Notes

Introduction


Chapter One

3 J. Godard, *Industrial Relations, the Economy and Society, 3rd Edition* (Concord: Captus, 2005).

4 H. Drost and R. Hird, *Introduction to the Canadian Labour Market, 2nd Edition* (Nelson: Scarborough, 2005). There are actually multiple labour markets, segmented by occupation, industry, and/or region. For the sake of convenience, we combine these and normally refer to the labour market.


6 Drost and Hird, *Canadian Labour Market*.

7 The common law is a body of law based on British legal tradition of a judge deciding matters based on the doctrine of precedent (previous decisions). Essentially, judges based decisions on established customs and conventions to ensure a uniform application of the law.


9 H. Glasbeek, “The Contract of Employment at Common Law,” in *Union–Management Relations in Canada*, eds. J.C. Anderson and M. Gunderson (Toronto: Addison-Wesley, 1982), 65. The master-and-servant tradition of employment arose in England at the end of the thirteenth century, just as the feudal system was breaking down. The state responded to a labour shortage and rising wages (i.e., the free operation of the labour market) with the Master–Servant Act. This law imported certain features of the old feudal relationship into the new world of employment. Workers, for example, had to obey the commands of their masters, and could not bargain for their rate of pay. Over time, some of the details have changed, but this master-and-servant approach persists in the common-law obligations of employment.

S. Marglin, “What Do Bosses Do? The Origins and Functions of Hierarchy in Capitalist Production,” *Review of Radical Political Economy* 6 (1974): 60–112. In England, the independent commodity production and putting-out system gave way to industrial capitalism between 1780 and 1840. Canada’s industrial revolution occurred later (1850–1880). The hallmark of industrialization is the factory system. There are two basic (and competing) explanations for the rise of factories:

**Technological determination:** Machine such as the spinning jenny and water frame were more efficient at producing goods but required a greater volume of work and workspace than could be found in small workshops. Thus, the argument is that technology drove change.

**Control of the workforce:** Factories were more efficient because employers could demand longer and harder work from their employees since workers were economically dependent and could be closely supervised. The evidence supports the latter theory. Factories predated the introduction of power and technological change. Rather, they began as agglomerations of smaller production units with no technological superiority. Their advantage for employers was increased control over the production process and preventing embezzlement.

Frederick Taylor is the usual example given here. He sought to reduce the control workers exercised over production (which impeded the ability of employers to maximize productivity) by taking jobs, breaking them down into component parts (which could be timed), and reconstructing the production process to maximize productivity. This stripped workers of control over the content and pace of work. It also allowed the use of cheaper, unskilled labour. Taylorism is still evident today when you visit any fast-food restaurant, wherein job duties are regimented and timed to maximize productivity and minimize worker discretion.

how corporations seek to maximize profitability by regulation and liability for workplace and consumer deaths and injuries. Among the tactics used are conducting or commissioning research to show a process or product is “safe,” generating controversy about its effects, and attacking scientists and scientific work that suggest otherwise. Support from industry-friendly “third-party” scientists can be organized for industry’s scientific positions in regulation-setting, court proceedings, and the press. Similarly, industry organizations and think tanks can be created or used to create the appearance of legitimacy and sway media and public opinion.


17 J. Witt, The Accidental Republic: Crippled Workingmen, Destitute Widows and the Remaking of American Law (Cambridge: Harvard University Press, 2004) notes that “the opinion’s author, Lord Abinger, had long supported reform in the English Poor Law along the lines advocated by classical economists Malthus and Ricardo,
on the theory that state-provided material support undermined the incentives to work and led to pauperism” (p. 13).

18 Similar case law developed in the United States. E. Tucker, “The determination of occupational health and safety standards in Ontario, 1860–1982,” *McGill law Journal* 29 (1983/84): 260–311, notes that this approach, including the various common-law defences employers could use to avoid liability, also reflects the precepts of nineteenth-century Liberalism which sought to maximize the ability of individuals to pursue their self-interest.


22 Risk, “This nuisance of litigation.”

23 M. Gunderson and D. Hyatt, “Foundations for Workers’ Compensation Reform: Overview and Summary,” in *Workers’ Compensation: Foundations for Reform*, eds. M. Gunderson and D. Hyatt (Toronto: University of Toronto Press, 2000), 3–26. Kostal, *Legal Justice, Social Justice* notes that of the 20 work-related injury cases litigated and reported in Ontario before 1886, only three (15 percent) were successful. While the success rate is interesting, the key finding here is the small absolute number of litigated and reported cases. An 85 percent failure rate for civil suits is also reported in the American literature, but again substantiation is elusive. See: M. Aldrich, *Safety First: Technology, Labor and Business in the Building of American Work Safety, 1870–1939* (Baltimore: Johns Hopkins University Press, 1997).
Witt, *The Accidental Republic,* discusses cooperative insurance and the reasons it gave way to state-run workers’ compensation.

Witt, *The Accidental Republic,* discusses the operation of such benefit plans in the United States. He also provides a compelling discussion of the tensions facing unions that operated insurance schemes.

A. Derickson, “To Be His Own Benefactor: The Founding of the Coeur d’Alene Miners’ Union Hospital, 1891,” in *Dying for a Living: Workers’ Safety and Health in Twentieth-Century America,* eds. D. Rosner and G. Markowitz (Bloomington: Indiana University Press, 1989), 3–18. These worker-run plans reduced the power employers could wield over workers via the administration of employer-run benefit plans. Some workers were forced to strike for the right to control medical plans financed by their own money.

Aldrich, *Safety First.*

R. Asher, “The Limits of Big Business Paternalism: Relief for Injured Workers in the Years Before Workmen’s Compensation,” in *Dying for a Living: Workers’ Safety and Health in Twentieth-Century America* (Bloomington: Indiana University Press, 1989), 19–33. For example, employers might require workers to sign away their right to sue in order to access employer-provided benefits in the event of a workplace injury.

Chapter Two


manufacturers to set exposure limits based on what was (in the employers’ view) economically feasible. Brown notes the difficulty regulators had disentangling economic and technical feasibility and that regulation was impeded both by a lack of reliable data on exposure effects and the regulator’s reliance entirely on industry for information about the feasibility of standards.

4 Tucker, “The Determination of Occupational Health and Safety Standards in Ontario”; H. Glasbeek and E. Tucker, “Death by Consensus: The Westray Story,” New Solutions 3 (1993): 14–41. This market-based approach requires employers and workers to know enough about health to make a rational choice and for all of the costs of ill health to be borne by the firm. As shown below, these assumptions do not hold up to scrutiny.


6 J. Robinson, Toil and Toxins: Workplace Struggles and Political Strategies for Occupational Health (Berkeley: University of California Press, 1991), provides a detailed discussion of the hazard pay and the practicalities of exit as a worker option.

7 Risk, “This Nuisance of Litigation.”

8 Kostal, “Legal Justice, Social Justice.” A lawsuit gave workers a chance to resist their employer’s will without fundamentally threatening the existing social structure — a structure that many workers no doubt believed was beneficial to them in many ways.


10 Iverson and Barling, “The Current Culture of Workplace Injury.” There were differences by size of firm: 81 percent of small businesses, 79 percent of medium businesses, and 60 percent of large businesses agreed with this statement.
Iverson and Barling’s “The Current Culture of Workplace Injury” survey of Canadians found that 61 percent of respondents thought that workplace accidents and injuries were inevitable. At the same time, 68 percent believed that the right amount of attention was being paid to injury prevention.

D. Rosner and G. Markowitz, “A Gift of God? The Public Health Controversy over Leaded Gasoline during the 1920s,” in Dying for a Living: Workers’ Safety and Health in Twentieth-Century America, eds. D. Rosner and G. Markowitz (Bloomington: Indiana University Press, 1989), 121–139. A modern twist on the carelessness narrative is that of hyper-susceptibility. Again, workers are blamed for their injuries instead of examining the impact of job design on exposing them to toxins. Framing injury as a result of susceptibility leads one to removing the worker for the workplace, rather than removing the hazard.

For example, N. Ashford, Crisis in the Workplace: Occupational Disease and Injury (Cambridge: MIT Press, 1976), found that more than half of injuries and deaths were caused by unsafe working conditions, while less than a third were caused by unsafe acts. It is also important to be mindful that unsafe acts may be triggered by unsafe working conditions. Falling off a building may be due to not wearing fall protection. But was such protection available? Was the worker trained to use it? Was the worker pressured not to use it? All of these explanations are difficult to see but suggest some unsafe acts actually reflect working conditions.


Aldrich, Safety First notes that blaming the worker suggests that the remedy lies in worker training, supervision, and discipline. This is a much less expensive remedy than re-engineering workplaces to eliminate hazards.

A similar effect can be seen in the adoption of the metric system in the 1970s. Despite 30 years of indoctrination, the only area where the metric system has clearly displaced the imperial system is in speed and distance measures. And this reflects that the state has mandated metric speedometers and changed road signs. The imperial system continues to dominate our concep
tions of weights and measures (e.g., I’m six-foot-three and I’d like a pound of butter, please).

17 Tucker, “And the Defeat Goes On.” This includes the cost of civil settlements and corporate benefit plans. More recently, these costs have included workers’ compensation premiums and occupational health and safety fines.

18 Tucker, *Administering Danger in the Workplace*, traces the effect of industrialization on injuries in Ontario between 1850 and 1914. Among his conclusions are that workplace injury must be understood in terms of the prevailing relations of production. A pre-industrial, pre-capitalist social formation allowed workers to determine their own work process and working pace. Industrial capitalism sees employers determining the duration of the workday and the pace and design of work. Workers have less ability to organize work in ways that are safe. Further, the nature of Taylorist job design entails long periods of monotonous work, often in close proximity to hazardous equipment. Finally, the integration of workers also meant workers could be injured through the (in)action of other workers.

19 Witt, *The Accidental Republic*, provides a thorough discussion of the American evidence regarding increasing injury rates. While some historians have suggested that injury rates (as measured by fatalities) remained stable through the late nineteenth century, Witt provides a compelling case that fatalities are a poor measure of injury rates. The assertion that injury rates increased during this period is corroborated by British injury data.


22 A. Bale, “America’s First Compensation Crisis: Conflict over Value and Meaning of Workplace Injuries under the Employer Liability System,” in *Dying for a Living: Workers’ Safety and Health in*

23 Tucker, “The Determinants of Occupational Health and Safety Standards in Ontario” asserts that the addition of an income franchise in 1824, which was extended to a full male suffrage in 1888, increased the political power of the working class. Among the outcomes of these changes in Ontario were legislative changes designed to address objectionable working conditions and alter employer liability rules.

24 E. Lorentsen and E. Woolner, Fifty Years of Labour Legislation in Canada (Ottawa: Department of Labour, 1950); Finkel, Social Policy and Practice in Canada; Palmer, Working Class Experience.


26 Tucker, “The Determination of Occupational Health and Safety Standards in Ontario” notes that legislation in 1874 addressed threshing and other machines. This was followed in 1881 by legislation addressing safety on railroads. The former was enforced via private prosecution while the latter allowed workers to sue as if they were not workers if the employer failed to comply with the Act.

27 Tucker, “Making the Workplace ‘Safe’ in Capitalism” notes that both employers and workers sought more inspectors. Workers sought additional inspectors to ensure increased regulation. Employers sought more than a single inspector with the expectation that multiple inspectors would result in some inspectors being drawn from industry.

28 Tucker, “Making the Workplace ‘Safe’ in Capitalism” and Tucker, Administering Danger in the Workplace document how inspectors approached compliance in ways that did not impair the employer’s right to organize work in the most profitable manner. Further, compliance was sought via persuasion, rather than prosecution. This reflected the view that injuries were neutral events, unrelated to any relationship of power or the pursuit of advantage. Conflict over health and safety was also hived off from mainstream labour relations, thereby reducing the risk of social instability, particularly when combined with workers’ compensation.
Lorentsen and Woolner, *Fifty Years of Labour Legislation in Canada*. This included Quebec (1886), Manitoba (1900), Nova Scotia (1901), New Brunswick (1905), British Columbia (1908), Saskatchewan (1909), and Alberta (1917).

Tucker, “Making the Workplace ‘Safe’ in Canada” also suggests that compliance was constructed in such a way as to exclude requiring employers to incur substantial costs in preventing injury. This reflects that inspectors accepted the view that there are no fundamental conflicts between the interests of workers and employers when it comes to health and safety.

Tucker, “The Determination of Occupational Health and Safety Standards in Ontario” notes that state regulation introduces an overtly political element into the regulation of safety. Among the consequences of this change is that the strength of different social classes will significantly influence the content of the regulation. One outcome is that, as the state begins regulating the economy, it must grapple with the fact that private investment decisions determine economic performance (unless the state plans to challenge private property) and thus the state must regulate with an eye to encouraging private investing. This situation often results in a confounding of the private interests of employers with the public interest.

Bale, “America’s First Compensation Crisis” discusses this dynamic in depth as it occurred in America. Overall, the American literature on this topic is better developed than the Canadian is and can provide useful insight into the Canadian experience.

Carr, “Workers’ Compensation Systems.” In spite of this change, courts could still only award compensation in the event of employer negligence—which still had to be proven in a system of tort law. Changes in Canadian legislation followed, as set out in Tucker, “Making the Workplace ‘Safe’ in Canada.”

Workers’ compensation was part of a broad package of social policies intended to provide a complete network of social security to German citizens.

Witt, *The Accidental Republic* notes that programs for veterans of America’s civil war were important precursors to programs designed to compensate work-related injuries.


Palmer, *Working Class Experience*.


Stritch, “Power, Resources, Institutions and Policy Learning” notes that no-fault compensation first emerged in Quebec where the labour movement was too weak and divided to force such a concession. Witt, *The Accidental Republic* traces the development of workers’ compensation in the U.S. and concludes the ability of workers’ compensation to offer all stakeholders something (if only notionally) helps explain its rapid adoption.

Witt, *The Accidental Republic*. The most famous of these is C. Eastman, *Work Accidents and the Law* (Brookhaven Press, 1999), which is Eastman’s 1910 study of workplace injury in Pittsburgh. It concluded that only 44 percent of injuries could be partially blamed on worker or co-worker error. Employer error was responsible for 30 percent. But the working conditions created by the employer contributed to a great many more injuries by placing workers in positions of heightened or constant risk. Aldrich, *Safety First* notes that, as worker carelessness lost its legal importance in America, it became less important in the discourse around injury.

Risk, “This Nuisance of Litigation.”

Tucker, “The Determination of Occupational Health and Safety in
Ontario” examines Ontario’s approach to employer liability and suggests that state-managed compensation would be ideologically more palatable than additional state-regulation because it is less an impediment to employers’ operating their businesses as they saw fit. In this way, compensation is more consistent with the principles of classical Liberalism than additional regulation.

44 W. Meredith, Final Report on Laws Relating to the Liability of Employers to Make Compensation to Their Employees for Injuries Received in the Course of their Employment Which are in Force in Other Countries (Toronto: L.K. Cameron, 1913).

45 Meredith, Final Report, 13.

46 Risk, “This Nuisance of Litigation”: 472.

47 Lorentsen and Woolner, Fifty Years of Labour Legislation in Canada.


the interactions between the development of the health and safety and environmental movements.

52 Storey, “From the Environment to the Workplace.” R. Storey, “Activism and the Making of Occupational Health and Safety Law in Ontario, 1960s–1980,” Policy and Practice in Occupational Health and Safety 1 (2005): 41–68, traces the development of occupational health and safety in Ontario. Among his findings are that occupational health and safety reform was driven by activists at the periphery of the trade union movement, concern centred on exposures to toxic substances, and the movement was strongest in unionized and male-dominated sectors.

53 Walters, “Occupational Health and Safety Legislation in Ontario” traces these pressures and convincingly links them to Ontario’s move towards the internal responsibility system in the 1970s. She suggests that worker pressure was less important in the enactment of legislation than were the financial pressures caused by workplace injury on employers and the state.

54 Toronto Daily Star (1960).

55 B. Walker, “Government Regulation of Health Hazards in the Ontario Uranium Mining Industry, 1955–1976,” in At the End of the Shift: Mines and Single-Industry Towns in Northern Ontario, eds. R. Bray and A. Thomson (Toronto: Dundurn, 1992), 130–139. Levels of radiation and silica were both above industry-recommended safety levels. Rank-and-file activism was muted, however, in part because of concerns about the financial viability of uranium mines. Ineffective federal regulation of radiation levels reflected the federal government’s interest in expanding Canada’s nuclear industry. Similarly, Ontario’s Department of Mines was focused on promoting and expanding the mining industry, not addressing workplace safety issues.

56 This can be seen in Ontario’s Ham Commission (1974), Alberta’s Gale Commission (1975), and Quebec’s Beaudry Commission (1977).

occupational health and safety regulations under existing workers’ compensation legislation.


59 *The Occupational Health and Safety Act*, s.3(a).

60 For example, s.4(1)(a) of Manitoba’s *The Workplace Health and Safety Act*. Similarly, s.25(2)(h) of Ontario’s legislation requires employers “take every precaution reasonable in the circumstances for the protection of a worker.”


62 Neo-liberalism is the political expression of economic globalization. Among its prescriptions are for a smaller and less active state. This reduces taxation, which, along with costs savings associated with weaker labour and environmental laws, is supposed to prevent capital flight by transnational employers. This ideology had a significant impact on Canadian governments during the 1990s. R. Storey and E. Tucker, “All That is Solid Melts into Air: Worker Participation and Occupational Health and Safety Regulation in Ontario, 1970–2000,” in *Worker Safety Under Siege: Labor, Capital and the Politics of Workplace Safety in a Deregulated World*, ed. V. Mogensen (Armonk: M.E. Sharpe, 2006), 157–185, examine the impact of neo-liberalism on OHS in Ontario between 1970 and 2000. Costs associated with workplace injury were managed in a variety of ways, including emphasizing early return to work programs. Government emphasis shifted to increasing the number of inspections but at a reduction in quality. Among the changes were having OHS inspectors mediate work refusals over the phone. In effect, external regulation is limited to instances of injury or death when prosecution is required. Changes in the labour market and the nature of employment undermined the internal responsibility system (an issue further discussed in Chapter 3).

63 Storey and Tucker, *Worker Safety Under Siege*, note that in Ontario, short-lived bipartite governance of health and safety reduced shop-floor activism over health and safety, thereby reducing the ability of organized labour to respond to its exclusion. Other
jurisdictions (e.g., Alberta) never saw the degree of shop floor activism around health and safety and thus the movement towards government–employer partnerships occurred without any intervening depoliticization.


66 As noted in Tucker, “Remapping Worker Citizenship,” the level and degree of state enforcement is subject to significant changes in response to political pressure. Crude indicators of enforcement (such as field activity by inspectors) show a long-term downward trend between 1970 and 2005, although other indicators (such as prosecutions) show more variability.

67 In the word of Ontario’s Ham Report, “Since both parties desire the good of the individual worker, confrontation can and must be set aside with respect both to accidents and to health-impairing environmental exposures.” Ontario. *Report of the Royal Commission on the Health and Safety of Workers in Mines* (Toronto: Ministry of the Attorney-General, 1976), 121.


69 There are several types of exposure limits, including time-weighted average limits, short-term exposure limits (which are 15-minute exposures that should not be repeated more than a few times per day), and exposure ceilings (levels above which no one should be exposed).

70 After the WHMIS system was implemented, R. Sass, “The Limits of Workplace Health and Safety Reforms in Liberal Economics,”
New Solutions 3(1) (1992): 31–40 notes Saskatchewan’s government removed a regulatory clause from provincial legislation that prohibited employers from refusing information demands based on trade secrets.

71 As Schmidt, Lawyers and Regulation notes, enforcing the law requires inspectors to use their discretion because the generalities of formal law can be applied to specific factual cases without some interpretation. That said, trends in the application of discretion can reveal various things, such as unworkable laws, emerging circumstances not well addressed by the law, and patterns of influence and power.


73 The basis of a refusal could be a genuine belief that the work was hazardous, having a reasonable cause to believe that the work was hazardous, or having objective evidence of a hazard. The second standard is the norm in Canada. Some legislation and arbitrators have qualified this by requiring the danger be out of the ordinary for the work or the harm imminent and thus inescapable except through work refusal.

74 In Chapter 3, we will examine the use of informal refusals.


76 This incentive system was built upon a government–industry partnership (Partnership in Health and Safety) that began in 1989. This partnership sought to reduce work-related injuries and illnesses by encouraging employers and workers to develop OHS management systems (AEII, 2007b). Employers who passed an audit of their health and safety management system (performed by certified auditor, generally from a safety association) received a Certificate of Recognition (COR).
WCB, “Partners in Injury Reduction” Brochure (Edmonton: Alberta Workers’ Compensation Board, 2007). Under the PIR program, first-time COR recipients receive a 10 percent reduction in their WCB industry rate during their first year. Further, by reducing WCB claim costs or maintaining claim costs at least 50 percent lower than the industry average for two consecutive years, employers can receive further discounts up to a 20 percent discount.

Chapter Three


2 Internationally, the International Labour Organization (ILO), Facts on Safety (Geneva: Author, 2004) reports 270 million workplace accidents and 160 million occupational diseases each year. L. Osberg and A. Sharpe, An Index of Labour Market Well Being for OECD Countries (Ottawa: Canadian Centre for the Study of Living Standards, 2003), compared fatality rates among OECD countries and noted that Canada tied with Italy for having the highest rate of fatalities per 100,000 workers in 2001. Canada also had the smallest reduction in the rate of fatal injuries between 1980 and 2001.

3 Wilkins and Mackenzie, “Work Injuries.”


5 H. Shannon and G. Lowe, “How Many Injured Workers do not File Claims for Workers’ Compensation Benefits?” American Journal of Industrial Medicine 42(6) (2002): 467–473 found that 40 percent of eligible injured workers did not submit a workers’ compensation claim, although there was a positive relationship between increasing injury seriousness and the likelihood of filing a claim. Even so, 30 percent of injuries resulting in lost-time that would be eligible for compensation were not reported to a WCB.

studied injuries in Winnipeg and found that fewer than half of workers who had been injured filed a claim with workers’ compensation. In the UK, B. Reilly, P. Paci, and P. Holl, “Unions, Safety Committees and Workplace Injuries,” British Journal of Industrial Relations 33(2) (1995): 275–288, noted that only 30 percent of workplace injuries were reported under the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations in 1990.


When you look for this, it becomes easy to see. For example, job postings for building supervisors (a predominantly male occupation) frequently list as a requirement the ability to periodically lift heavy weights. By contrast, job postings for nurses and health care aides (a predominantly female occupation) frequently contain no information about lifting requirements, even though these workers routinely lift patients. In this way, the physical demands of female work are hidden. K. Messing, One-Eyed Science: Occupational Health and Women Workers (Philadelphia: Temple University Press, 1998), discusses the issue of women’s occupational health and the relative invisibility of non-reproductive issues at length in her excellent book on the topic.


11 M. Firth, J. Brophy, and M. Keith, Workplace Roulette: Gambling with Cancer (Toronto: Between the Lines, 1997).


14 A particularly chilling account of the corporate cover-up can be found in D. Kotelchuck, “Asbestos: The Funeral Dress of Kings — and Others,” in Dying for a Living: Workers’ Safety and Health in Twentieth-Century America, eds. D. Rosner and G. Markowitz (Bloomington: Indiana University Press, 1989), 192–207. One interviewee recalls a lunch meeting in 1942 or 1943 where he asked one of the Brown brothers whether he would withhold information about asbestosis from afflicted workers, to which the brother responded, “Yes. We save a lot of money that way” (p. 202). This attitude is consistent with the mass of documentation about corporate behaviour that has been uncovered during asbestos lawsuits.


18 Variations on this pattern are evident in many instances of occupational hazards, including lead (Rosner and Markowitz, “Safety and Health as a Class Issue”) and asbestos (Kotelchuck, “Asbestos”);


20 Alberta has a long history of this behaviour. Reasons, Ross, and Paterson, “Assault on the Worker,” note that Alberta used blame the worker approaches as far back as 1979’s “Alive” campaign and documents the then-CEO of Alberta’s health and safety programming as stating that 70–80 percent of injuries and fatalities were caused by careless workers.

21 www.bloodylucky.ca.


23 This bias recurs through discussion of cancer and reflects the importance of treatment to patients and the “cure” orientation of health care, although other motives (including the profitability of cancer treatment) also appear to play a role. See D. Davis, The Secret History of the War on Cancer (New York: Basic Books, 2007).

24 Epstein, The Politics of Cancer Revisited; Firth, Brophy, and Keith, Workplace Roulette.


26 Firth, Brophy, and Keith, *Workplace Roulette*.


30 Exposure limits are discussed at length below — for now suffice to say that the reliability of these levels of exposure is the subject of significant question.

31 Alberta Cancer Foundation, *Cancer and the Workplace*.


33 Asbestos-related diseases, for example, demonstrate that workers can pressure the state and employers to recognize, address, and compensate some forms of occupational diseases. Yet the number of diseases so recognized is few and updated infrequently. In Alberta, there is statutory recognition of 11 major forms of occupational disease or conditions.


V. Walters and T. Haines, “Workers’ Use and Knowledge of the Internal Responsibility System: Limits to Participation in Occupational Health and Safety,” *Canadian Public Policy* 14(4) (1988): 411–423, found that 49 percent of workers used their own experience as their main source of information about the presence or absence of a health effect. The experience of co-workers was the main source for 30 percent of workers, and personal feelings (i.e., lacking any evidentiary basis) was the main source for 20 percent. Employers and health and safety representatives each comprised the main source for 7 percent of workers. Interestingly, relying on self-knowledge (as opposed to “medical knowledge”) about workplace hazards to trigger action is broadly consistent with the recent recommendation of Bob Sass, the creator of the three rights that came to define OHS in the 1970s. See: D. Smith, *Consulted to Death: How Canada’s Workplace Health and Safety System Fails Workers* (Winnipeg: Arbeiter Ring, 2000).

This raises interesting questions. Should workers be educated so they can better act within the dominant paradigm? Or should workers be taught how to express their concerns, thereby bringing these to concerns into the mainstream of debate?


For example, http:/ /www.ama.ab.ca/cps/rde/xchg/ama/web/advocacy_safety_1898.htm


Work refusals are an indicator of workers exercising their rights. Renaud and St-Jacques (1988) found non-union workers accounted for only 2.9 percent of work refusals even though they accounted for 72.2 percent of the workforce.

Walters and Haines, “Workers Use and Knowledge of the Internal Responsibility System.”

Walters and Haines, “Workers’ Perceptions, Knowledge and Responses Regarding Occupational Health and Safety.”

V. Walters and M. Denton, “Workers’ Knowledge of their Legal Rights and Resistance to Hazardous Work,” *Relations Industrielles/Industrial Relations* 45(3) (1990): 531–547. This broadly replicates Nelkin and Brown’s, *Workers at Risk*, findings although the important variable is knowledge, not gender, education, or unionization.


Smith, *Consulted to Death*, attributes this quote to Saskatchewan’s Bob Sass.

This point is made in Sass, “The Limits of Workplace Health and Safety Reforms in Liberal Economics.” I have extended his discussion in a manner with which he may not agree with.

Reilly, Paci and Holl, “Unions, Safety Committees and Workplace Injuries”; W. Lewchuck, L. Robb and V. Walters, “The Effectiveness of Bill 70 and Joint Health and Safety Committee


Lewchuk, Robb and Walters, “The Effectiveness of Bill 70 and Joint Health and Safety Committee in Reducing Injuries in the Workplace” found that Ontario workplaces where JHSCs were struck before or soon after such committees were legislatively required saw a meaningful reduction in lost-time injuries (as much as 18 percent). Where committees were slow to develop, there was little or no improvement in safety performance. This may suggest that JHSC have difficulty overcoming employer resistance and/or worker apathy.


The most effective politically active representatives exhibited significant self-learning and access of wide-ranging information sources. They tended to use and promote the knowledge of workers about unsafe working conditions, rather than relying solely upon scientific knowledge. They also tended to focus on the underlying causes of issues and present managers with solutions.

Hall, Forrest, Sears, and Carlan, “Making a Difference: Knowledge Activism and Worker Representation in Joint OHS Committees.” These workers did not appear to recognize that their ability to achieve improved health and safety turned on their individual power and political influence.


The calculation of 321,000 injuries is based on Alberta WCB claims data, which has been modified to account for the at least 10 percent of workers outside the ambit of workers’ compensation and that reported claims account for only 60 percent of all injuries.


Walters and Haines, “Workers’ Use and Knowledge of the Internal Responsibility System.”

Gray, “A Socio-legal Ethnography of the Right to Refuse Dangerous Work” notes that informal refusals may include altering the process or pace of work as well as refusing overtime on unsafe jobs, calling in sick and seeking transfers. These non-confrontational strategies may reflect a workers’ calculus about the risk and reward of a formal refusal.

R. Hebdon and D. Hyatt, “The Effects of Industrial Factors on Health and Safety Conflict,” Industrial and Labor Relations Review 51(4) (1998): 579–593 found no evidence that work refusals or health and safety complaints were used by workers to harass employers or increase worker bargaining power. Rather, they found that workplaces characterized by industrial relations conflict (e.g., strikes, arbitrations, grievances) are also characterized by conflict over health and safety matters.

Gray, “A Socio-legal Ethnography of the Right to Refuse Dangerous Work.”

Gray, “A Socio-legal Ethnography of the Right to Refuse Dangerous Work” suggests that informal refusals outpace formal refuses because workers recognize that conflict with their employer may be a greater risk than the unsafe work they are concerned about.

M. Harcourt and S. Harcourt, “When Can an Employee Refuse Unsafe Work and Expect to be Protected from Discipline? Evidence from Canada,” Industrial and Labor Relations Review 53(4) (2000): 684–703, analyzed 272 arbitration and labour board decisions about the right to refuse. Among their findings are that boards often look beyond the work refusal to examine the worker’s general behaviour towards the employer. Dutiful workers and those with good work records are more likely to be treated less harshly than workers who were unruly. This is broadly consistent with


72 Bob Sass, the father of the three rights in Canada, himself characterized these rights as weak in Smith, *Consulted to Death*. Sass also suggests he no longer subscribes to the three rights.

73 Sass, “The Limits of Workplace Health and Safety Reforms in Liberal Economics” notes that this limitation exists even in seemingly favourable circumstances, such as in during a pilot program in a crown corporation under a New Democrat government in Saskatchewan.

74 Tucker, “And the Defeat Goes On.”

75 S. Geldart, H. Shannon, and L. Lohfeld, “Have Companies Improved Their Health and Safety Approaches over the Last Decade? A Longitudinal Study,” *American Journal of Industrial Medicine* 47(3) (2005): 227–36, suggest managers were less likely to view worker participation as important in improving safety between 1990 and 2001. For their part, workers felt employers were less likely to cooperate on safety.


77 CDC, *Preventing Lead Poisoning in Young Children* (Atlanta: Centers for Disease Control and Prevention, 1991). Even low levels
of lead appear to have negative effects on intelligence and neuro-behavioural development

78 G. Ziem and B. Castleman, “Threshold Limit Values: Historical Perspectives and Current Practice,” in Illness and the Environment, eds. S. Kroll-Smith, P. Brown and V. Gunter (New York: New York University Press, 2000), 120–134, trace the history of TLVs. When TLVs were first developed by the American Conference of Government Industrial Hygienists (ACGIH) in 1942, the ACGIH noted that TLVs were not safe levels of exposure. By 1953, the ACGIH was indicating that TLVs were a guide to safe daily levels of exposure, although there is no basis to believe that any sort of review or scientific breakthrough addressed the uncertainty about what a safe level of exposure was. There appears to be little scientific support for the levels that were set and there has been constant revision downwards as previously “safe” levels of exposure are found not to be safe after all.

79 R. Heifetz, “Women, Lead and Reproductive Hazards. Defining a New Risk,” in Dying for a Living: Workers’ Safety and Health in Twentieth-Century America, eds. D. Rosner and G. Markowitz (Bloomington: Indiana University Press, 1989), 160–176, notes that, when gender is considered, it is usually in the context of female reproduction. The solution is often to move women out of hazardous jobs (to lower-pay jobs or by firing them) rather than remove the hazard.

80 Firth, Brophy and Keith, Workplace roulette. Further, as precarious work results in many workers have multiple employers, there is potential for multiple exposures or unanticipated interactive effects from exposures to different chemicals.

81 B. Castleman and G. Ziem, “Corporate Influence on Threshold Limit Values,” American Journal of Industrial Medicine, 13 (188): 531–559. Indeed, many scientists dispute the notion that there is any safe level of exposure for carcinogens and reproductive hazards. These “safe” levels reflects simply the point below which they are (at present) unable to detect ill effects.

Ziem and Castleman, “Threshold Limit Values.” Animal studies contain several deficiencies such as an inability to elicit a medical history, assess the effects of exposure on cognition, or register symptoms that do not result in gross physical reactions. There is also little attention to pulmonary functioning in many of these studies—obviously an issue of concern to workers!


This dynamic is well established. Examples include corporate obfuscation of the cancer risk associated with smoking (Davis, The Secret History of the War on Cancer) and the occupational risks associated with asbestos (Epstein, The Politics of Cancer Revisited).


Law Reform Commission of Canada, Workplace Pollution.


Ontario, “Report Card: Health and Safety Statistics,” (Toronto: Ministry of Labour, 2008). A field visit includes inspections, investigations, and consultations. The majority of the increase comes from an increase in inspections, which Ontario terms as proactive visits (as contrasted with investigations of complaints).

91 Storey and Tucker, “All That Is Solid Melts into Air.” It is not clear the degree to which the doubling of orders and stop work orders between 2004/05 and 2007/08 undermines this critique.

92 CBC, “Weekend inspection rates,” 2007, http://www.cbc.ca/news/background/workplace-safety/pdf/weekendvisits.pdf. This number of inspections is about average for the early 2000s. This number is based on information received under freedom of information legislation and conflicts with the 13,000 inspections claimed by the government in the press: see S. Harris, “The boom is a bust for workplace safety” The Vue Weekly, 27 April 2006. Tucker, “Diverging Trends in Worker Health and Safety Protection and Participation in Canada” notes this is a decline from inspections levels in the 1980s.


94 CBC, “Out of sync with today’s changing workplace.”

95 To be fair, the number of injuries per workplace or employer might still be higher in traditionally inspected workplaces. The CBC story suggests that claim rates in health care are the equivalent of those in construction, manufacturing, and forestry.

96 CBC, “Weekend inspection rates.” By contrast, Alberta had the highest rate with 14 percent of inspections occurring on a weekend in 2005.


98 Schmidt, Lawyers and Regulation, notes that good relationships can be important because the OHS is characterized by highly interdependent relationships. An inspector taking a hard line may be able to create consequences for an employer. But the employer,
using political connections or the press, can also create consequences for the inspector.


100 Fidler, “The Occupational Health and Safety Act and the Internal Responsibility System” details the case of Stan Gray, an Ontario worker who faced seemingly endless resistance from a provincial occupational health and safety officer when he sought remedy for hazards that the employer would not address.

101 T. Ison, “The Uses and Limits of Sanctions in Industrial Health and Safety,” *Workers’ Compensation Reporter (BC)* 2 (1975): 203. In a partial reversal of this tendency, the Criminal Code was amended in the wake of the Westray Mine disaster.

102 “Due diligence” can be used to defend and employer charged under occupational health and safety legislation. If the employer can prove it/she/he took all precautions to protect the health and safety of worker that were reasonable under the circumstance, then the employer can be found not guilty.

103 CBC, “Out of sync with today’s changing workplace.”

104 Ontario, “Report Card: Health and Safety Statistics.” These changes followed the election of a liberal government to replace the previous progressive conservative one.

105 AEI, “Alberta imposes record penalties for occupational health and safety violations,” (Press release, 29 December 2008. Edmonton: Employment and Immigration). To be fair, prosecutions for some of these fatalities may be ongoing or previously concluded.


107 The authors did not, however, provide any data about the cost-effectiveness of enforcement (i.e., it may be less financially or politically expensive to compensate injury than prevent it). The authors also note that, over time, the effectiveness of enforcement appears to have declined. This may reflect changes in the nature of work and injury.
Tucker, “Making the Workplace ‘Safe’ in Capitalism.”

Glasbeek and Tucker, “Death by Consensus.”

Iverson and Barling, “The Current Culture of Workplace Injury” found that 98 percent of 600 employers surveyed agreed that providing a safe working environment increased profitability.

A variation on “safety pays” is that safety provides strategic advantages to employers, such as customer satisfaction, worker motivation, and corporate reputation.


During the study no firms experienced fatalities, prosecutions or civil claims — all events that would drive up costs.


No information is provided about what threshold was used or whether it was used consistently. It is also unclear if there is any sort of pattern to the accidents that were excluded.


A. Hopkins, “For Whom Does Safety Pay? The Case of Major Accidents,” Safety Science 32 (1999): 143–153. If injury costs were reduced by $2 billion, the net benefit would only be $0.34 billion. In effect, every dollar of reduced cost only results in net benefit of 17 cents. See: Industrial Commission, “Work, health and safety.”


R. Knight and D. Pretty, “The impact of Catastrophes on shareholder value” (Oxford University Business School, Executive Research Briefings, 1998), examined the effect of major catastrophes on 15 corporations. While all saw short-term drops in shareholder value, some corporations saw a net gain after 50 trading days.

There is growing evidence that lost-time claims are also in decline in British Columbia and Ontario. Yet these studies do not fully grapple with whether there is an actual reduction in injury or simply a reduction in reporting. C. Mustard, D. Cole, H. Shannon, J. Pole, T. Sullivan and R. Allingham, “Declining Trends in Work-Related Morbidity and Disability, 1993–1998: A Comparison of Survey Estimates and Compensation Insurance Claims,” American Journal of Public Health 93(8) (2003): 1283–1286, found a 22.3 percent decline in Ontario LTC between 1993 and 1998. Similar reductions in lost-time injuries were reported during this period on two other panel surveys (one measuring work-related injuries and illnesses restricting activity and other addressing work-related injuries causing absences of one-week or more from work).

Overall, there appears to be a general downwards trend in reported injuries during this period. The downward slope of LTCs is steeper than those of other measures. That is to say, LTCs have been decreasing faster than then other indicators of injury. Both the LTC measure and the measure of work-related injuries causing absences of one-week or more from work can be affected by employer claims management behaviour (see the discussion of experience-rating schemes in Chapter 5), thus may overstate the reduction in actual injuries. Further, the claims systems may be less sensitive to the development of chronic injuries, where workers may exercise a degree of discretion in when they file a claim. The measure examining work-related injuries and illnesses restricting activity shows a decline over time. In theory, this measure ought to control for employer claims management techniques. The large variations in reported restrictions in this study suggest it may not be particularly reliable.

in Ontario between 1990 and 2003. They noted a decline on lost-time claims over time, with the proportion of manual jobs in each industry being associated with the claim rate. This decrease may reflect the export of hazardous jobs overseas and/or improvements in technology. The impact of claims management on lost-time claim prevalence was not addressed. See also C. Breslin, P. Smith, M. Koehoorn, and H. Lee, “Is the Workplace Becoming Safer?” Perspectives on Labour and Income 18(3) (2006): 36–42.


132 There has also been an increase in the workforce. The rate of occupational fatality (fatalities per 1 million person years worked) has remained stable over time. See: AEI, Annual Report, 2008/09 (Edmonton: Alberta Employment and Immigration, 2009).

133 AEII, “About Worksafe Alberta: Fact Sheet,” (Edmonton: Alberta Employment, Immigration and Industry, 2007). In that occupational disease fatalities often involve a time lag and the types of fatalities accepted by the WCB may be affected by changing
policies, it is difficult to accurately assess the level of ultimately fatal occupational diseases being acquired today.

134 T. Ison, “The Significance of Experience Rating.”

135 As we saw earlier in this chapter, Shannon and Lowe, “How Many Injured Workers do not File Claims for Workers’ Compensation Benefits?” found 40 percent of eligible injured workers in their Canada-wide sample did not submit a workers’ compensation claim (with a much higher proportion in Alberta), although there was a positive relationship between increasing injury seriousness and likelihood of filing a claim. Even so, 30 percent of injuries resulting in lost-time that would be eligible for compensation were not reported to a WCB.

136 Ison, “The Significance of Experience Rating.”


138 Breslin, Tompa, Mustard, Zhao, Smith and Hogg-Johnson, “Association Between the Decline in Workers’ Compensation Claims and Workforce Composition and Job Characteristics in Ontario, Canada,” note that changes in the number of workers employed in manual jobs appears to affect lost time claim numbers in Ontario.

139 J. Foster, Personal Communication. (Director of Policy, Alberta Federation of Labour, 15 September 2008).


141 Storey, “From the Environment to the Workplace… and Back Again?” notes that this may simply shift exposures away from workers and onto the general population. For example, the International Nickel Company (INCO) in Sudbury reduced gas and dust concentrations in the Sudbury area by spreading them over a large area via a tall smoke stack.

notes that PPE is less effective because of the potential for mis-
or non-use. While writing this section of the book, I watched a
roofer working from my window. He was wearing a safety har-
ness and had a rope. But he didn’t hook the rope up to his har-
ness while working at the edge of the building (where there was
a 20-foot drop). Oddly, he did hook on when he was working in
the middle of the flat roof (where there was no chance of falling).
At this point, it became apparent that he had nearly 30 feet of
safety line anchored at the building edge. So even had he been
wearing the harness while working at the edge of the roof, its
sole effect would have been to make retrieving his body easier.

143 G. Gray, “The Regulation of Corporate Violations: Punishment,
Compliance, and the Blurring of Responsibility,” British Journal

Chapter Four

1 The following discussion is derived from the insightful approach
to understanding state regulation of the workplace set out in
Tucker, “The determination of occupational health and safety
standards in Ontario,” Tucker, “Making the Workplace ‘Safe’ in
Capitalism,” and Tucker, Administering Danger in the Workplace.

2 In this, we see a very traditionally Liberal approach to the role
of the state. Private investors, of course, may be both an investor
and a worker and thus hold moderated (or conflicting!) views on
the desirability of state interventions. The traditional Liberal
conception of the state’s role has certainly been evident in Can-
adian neoliberal politics of the 1990s.

3 On the effectiveness of child labour laws at precluding illegal
employment in Canada, see B. Barnetson, “The Regulation of
Child and Adolescent Labour in Alberta,” Just labour. 13 (2009):
29–47, and B. Barnetson and J. Foster, “Child and Adolescent
Employment in Alberta,” forthcoming.

4 Glasbeek and Tucker, “Death by Consensus.” These differences
can be difficult to see. And, faced with such stark inequality,
workers may simply accept that this is their lot in life under a
capitalist system and get on with what must be done to pay the
rent. The spectre of striking it rich or even just retiring may be
enough to make this palatable.


7  Yates, *Naming the System*.

8  Even accessing national data on workers’ compensation claims now requires that one purchase that data from the Association of Workers’ Compensation Boards of Canada. Such data used to be freely available from Statistics Canada.

9  J. Barab, “The Invisibility of Workplace Death,” in *Worker Safety under Siege: Labor, Capital and the Politics of Workplace Safety in a Deregulated World*, ed. V. Mogensen (Armonk: M.E. Sharpe, 2006), 3–16, notes that even clusters of deaths from the same hazard can be described as “freak” accidents — even though the hazard is well known and the accidents occur in close geographic and temporal proximity.

10  Tucker, “The determination of occupational health and safety standards in Ontario.”


Lewchuk, Clarke, and de Wolff “Precarious Employment and the Internal Responsibility System” found that men in less permanent jobs were more likely to report working with toxic substances, in noisy environments and in uncomfortable temperatures. Self-employed men were more likely to report working with toxic substances. Both men and women in less permanent jobs were more likely to report working in pain than men and women in permanent full-time employment or who were self-employed.
These findings mostly held even controlling for the effect of age, sex, and race — they are characteristics of precarious employment relationships. These findings are broadly consistent with M. Quinlan, C. Mayhew and P. Bohle, “The Global Expansion of Precarious Employment, Work Disorganisation, and Consequences for Occupational Health: A Review of Recent Research,” *International Journal of Health Services* 31(2) (2001a): 335–414, research in Australia.


**Chapter Five**

1 P. Simons, “Injured Worker, ATA Locked in Lose-Lose Situation,” *(Edmonton Journal, 3 October 2009).*
Lippel “Workers’ Compensation and Controversial Illnesses.” Those who are temporarily disabled may be eligible for financial benefits through Employment Insurance. Long-term disability may allow individuals to access benefits under the Canada/Quebec Pension Plan. Some workers also have access to employer-sponsored benefit plans.

A government-appointed Board of Directors manages the Board’s operations, and normally comprises representatives who are themselves (and in varying proportions) representative of employers, workers and the public (Stritch, 1995). In accordance with the powers granted to it in legislation, this Board typically sets policy, reviews and approves operational and financial plans, and employs a CEO and staff to administer the system. Boards typically have comprehensive and complex policy manuals that define to a high degree of specificity how they adjudicate claims, administer benefits, and collect employer premiums.

Gunderson and Hyatt, “Foundations for Workers’ Compensation Reform.” S. Bernstein, K. Lippel and L. Lemarche, Women and Homework: The Canadian Legislative Framework (Ottawa: Status of Women in Canada, 2001), note there are gaps in the scope of this legislation. For example, workers in non-standard employment relationships, such as unincorporated self-employed workers in New Brunswick or self-employed workers in industries excluded from mandatory coverage in Ontario, may be unable to acquire even voluntary personal coverage.

Babcock, “Blood on the Factory Floor”; Risk, “This Nuisance of Litigation.”


The high-level discussion that follows obscures important differences over time and between the jurisdictions as well as within each of the groups. Yet concisely outlining the benefits of compensation is a useful first step in appreciating the political and economic dynamics of the compromise.

Mandel, Power and Money, discusses this dynamic. In short, workers may choose to limit activity to secure future gains because they fear that such resistance might result in the loss of past
gains. In this way, worker resistance is lessened or, perhaps, channelled into processes where it can be effectively managed by employers and the state.

An example might be the grievance process in collective bargaining legislation. Instead of putting down their tools to protest a violation of the agreement (a highly effective tactic), workers continue to work while their complaint makes its way through a lengthy grievance process. Work continues as directed by the employer until there is a resolution, by which time the issue may no longer matter.

Workers largely abide by the grievance process (despite the availability of the more effective mid-term strike) because they fear the sanctions that can occur as a result of a wildcat strike. They are often pressured by their unions to remain on the job because unions fear the potential repressive action of the employer and state if the union cannot manage their membership’s behaviour.

9 Jobs where workers’ compensation is not mandatory are a curious mix. They include very safe jobs (e.g., accountancy). They also include very unsafe jobs (e.g., agriculture, prostitution). The underlying rationale(s) or principle(s) for exclusions is elusive.

10 Vosko, “Precarious Employment.” Precarious workers are often employed in non-standard employment relationships that (intentionally) fail to qualify for statutory protections (Bernstein, Lippel, Tucker, and Vosko, Women and Homework). The marginal position of precarious workers, due to their social and labour market location or the nature of their injury, limits the costs of ignoring these workers to unions.

11 For example, the unwillingness of employers to agree to proposals significantly limiting managerial authority pushes unions to monetize member demands during collective bargaining because unions have a much better chance of achieving monetary gains. While not an ideal outcome, accepting this outcome reduces the chance that employers will reject the legitimacy of trade unions and seek their destruction.

12 Soderstrom and Stewart, “Adjudicating Claims” note that, in 1996, Alberta denied only 2.3 percent of time-loss claims. In 2008, this percentage was 7.8 percent of lost-time claims (Alberta Workers’
Compensation Board, *Workers' Compensation Board – Alberta 2008 Annual Report*. These numbers do not address the containment of claim costs through benefit reductions, denials, and terminations. They also do not consider claims not filed due to an expectation of denial or for other reasons. As Shannon and Lowe, “How Many Injured Workers do not File Claims for Workers’ Compensation Benefits?” note, up to 40 percent of potentially compensable injuries are not reported to WCBs.

More recent data on claims denial rates in British Columbia’s health care system (H. Alamgir, S. Siow, S. Yu, K. Ngan and J. Guzman, “Compensation Patterns for Health Care Workers in British Columbia, Canada,” *Journal of Occupational Environmental Medicine*, 66 (2009): 381–387, found an average of 82 percent of workers’ compensation claims were accepted. Acceptance rates varied from 79 percent in community care and corporate offices to 85 percent in long-term care. There was also significant variation by type of injury. Only 46 percent of allergy/irritation claims were accepted while 98 percent of cuts and puncture wounds claims were accepted. There was also occupational variation in acceptance rates and workers with greater seniority faced lower odds of claim rejection.


16 A hazard may be directly related to work (e.g., chemicals, machinery) or indirectly (e.g., weather conditions, insect bites, third-party vehicles). This typically excludes risks that are personal to the worker (e.g., physical condition or personal relationships) unless employment factors contributed to the occurrence of the injury.
Alberta Workers’ Compensation Board, “Policy 02-01 ‘Arises out of and occurs in the course of employment’”


Workers’ Safety and Compensation Commission, Northwest Territories and Nunavut, “Policy 03.04 ‘Decision-making’.”

Lippel, “Workers’ Compensation and Controversial Illnesses” notes that there is often a conflict between the legal requirement to prove compensability based on the balance of probabilities and the tendency for medical and scientific experts to rely upon scientific certitude. This bias towards a much more stringent test can creep into workers’ compensation adjudication in medical and scientific opinions about causation. This is particularly the case when claims for controversial injuries are filed.

That said, there are two circumstances when an injury that arises and occurs may still be deemed non-compensable. Section 24 of Alberta’s *Workers’ Compensation Act* provides a limited exception to the general no-fault rule by introducing the concept of “serious and willful misconduct”:

24(1) Subject to the Act, compensation under the Act is payable

(a) to a worker who suffers personal injury by an accident unless the injury is attributable primarily to the serious and willful misconduct of the worker, and

(b) to the dependents of a worker who dies as a result of an accident,

24(2) The Board shall pay compensation under this Act to a worker who is seriously disabled as a result of an accident notwithstanding that the injury is attributable primarily to the serious and willful misconduct of the worker.

Serious and wilful misconduct refers to a deliberate and unreasonable breach of a law or rule designed for safety, well known to
the worker, and enforced. The serious and wilful misconduct exception is a significant departure from the no-fault principle and, therefore, must meet a very high standard. Its use is very rare and, as s.24(2) of the Alberta Act states, it cannot be used if the worker is seriously disabled or killed. This exception is not present in all Canadian workers’ compensation legislation and may entail a delay in, rather than a denial of, compensation.

A second instance in which compensation will not be payable is when the worker’s actions at the time of the injury are a substantial deviation from the expectations and conditions of employment. That is to say, the worker’s actions are tantamount to the worker removing him or herself from the course of employment. Among the kinds of behaviour that can take a worker out of the course of employment include a criminal act with gainful intent, intoxication where drinking is not permitted or condoned by the employer and intoxication is the sole cause of the accident, an intentional, self-inflicted injury, or actions that are exclusively personal and have no direct or indirect relationship to the worker’s employment duties or the employer’s operations (Alberta Workers’ Compensation Board, “Policy 02-01 ‘Arises out of and occurs in the course of employment’”).

23 Schultz, Crook, Fraser and Joy, “Models of Diagnosis and Rehabilitation in Musculoskeletal Pain-related Occupational Disability.”


25 Storey, “From the Environment to the Workplace… and Back Again” examines the interaction of occupational health and safety and the environmental movement.

26 Lippel, “Workers’ Compensation and Controversial Illnesses” notes that denying workers’ compensation for certain types of injury does not make the injury go away. It simply transfers the cost from one party to another.


32 Kerr, “The Importance of Psychosocial Risk Factors in Injury,” 103.

33 Kome, *Wounded Workers*.


37 W. Gnam, “Psychiatric Disability and Workers’ Compensation,” in *Injury and the New World of Work*, ed. T. Sullivan (Vancouver: UBC Press, 2000), 305–328 notes that, while there has been some acceptance of “physical-mental” claims (whereby a physical event causes a mental disorder) and “mental-physical” claims (where mental stimulus causes a physical injury), so-called “mental-mental” claims (whereby mental stimulus causes a mental disorder) are often excluded from compensation. Physical-mental claims
pose the least problems because compensability has already been determined. Mental-physical claims are more difficult but the resulting physical ailments are subject to verification. Mental-mental claims pose evidentiary difficulties and the discourse is overlain with concerns about moral hazard. The overall claims are also difficult to predict.


39 As noted R. U’Ren and M. U’Ren, “Workers’ Compensation, Mental Health Claims and Political Economy,” International Journal of Law and Psychiatry 22(5–6) (1999): 451–471, requiring work-related events to be excessive or unusual in comparison to normal tensions creates a situation where workers with difficult work circumstances (e.g., long or irregular hours, intense production pressures, unpleasant interactions) must experience truly exceptional events in order to qualify for compensation for psychological injuries. To the degree that those holding these positions are otherwise disadvantaged (which perhaps explains why they hold such jobs), concerns about systemic disadvantage on the basis of age or race come to the fore. In this way, the broader dynamics of employment (e.g., greater employer power, efforts to intensify and re-organize work to avoid statutory obligations) impact upon workers’ compensation.


41 S. Adler and R. Schoctet, “Workers’ Compensation and Psychiatric Injury Definition,” International Journal of Law and Psychiatry 22(5–6) (1999): 603–616, propose one approach to improve how WCBs handle causation, suggesting industrial psychiatric injuries must be (1) psychiatric injuries (2) which is work-related and
(3) which precludes employment. Their approach to causation is not significantly different from the Alberta example, excepting it requires prompt diagnosis and claim filing.

42 Gnam, “Psychiatric Disability and Workers’ Compensation.”

43 J. Murray, *Chronic pain study* (Halifax: Workers’ Compensation Board of Nova Scotia, 1999). Chronic pain syndrome is a condition of pain that continues beyond the normal healing time for an injury or is disproportionate to the nature of the injury. It may lack an identifiable explanation and is resistant to treatment. Chronic pain is often associated with soft-tissue injuries such as strains, sprains and contusions, and can be accompanied by related symptoms such as depression, sleep disorders and fatigue. As a result of the pain and lack of success in treatment, individuals will often adopt ‘pain behaviours’, such as limiting their motion to a greater degree that strictly necessary. This may physically and psychologically reinforce the effect of the chronic pain, and lead to long-term debilitation and significant claim costs.


47 M. McCluskey, “The Illusion of Efficiency in Workers’ Compensation Reform,” *Rutgers Law Journal* 50(3) (1998): 657–856, notes that it is possible to view these sorts of injuries as expanding workers’ compensation in an unsustainable manner, imposing costs on employers that are unrelated to work. Yet she also perceptively notes that an alternative approach would be to view the expansion of workers’ compensation to embrace the full range of work-related injuries as the long-delayed fulfillment of the
original purpose of workers' compensation. That these injuries may drive up employer premiums reflects that employers have historically transferred costs to workers, their families, and the state in the form of injury that is just now becoming recognized.

Chapter Six

1 For example, of the 184,248 claims reported in Alberta in 2008, 135,648 were for medical aid costs only.

2 Over time, the degree of earnings lost that is replaced has increased, clearly benefiting injured workers. Yet this is contested terrain and the direction of change has not always been upwards. For example, Newfoundland reduced the replacement rate from 90 percent of net earnings to 75 percent for accidents occurring after 1 January 1993. At that time, New Brunswick also reduced the replacement rate from 90 percent to 80 percent of net earnings for the first 39 days and 85 percent thereafter. A three-day waiting period was also introduced.


4 Half of Canada’s jurisdictions also have minimum compensation rates or levels. In Manitoba, for example, s.39(6) of the Workers’ Compensation Act states that, if a worker’s average earnings before the accident, are less than or equal to the minimum annual earnings ($17,220 in 2008), the worker will receive 100 percent of the worker’s loss in earnings capacity, rather than the 90 percent normally allowed.

5 Net earnings may be based on an amount that fairly represents the worker’s income, not just the income on the date of accident (DOA). This prevents workers from being unfairly advantaged or disadvantaged by a fluke of timing (e.g., income being unrepresentatively high or low because the worker was injured while working an unusual amount of overtime or an unusually few number of hours).

With some exceptions (such as apprentices), net earnings are usually calculated retrospectively. This can mean permanently injured workers who were injured while working part-time or
when they were young (and typically receiving lower pay levels) will face low levels of compensation for their entire life.


7 Carr, “Workers’ Compensation Systems: Purpose and Mandate.”


9 There are some regional differences. In Ontario, “available” means that employment must exist in the labour market to the extent that the worker has a reasonable prospect of actually acquiring the job. By contrast, Alberta requires only that the work is reasonably available in a location to which the worker may reasonably commute or relocate. There is no consideration of whether the worker has any realistic chance to obtain such work.


14 Normally, workers undergo an assessment of their injuries and these assessments are used to determine the nature of the RTW services they’re eligible for. Once the worker has completed RTW services (e.g., physical therapy, training, job search assistance), the worker is expected to return to work to the degree possible.
given the worker’s abilities. As noted above, workers may be deemed to have achieved earnings consistent with their level of employability and have their benefits reduced accordingly, even if they are not employed at this level.

R. Allingham and D. Hyatt, “Measuring the Impact of Vocational Rehabilitation on the Probability of Post-injury Return to Work,” in *Research in Canadian Workers’ Compensation*, eds. T. Thomason and R. Chaykowski (Kingston: IRC Press, 1995), 158–180, note that VR recipients with higher pre-accident wages, men, married men, and native English speakers were more likely to return to work than VR recipients with lower pre-accident wages, women, unmarried men and those for whom English is not their native language respectively. A worker’s specific injury may also be an important mediating factor.

A six-country study of the effectiveness of measures designed to reduce long-term work incapacity among workers with back disorders provides further insight (Bloch and Prins, 2001). Workers scoring higher on indicators of good health (less pain, better back function) were found more likely to RTW after two years than those with poorer scores, and that better health status was correlated with personal characteristics (specifically younger age). The correlation of other characteristics (gender, education, job type) with RTW varied by country (Cuelenaere and Prins, 2001). Consistent with B. Badura, T. Schott and M. Waltz’s, *Work Incapacity and Reintegration, Proposal for a Cross-national Research Study on Return to Work (RTW) After Coronary Heart Disease in the European Region* (Bielefeld: Universität Bielefeld, 1993) identification of a discrepancy between medical expectations of work resumption and actual levels of work resumption, this study found no significant correlation between medical treatment and RTW. That said, persons of similar health status had significantly different probability of RTW between countries, suggesting national differences in benefit provision and employment protection may be important factors. And many workers returned to work with no change in their health status. The success of vocational rehabilitation was mediated by other factors, such as education level and duration of training (B. Cuelenaere and R. Prins, “Factors Influencing Work Resumption: A Summary of Major Findings,” in *Who


17 WCBs normally provide parameters that define “suitable” modified work, such as accommodating medical work restrictions, contributing to rehabilitation, and not creating hardships for the worker. This may include changes to specific job tasks or functions, hours of work or schedule, the work environment, or equipment.


20 Again, it is not clear if the work absence causes the poor mental health or if poor mental health causes the work absence. Possibly, one may reinforce the other in a viscous cycle.


22 Kome, Wounded Workers. This deserves some qualification. As pointed out by Messing, One-Eyed Science, female work is often incorrectly deemed “light” work when its demands are equal to (albeit somewhat different) or greater than male work.


25 Ostry, “From Chainsaws to Keyboards”; A. Sharpe and J. Hardt, Five Deaths a Day: Workplace Fatalities in Canada, 1992–2005 (Ottawa: Centre for the Study of Living Standards, 2006). This number is based on WCB claims statistics and thus under-reports
the actual level of work-related fatalities, perhaps by as much as an order of magnitude when deaths from occupational diseases are included.

26 The level of benefits varies. Usually, WCBs pay reasonable funeral expenses. Earnings-loss benefits for survivors are also common and based upon a worker’s income (just like other workers’ compensation benefits). Some jurisdictions also provide other services (e.g., re-employment services for dependent spouses) and may limit the duration of benefits. To receive fatality benefits, one must have some sort of relationship (normally a family relationship) to the worker and one must be financially dependent upon the worker. Most often, benefits are provided to a spouse/partner and/or minor children. But some jurisdictions and circumstances may allow grandchildren, parents, in-laws, siblings and others to receive benefits, although normally compensation is only payable to one recipient. And, normally, if no one is eligible, no long-term compensation is paid, although funeral expenses would still be covered (Thomason, 2000).


28 The composition of industry groups varies between provinces and territories. Consequently, the number of groups ranges from approximately 50 to upwards of 300. Each group needs to be large enough to adequately spread risk among members and provide premium stability. The more ratings groups there are, the more homogeneous is the composition of each of group regarding its accident risks and costs.


30 Sometimes called merit programs, experience-rating programs also vary between provinces. Some programs are balanced (i.e., discounts and surcharges that are awarded balance each other
out), while others do not contain this requirement. Normally, provinces with more ratings groups have less complex experience-rating systems and vice versa (F. Vaillancourt, “The Financing of Pricing of WCBs in Canada: Existing Arrangements, Possible Changes,” in Chronic Stress: Workers’ Compensation in the 1990s, eds. T. Thomason, F. Vaillancourt, T. Bogyo and A. Stritch (Toronto: C.D. Howe Institute, 1995), 66–91.

Some very large employers (mostly governments) do not pay premiums. Instead, they pay the full cost of accidents plus an administrative fee to a WCB (i.e., they are self-insured). The WCB administers these claims on these employers’ behalves, making the appropriate payments and providing services. In this way, these employers are said to be perfectly experience rated through this form of self-insurance (Bogyo, “Workers’ Compensation”).

31 For example, if an employer has three workers, each earning $30,000 per year and has an assessment rate of $0.97/$100 of payroll, this means the employer will pay $291 per employee.


33 M. Gunderson and D. Hyatt, “Do Injured Workers Pay for Reasonable Accommodation?” Industrial and Labor Relations Review 50(1) (1996): 92–104, for example, found costs of accommodation for work-related injuries were transferred in a small way to employees when an employee changed employers following an accident.


Association of Workers’ Compensation Boards of Canada, “Average Assessment Rates per $100.00 Payroll, 1985–2008,” http://www.awcbc.org/common/assets/assessment/avg_rates_history.pdf. In 2007, the average assessment rate varied between $1.32 per $100 of payroll in Alberta and $2.75/$100 in Newfoundland. Individual jurisdictions have seen significant year-to-year variation, perhaps reflecting work by WCBs and employers to lower premiums.

37 Derived from Association of Workers’ Compensation Boards of Canada, “Summary Table of Accepted Time-Loss Injuries/Diseases and Fatalities by Jurisdiction” and “Key Statistical Measures for 2007.” The benefit costs incurred include short-term disability, long-term disability, survivors’ benefits, healthcare, and rehabilitation services but excluded administrative costs. Averages, of course, can be deceptive and some types of claims have even higher costs. For example, in Alberta, an average lost-time claim cost $23,700 in 2005 (Keith and Neave, A Practical Guide to Occupational Health and Safety and Workers’ Compensation Compliance in Alberta).

Chaykowski and Thomason, “Canadian Workers’ Compensation” note that real-dollar claims costs rose from $1222 per claim in 1960 to $5179 in 1991. M. Campolieti and J. Lavis, “In Workers’ Compensation, Higher Benefits Mean Lengthier Claims,” Policy Options 20(10) (1999): 45–48, provide an interesting discussion of this trend. One explanation for long-term increases in claim costs appears to be changes in benefit levels. Some commentators argue this “benefit liberalization” includes an increase in the maximum dollar value of compensation, reductions in the wait time for compensation to kick in, and an increasing proportion of jurisdictions providing income replacement at 90 percent of net earnings. There have also been small increases in the costs associated with medical aid and vocational rehabilitation.

Thomason, “The Escalating Costs of Workers’ Compensation in Canada” For example, a 10 percent increase in workers’ compensation benefits appears to increase the probability of a claim being filed by 4 to 6 percent and the duration of a claim by 20 percent. It also increases the likelihood of awards of permanent partial disability payments.
H. Levitt, “Time to level WCB playing field. (Saskatoon Star-Phoenix, 4 November 2009) provides a particularly asinine example of the tendency to call injured workers lazy.


For example, J. O’Grady, “When the Playing Field Isn’t Level: The Underground Economy in Ontario,” (paper delivered at the 33rd Canadian Construction Association Labour Relations Conference, Montreal, 5 November 2004) notes some 98,000 construction businesses existed in Ontario in 2003, of which 50,000 were not registered with the WSIB. Changes requiring mandatory personal coverage for independent construction contractors is expected to bring in an addition $511 million in revenue in 2009 (Daily Commercial News, “CFIB warns WSIB’s Bill 119 will put contractors out of business” (27 November 2008).

While many of these same levers can be used to facilitate investigations of WCB employees, the opportunity for employee fraud is lesser due to procedural safeguards. Further, overly enthusiastic surveillance of staff may negatively affect employee relations and productivity.

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There is little empirical evidence to substantiate this possibility. The argument has roots in the notion that workers will be less likely to file claims if they know the claim will be disputed, their credibility impugned, and that they risk employer harassment or discipline. T. Scherzer, R. Rugulies, and N. Krause, “Work-related Pain and Injury and Barriers to Workers’ Compensation Among Las Vegas Hotel Room Cleaners,” *American Journal of Public Health* 95(1) (2005): 483–488, found approximately one-quarter of U.S. hotel cleaners cited fear of a disciplinary or punitive reaction from their employer as a reason for not making a claim.

Michaels, “Fraud in the Workers’ Compensation System.”


There is significant variation between jurisdictions and rate groups. Further, some programs to differentiate based on the size of an employer’s annual assessment, perhaps reducing the degree or speed with which experience rating affects employers with lower assessments. Plans may also have caps such that the effect of a single large claim is moderated.

Vaillancourt, “The Financing and Pricing of WCBs in Canada.” A further benefit of experience rating is that, despite the proliferation of rating groups, there are still differences within a rating group (e.g., considering types of employees, their production processes) for which experience rating accounts.

Stritch, “Homage to Catatonia.”

E. MacEachen, “The Mundane Administration of Worker Bodies: From Welfarism to Neoliberalism,” *Health, Risk and Society* 2(3) (2001): 316–327. Whether employers see this as “gaming” behaviour or simply as a legitimate response to a system that imposes seemingly onerous costs upon them is legitimately open to debate. Regardless, the effect of such behaviour on workers is negative.

Bruce and Atkins, “Efficiency Effects of Premium Setting Regimes Under Workers’ Compensation.”

T. Thomason and S. Pozzebon, “Determinants of Firm Workplace Health and Safety and Claims Management Practices,” *Industrial and Labor Relations Review* 55(2) (2002): 286–307. This included having an in-house claims manager, an increasing incidence of cost-relief applications, the use of temporary modified work to reduce benefit duration and more frequent appeal activity. This suggests reactive claims management may act as a substitute for improved workplace safety, although this was more evident in low-wage firms than in high-wage firms.

Hyatt and Kralj, “The Impact of Workers’ Compensation Experience Rating on Employer Appeals Activity.” That said, not all appeal activity can be dismissed solely as gaming behaviour.

Cousineau, Lacroix, and Girard, “The Economic Determinants of the Occupational Risk of Injury.”

Increasing the costs triggered by experience rating might affect employer behaviour, however, doing so takes WCBs further away from the principle of collective liability.

Aldrich, *Safety First.*

Kralj, “Employer Responses to Workers’ Compensation Insurance Experience Rating.”


67 Ison, “The Significance of Experience Rating.”

68 Brody, Letourneau, and Poirier (1990) in Hyatt and Kralj, “The Impact of Workers’ Compensation Experience Rating on Employer Appeals Activity.” The 4:1 ratio of indirect to direct costs appears to originate with a 1926 study by Herbert Heinrich. Although this number has wide currency, it appears based on faulty accounting (Aldrich, Safety First), thus the precision of this ratio ought to be considered speculative.

69 Ison, “The Significance of Experience Rating.”

Chapter Seven


3 Haddow and Klassen, Partisanship, Globalization and Canadian Labour Market Policy.

4 Social movement theory posits that successful social movements can be understood by examining the interplay between: (1) the structure of political opportunities, (2) the mobilization structure via which individuals can pursue their collective interests, and (3) the framing process which allows individuals to form a collective understanding of the problem(s) they face and see it as amenable to change (D. McAdam, J. McCarthy and M. Zaid, “Introduction: Opportunities, Mobilizing Structures and Framing Processes — Towards a Synthetic, Comparative Perspective in Social Movements,” in Comparative Perspectives on Social

5 Storey, “Social Assistance or a Workers’ Right” and “Their Only Power was Moral.”

6 For example, ethnic communities may create a means by which injured workers can interact. See: Storey, “Their Only Power was Moral.”

7 There is little research on this topic. The creation of injured worker groups suggests mobilization is not entirely impeded. Yet, these groups are often populated (at least in part) by workers who have been denied compensation and thus have little further to lose.

8 This is consistent with Mandel’s Power and Money dialectic of partial conquest and mirrors the effect critics of grievance arbitration suggest that highly legalistic process has on collective worker resistance to unacceptable employer demands and orders. See D. Drache and H. Glasbeek, The Changing Workplace: Reshaping Canada’s Industrial Relations System (Toronto: Lorimar, 1992).

9 The willingness of workers to sacrifice wages or risk a strike is likely affected by the degree to which injury is viewed as a class-based issue. As noted earlier, the operation of workers’ compensation retards the ability of workers to see the degree and nature of injuries. This in turn reduces the political salience of safety within trade unions.

10 Unions, of course, could force the issue via direct action such a strike. Whether there is the appetite for such action and whether union leaders are prepared to violate the peace obligation found in labour legislation is unclear. Unions, in fact, are expected to ensure their members don’t take direct action in this way (Hyman, The Political Economy of Industrial Relations).

11 In 2008, Alberta saw 2620 requests for a decision review brought forward to its internal appeals body on 211,737 active claims (Workers’ Compensation Board – Alberta 2008 Annual Report).

12 For benefit decisions, the parties will typically be the worker or the worker’s dependant (if the worker was killed) and the employer. Employers can likewise seek a review of decisions made

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13 Some jurisdictions may provide workers with access to WCB appeals advisors.

14 Alberta’s Appeal Commission received 879 appeals in 2007/08. Of the 2074 issues resolved (a single appeal may contain multiple issues) in 2007/08, it upheld the WCB decision on 833 issues, overturned/partially supported or created an alternative resolution on 781 issues, and reached another conclusion on 460 issues (ACAWC, “2008 presentation to the annual general meeting,” (Edmonton: Appeals Commission for Alberta Workers’ Compensation, 2008)). A similar pattern of upholding/varying is evident in BC (Workers’ Compensation Appeal Tribunal, *Workers’ Compensation Appeal Tribunal 2008 Annual Report*).

15 Evidence can include a summary of the facts, testimony by witnesses, and discussion of key legislative or policy provisions. Although broadly similar to a civil court case, it is often structured in a manner that is less overtly adversarial. For example, questions for a witness may be provided to and asked by the hearing chair, rather than directly by a party.

16 An appeal body’s decision is normally considered final. For example in Alberta, s.13.4 of the Alberta Act limits the right of appeal to the courts to questions of law or jurisdiction. What this privative clause means is that an appeal decision may be quashed by a court only for such reasons as a breach of natural justice, significant error of fact or law, or a jurisdictional error — limitations typical for a quasi-administrative tribunal (England, *Individual Employment Law, 2nd Edition*). Simple dissatisfaction with the decision or a difference in reasoning will not be considered grounds for judicial review.
In Alberta, appeals filed with the Appeals Commission were on average completed in 144 days in 2007/08. Complex appeals were completed in 182 days on average (ACAWC, “2008 presentation to the annual general meeting.”). Such appeals typically have a longer history of adjudication and review prior to entering the appeals process.

There is little study of the internal workers of workers’ compensation adjudication and review processes. I draw this conclusion based on my experience working for a WCB and from discussions with other WCB staff (in both Alberta and elsewhere). I also find the internal logic of this behaviour compelling: absent very good reason (which typically results in a reconsideration of the decision by the adjudicator), adjudicators seek to have their decisions (which they made in good faith) upheld because a reversal may negatively affect the adjudicator’s status among his or her peers as well as the adjudicator’s self-perception. The involvement of other WCB staff during an internal review can limit the influence of the adjudicator can exert on this process, although the shared experiences of adjudicators and policy restrictions in effect means that the original adjudicator’s opinion and rationale may be persuasive.

Again, I base this on my experience in the Alberta WCB and discussions I’ve had with others. While few adjudicators are openly or irrationally hostile to workers, many rely upon employer evidence over worker evidence based on the supposition that employers have less at stake than workers do. On any individual claim, that is likely true. But the incremental value of being relied upon by WCB adjudicators over a large number of claims is clearly present and well known to employer representatives.

The right of a WCB to participate in a hearing varies between jurisdictions. In Alberta, WCBs are given notice of appeals and may request status as an affected party. In Ontario, the Workplace Safety and Insurance Board is not generally allowed to participate in appeals.

For example, a variety of changes in Ontario’s compensation system (including the creation of an independent appeals tribunal) resulted in a substantial growth of appeals. D. Law, “Appeals Litigation: Pricing the Workplace Injury,” in Workers’ Compensation: Foundations for Reform, eds. M. Gunderson and D. Hyatt (Toronto: University of Toronto Press, 2000), 299–326, asserts that the rise in appeal activity in Ontario was in large part due to a deliberate opening of a previously ‘insulated’ compensation decision process.

Further, changes in the type and frequency of injuries can pose challenges in determining whether and what compensation ought to be granted. The perception that the changing nature of injury has increased the potential for adjudicative error may augur in favour of greater independence in the appeals system. It is also important to consider how creation of additional appeal activity may affect the interests of the parties.

Independent appeals commissions create both benefits and costs for WCBs. This arrangement splits responsibility for a claim between the WCB (which administers claims and sets policy) and the appeals body (which interprets policy and determines the final disposition of claims) (Chaykowski and Thomason, “Canadian Workers’ Compensation”). The result is conflicting interpretations of WCB policy and intermittent legal wrangling between WCBs and their appeal bodies. Further, WCBs almost always end up arguing “against” workers at appeals commission hearings when they defend their interpretation of policy, which is a difficult public relations issue for WCBs.

That said, appeals commissions externalize the difficulties of contentious claims. If the employer walks away dissatisfied from an appeal about a worker claim, responsibility is shifted from the WCB to the appeals commission. Similarly, if a worker walks away dissatisfied, responsibility is (at minimum) now shared between the WCB and the appeals commission. This also provides WCBs with political cover: legislators face less overall pressure from constituents and those legislators seeking to intervene can be passed off to the appeals commission. Finally, appeals commissions restore some of the legitimacy to workers’ compensation systems because the WCB isn’t compelled to both make the
initial decision and final appeals decision on a claim — a fundamental conflict of interest.


26 K. Lippel, “Private Policing of Injured Workers: Legitimate Management Practices or Human Rights Violations?” *Policy and Practice in Health and Safety* 1(2) (2003): 97–118. This surveillance may reflect a welfarization of workers’ compensation, whereby injured workers are stigmatized for making claims. This may be exacerbated by the financial incentives created for employers by experience rating.

27 Lippel, “Workers Describe the Effect of the Workers’ Compensation Process on Their Health.”


McCluskey, “The Illusion of Efficiency in Workers’ Compensation Reform” provides an extensive analysis of U.S. workers’ compensation reform efforts. She argues that reforms aimed at improving “efficiency” mask efforts to shift costs towards injured workers and away from employers and insurers by obscuring the purpose of reform. My argument is broadly similar in that it suggests privatization and abolish are rhetorical devices designed to constrain worker demands (or resistance to employer demands) by creating a threatening alternative.

Yet even moderately injured workers may find themselves disenchanted if either (or both) the level or probability of compensation declines (D. Hyatt and D. Law, “Should Workers’ Compensation Continue to Imbibe at the Tort Bar?” in Workers’ Compensation: Foundations for Reform, eds. M. Gunderson and D. Hyatt [Toronto: University of Toronto Press, 2000], 327–360.)

Thomason, “The Escalating Costs of Workers’ Compensation in Canada.”

Bogyo, “Workers’ Compensation.”

Hyatt and Law, “Should Workers’ Compensation Continue to Imbibe at the Tort Bar?”


Vosko, “Precarious Employment”

Ontario has experimented with private delivery of vocational rehabilitation. Trade unions assert this has resulted in delays in accessing services, higher costs and longer claim duration, but such claims are difficult to substantiate.

This discussion draws directly on Dewees, “Private Participation in Workers’ Compensation.”

Privatization can also have other costs, such as agency costs. An agency cost is an additional cost generated because the process of delegating authority requires that contracts be structured and enforced, and because the interests of the agent (i.e., private insurer seeking profit) and the principal (i.e., government seeking equitable compensation objectives) are not perfectly aligned. These costs tend to rise over time as the relationship between the agent and the principal loosens.

Dewees, “Private Participation in Workers’ Compensation” also notes a key risk that accompanies privatization: what would happen to injured workers and their claims if an insurance company goes bankrupt?

Thomason, “The Escalating Costs of Workers’ Compensation in Canada.”


Bogyo, “Workers’ Compensation.”


T. Thomason, T. Schmidle, and J. Burton, Workers’ compensation: Benefits, costs and safety under alternative insurance arrangements. (Kalamazoo: Updike Institute, 2001). It is important to be mindful of the data limitations they note.

G. Teeple, Globalization and the decline of social reform (Toronto: Garamond, 1995); B. Jessop, “Towards a Schumpeterian Work


55 J. Peters, A Fine Balance: Canadian Unions Confront Globalization (Ottawa: The Canadian Centre for Policy Alternatives, 2002; L. Panitch and D. Swartz, From Consent to Coercion: The Assault on Trade Union Freedoms, 3rd Edition (Aurora: Garamond. 2003). This includes labour law amendments designed to weaken unions and make certification more difficult, instances of legislating workers back to work and imposing provisions into collective bargaining agreements, enacting mandatory wage freezes, rollbacks, or days off without pay, and calculated efforts to decrease workers’ bargaining power via changes in the eligibility and benefit levels of social assistance programs.

56 Mandel, Power and Money.

57 There is no empirical research on this dynamic. I base this assertion on my conversations with trade unionists in Alberta and elsewhere. The logic is compelling though: criticizing workers’ compensation creates an opportunity for change. The power of capital to shape the nature of any change makes trade unionists somewhat reluctant to criticize workers’ compensation as a structure. Criticism about individual cases has less potential to upset
the apple cart and more directly addresses the concerns of members. Consequently, much energy is directed into individual case management rather than seeking structural reform.


59 That said, there are indications that this trend is not entirely one way. In late 2008, Ontario’s Liberal government proclaimed Bill 119, which required most small construction contractors to purchase personal WSIB coverage.


65 Quinlan and Mayhew, “Precarious Employment and Workers’ Compensation.”


68 Royal Commission on Workers’ Compensation in British Columbia, *For the Common Good.*


70 Vosko, “Precarious Employment.”