



Increased Use of WSIB Surveillance



By: Gary Majesky, *WSIB Consultant & Executive Board Member*

On June 16, 2014 the Toronto Star blew the lid off a dirty little secret regarding WSIB surveillance. This type of **surveillance** by the **WSIB** used to be a rarity, typically ordered when the insurance board received a tip from a caller. However, there is now general agreement that this has become a routine activity, particularly when workers are claiming to be totally disabled and unable to return to any form of remunerative work.

I have written about member surveillance in the past, either employer or WSIB generated surveillance, particularly the complexities surrounding the adjudication of claims involving a workers level of disability.

In my experience instances of worker fraud are rare, but there are situations that come to my attention that bring all injured workers credibility into question. That's right the innocent are being unfairly tarnished. If I had a nickel every time a member tells me *"how come I'm getting screwed by WSIB when other guys are milking the system,"* I cringe, because it says workers believe there is systemic fraud. It's hard to beat prejudice out of people, particularly when there may be some foundation to their belief.

So let me remind everyone about some basic facts. The WSIB has its own police force that works under the Regulatory Compliance Division. They have investigators who are typically retired horseman (RCMP) or constabulary from other municipal and provincial police forces. Typically, upwards to 80% of their activity is spent investigating employer fraud, usually revenue related issues, misreporting, experience rating rebates, and

other administrative breaches. They also hire private investigators who will follow you morning, noon, and night, and for days on end over several months. They will watch you leave in the morning, go for coffee, or shopping. They will spy on you in the grocery store, and watch you bend over into bins to find bargains. They'll even watch you when you go to the Casino on your honeymoon, or while standing in line at the airport with your luggage while you wait to board.

The Board's authority to investigate and prosecute flows from section 149 of the *Workplace Safety and Insurance Act*, where it is an offense for workers or employers to provide false and misleading information to the WSIB. That also includes representatives like myself or other service providers, including health care professionals. We are all expected to be honest, nor be used as a tool or dupe by unscrupulous persons.

While the vast majority of our members are honest with genuine problems related to their work injuries, I want to caution everyone that getting charged by the WSIB for fraud is an expensive and time consuming ordeal that will result in charges being laid, and a trial. The WSIB are not deal makers and run with whatever evidence they have gathered and let a judge decide your fate. More importantly, the union does not represent members in these matters.

So a reminder is in order. I don't want to see surveillance DVDs with members carrying coils of wire, or strapping on a tool pouch, particularly when they claim to be totally disabled and cannot work. As I reported at

the July union meeting, a tool pouch is not a back brace. Nor a coil of wire a dumbbell. Over the years I've heard every excuse from "Captain Doorbell" because an electrician was routinely called by friends to fix broken doorbells. Or the panel van festooned with ladders 24/7. A worker once told me he felt like a moose without antlers without ladders on the roof, and their presence made him feel psychologically purposeful. But the real difficulty I have is if the medical reports suggest a worker is totally disabled, then there should be some visual evidence of how a worker walks, moves, and engages in certain activities. Skipping down the street with your hand in your pocket like James Dean will result in negative inferences.

What I have also observed is that when it comes to co-existing mental health issues, it is difficult to measure psychological disabilities on video, and in my opinion, the WSIB does not really consider the whole person during an investigation, but instead focuses on a workers documented physical injuries and functional abilities. The inherent difficulty in assessing mental health using visual surveillance exposes the limitations of this kind of evidence. If a worker flashes a smile, does that mean he or she is not depressed, suffering from anxiety or PTSD?

WSIB Denies Retraining, Tells Electricians to Become Inspectors

Another challenging situation has recently emerged involving retraining injured electricians. For years the WSIB has struggled with the delivery of meaningful vocational rehabilitation services for Ontario



injured workers. I take particular pride in the fact my father, the late Brother Wally Majesky, was a key architect in bringing mandatory retraining for injured workers in Ontario. However, he would be appalled to see what is happening today, as the WSIBs retraining schemes have morphed from Vocational Rehabilitation, to Labour Market Re-entry, and now Work Transitions.

Several years ago the WSIBs Labour Market Re-entry program was the subject of a Toronto Star investigation, and they concluded, supported by the Ontario Federation of Labour, that the WSIBs retraining program was not working properly. Cost was a key issue, because why did it take \$80K to upgrade a worker to grade 8 level in Math and English? Also singled out were injured workers sponsored in college programs where they were destined to fail, or graduated but could not find work after 3 years of college, only find jobs \$13 per/hr. job, or part-time minimum wage jobs.

The WSIB jettisoned Labour Market Re-entry in 2010, then rolled out Work Transitions, their new program to retrain injured workers. Miraculously, they now provide 1/3 the training, and say workers can earn more money, all in an effort to reduce cost. Ironically, it is staffed by many of the same folks who were part of the discredited LMR

program delivered by private service providers. Now the pendulum has swung the other way and electricians are now being told that they can make a seamless transition as Electrical Inspectors, without retraining, and some job search assistance i.e., resume preparation.

Over the next 2-3 months I'm reaching out to our members working as Electrical Inspectors so I can prepare a report on the challenges they experienced migrating from the tools, employer hiring requirements, and the different job opportunities for Electrical Inspectors. Please feel free to contact me with your insights, and I would be pleased to come out and meet with you at your convenience. This is a very important issue that the WSIB appears to know very little, and I need your help.

Electrical Estimators

Another area of controversy relates to members who transition as injured workers to the job of Electrical Estimator. This is usually a good fit, but we are having problems with the WSIB because they do not distinguish between degree, diploma (2 or 3 college program), or the 6 course certificate program at George Brown College taken at night school. In my opinion, the George Brown 6 course certificate is not equivalent to the wide range of engineering programs offered, but merely a pathway to future learning. However, the WSIB does

not distinguish between the different levels of education, or trade experience, and the wage/salary a member will likely earn.

There is another blind spot because WSIB does not distinguish between Junior and Senior Estimators. In my experience, an electrician who takes the George Brown 6-course certificate course will in all likelihood be hired as a Jr. Electrical Estimator. However, WSIB says there is no such distinction, even though job postings, including those of our electrical contractors state they employ both Jr. and Sr. Electrical Estimators. That is a puzzling contradiction. When I challenged the WSIB that job postings for Electrical Estimators typically require 3-5 years' experience, they tell me this refers to "electrical experience" as an electrician, not an Electrical Estimator. Now that is an absurd position.

In closing, I want to hear from our members who are working as Electrical so I can benefit from your experience and insights. I can be reached by email gary_wsib@ibew33.org or Tel (416) 510-5251.

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Safety Corner

Thank you for your safety slogan submissions.
The winner for the safety slogan contest is **Luis Pires**.

"Safety, it belongs everywhere."

