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VIA FACSMILE AND REGULAR MAIL

April 11, 2016

Hon. Kevin Flynn, Minister of Labour
Ministry of Labour
400 University Avenue, 14th Floor
Toronto, Ontario M7A 1T7

Dear Mr. Flynn:

**RE: The statutory bar to chronic mental stress claims in the
*Workplace Safety and Insurance Act, 1997***

Let me begin by congratulating you and your government on passing the *Supporting Ontario's First Responders Act*, which will alleviate significant hardship for first responders who develop PTSD as a result of their work. It was a humane piece of lawmaking.

I write to inquire about your government's intentions regarding the legislation dealing with work-related mental illness suffered by other workers.

As you are aware, sections 13(4) and (5) the *Workplace Safety and Insurance Act* bar WSIB claims for "mental stress," with the exception of a small subset of cases where a worker can prove that their mental illness "is an acute reaction to a sudden and unexpected traumatic event."

This element of the WSIA has resulted in terrible financial hardship that has exacerbated the suffering of several mentally ill workers whom I know, and I have no doubt that there are many more cases.

As you will also be aware, the *Workplace Safety and Insurance Appeals Tribunal* has on two occasions ruled that ss. 13(4) and (5) of the *WSIA* are unconstitutional because they discriminated against the workers in those cases on the basis of their mental disability, in a way that cannot be justified in a free and democratic society. The two cases are *WSIAT Decision no. 2157/09*, issued on April 29, 2014; and *Decision no. 1945/10*, dated January 27, 2015.

I note that the government has not applied for judicial review of either of these decisions.

I also note that the government effectively abandoned its defence of the law during the course of the hearing for *Decision 1945/10*. Shortly before expert witnesses were scheduled to testify in *1945/10*, the WSIAT issued *Decision no. 2157/09*, in response to which the Attorney General withdrew her intervention in *1945/10*. Thus the government chose to tender no evidence and made no legal arguments to support the legislation.

However, since then—and almost two years how now passed since the WSIAT first ruled the law is unconstitutional—the government has not announced any changes to the legislation (other than the *Supporting Ontario's First Responders Act*, which in no way addresses the bar on chronic mental stress claims).

This creates significant problems for workers suffering from work-related mental illnesses. Owing to the WSIAT's limited remedial jurisdiction, the discriminatory law remains in effect and is being applied by the WSIB to other workers' cases, such that they too now have to launch a constitutional challenge if they are to receive benefits. Few workers have the resources required for constitutional litigation.

Therefore, I believe that the government should, at the very least, clarify its position on the current legislation and whether it intends to amend it.

In particular, I ask you to reply to the following questions:

1. Does the Ontario government accept that ss. 13(4) and (5) of the *WSIA* are unconstitutional?

2. Does the government intend to amend the *WSIA* to remove the statutory bar on chronic mental stress claims?
3. If so, when does the government anticipate passing legislation to that effect?
4. In the interim, what relief will the government provide to workers who wish to make *WSIB* claims for chronic mental stress?

I hope you do not think it impertinent that I ask direct questions of a Minister of the Crown. However, given the situation that injured workers and their advocates find themselves in, I believe we have a right to know the answers.

Yours sincerely,

A handwritten signature in black ink, consisting of a large, stylized 'S' with a horizontal line crossing through it.

Antony Singleton
Barrister and Solicitor.