various social movements allocated a bigger portion of the economic pie to labour and poor people—a situation that was palatable to capital so long as the economic pie was growing. The wealth of the top 1% of the U.S. population had remained fairly steady throughout the twentieth century, despite high rates of taxation. With the collapse of growth in the 1970s, the wealth of the top 1% of the U.S. population "plunged precipitously as asset values (stocks, property, savings) collapsed. The upper classes had to move decisively if they were to protect themselves from political and economic annihilation" (Harvey, 2005, p. 15). Schram (2015) updates this assertion noting that the subsequent concentration of wealth and growth of inequality had not occurred as "the result of inexorable economic forces" (p. 18). Rather, "[t]here is compelling evidence that much of the gain by the wealthy came from economically unproductive tax cuts that contrary to arguments made at the time actually may have slowed economic growth while doing little more than lining the pockets of the rich" (Schram, 2015, p. 18). He further argued that this concentration of wealth represents "the return of ordinary capitalism" (Schram, 2015). Citing data used in Thomas Piketty's analysis of capitalism over the centuries, Schram (2015) stated that the Keynesian period (1945–1973), during which wages rose in tandem with economic growth to reduce inequality (though disproportionately by race), was an anomaly in the history of capitalism. The return of ordinary capitalism has meant the return of high levels of inequality with implications for the state and social policy. One of these implications is that the economic conditions underlying the Keynesian welfare state are unlikely to occur again.

Neoliberalism and Social Policy

In neoliberal theory, the state's role is to provide the best environment for capital's endeavours through the protection of private property rights, deregulation, and low taxes while maintaining its longstanding responsibilities for the integrity of the money supply and its

monopoly on the use of force (Harvey, 2005). Evans et al. (2023) caution, however, that it would be a mistake to characterize this situation as simply "(less) state against (more) market" (p. 6). Rather, "neoliberalism has been about a particular kind of state suited to the logic of capital in a specific historical phase of capitalist development" (Evans et al., 2023, p. 6). Indeed, Navarro (2009) documents an increase in public expenditures as a percentage of Gross National Product and per capita in most OECD countries between 1980 and 2007. Where governments were spending, however, began to shift. For example, in 1980, 38% of U.S. government expenditures were transfers to individuals, 41% were military expenditures, and 21% went to private enterprises. By 2007, transfers to individuals declined to 32%, military expenditures increased to 45%, and payments to private enterprises increased to 23% (Navarro, 2009). This shift occurred, furthermore, before the massive bail-out of the financial sector in 2008.

While neoliberalism may not spell less government per se, the shift Navarro (2009) described does point to less spending on the welfare state. Schram (2018) characterizes the conditions for the rise of neoliberalism as a "critical juncture" in which even a "well-ingrained 'path dependency' in social welfare policies has come under increased pressure to change" (p. 2–3). "This critical juncture is associated with a cyclical swing back from policy commitments that have dominated the social welfare state in the post-World War II era" (p. 3). For social policy, neoliberalism, with its emphasis on personal responsibility, has fortified the demise of universal programs and the rise of residualism, eroded the notion of social protection as a right, and justified cuts to social assistance and a failure to maintain benefit rates to inflation. As such, neoliberal ideology dispenses with any pretense that social security is a legitimate response to the vagaries and inequities of capitalism with entitlements as a function of citizenship. Instead, the "hollowed out welfare state…restructures the state to operate consistently with market logic in

order to better promote market-compliant behavior by as many people as possible" (Schram, 2018, p. 10)—including, those with disabilities, however caused.

In this light, the introduction of active labour market policies, workfare, aggressive return-to-work programs for injured workers, and the ongoing pressure to get more disabled people into paid employment makes sense. As demonstrated by the changes to both workers' compensation and disability benefits, those once excused from labour market involvement are now expected to join the ranks of the actively unemployed. Permanent pensions, designed to compensate for as long as the disability lasts, have no place in social policy designed to incentivize market participation. Ending the "permanently unemployable" category can be understood as a function of market imperative more than the removal of an offensive label.

Although accessing employment supports for ODSP beneficiaries is still voluntary, other jurisdictions such as the United Kingdom and Australia have, for the first time, adopted "compulsory work-focused interviews" for disabled people looking to make claims or continue their benefits (Grover & Piggott, 2005, p. 706; Grover & Soldatic, 2013). It is perhaps surprising that the recommendation for compulsory work activation in Ontario's disability benefits program shows up only once in the historical narrative in the *Brighter prospects* report in 2012.

In this shift to incentivize employment, we find an answer to the question of what role benefits policy plays in capital accumulation. Under demand-side economics, more decommodification of labour could be tolerated to support demand. However, the current supply-side economics require "labour-market flexibility", which translates into downward pressure on wages and precarity exercised through the reserve army of labour.

In light of these powerful political-economic forces behind changes to disability policy, the call for the employment of disabled people documented in the key public documents on

disability discussed in the previous chapter appears, in retrospect, very convenient for neoliberal policymakers. The various reports over the neoliberal period clearly co-opted social model rhetoric, including its focus on paid labour as the ticket out of poverty and into inclusion. Some critics of the social model have argued that the social model's focus on wage labour ignores the fact that, under capitalism, wage labour "is by its very nature, exploitative" (Grover & Piggott, 2015, p. 270). In her ground-breaking article on the topic, Taylor (2004) summarizes the argument for not working as a site of resistance to capitalism: "The right not to work is the right not have your value determined by your productivity as a worker, by your employability or salary" (Taylor, 2004, p. 40). Graby (2015) extended this argument, contending that the experience of exclusion from paid employment can be transformed into a refusal to identify with capitalist values and "thus become a catalyst for resistance" (p. 143). Taylor (2004) declared the necessity of this resistance to capitalism for disabled people when she argued that disability "epitomize[s] many ways in which our political and social systems need to change" (p. 43). She was not referring only to exclusion from a competitive labour market that condemns many people with disabilities to poverty, but also to the fact that impairments are "born of out of war, financial inequality, and environmental degradation", so characteristic of capitalism (Taylor, 2004, p. 43). (Her impairment was caused by an environmental toxin.)

There have, however, been many developments since the early days when the U.K. Union of Physically Impaired Against Segregation clashed with the Disablement Income Group over guaranteed monthly disability benefits (Withers, 2012). Moving away from their earlier disdain for welfare state provision for disabled people, social model advocates have come to characterize the welfare state as "an essential ingredient for the development of a truly inclusionary society" (Oliver & Barnes, 2009 as quoted in Morris, 2011, p. 4)—but not before

neoliberal policymakers took advantage of disabled people's genuine desire to work and contribute in ideologically acceptable ways, such as paid employment. Or, as Morris (2011), writing about the United Kingdom, put it, "aspects of disabled people's campaigns against discrimination and for independent living have been, and are being, used to legitimise changes in welfare benefits…in ways which will only lead to greater inequality and discrimination" (p. 5).

Conclusion

Workers' compensation continues to be an institutional program that decommodifies labour power for temporarily injured workers. However, the situations and interests of many permanently impaired workers and people with disabilities have converged in the residualism of general disability benefits. With this convergence comes a shift in costs from employers to the public tax base. The coverage of the population and level of benefits have improved for both workers' compensation and disability benefits over time in the context of the expanded welfare state of the post-war period. Eligibility for workers' compensation benefits has not technically changed, but has been influenced by complex changes in political-economic conditions such as increasing precarity and the evolution of work and the nature of injury and illness it causes. Eligibility for disability benefits has expanded and contracted over time and remains a source of struggle and controversy for disability advocates. Importantly, both programs, particularly workers' compensation, have come under pressure to act as conduits to returning or introducing recipients to a labour force that remains ambivalent, at best, in receiving them. Injured workers must cooperate with return-to-work programs to maintain their benefits. Participation in employment supports for ODSP beneficiaries continues to be voluntary for the time being, but other neoliberal welfare states have begun to impose participation requirements on disabled people. We can best understand these changes through the political economy of neoliberalism,

itself a response to underlying adjustments in capital accumulation. The shift to supply-side economics demands a flexible labour market that cements the role of injured workers and disabled people in the reserve army of labour with the goal of depressing wages for all workers.

Chapter 10: Discussion and Conclusion

An in-depth comparison of the benefit programs designed for injured workers and people with disabilities from other causes was used to explore how the inclusion of injured workers disrupts some key tenets of the CDS approach to understanding disability. This comparison also allowed for considering the political economy of disability benefit programs to illuminate the outcomes of class-based politics compared with a political approach more focused on disability as an identity. The ultimate aim of the study was to explore sources of political power for people with disabilities concerning income security. The following summarizes the findings of this research and discusses their implications both for CDS and for the political organizing of disabled people.

This study was predicated on the observation that CDS does not emphasize injured workers and impairments caused by work injury and disease. Interestingly, disability scholars make the reverse criticism of labour history. In her research on disability and gender in a coal-mining community, Forestell (2006) points to scholarship on the struggle to improve occupational health and safety "where the focus has remained far more on policy than on people, with disabled individuals and their families in particular rendered largely invisible" (p. 79). Similarly, Rose (2005) argues that, "Labor history has much to gain by considering disability—and disabled people—as more than a metaphor for poor working conditions or victimized workers" (p. 47). Thus, just as CDS is enriched by including a class analysis, so labour history is enhanced by innovative perspectives on disability.

Literature Review: The Injured Worker Disrupts

As a comparative-historical narrative, this research, by definition, reviewed much of the literature on injured workers and workers' compensation, both inside and outside of the field of

disability studies. Thus, the "literature review" section is somewhat unconventional in that it was designed to determine whether and how the issues of work injury and workers' compensation are treated in CDS. The interdisciplinary nature of CDS made it difficult to determine the specific confines of CDS literature. Consequently, the strategy described in Chapter 3 was devised to gauge the extent and nature of coverage. The review of the literature in 14 key disability studies journals over the last 35 years confirmed the observation that work injury is not emphasized in CDS, though there is an emerging interest in work-related impairments and the issues that they raise for disability studies. The search found 58 articles during this period, though about half simply mentioned workers' compensation. The literature review raises, though does not necessarily resolve, several areas of tension among different conceptualizations and approaches to disability.

The first seemingly irresolvable tension between the disability rights movement and the injured workers' movement is the conceptualization of disability itself. Critical disability studies as a field represents something of a vanguard position in arguing that disability is merely a human variation or difference that should be a source of pride and positive identity. At the same time, living with a disability is not to be seen as a source of "inspiration" or "overcoming" from this perspective.

On the other hand, the concept of a compensable impairment, developed in the early part of the twentieth century, fundamentally implies a loss. The early workers' compensation system focused solely on this loss in economic terms. The payment for non-economic loss caused by permanent impairment introduced in the 1990s was meant to recognize the loss imposed by impairment on other aspects of injured workers' lives, but the focus is still on impairment as a loss. As Scotch and Berkowitz (1990) pointed out, an injured worker is seen as "damaged goods"

demanding “legal redress” (p. 5). Impairments from other sources, as the early history of disability benefits in Ontario amply demonstrated, are seen as simply a matter of misfortune. Galer (2018b) described the divergence in conceptions of disability between disabled people and injured workers in his account of disability rights in the Canadian labour movement:

> The idea that physical disability was somehow a loss in need of financial reimbursement or could be so plainly quantified through medical testing was clearly at odds with the ideologies underpinning disability rights that also empowered disabled people to reconsider their self-identity and social roles. (Galer, 2018b, p. 274)

By situating impairment and disability in a class analysis, examining work injury disrupts both notions of disability as mere human variation or as a near-universal experience (Garland-Thomson, 2012), because a class perspective reveals that some people are disproportionately affected by impairment and disability. Work injury predominantly creates impairment and disability in the working class. A review of the literature on the social determinants of injury found that those working in farming, fisheries, forestry, manufacturing, and transportation were at higher risk of injury than those working in clerical or sales positions (Atlantic Collaborative on Injury Prevention, 2011). The report also details the link between low income and a higher risk of injury, highlighting the disproportionate rate of injury among Indigenous people (Atlantic Collaborative on Injury Prevention, 2011). Further, according to a United Nations Factsheet on Persons with Disabilities (Department of Economic and Social Affairs, n.d), 80% of disabled people live in the Global South, substantiating Meekosha’s (2011) call to decolonize disability studies to take into account how war and violence disproportionately create disability. Even the “temporarily able-bodied” trope can be questioned when we consider the latest figures from

Statistics Canada that show that even among those older than 75 years, the rate of disability for both men and women is just less than 50% (Statistics Canada, 2022). Not to mention that acquiring a disability in old age is a very different experience than having a disability from birth or acquiring one early in life.

The differing underlying assumptions about the nature and experience of disability help explain the different attitudes of each movement towards the benefits programs designed for each population. Achieving, sustaining, and improving compensation benefits for work injury and disease was the focus of the struggle, first led by the labour movement and later by the injured workers' movement that developed outside of the labour movement. The disability rights movement's relationship to benefits programs, on the other hand, has evolved. Because of an overriding concern for personal dignity and the stigma of receiving social assistance, the early movement in the United Kingdom experienced deep rifts over the issue of disability benefits (Withers, 2012). In opposition to an organization called the Disablement Income Group, which was campaigning for a national income program for people with disabilities, Oliver and Barnes (1998) theorized that such a program would discourage employers from hiring people with disabilities, rather than seeing it as a means to decommodification of labour. With a rare and oblique reference to the working class, Oliver (1989) argued that "[w]ork is central in industrial society not simply because it produces the goods to sustain life but also because it creates particular forms of social relations" (Oliver, 1989, p. 51). In subsequent years, however, social model advocates argued that disability benefits are "an indicator of collective social responsibility and social justice" (Barnes & Roulstone, 2005, p. 324). However, Ville noted this tension as recently as 2019. What I characterized as a "benefits versus rights" dichotomy, Ville (2019) described as an emancipation versus social protection dichotomy, while arguing that the

two are not mutually exclusive. It should be noted that injured workers are just as concerned with dignity as other people with disabilities. However, they don't feel the need to see disability as a benign or positive experience as requisite for pursuing dignity. They do, however, see adequate compensation as essential to dignity. This view is shared by those advocating for improved general disability benefits, as shown in the chapter on the development of the current benefits regime in Ontario. This observation, along with the shift in attitude towards benefits seen in the CDS literature, suggests that the adequacy of benefits is an issue that injured workers and other disabled people can come together on. Indeed, ONIWG supported the Disability Without Poverty group that recently campaigned for a federal disability benefit. That said, injured workers have a vested interest in the federal benefit in the hope that it will be "stackable" and thus augment workers' compensation benefits. An additional income source is particularly relevant to permanently impaired workers, given the changes to workers' compensation documented previously. (Interestingly, during an online meeting between the two groups that I attended, one injured worker was quick to point out that injured workers identify as injured workers, not as disabled.)

The conception of impairment as a loss has other implications for the relationship between injured workers and other disabled people. Rather than viewing disability as "necessary and generative" (Ben-Moshe et al., 2019, p. 180), injured workers see it as preventable and unjust. Recall that one of the four demands of the UIW was for "improved and enforced occupational health and safety laws" (Storey, 2008, p. 111). Most of the articles in the literature review that dealt with occupational health and safety and work injury skirted the issue of prevention with an implicit assumption that prevention was possible and necessary. After depicting a life of hardship for nineteenth-century and early twentieth-century coal miners and

their families, Jones (2017) almost apologetically notes how her portrayal (and her recommendation that chronic illness be considered a disability) could feed into a notion of disability as personal tragedy. She contents herself with emphasizing the "complex relationship between women's work, industrialisation and disability" (Jones, 2017, para. 32).

As noted, the only article reviewed to address the issue of the desirability of disability versus disability prevention was published in a student journal. Describing the impairment-inducing conditions faced by Mexican temporary farmworkers in Canada, González Tanamachi (2019) turns to the politics of disability justice claiming that this framework offers "valuable lessons that challenge the idea that seeking prevention of disability means devaluing it" (p. 52). Unfortunately, the author doesn't elaborate beyond noting that "disability justice holds a vision born of collective struggle" (González Tanamachi, 2019, p. 52). She also invokes Kafer's (2013) political/relational model of disability, because it recognizes that in certain contexts and within particular social relations, people experience impairment and disability as loss, which they may want to mourn and/or remediate. In this view, "*both* impairment and disability are social" (Kafer, 2103, p. 7). Ultimately, however, González Tanamachi (2019) argued for us to "embrace the 'messiness' that comes from being confronted with different views on disability and health care" (p. 53). Citing Puar (2009), Kafer (2013) argued that some contradictions are simply not reconcilable and that it may be impossible to be on one side or the other of certain issues. Class politics, on the other hand, demand a clear commitment to one side or the other. The labour movement's dedication to occupational health and safety, along with the injured workers' movement's concerns about prevention, suggests that the tension between prevention and desirability is a significant source of disagreement.

Research Questions Revisited

The historical narratives firmly established the superiority of workers' compensation as an institutional welfare program, well ahead of its time, over the residualism of general disability benefits. This superiority rests in several factors: the relative comprehensiveness of workers' compensation compared with the high level of selectivity for general disability benefits, the automatic eligibility for workers' compensation among insured employers compared with the highly restrictive eligibility for disability benefits; the wider, though not universal, population coverage of workers' compensation compared with disability benefits; and workers' compensation's higher level of decommodification than that of general disability benefits. Indeed, when workers' compensation rates were at 90% of average wages, injured workers' labour was highly decommodified. However, as the historical narrative showed, in practice, this level of decommodification tends to be available only to those *temporarily* prevented from working due to injury. With the elimination of permanent pensions and the introduction of deeming, many permanently injured workers struggle with poverty, although some evidence suggests no higher rates of poverty among injured workers than before the policy changes (Tompa et al., 2016). Disability benefits, as a residual program, have never come close to decommodifying the labour of disabled people with non-work-related impairments. As workers' compensation benefits lose their ability to decommodify labour power, there emerges a convergence of interests between injured workers and other disabled people. Indeed, this research has attempted to demonstrate that injured workers and disabled people have shared interests throughout the history of income security programs, because both programs were developed within the political economy of capitalism, which devalues disabled bodies.

The difference in the level of decommodification has been explained as a reflection of the assumption that those who become disabled through contributing to the economy (or military) are deemed to deserve assistance more than other disabled people (Jongbloed, 2003). The social acceptance of the discrepancy between workers' compensation and disability benefits lends some credibility to this argument. Certainly, there is little evidence in Canada of a backlash from people with impairments that are not work-related. Indeed, the only discussion of the two programs I found was in the Marsh Report in 1942, which justified the discrepancy because workers' compensation was restitution for "a species of harm suffered at the hands of industry" (Marsh, 2017, p. 125). Moreover, Marsh (2017) suggested that because the broader community funds disability benefits, disabled people are expected to accept less "to conserve the funds" (Marsh, 2017, p. 125).

This historical narrative, however, takes Jongbloed's argument a step further, rooting the discrepancy in the political economy of Tucker's (2017) commodification-decommodification dialectic. While the commodification of labour is essential to capitalism, labour is not an ordinary commodity. If workers are injured or killed, the commodity of their labour power is destroyed. Further, the high rates of injury that preceded the introduction of workers' compensation and the deep poverty this caused began to threaten the reproduction of labour itself. Combined with increasingly successful lawsuits and growing militancy in the labour movement at the time, it suited both capital and the state to develop a cost-effective insurance scheme. Labour militancy helped to increase the benefit levels, though they were not as high as labour would have liked, nor were they adequate to keep injured workers and their families out of poverty. Labour militancy also caused the state to seek labour peace. In this regard, the stated rationale for the program at the time was transparent. Though also framed as social justice,

Meredith was clear that the workers' compensation was to garner labour peace and "freedom from social unrest" (Ontario, 1913, p. xix). He did not go so far as to say that the purpose of workers' compensation was to thwart socialism, but others have since observed that the threat of socialism played a role in the emergence of workers' compensation worldwide (Abbot & DeViney, 1992). Despite labour's militancy and growing socialist movements, Ontario's workers' compensation system can be considered a function of class compromise as opposed to an outright victory for the working class. That said, there can be little doubt that the class location of injured workers and more specifically, the importance of the working class to capital accumulation, led to a superior social program funded directly by capital (and indirectly by consumers through higher prices on goods). Similarly, the design of workers' compensation as social insurance and capital's need for its efficient administration helps explain the automatic entitlement of the program's early days.

Disability benefits, on the other hand, were designed originally as a humanitarian gesture only for those disabled people unable to work. As such, there was not a similar commodification/decommodification dialectic at work in the development of disability benefits, since beneficiaries' labour was not commodified in the first place. Funded by tax revenues, with the perception that the whole community was footing the Bill, the goal of the program was to ensure that only the most deserving received benefits. As benefits became more widely available in an expanding welfare state, this concern only intensified, resulting in the highly complex, rule-bound program that disabled people must navigate today. Thus, like workers' compensation in its early development, the stated rationale of the program was fairly transparent and straightforward, not to mention patronizing. Legislators seemed quite aware that the disability benefits they

implemented in 1952 would not give disabled people full independence. Rather, it was a little something to help out.

Unlike workers' compensation, it's not clear how much the agency of disabled people at the time affected the outcome of the development of disability benefits. The group highlighted in the historical narrative here, The Canadian Association of Incurables, receives scant attention in extant histories. There is even the suggestion that the benefits program at the federal level was motivated in part by the personal experience with polio of then National Health and Welfare Minister, Paul Martin Sr. What is clear is that a perception of disability as a pitiable condition predominated, both among legislators and community advocates.

Political-Economic Context

Coming as they did 40 years apart, the political-economic circumstances of the origins of workers' compensation and general disability benefits differed widely. The patronizing tone attached to the early disability benefits program comes as no surprise in a feminist political economy analysis. Baker (2018) argued that the ideology that constructs the public sphere as superior to the private sphere influences both political theory and practice to marginalize women in the modern welfare state. Such an ideology helps to justify the development of an inferior, residual program for disabled people with little or no labour force attachment who are cared for primarily by the unpaid labour of women.

Workers' compensation was born during a recession, which was followed by an even deeper recession in the 1920s (Bonham, 2017; Jennissen, 1981). This suggests that labour, capital, and the state all felt the urgency for a remedy to the poverty induced by work injury, despite recessionary economic circumstances. Disability benefits, on the other hand, emerged in the post-war period of high growth that allowed for the expansion of the welfare state more generally. Under the post-war settlement between capital and labour and with the dominance of

Keynesian demand-side economic theory, the expansion of the welfare state made sense in that it would help maintain aggregate demand in the economy.

Though the two programs had their origins in very different political-economic circumstances, the current political economy of neoliberalism affects both programs in similar ways. The supply-side economics of neoliberalism has eclipsed the purpose of both programs to provide income security with an aggressive effort to return or initiate employment. Although couched in terms of supporting the injured worker and the disabled person, both programs currently make it clear that their purpose is to reduce the benefit rolls through employment, another point of convergence in the interests of injured workers and disabled people. As such, the program changes to both workers' compensation and disability benefits support the neoliberal policy objective of "less government", even though that policy objective is a myth. The rise of neoliberalism has not resulted in less government, but rather in a change in what government does, with less support for social security (Navarro, 2009). When analyzed through the concept of the reserve army of labour, this shift to incentivize employment among disabled people (regardless of the source of disability) can be understood as an effort to enforce the primacy of the market as the source of sustenance while creating as much competition as possible through an abundance of workers, thereby depressing wages for all workers. Understanding income security programs in this way answers the question of what role they play in capital accumulation. Under the Fordist mode of capital accumulation, the expanded welfare state supported aggregate demand. Under neoliberalism, the "hollowed out welfare state" (Schram, 2018, p. 10) works to depress wages and enforce labour supply. Scholars argue that neoliberal policies serve to subordinate social policy to the needs of capital (Greer, 2016, p. 163; Grover & Piggott, 2005; Schram, 2018), but our analysis here suggests that social policy has always been

designed for capital's needs. The change to supply-side economic policies has merely shifted the understanding of how disabled bodies can aid capital accumulation. Moreover, the aggressiveness and mean-spiritedness that accompanies it serve to make that reality more obvious.

Thus, the political economy of income security problematizes a political strategy of employment for people with disabilities as the means to independence, financial and otherwise. As discussed, the disability rights movement's position on benefits programs has softened over the years, engendering a discussion of the right *not* to work (Taylor, 2004) and not working as a means of resistance to capitalist relations of production that are inherently exploitive (Graby, 2015; Grover & Piggott, 2015). As well, the historical narratives of both workers' compensation and disability benefits demonstrated how easily this focus on paid employment was co-opted by neoliberal ideology, potentially narrowing the options for income security for people with disabilities.

As part of the changing narrative about employment, Barnes and Mercer (2005) have argued for "a reassessment of theoretical and policy approaches, based on a reconfiguration of the meaning of work, and a re-evaluation and de-stigmatization of welfare and social care provision" (p. 528). This would entail "a radical re-appraisal of the meaning of work for disabled people that goes beyond the rigid confines of paid employment…" (Barnes & Roulstone, 2005, p. 322). Barnes (2012) has even taken on the task of redefining work. Noting an alliance with feminist theorists who have argued for the recognition of the work of social reproduction, he states that the "re-configuring of work must include the everyday tasks that non-disabled people take for granted" (Barnes, 2012, p. 480).

The acceptance of the idea that some disabled people cannot maintain paid employment is not new to disability theory debates. As early as 1996, Abberley (1996) argued against "classical sociological perspectives", including Marxism, because of their emphasis on work as an essential ingredient for "social membership" (p. 74). He notes, "the ability to labour in some socially recognised sense still seems a requirement of full membership of a future good society based on Marxist theory" (Abberley, 1996, p. 69). This means, based on the contention that some impairments mean some people may never be able to work, "it would be undesirable to be an impaired person in such a society, and thus…the abolition of disablement also involves as far as possible the abolition of impairment" (Abberley, 1996, p. 74). This ultimately entails a negative judgement of "impaired modes of being" (Abberley, 1996, p. 75). Thus, he argues, "a thoroughgoing materialist analysis of disablement today must recognise that full integration of impaired people in social production can never constitute the future to which we as a movement aspire" (Abberley, 1996, p. 77).

With this reasoning, Abberley (1996) looks to social movement theory and practice for the means of changing society so that disablement, though not necessarily impairment, is eliminated. He points, in particular, to work on social movements that emphasize how they operate to change belief systems, in particular, "the mobilisation of convictions based on moral conviction and personal issues, against prevailing sociological determinism" (Abberley, 1996, p. 75). Abberley's (1996) work points to the deep roots of social movement theory in CDS, with an implicit aversion to class politics. It should be noted that social movement theory and political economy were not always estranged. According to Hetland and Goodwin (2013), the "strange disappearance" of capitalism from social movement theory had already occurred by the time Abberley was writing in 1996. They note that the dynamics of capitalism figured prominently in

the seminal works on social movements in the 1970s. However, their content analysis of two leading journals specializing in social movement studies, awarding-winning books and articles on the topic, and textbooks and handbooks on social movements from the late 1980s to the present found scant reference to the political economy of social movements (Hetland & Goodwin, 2013).

Thus, what Abberley (1996) and the whole discussion about transforming our concept of work overlooks is the material basis for this change in ideas and practices. Perhaps Abberley would see it as "sociological determinism", but the historical narratives presented here suggest that there are powerful economic forces behind disability policy regarding income security. It seems unlikely in a society dominated by capital and profit maximization that new concepts of work and a right not to work will emerge except, possibly, as lip service, such as that paid to the social model of disability. That said, it is worthwhile to imagine what work would look like outside of the confines of the competitive employment structures inherent to capitalism. If the historical narratives demonstrate anything, it is that capitalism is hostile to both the employment and income security needs of people with disabilities. Indeed, the political economy of income security for disabled people potentially paints a bleak picture, especially under neoliberalism. However, this picture is nuanced by the role of human agency, along with some insights about the state under capitalism, which leads to the discussion of sources of political power for disabled people.

Political Power and Disability Politics

When I started this research, I expected to depict the development of workers' compensation as a victory of working-class politics, asserting the superior effectiveness of class politics over state-oriented, identity politics for achieving income security. However, both

theoretical and real-life developments challenge this argument. For example, a current development in disability benefits, though outside the scope of the historical narrative, must be mentioned. After years of intensive lobbying, the federal government unanimously passed a Bill to introduce a benefit supposedly designed to lift disabled people out of poverty. The Accessibility for Ontarians with Disabilities Act Alliance calls it a "fragile milestone" because details remain scant: the amount of the benefit has not been determined, nor have the eligibility criteria. Further, it is available only to working-age disabled people, leaving the poverty of disabled seniors unaddressed. The government estimates another three years from 2023 before the first payments will be made (Accessibility for Ontarians with Disabilities Act Alliance, 2023). Fragile though it may be, this development represents a victory for the state-oriented approach of the disability movement, even within the harsh confines of neoliberalism. As such, it shows that the disability movement can be effective while lending credibility to our earlier observations about the state: the state under capitalism is also the state in a liberal democracy with enough autonomy to be influenced by those other than the ruling class.

Another consideration against the argument of the superiority of class politics over identity policies is that labour's involvement with workers' compensation issues has been largely ineffective. The labour movement has become much more involved in issues of workers' compensation since the early days of the injured workers' movement. Recall McCombie's (1984) description of unsuccessful attempts to engage the labour movement. Labour's active involvement has not, however, been successful in challenging the unwanted changes to workers' compensation documented here. Interestingly, the injured workers' movement even with its working-class orientation, sees the labour movement as an "ally", suggesting that it sees itself as distinct from labour.

On the theory front, a 2018 article introducing an issue devoted to Marxist analyses of identity politics argued that "[t]ackling politics of identity formation, the politics of capital, and their mutual constitution, is an urgent site of intervention for Marxists today (Kumar et al., 2018, p. 5). The issue is a "call for an intellectual and organisational embracing of the complexity of identity as it figures in contemporary conditions" because it is "a core organising principle of capitalism today" (Kumar et al., 2018, p. 19). The authors contend that identity is a paradigm ripe for leftist organizing "with a recognition of the necessity of historicising, and ultimately. abolishing, these categories along with capitalism itself" (Kumar et al., 2018, p. 19). This point about abolishing categories reflects the fact that the article did not mention disability identity, because, as Abberley (1996) so passionately argued, the disability movement seeks to maintain impaired lives as viable and valued. This marks another important difference between the disability movement from socialist politics, which seeks the elimination of class. This statement also raises the question of whether other social movements based on gender, race, and sexuality promote the elimination of these categories, given the importance of culture and identity.

Another article in the special issue, cited in the preceding paragragh, provides a critical historiography that frames the debates in terms of Marxism needing intersectionality and intersectionality as needing a robust analysis of class and capitalism (Bohrer, 2018). The author acknowledges an early tendency in Marxism to treat intersectional forms of domination as "epiphenomenal to primary class relations" but also points to iterations of Marxism that have been intersectional, without using the term (Bohrer, 2018, p. 48). Ultimately, she argues that the focus of an intersectional Marxism should be capitalism, as opposed to class per se, because it is the "root of the modern class, gender, sexuality and race systems of oppression" (Bohrer, 2018, p. 69). Bohrer (2018) recognizes that this approach represents a departure from traditional

Marxist notions of class, but given the interwoven nature of these oppressions, she argues that we need to understand capitalism as "the tapestry" that results from this weaving (p. 70).

Bohrer's (2018) thought-provoking approach also departs from the concept of class used in this research. Recall Lewis's (2016) contention that class is not simply another vector of oppression, but rather the foundation of capitalism. In short, class is different from gender, race, sexuality, and disability (Gimenez, 2001; Lewis. 2016). Gimenez's (2001) formulation of class states that class oppression is distinctive so requires different treatment, politically and theoretically, than race and gender (as cited in Bohrer, 2018, p. 54). (Gimenez [2001] does not discuss sexuality and disability.) Unlike Bohrer (2018), Lewis (2016) and Gimenez (2001) emphasize the centrality of class as tactical, not moral, because it is impossible to imagine the end of capitalism without a primary role for the working class for the simple reason that it is the working class that creates wealth. Furthermore, our class location is intimately connected to our means of survival (Gimenez, 2001).

What does this understanding of class mean for the importance of other social movements, especially the disability movement, in which so many people are excluded from paid employment and hence, the working class? Matthews (2021) argued that "With capitalism at the heart of their exclusion, disabled individuals are central to the class struggle" (p. 40). Adler-Bolton and Vierkant (2022) made a similar argument that "to truly mount a challenge to capitalism it is necessary that our political projects have and maintain the surplus [population] at their center" (p. 4). They base this argument on the fact that even those workers who are not part of the surplus population are at constant risk of becoming so, an observation Marx himself made (Marx, 1867/1990). Further, addressing the intersectional demands of those excluded under

capital is the basis for building solidarity. For Adler-Bolton and Vierkant (2022), understanding the social determinants of health in itself constitutes a threat to capitalism.

Moreover, social movements would continue to be important even if socialism were achieved. As Withers (2012) rightly states, "Sexism, heterosexism/homophobia, disablism and racism all exist outside of capitalism and it would be irresponsible to argue that replacing capitalism would alleviate all oppression" (p. 110). That said, ending capitalism would hopefully end the economic drivers behind these oppressions, creating material conditions better suited to addressing them. This is particularly important for disability oppression generally and income security specifically, because capitalist ideology equates a person's economic productivity with a person's value. As Matthews (2021) put it, to liberate disabled people, the goal must be an economy in which

> …work would not be underpinned by profit, but by human need, allowing all members of society, whether they have impairments or not, to achieve a sufficient material existence for themselves and, crucially, to engage in the development of society in a way that affirms their humanity. (p. 41)

Similarly, in arguing for the need to root disability into all social movements, Jama (2020) makes the point, "Disabled people are thus the antithesis to the capitalist system that continues to base the value of human beings on our ability to compete and produce, because many people with disabilities cannot work and do not choose to work" (p. 86). Therefore to "build a society that fundamentally includes and supports people with disabilities" is to necessarily challenge capitalism (Jama, 2020, p. 86).

Prince (2009) notes that the disability movement is neither anti-capitalist nor anti-globalization, in that it accepts "the existence and fundamental necessity of the capitalist economy and private market relations" (p. 182). Prince (2009) also observes that the "disability movement in Canada with its associated discourse, politics, and policy making exhibits a characteristic style…that reflects the dominance of liberal values in Canadian society and political culture" (pp. 181–182). He calls this style "social liberalism" (Prince, 2009). The social liberalism of the disability movement places the individual at the centre, while at the same time rejecting "rugged individualism". As mentioned earlier, Galer (2018b) also noted that the injured workers' movement tended to a more "collective approach quite distinct from the identity associated with disability rights and activism" (p. 274). Social liberalism's philosophy is that every individual has moral worth and innate capacities that can be developed to the fullest extent possible under enabling social and political conditions. The critique of capitalism from this standpoint is limited to setting "some limits on market relations" (Prince, 2009, p. 184). This belief and the lack of a class base also help to explain why the movement is state-oriented. Also, the broad nature of the concerns raised by the disability movement—inclusion, citizenship, services, agency funding—point activists in the direction of the state, since "[s]tate activities are pivotal in defining citizenship" (Prince, 2009, p. 183).

The disability movement's focus on immediate reforms led Adler-Bolton and Vierkant (2022) to criticize that "the social model of disability frames the exclusion and creation of disability as the result of dynamic social forces that could be realigned to create a more equitable society…" (p. 150), They counter that "[h]ealth under capitalism is an impossibility" (p. xi). Puar (2017) is equally pointed. Referring to the disability created through political repression, she states, "Slated for death or slated for debilitation—both are forms of the racialization of

individuals and populations that liberal (disability) rights frameworks, advocating for social accommodation, access, acceptance, pride, and empowerment, are unable to account for, much less disrupt" (p. x).

This criticism may be a little unfair in that it does not recognize the paradox embedded in socialist organizing: activism must seek immediate changes for their own sake and to remain relevant to people's lives, while continually striving for farther-reaching change. Although the social model has been co-opted in reports and discourse, its early proponents were anti-capitalist (Matthews, 2021; van Toorn, 2021), calling for fundamental and transformative political change, even if they were vague on whether that change involves a socialist alternative. However, the more immediate and pragmatic actions called for in the social model are challenging the medicalization of disability, promoting disabled-led organizations and direct payments for services, and pushing for anti-discrimination and human rights legislation. While these endeavours may have improved the lives of disabled people, none follow the theoretical formulation that the social construct of disability, as we currently experience it, is rooted in capitalism. In short, none of these strategies address the capitalist relations of production and consumption and thus, capitalism's structural poverty. Indeed, the direct payments system has been criticized as fostering neoliberal individualism and market-based solutions to care provision at the expense of collective social protections (van Toorn, 2021). Furthermore, implementing improvements to access to air travel, theatre, restaurants, cultural events, etc. is often propelled by the argument that disabled people represent an untapped market, furthering the capitalist notion that disabled people "only have value if we contribute to the economy" (Jama, 2020). Meanwhile, unemployment and poverty rates remain stubbornly high.

Prince's (2009) analysis of the Canadian disability movement preceded the emergence of disability justice and other radical approaches to disability politics that are avowedly anti-capitalist. The Disability Justice movement arose in the United States through "a performance project" (Sins Invalid, n.d.) that provides space for the artistic expression of disabled people of colour and sexually diverse disabled people. The movement has expanded to other parts of the world, including here in Ontario. The disability justice framework is a response to a perception that the United States disability rights movement ignored the intersectionality of disabled people's lives (Sins Invalid, n.d.). As such, the first of the stated 10 principles of Disability Justice is a commitment to an intersectional understanding of the experience of disability. The third principle is a commitment to an "anti-capitalist politic" that understands "capitalism to be a system that promotes private wealth accumulation for some at the expense of others" (Berne et al., 2018, p. 227). That said, the documentary evidence reveals an understanding of class as another "vector of oppression" as Lewis (2016) describes it, with little engagement with issues specific to the working class. Indeed, disability justice somewhat rejects the notion of class struggle in the following statement of principle of "collective liberation": "We move together as people with mixed abilities, multiracial, multi-gendered, mixed class, across the sexual spectrum, with a vision that leaves no bodymind behind" (Sins Invalid, 2019).

Similarly, Withers's (2012) radical model of disability is vague on the nature and role of class. Referring to the problems with "capitalist values" and controlling "elites", Withers (2012) describes the fundamental principles of the model as

> …the necessity of recognizing and relating to intersectionality, that disability is a social construction, the disability label is imposed as a tactic to retain power and social control

> and that we have to create space for each other in terms of acknowledging our lived experiences and ensuring accessibility…. (p. 119)

Both the radical model and disability justice, do, however, mark a promising departure from the mainstream disability rights movement in a call for cross-movement solidarity. The fourth principle of disability justice states: "Necessarily cross-movement, Disability Justice shifts how social justice movements understand disability and contextualize ableism, lending itself toward a united front politic" (Berne et al., 2018, p. 227–228). Hence Jama's (2020) call to root disability in all social movements. Indeed, Sarah Jama's involvement as one of the founders of the Disability Justice Network of Ontario suggests a greater affinity to socialist politics than that offered in the documents reviewed. In an autobiographical article, Jama reveals the influence of socialist politics in her approach. Interestingly, her involvement with the Young Communist League "taught [her] more about intersectionality and oppression than any class in sociology did" and helped her link capitalist notions of productivity and the treatment of disabled people (Jama, 2020, p. 80). However, she also found several practical shortcomings in the group's approach to race and disability, and she was critical of the labour movement on both of these issues as well (Jama, 2020). Until October 24, 2023, Jama sat as a Member of Provincial Parliament for the putative party of the working class, the NDP. She was expelled from the party and censured by Parliament for her pro-Palestinian stance in the war between Israel and Gaza, which started on October 7, 2023. Her stance on this issue aligns with the longstanding position of the socialist left. In coming to her defence, the Hamilton & District Labour Council declared her to be "our working class MPP" (Hamilton & District Labour Council, 2023).

Perhaps surprisingly, the current injured workers' movement is not particularly anti-capitalist, despite its class base and the socialist influences of its early days. Indeed, in a

presentation to the weekly meeting of injured workers hosted by the Thunder Bay & District Injured Workers Group, Storey (2023) lamented that there is no injured workers' movement to speak of currently because there is no longer an angry, mobilized base. Storey (2023) also argued that the early injured workers' movement had been buoyed by other social movements that were strong at the time, such as the women's movement and the peace movement. The current aim of the injured workers' movement is to improve the compensation system, both one case at a time and through policy and law reform. In reality, the focus has been to "hold the line" (Storey, 2023) and not always successfully, as the historical narrative shows. Storey (2023) raises the question of what the injured workers' movement and, moreover, the compensation system would look like without the leadership of the legal clinic system, which fortunately maintains a legal mandate to work on law reform and public education, in addition to individual claims. Unfortunately, neither Storey nor the injured workers at the meeting had concrete strategies for changing this situation. Storey (2023) recommended listening to injured workers' stories, building a narrative, and preparing to join the "next wave" of social movements.

Disability and Labour

One obvious conclusion I expected to draw from my analysis is the disability movement needs to join forces with the labour movement to make effective change, though how well the labour movement itself has fared in the fight against neoliberalism is debatable. Nonetheless, labour has traditionally supported the expansion of social rights. However, as Galer (2018b) has chronicled, the disability movement has had an increasing presence in the labour movement since the early 1980s. Galer (2018b) argues that the rise of public sector unions in the 1970s breathed new life into labour's involvement with social movement activism, just as neoliberalism was emerging (part of the previous "wave" of social movement activism that Storey [2023] refers to). Disability rights within the labour movement also received a boost from the emergence

of the concept of employment equity (as opposed to affirmative action) with the release of the 1984 Report of the Royal Commission on Equality in Employment (also known as the Abella Commission). Employment equity allowed for more focus on addressing and eliminating workforce barriers while acknowledging the need for accommodations based on the needs of different groups (Galer, 2018b). Galer (2018b) describes the ebb and flow of interest and activism in disability within the labour movement, in which disability rights were often "lumped into a larger equity agenda in which advocates competed for attention alongside other equity-seeking groups" (p. 273). Furthermore, because the labour movement was larger, more established, and better funded than the disability rights movement, it was able "to solicit the input of disability activists and rights organizations when the opportunity arose and forced the terms of these momentary partnerships to fit within an existing set of priorities the labour movement" (Galer, 2018b, p. 276). One consequence of these priorities is that the labour movement tended to focus on issues of concern to injured workers rather than disabled people more broadly (Galer, 2018b).

Galer (2018b) points to the late 1990s as a turning point for disability rights in the labour movement, "when labour organizations began to realize that passive and impromptu relationships with disability rights activists and organizations did not result in productive and valuable partnerships" (p. 277). In the 1990s and 2000s, unions and labour federations saw the development of disability caucuses to build a dialogue on disability issues. However, according to Galer (2018b), these caucuses did not attract injured workers, who had their own caucuses and did not tend to identify as disabled people. Nonetheless, the Canadian Labour Congress held its first Disability Rights Conference in 2000, which led to a campaign called "Mobilize, Organize,

Represent, and Educate (MORE)" that produced a manual designed to better incorporate disability rights into the collective bargaining process (Galer, 2018b).

Galer's (2018b) account reflects the tensions described in the historical narratives in that the "Canadian labour movement was unique in that it simultaneously represented both the individual and social model of disability" (p. 273). Unions were compelled to maintain a medical approach to disability to work within the workers' compensation system to obtain benefits and workplace accommodations for their members but eventually advocated against barriers to employment, largely at the behest of workers with pre-existing disabilities. Interestingly, Galer (2018b) does not mention whether the issue of prevention of disability was another source of tension for disability rights activists in the labour movement.

Thus, the question about the source of political power for disabled people could be reframed to add the question of political power to what end? If the goal is to reform the existing social structure to improve the lives of disabled people, state-centred, identity politics can boast some successes (Chivers, 2009), though unemployment and poverty rates remain high. If, on the other hand, the goal is to "build a society that fundamentally includes and supports people with disabilities" (Jama, 2022, p. 86)—which capitalism does not—and if we accept the critical role of the working class in challenging capitalism, the disability movement needs to engage with the theory and praxis of class in addition to the praxis of social movements.

Limitations and Areas for Further Research

The primary limitation of this study lies in the comparative-historical narrative method, specifically the reliance on documentary evidence alone. As discussed, the recent histories of both the changes in ODSP and workers' compensation have not been written. Although the generous use of primary sources allowed me to piece together those histories from documentary

evidence, they would have been much richer had I been able to interview those involved. It is impossible to assess the impact of activism on policy changes without speaking to the activists and policymakers involved. For example, I could not discern with certainty from documentary evidence alone if a particular advocacy campaign resulted in a policy change or if the policy change would have happened anyway. This is particularly important since assessing the impact of agency and sources of political power for injured workers and people with disabilities was a key research question for this study.

Similarly, comparative-historical research methods are open to the criticism of bias and cherry-picking, especially when the research is overtly theory-driven, as this research is. To avoid bias, I used a wide range of primary and secondary sources, although it is impossible to include all sources that might be relevant to a study such as this. I also tried to weighed opposing arguments where possible in making my argument.

The limitations of this research clearly point to some of the possible areas for further research. A richer, more in-depth history of both the development of ODSP and the role of disabled people in that development needs to be written. Similarly, the history of workers' compensation after 2010 needs to be researched along the lines of Storey's works in the preceding periods. Moving beyond his focus on the injured workers' movement per se, it would be useful to understand the role of the labour movement in that history, particularly its apparent inability to prevent unwanted changes to the workers' compensation system. Similarly, the need for an in-depth understanding of the relationship between disability activists and the labour movement in Ontario and how they navigate the tensions arises from this research.

Conclusion

This comparison of workers' compensation and general disability benefits in Ontario explains the relative absence of injured workers in CDS. How injured workers experience and react to impairment and disability unsettles some of the key tenets of a critical disability analysis. Injured workers see disability as a loss worthy of adequate compensation rather than a source of positive identity. (It should be noted that one of the disadvantages of this viewpoint is that it could keep injured workers in a state of perpetual victimhood that could affect their adjustment to living with a disability. Negative treatment at the hands of the WSIB contributes to this problem.) Injured workers support the prevention of disability through strong occupational health and safety laws and good workplace practices. Further, activism on workers' compensation is firmly rooted in working-class politics, whereas disability activism, including radical approaches, favours cross-class and intersectional social movement politics based on the positive identity of being disabled.

This comparison of the two benefit programs also brings to the fore the political economy of such programs, and by extension, the political economy of disability. The analysis here suggests that the development and evolution of benefit programs have less to do with "the mobilisation of convictions based on moral conviction and personal issues" (Abberley, 1996, p. 75) and more to do with the raw politics of capital accumulation. The historical narratives show that moral suasion faces the formidable opponent of the political economy of an amoral capitalist mode of production. Their class location and importance to capital originally led to the creation of a superior, though still inadequate, benefit system for injured workers. However, the impact of neoliberalism on both workers' compensation and ODSP has created a convergence of interests between permanently impaired injured workers and other disabled people, which makes

resolving some of the differences discussed previously more pressing, though no less perplexing. Equally perplexing is both movements' relationship to labour, a problem related to the question of sources of political power for people with disabilities, or anyone else for that matter. Further, we can not assume that the labour movement in its current state is oriented towards a transformational anti-capitalist agenda. Thus far, even anti-capitalist approaches to disability politics, at least from the documentary evidence examined here, are vague about what to replace capitalism with and the role of the working class in that replacement.

What the political economy of disability does make clear, however, is that the capitalist mode of production is incompatible with the income security needs of those disabled people who cannot or choose not to work in a competitive market. To build a society that "fundamentally includes and supports people with disabilities" as Jama (2020) puts it, we need a different political economy. Though he did not have disability per se in mind at that time, Marx (1857) clearly articulated the underlying principle for that political economy: from each according to their ability, to each according to their need.

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