Submission of the

Industrial Accident Victims Group of Ontario (IAVGO)

on the WSIB Discussion Paper

Coverage under the Workplace Safety and Insurance Act

March 28, 2002

I. INTRODUCTION

The Industrial Accident Victims Group of Ontario (IAVGO) is a community legal clinic funded by Legal Aid Ontario. We provide representation to injured workers in their dealings with the workers' compensation system. We also provide legal supervision and administrative support for the Advocates for Injured Workers student legal clinic, as well as training, case consultation and publications for other worker representatives.

Our submissions on the issues raised in the Board's discussion paper on coverage may be summarised as follows:

> all industries should be covered by the no-fault benefit scheme in the *Act*;
>
> all employers in those industries should be included in Schedule 1; and
>
> all workers, including independent operators and executive directors, should be covered

In short, the default position of the system should be shifted from coverage by inclusion only to universal coverage. Exclusions, if any are allowed to continue, should be few and carefully defined. Failure to expand coverage is unfair to injured workers, taxpayers and those employers who are already covered.

II. Mandatory coverage of all non-covered workplaces under Schedule 1.

As detailed in the Board's discussion paper, coverage is currently limited to workplaces in industries listed in Schedule 1 or Schedule 2 of the regulations to the Act. Schedule 1 employers pay premiums under the collective liability system, while Schedule 2 employers are responsible for their individual claims costs. Whole industries, such as banks, law offices and insurance companies, have never been covered, while newly emerging industries, such as writing computer software and operating call centres, have yet to be covered.

In our submission, covering these industries should be viewed primarily as an access to justice issue. Existing gaps in coverage are arbitrary and lead to injustice in individual cases. From the point of view of injured workers, there is no justification for allowing even one individual to be denied the benefits of coverage.

From the point of view of taxpayers and employers who are currently covered by the no fault benefit scheme, there is no justification for allowing some employers to transfer a large portion of the costs of workplace injuries onto public programs, while avoiding contribution to the Board's unfunded liability.

A. Existing gaps in coverage are arbitrary and unfair

It **is** true that workers in non-covered industries as a whole are at a somewhat lower risk of injury than those in mandatorily covered industries as a whole. However, this generalization does not justify their exclusion from coverage.

First of all, employers in industries with low risk of injury receive the benefit of that fact in lower premium rates. For example, financial sector employers with mandatory or voluntary coverage pay only 17 cents per $100 of payroll, or $1700 per million dollars of payroll, less than 2/10 of 1% of payroll.

Second, lower incidence of injury does not necessarily mean injuries of less severity or shorter duration for those individuals who actually are injured. This can be seen from the 1995 edition (unfortunately the last issue) of the Statistics Canada publication "Work Injuries" (Catalogue 72-208). For the period 1993-1994, contrary to what one might suppose, the most common single type of accepted lost-time injury in both the Finance and insurance and the Real estate operators and insurance agent sectors was back injury (Table 10, at page 49). If we take the liberty of adding together some of the body part categories, back injuries are followed by injuries to the upper extremities and then lower extremities.

Since these are nation-wide statistics based on accepted lost-time claims, they are not strictly reflective of experience in Ontario, which has only spotty coverage in these areas. But there is no reason to suppose that injuries in these sectors stop at the Ontario border. In fact, the same publication provides a breakdown by province and industry indicating that more than 1000 lost-time claims were accepted by the Ontario Board in these two sectors for each of the years 1992 through 1994 (Table 9, at page 42). In 1994, Ontario had more accepted lost-time claims under the Real estate operator and insurance agent category than any other province, despite the fact that neither real estate nor insurance agents have mandatory coverage.

Third, existing gaps in coverage are not limited to these lower risk industries. Many workers in the social services and health care fields in the private and

broader public sectors are not covered, and they are at a much greater risk of injury. Lifting children is not any less likely to cause a back injury in a private daycare centre than in one run by a municipal government. Yet workers in private daycares are denied access to no fault injury benefits unless their employers have opted for voluntary coverage (Employer Classification Manual [ECM] Document No. H-861-05).

Fourth, occupations cut across industry lines. There is no reason to suppose that workers in the same occupation are at any less risk simply because their employers have not chosen coverage, but many are denied workers' compensation coverage for no better reason. According to Human Resources Development Canada, slightly more than 1/3 of medical secretaries work for hospitals (http://jobfutures.ca/jobfutures/noc/1243.html). They are covered (ECM H-853-01). Most of the remainder work in the offices of health care practitioners and in medical labs. The former are not covered (ECM H-875-04 and following), while the latter are (ECM H-875-16). Clerical support staff of all descriptions find themselves in a similarly arbitrary situation. Data entry work is no less likely to cause an RSI at a bank than in the office of a manufacturing concern, but one worker receives benefits while the other does not.

Fifth, on the other side of the equation, the arbitrary nature of coverage creates unfairness between employers. The manufacturer pays insurance premiums, and at the rate applicable to its manufacturing business, while the bank escapes even the much lower rate applicable to its sector. Again according to HRDC, more than half of the workers in the general occupational category of finance and insurance clerks work in sectors other than finance, insurance, real estate and professional services (http://jobfutures.ca/jobfutures/noc/143.html) . About 4% of the total work in the construction sector. Those workers are covered, and their employers pay premiums at very high rates.

B. The Canada Labour Code does not provide an adequate alternative to workers' compensation coverage.

Representatives of the banking and insurance industries have been quick to point to s.239.1(2) of the *Canada Labour Code* (CLC) as a justification for the status quo. This provision states that:

> Every employer shall subscribe to a plan that provides an employee who is absent from work due to work-related illness or injury with wage

> replacement, payable at an equivalent rate to that provided for under the applicable workers' compensation legislation in the employee's province of permanent residence.

It has been asserted that this provision renders workers' compensation coverage redundant, but that position is deeply flawed.

First of all, the *Canada Labour Code* provision does not apply to all non-covered workplaces. In fact, it does not even apply to the entire financial and insurance sector. The federal labour jurisdiction is a very narrowly circumscribed field. In the financial sector, for example, a business must be a bank within the technical definition of the *Banks Act* in order to be classified as a federal undertaking.

Banks, credit unions, trust companies and insurance companies are all in similar businesses, as reflected in the fact that those who opt for WSIB coverage are all part of Rate Group 956 and pay the same premiums. However, of this group, only banks fall within the federal labour jurisdiction to which the CLC applies (see e.g. *Canadian Pioneer Management Ltd. v. Saskatchewan (Labour Relations Board)*, [1980] 1 S.C.R. 433). This is true whether an insurance company is federally or provincially incorporated. Furthermore, the CLC does not apply to the health care and social service sector workplaces without mandatory WSIB coverage.

Second, it is questionable whether all, or even any, of the workplaces which are covered by the CLC, but not by WSIB actually subscribe to plans that provide wage replacement at a rate "equivalent" to workers' compensation. At the public consultation on March 7, representatives of the insurance industry seemed to be describing standard Long Term Disability (LTD) plans paying standard rates. These plans pay at lower rates than 85% of net average earnings and also do not pay from the date of injury. They generally require the worker to exhaust her sick leave and then her EI sickness benefits before receiving LTD. This waiting period is applied again in cases of recurrence. This would not be equivalent wage loss protection, which would require the payment of full wages for the day of the injury and 85% of net average earnings for every dollar lost thereafter, until age 65. The submission of the Ontario Public Service Employees' Union (OPSEU), leads one to question whether such coverage is even available on the private insurance market.

Third, the CLC does not require that equivalent insurance coverage be provided. The provision refers only to wage replacement. Employers are not required to provide vocational rehabilitation services for workers who cannot return to the

workplace, compensation for non-economic loss or compensation for loss of retirement income.

Fourth, even within the very narrow coverage of the CLC provision, it is unclear what an injured worker's remedies are if the wage loss coverage is not equivalent or is not properly paid in accordance with an equivalent plan. The business of providing an insurance plan to cover workplace injuries is not a federal undertaking, as evidenced by this very consultation. Arguably, the enforcement of rights under any equivalent plan would require the injured worker to institute legal proceedings.

In short, the existence of s.239.1(2) of the CLC does not provide an adequate alternative remedy even to those workers it does cover. Its very existence stands as a reproach to the arbitrary nature of existing WSIB coverage. That the federal government has found it necessary to legislate such a standard is not cause for the Board to back off, but an invitation to step up and provide proper protection in terms of insurance for workplace injuries, a matter which is after all properly in the province's jurisdiction.

C. Adequate alternative remedies are not available.

1. LTD Plans

First of all, these plans are totally voluntary. There is no requirement that an employer without WSIB coverage obtain LTD coverage for its workers.

Second, as noted above, LTD plans do not offer equivalent wage replacement. For example, the standard plan provided to legal clinic staff through Legal Aid Ontario (LAO) pays 70% of gross wages. The wage replacement rate for a lawyer with a 1995 year of call would be approximately $75 to 100 per week less than workers' compensation.

Third, LTD plans have waiting periods. The Board's "Monthly Monitor" consistently shows that more than 85% of lost-time claims are resolved in 90 days or less, which is shorter than the standard waiting period. The LAO plan has a waiting period of 17 weeks, which must be repeated with each recurrence after a return to work of 6 months or more. The waiting period alone renders most of those eligible for lost time workers' compensation benefits ineligible for LTD.

Fourth, LTD plans contain restrictions for new workers. The LAO plan contains

both a three month waiting period before coverage begins, and restrictions on "pre-existing conditions" that would not necessarily affect workers' compensation entitlement in light of the significant contributing factor test.

Fifth, return to work and other rehabilitation measures that are available under LTD plans are often subject to rigid restrictions. The LAO plan requires insurer approval for any return to work plan. The above average plan for federal civil servants caps rehabilitation services at 24 months (http://www.pwgsc.ca/compensation/text/insurance3-e.html, section 3.11.10). Partial disability compensation after a return to work is also typically much less favourable than under the workers' compensation scheme, when it is available at all.

Finally, it is difficult for injured workers to enforce their rights under LTD plans. There is no inexpensive appeal to an independent body, but typically just an internal ombudsman followed by litigation. By contrast, workers' compensation coverage provides for an independent appeal, and free representation is readily available from legal clinics, unions and the Office of the Worker Adviser.

The "24/7" nature of LTD coverage does not make up for these inadequacies. IAVGO has voluntary WSIB coverage to protect its workers. Not all legal clinics do. Those who do not are worse off.

2. Civil Actions

First of all, civil actions are notoriously uncertain. As Samuel Butler remarked, "In the law, the only thing certain is the expense."

Second, as regards the expense, little has changed since Chief Justice Meredith's time in terms of the ability of injured workers to fund legal actions. Unless a matter can be settled with one phone call, the cost is prohibitive. Simply issuing pleadings and attending a settlement conference costs $10,000 to $15,000. The cost to actually proceed through discoveries and to trial is astronomical. Any reasonable cost-benefit analysis rules out a civil action in any but the most serious cases of long-term disability, i.e. those where the injured worker's financial situation is most impaired.

Third, inadequate alternatives skew the cost-benefit analysis to make civil actions even less attractive. For example, if an injured worker is able to return to a new

job at a wage loss, the ratio of potential damage award to legal costs is decreased. As another example, the LAO LTD plan mentioned above would be entitled to reimbursement from the proceeds of any civil action. This has an even greater impact, as it renders the prospect of a quick settlement on worthwhile terms remote, since the injured worker sees no benefit from any settlement until it surpasses 70% of lost wages. It is difficult to imagine when an action would be financially viable under these circumstances.

Fourth, proper legal advice is hard to come by. Even experienced lawyers are rarely unaware of the fact that an injured worker need not demonstrate negligence on the part of her employer. Part X of the *Workplace Safety and Insurance Act* dealing with "Uninsured Employment" provides a statutory cause of action whenever a worker who is not covered by the no fault benefit scheme is injured "by reason of a defect in the condition or arrangement of the ways, works, machinery, plant, buildings or premises used in the employer's business or connected with or intended for that business" [s. 114(1)(1)].

Combined with the s. 116 removal of certain common law defences, this imposes a duty on employers to provide a safe workplace that is akin to a strict or absolute liability standard. It is not necessary to prove that the injury resulted from the employer's negligence, and contributory negligence on the part of the injured worker is to be construed narrowly. That the employer liability provisions of the *Act* are to be interpreted liberally in favour of the worker has been made clear by no less an authority than the Supreme Court of Canada in *Lewis Estate v. Nisbet & Auld Ltd.* [1934] S.C.R. 333.

Yet one searches in vain for subsequent Ontario cases interpreting the employer liability provisions. In light of the injury statistics provided above, the large number of workplaces without WSIB coverage, and the fact that any repetitive strain injury and most other injuries caused by work would fall within the employer's expanded liability, how can this be so? One would expect that there would be literally hundreds, possibly thousands of actions each year. Yet the employer liability provisions have apparently fallen into disuse and forgetfulness.

It should be remembered that the provisions now in Part X of the *Act* are essentially those contained in the employer liability legislation that was in force between 1886 and 1915. Whatever the theoretical advantages it gives to injured workers, the mere existence of the no fault benefit scheme is a testimony to its impracticality as a primary vehicle for compensating injured workers. It was simply not within the means of most injured workers to translate the employer's

notional liability into actual compensation. Nothing has changed in that regard.

D. Case Examples

Due to the nature of its practice, IAVGO does not tend to have much contact with workers from non-covered workplaces. Unless there is some connection to the workers' compensation system, we are generally only able to confirm the lack of coverage and refer the injured worker to the private bar. However, we still see the practical effect of gaps in coverage.

1. "Isabel"

Isabel worked for a daycare centre and suffered a permanent low back injury lifting a problem child in March 1996. At that time, she recalled that her employer had distributed a memo that January indicating its intention to cancel its voluntary coverage. However, she was not sure of the effective date of the cancellation. A claim was filed, and she notified her adjudicator on several occasions of her doubts regarding her coverage. She was assured that her employer still had coverage. However, it was discovered that this was an error after she had received more than $1500 in benefits.

IAVGO became Isabel's representative with respect to the overpayment, which is no longer being pursued by the Board. By two years post-injury, she had obtained a job at a 20% wage loss. Her employer did not have an LTD plan. Although we referred her to a reputable personal injury firm and informed the lawyer advising her of the provisions of Part X (then Part II) of the *Act*, nothing ever came of this for the reasons outlined above.

Isabel received UI sick benefits, but other than that, her family was forced to absorb the cost of her injuries. We have also been contacted by another non-covered child care worker in recent months.

2. "Betty"

Betty worked in a bank cafeteria and came down with carpal tunnel syndrome. She was told by her supervisor that banks were not covered by the WSIB and therefore she had no claim. This information turned out to be incorrect, and a claim was eventually filed by a company nurse "just in case". It was denied on the

basis that the carpal tunnel syndrome was not consistent with her work duties, but Betty never received that letter.

She was able to return to work at modified duties and continued to receive her pre-injury pay. However, when cafeteria operations were suspended and she was laid off two years post-injury, she sought further advice regarding her options, in light of her continued need for modified work. It was only at this point that she learned her particular work area had in fact been covered and that her claim had been denied. Thus far, the Board has refused to forgive the time limit to appeal the denial of benefits.

The reasons boil down to an assertion that it is not reasonable for her to have been uncertain about her coverage. After all, a WSIB ergonomist had attended at the workplace to examine her job. Apparently, she was to have deduced from this that she was covered and that the failure to pay benefits was the result of a denial to which a time limit attached.

To date she has received no compensation, and she is waiting for WSIAT to determine if it can hear an appeal from the decision not to extend the time limit and/or the decision to deny benefits. Her case has gone through a merit review at our clinic, and our satellite clinic staffed by University of Toronto law students is representing her.

The last correspondence on this matter is a letter dated March 13, 2002 from Mr. Robert Boswell of Hicks Morley, who is representing the employer. It reads in part as follows:

> As you know, federally regulated banks currently are not covered mandatorily under the Workplace Safety and Insurance Act. It is our understanding that our client has elected to voluntarily seek coverage from the Board in respect of a subset of its employees. Based on the information we currently have respecting this matter, we are unable to confirm whether [Betty] is a person who worked in a portion of our client's operations which was subject to coverage under the WSIA insurance plan. Once we are able to determine whether the worker as voluntarily covered under the Act, we will advise the Tribunal. It may be that the issues on appeal are moot.

Mr. Boswell, who also happens to be chair of the Workers' Compensation Section of the Ontario Bar Association is entitled to his confusion. Betty should be too.

Both Isabel and Betty have suffered for no better reason than that their employers are able to do as they like with respect to workers' compensation coverage. Both have received no compensation because of it. Our experience is that workers are also wrongly informed that they do not have coverage when they are actually working in industries with mandatory coverage. This can result in lengthy delays in receiving compensation. Universal coverage is the only way to ensure that all injured workers have a right to fair compensation, that they can unequivocally know their rights and effectively enforce them.

II. Transfer current Schedule 2 employers into Schedule 1.

Once again, the effect on injured workers should be the first consideration. The self-insurance scheme provides Schedule 2 employers with powerful incentives to manage claims in an aggressive, overly litigious fashion that is detrimental to injured workers. Due to the demographics of Schedule 2, workers from these industries are only a small part of our caseload, probably 5% or less. However, the class of Schedule 2 injured workers who become eligible for legal aid have confirmed for us that all of the problems engendered by experience rating in Schedule 1 are magnified. Schedule 2 employers have virtually unlimited incentives to suppress claims, make offers of non-existent modified work, vigorously pursue questionable appeals in the hopes of getting lucky, and so on.

This is the universal experience of unions, legal clinics and others providing representation to injured workers, and we strongly urge the Board to take this matter seriously. Claims management does not equal a safer workplace or effective return to work. It does convince workers that it would be easier to use sick leave credits or accept a "job" sitting in the cafeteria reading the newspaper than to pursue a workers' compensation claim. This shifting of the burden may allow consultants to claim stunning reductions in workers' compensation costs, but it also leads to significant problems for injured workers, especially those left with serious, permanent disabilities and a deemed ability to earn their pre-injury wages.

We adopt the submissions of the Ontario Public Service Employees Union on the elimination of Schedule 2, and add only the following;

Schedule 2 was conceived and expanded on the principle that public and private employers in a monopoly or near monopoly position could be relied upon to pay their bills. However, it includes a number of smaller employers of less certain prospects, some of which have gone bankrupt over the years. Thus far, the

phenomenon has been restricted to these small operations, but there is certainly no guarantee that this will always be the case.

The Schedule 2 Employers' Group has submitted that there is no danger the costs of future bankruptcies will be passed on to employers in Schedule 1. Schedule 2 employers are willing to agree that they will bear any such costs, and will also continue to reinsure against catastrophes. But will the commitment of Schedule 2 employers to collective liability still exist five, ten or fifteen years from now when they are actually called upon to pay? If not, how would the Board enforce these commitments? What statutory powers can it call upon in this circumstance?

For that matter, how would the Board enforce the commitments of reinsurers to pay in the event of catastrophe? As evidenced by a story in the Globe and Mail of March 13, 2002 (John Partridge, "Canada Life suing reinsurer in second WTC-related case", available through www.globeinvestor.com), actual catastrophes have a way of causing controversy between reinsurers and their customers. Canada Life is suing Caisse Centrale de Reassurance SA (CCR) for an additional $26.5 million on top of the $6 million CCR is actually willing to pay over the World Trade Center attack. Canada Life had already launched an $82.4 million action against Zurich Ruckversicherung AG (ZR) with respect to the same disaster.

The issue in the Canada Life cases is not one of insufficient funds. CCR is owned by the French government, while ZR is now Converium Reinsurance (Germany) Ltd., part of the giant Converium Group. The A.M. Best insurance rating service gives both companies an "A" or "excellent" financial strength rating (www.ambest.com/ratings). Nevertheless, there are disputes over what is owed, and these will now be the subject of international court battles.

It is always possible that individual Schedule 2 employers will have better luck with reinsurance than the insurance professionals at Canada Life. But why should the Board subject Schedule 1 employers to that risk? There is a system of collective liability which will soon have the entire Ontario economy and billions in reserves to back it up. It is called Schedule 1, and the Board does not need to rely on gratuitous payments, good faith or legal action to ensure that its expectations are fulfilled. Its statutory powers are up to the job.

III. Cover independent operators and executive officers

Obviously, being characterised as an independent operator by an unscrupulous employer leads to significant delays in the payment of compensation to affected workers. It can only be in the interest of workers to be recognised as such by the Board from the outset, rather than fighting for worker status after an injury. It is also in the interest of the system as a whole.

Over the last two decades, hundreds of millions of dollars have been transferred from other industries to cover the liabilities of the construction sector. Revenue leakage in the construction sector is enormous, possibly as high as 50%. The phenomenon of so-called "independent operators" who are actually workers is a large part of the problem, leading to uncollectable revenue debts and to compensable injuries where no premiums have been paid.

Treating all independent operators as workers is necessary to improve revenue collection not only in construction, but also in other industries such as trucking. This is to the benefit of other employers in these sectors who are first in line to pick up the tab and also to other employers who are inevitably called upon to make up the difference when this proves overly burdensome.

Mandatory coverage of independent operators in industries like construction and trucking, and of executive officers and all others working in covered industries will not only increase the payroll on which premiums are collected, it should simplify the Board's enforcement duties with respect to business registration and premium collection. We can only refer the Board to those in the affected industries for their ideas on the most effective strategies for enforcement.

IV. Clear up the bar on lawsuits.

It should be noted with respect to non-covered and Schedule 2 employers, as well as independent operators, that bringing them into Schedule 1 will clarify and extend the bar on lawsuits. As detailed above, we are not impressed by the practicality of lawsuits as a vehicle for compensating injured workers. However, to the extent that they remain a possibility, workers in non-covered or Schedule 2 workplaces and those properly characterised as independent operators or executive officers all retain the right to sue Schedule 1 employers. When a trucking company declares its drivers to be independent operators, it is not only passing the buck on premiums, it is exposing its unwitting customers to new liabilities.

Allowing this to happen is not sound public policy.

V. Newly covered employers should contribute to the unfunded liability

Both non-covered and Schedule 2 employers are sure to argue that if they are brought into Schedule 1, they should be exempt from paying for the Board's existing unfunded liability (UL), since they will continue to have responsibility for funding workers' compensation or other claims which have arisen prior to their inclusion in Schedule 1.

This is a serious issue. Premium rates currently include a charge designed to retire the UL by 2014. First the overall UL charge for Schedule 1 is calculated, and then this charge is allocated among the various rate groups in proportion to their net new claims costs. For 2002, the UL charge makes up 34% of the premium rate for aircraft manufacturing ($0.356 per $100 of assessable payroll, full rate of $1.06 per $100) and 32% of the rate for legal and financial services ($0.054 of the $0.17 full rate).

It is perfectly fair to bring newly covered employers into the existing rate groups for their sectors, including the UL charge. The UL includes a huge component which cannot be attributed to currently covered employers. This includes the costs of uncollected debts and permanent disability claims for thousands of companies which are no longer in business, including substantial claims costs for the now defunct asbestos cement and uranium mining industries.

This process is ongoing. The allocation of the UL charge based on net new claims costs and payment of premiums based on current payroll means that the unfunded portion of claims arising from declining sectors are always being shifted to other workplaces.

Most tellingly, anyone purchasing the assets of a business, any new business with mandatory coverage and any non-covered business which opts for coverage is required to pay the usual premium rate, including the UL charge. This has always been justified on the basis that those in business today are in some way standing on the shoulders of their predecessors. And the height of those shoulders has been financed in part by the UL, which left money in the hands of business rather than the Board.

If Mom and Pop open a new, mandatorily covered accounting practice this year, they must pay premiums for their employees at a rate of $0.17 per $100 of payroll, 32% of which is assignable to the existing UL. If a lawyer opts for voluntary coverage prior to any changes in coverage, she will pay at the same rate. Why should newly emerging industries be exempt from charges which apply to other new businesses?

Why should banks and insurance companies that have existed for decades, benefiting from the activities of the resource and manufacturing sectors, get a better deal on their premiums? In the past, the financial sector directly profited from the fact that covered businesses were effectively subsidised by the UL, including businesses that were so inherently dangerous they have now disappeared. Furthermore, the costs of its own work injuries were largely passed on to the publicly funded health care system, the EI program and other programs funded by Schedule 1 employers and their workers.

IAVGO has paid workers' compensation premiums for many years without incurring liabilities for the Board. Why should it continue to pay for the unfunded liability while a law office which is brought in by the current process does not? It is surely not good public policy to exempt the newcomer on the basis that it has exposed its employees to the risks of inadequate coverage or, where there have been injuries, passed the costs onto its employees, their families and taxpayers.

As a matter of equity, all newly covered employers should certainly bear part of the burden of paying off the UL.

With respect for Schedule 2 employers, the Board's paper notes that Schedule 2 has its own unfunded liability of $1.5 - 2 billion. Following the treatment accorded to new businesses, it could be argued that internal fairness and consistency would require these employers to cover their existing costs **and also** contribute to the Schedule 1 UL. The fact that they bring established liabilities with them is hardly an argument for preferential treatment as compared with new businesses or newly covered industries.

In summary, equity demands that non-covered and Schedule 2 employers brought into Schedule 1 be called upon to contribute towards the UL. The only plausible arguments for exempting them also apply to most if not all of the employers who are already covered. The UL belongs to the past, and largely to companies which no longer exist. The only concession on the UL issue should be one which addresses this generational inequity, i.e. the implementation of a sustainable partial

funding scheme. Such an option is eminently feasible and responsible under a regime of full coverage.

Fully funding all future liabilities is not necessary to secure payments to injured workers. On the contrary, unwarranted attention to the UL has only been the source of harmful policy and legislative developments.

All of which is respectfully submitted,

INDUSTRIAL ACCIDENT VICTIMS GROUP OF ONTARIO

David Wilken
Staff Lawyer