



GLADNET

**International Research Project on
Job Retention and Return to Work
Strategies for Disabled Workers**

**Study Report
Canada**



**Morley Gunderson
Centre for Industrial Relations, University of Toronto**

**Alina Gildiner
Department of Community Health, University of Toronto**

**Andrew King
National Institute of Disability Management and Research
and United Steelworkers of America**



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PREFACE

The *International Research Project on Job Retention and Return to Work Strategies for Disabled Workers* is an initiative of the International Labour Organisation (ILO) and the Global Applied Research and Information Network on Employment and Training (GLADNET). It reflects ILO and GLADNET joint aims of establishing a base for cross-national research and strengthening links between research analysis and policy reform in the field of employment of disabled people.

The Project is a response to a combination of developments which highlight the need for more effective policies and practices in support of workers whose prospects of remaining in employment are jeopardised by work injury, illness or disability. Persons with disabilities are increasingly claiming rights to stay in work as well as to access employment. Pressures on state budgets, the rising costs of compensation claims and disability benefits, and changes in the structure of the labour market are strengthening policies in favour of job retention and return to work. Enterprises are developing their own strategies to minimise the costs of disability and to retain valued employees. Overall, the balance of responsibility is shifting from the state to the enterprise.

Policies and practices to prevent disabled workers from leaving work unnecessarily, and to facilitate rapid return to employment if job loss cannot be prevented, are recent developments in many countries. The cross-national exchange of information on initiatives and their effects is limited. The first aim of this Project has been to gather information about what has been attempted, by whom, for what purposes, in which contexts and to what effects. The second, more ambitious, aim, is to examine the interaction between the various policies and practices, identify dysfunctions, and work towards more coherent and cost-effective strategies for job retention and return to work which might be applied in different national systems. The ultimate objective is to identify strategies which can be put into effect in the workplace.

The Project was constructed in two phases. In Phase One, eight exploratory desk-based studies were commissioned from researchers in Canada, France, Germany, the Netherlands, New Zealand, Sweden, the United Kingdom and the USA. The eight countries invited to participate represent a spectrum of policy approaches and enterprise practices which affect the retention and return to work of workers with disabilities. Australia joined the project at a later stage.

The studies formed the basis for a *Key Issues* Paper, published simultaneously with the eight country reports. This Paper aims to inform, stimulate debate and pave the way for constructive discussion of questions for further exploration through cross-national collaboration in Phase Two.

National government departments, agencies, a private sector organisation, and the ILO co-sponsored Phase One of the Project. Overall responsibility for the Project rests with the ILO (Vocational Rehabilitation Branch, Employment and Training Department). The design, implementation and analysis of the research in Phase One were the responsibility of the Research Co-ordination Unit established at the Social Policy Research Unit, University of York (UK) in April 1997. Research specialists in the main areas of enquiry, based in study countries, contributed at all stages of the research process and, with ILO representatives, met with the research co-ordinators as a Research Advisory Group.

The country studies

The Project recruited and supported national informants from research institutes in all eight countries. During the second half of 1997 they completed a Schedule of Questions developed by the Research Co-ordination Unit to describe policies and practices, document evidence of their effects and provide grounded commentary on how policies and practices interact. The principal sources were policy documents, survey data, research evaluations and critical reviews. Informants were encouraged to contact sources in government departments and agencies, disabled people's organisations, labour unions and employers' groups. Where documented information was lacking, informants interviewed experts in the field.

The eight country reports are important resources for the development of job retention policy and practice both within and across countries. Each report brings together within a single volume: descriptions of policies, practices and programmes which impact on job retention and return to work; evaluative material; and informed commentary. They cover five themes: employment and labour market policies; benefit and compensation programmes; employment support and rehabilitation services; adaptation of work and workplace; and measures developed and implemented by the enterprise. In line with the research aim of identifying coherent and co-ordinated strategies, the informants both comment on dysfunctions in national systems which obstruct job retention efforts and identify links between themes.

It should be noted that the situation described in the reports may have changed. This is especially true of the Netherlands where further reforms were expected in the first half of 1998 and the United Kingdom where the government changed in May 1997. Important developments in the USA were announced in March 1998.

The reports produced by the eight teams of national informants conformed to the format laid down by the Schedule of Questions. The original reports have been edited for publication by the Research Co-ordination Unit in co-operation with their authors. However, they remain essentially the 'raw data' for analysis and should be read in that light. Each report follows the same sequence of headings which reflect the original open-ended questions. As the questionnaire prompted informants to respond flexibly to suggestions about possible areas to address under each question, the content varies from report to report. The reader should note that, at the end of a thematic section, commentary may be included on the links between that theme and those which precede it.

Terms used in the study

The study concerns paid competitive employment in the open labour market.

The term 'disabled workers' is broadly defined. It covers individuals who become disabled, injured or ill whose prospects of continuing or advancing in employment are jeopardised when an acquired impairment, illness or deteriorating condition - physical or mental - presents difficulties in fulfilling the requirements of the job, reduces earning capacity or affects other rewards of working. They may or may not qualify under legal definitions of disabled persons. The term also covers workers with disabilities whose working capacity is not diminishing but whose continued employment is nevertheless threatened by prejudice or discrimination, or by the loss of supports which have maintained them in the job.

'Job retention' means staying with the same employer, with the same or different duties or conditions of employment, and includes return after a period of paid or unpaid absence. 'Return to work' refers to the resumption of employment by a worker who has crossed the threshold from a continued employment

relationship into non-employed status; the main interest of the study is in policies and practices which return the disabled individual to work at an early stage.

Acknowledgements

The publication of eight country reports of a very high quality in a short space of time would not have been possible without the expert attention of Andrew Nocon of the Social Policy Research Unit who edited the reports with remarkable care and efficiency. His task was made easier by the eight teams of informants who most willingly answered queries and approved the edited versions to tight deadlines.

The Project wishes to acknowledge the contribution of Dan Kearns who assisted with research design, supported the national informants and masterminded international tele-communications.

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Patricia Thornton
Research Co-ordination Unit
Social Policy Research Unit, University of York, UK

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Copies of the 'Methodology Paper' and the 'Informant Briefing and Schedule of Questions' may be obtained from the Research Co-ordination Unit, Social Policy Research Unit, University of York, YO1 5DD, UK.

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This report was co-ordinated by Terrence Sullivan and Sandra Sinclair, Institute for Work and Health, Toronto.

I. EMPLOYMENT POLICIES

The purpose of this Part of the report is to describe policies which maintain those workers in employment whose continued employment is at risk because of disability. It provides evidence of the effects of those policies and identifies factors which influence their effectiveness. The emphasis in this part is on national (or state/provincial) policies formulated by government, and by bi-partite or tri-partite policy-making and advisory bodies.

Sections 1 to 5 are concerned with legislation, incentives and other 'persuasion' policies which oblige and encourage enterprises to retain disabled employees. A distinction is made between employees who become disabled and those who are already disabled. Information is provided about employment policies which encourage disabled employees to retain or return to their jobs. Sections 6 to 8 focus on the factors which affects the success of policies. They also examine the labour market factors which contribute to the retention or loss of jobs among disabled people.

Note

Canada is a federal system with a federal government and 10 provincial jurisdictions as well as 2 territorial jurisdictions.

I.1 POLICIES WHICH AIM SPECIFICALLY TO INFLUENCE ENTERPRISES TO RETAIN NEWLY DISABLED EMPLOYEES

I.1.1 Legal obligations and binding agreements specifically intended to prevent and restrict dismissal of employees who become disabled

Common law protection against wrongful dismissal

Under common law through the courts, all employees have protection against wrongful dismissal (i.e., the employer must have 'just cause' to dismiss an employee).¹ Examples of just cause include misconduct, disobedience, excessive absenteeism, incompetence, and refusal to accept geographic transfers. In these circumstances, employers can terminate employees without advance notice or severance pay. In general, employers must carefully document their case and show that they have provided progressive discipline with appropriate warnings. If just cause is not proven, the employee is not entitled to reinstatement under common law. Rather the employee is entitled only to a reasonable notice period or pay in lieu of notice.

There is considerable variation in the magnitude of the awards, although one month of pay for every year of service is common, with two years of pay usually being a maximum. The larger awards are granted to persons who will find it most difficult to find alternative employment. Employees are expected to mitigate their loss by seeking other employment. Given the potential legal costs involved in going through the courts, such wrongful dismissal proceedings tend to occur mainly for managerial personnel.

Economic redundancy, including redundancy due to restructuring, generally is not sufficient cause to dismiss an employee; hence in such circumstances a 'reasonable' notice period must be given. In most

cases, the employee is not expected to work during the notice period, so in effect it is a form of severance pay.

Such protection against wrongful dismissal is afforded to all employees under common law, and hence newly disabled employees would also have such protection. Being newly disabled, by itself, of course would not provide 'just cause' to dismiss an employee. However, it is easy to see how the disability status could lead to other conditions such as excessive absenteeism, refusal to accept geographic transfers, and even competence to perform the job that could become grounds for dismissal. Special procedures are not required with respect to the dismissal of newly injured employees, although it is likely that the courts would require a higher standard of proof on the part of employers to show just cause. As well, any award may be larger to the extent that the newly disabled employee would find it difficult to find suitable alternative employment.

Statutory protection against unjust dismissal

Statutory protection against unjust dismissal² is also sometimes provided as part of employment standards legislation for non-union employees who do not have the protection of a collective agreement, and for non-managerial employees who are unlikely to use the expensive common law system through the courts. Such statutory protection exists in the federal jurisdiction, Quebec and Nova Scotia.

An adjudication process exists that is similar to the arbitration process under a collective agreement (discussed subsequently) whereby a grievance can be filed on the grounds of unjust dismissal. As in the grievance procedure in unionized environments (but not for wrongful dismissal cases for managerial employees at common law through the courts) reinstatement is possible, with or without backpay. Severance pay is also possible for situations where reinstatement is not deemed appropriate. As with the case of wrongful dismissal procedures at common law, the statutory protection does not require special procedures for the dismissal of newly injured employees. It is likely, however, that the adjudicator would require a higher standard of proof on the part of employers to show just cause, and any award may reflect the difficulty of a newly disabled person in finding alternative employment.

Human Rights Statutes and antidiscrimination laws

All Canadian jurisdictions have Human Rights Statutes or anti-discrimination laws that prohibit discrimination against specific groups including disabled persons.^{3,4} Such protection would apply to the dismissal of newly disabled persons. All jurisdictions, however, provide exemptions based on a bona fide occupational qualification (BFOQ), which means that the disabled employee must be capable of meeting the requirements of the job. (Employers' duties to reasonably accommodate disabled persons are discussed subsequently.)

Workers' Compensation Acts

Workers' Compensation Acts can also have specific provisions designed to inhibit employers from dismissing newly disabled employees. In Ontario, the employer must re-employ the injured worker as long as the worker returns to work within two years after the injury. For such purposes, the Workers' Compensation Board (WCB) has interpreted the date of injury as the date at which it is determined that the person is 'unable to work'. The employer must maintain continuous employment for that worker for at least six months after their return. Termination can occur if it is necessary for the financial viability of

the business, but such a case is usually difficult to make. Termination can also occur if it is directly related to the performance of duties. In interpreting this standard, the WCB uses the common law principle of 'just cause', which is a relatively high standard for employers to meet. Section 54 of the Ontario Workers' Compensation Act, (as amended by Bill 162 in 1989)⁵ and which covers employers with 20 or more employees, states:

Upon receiving notice from the Board that a worker is able to perform the essential duties of the worker's pre-injury employment, the employer shall offer to reinstate the worker in the position the worker held on the date of injury or offer to provide the worker with alternative employment of a nature and at earnings comparable to the worker's employment on that date.

Upon receiving notice from the Board that a worker, although unable to perform the essential duties of the worker's pre-injury employment, is medically able to perform suitable work, the employer shall offer the worker the first opportunity to accept suitable employment that may become available with the employer... In order to fulfil the employer's obligations under this section, the employer shall accommodate the work or the workplace to the needs of a worker who is impaired as a result of the injury to the extent that the accommodation does not cause the employer undue hardship.

A consensus has not emerged, however, over the appropriate interpretation of that requirement.⁶ Both the Workers' Compensation Board through its internal decision making process, and the external, independent Appeals Tribunal have differed over the circumstances which relieve an employer of its obligations under Section 54. All agreed that once the time limits under Section 54(8) have passed, an employer is free to discharge the worker or refuse accommodations under the *Workers' Compensation Act*, although the *Human Rights Code* still applies. The Board and Tribunal, however, held divergent views about the employer's obligation prior to the passing of the Section 54 time limits.

The Board established the strong requirement that the employer may not terminate the worker without just cause or proof that prohibiting the termination would impose 'undue hardship' and jeopardize the existence of the company. The Appeals Tribunal took a less stringent stance, maintaining that the employer retains all its standard rights to discharge the worker during the obligation period, provided that the termination decision is not 'tainted' with an 'anti-injured worker' bias. Whether the strong interpretation of the Board or the less stringent requirement of the Appeals Tribunal is followed, newly disabled employees are afforded some special considerations with respect to protection against dismissal.

Collective agreement protection against unjust dismissal

Collective agreement protection against unjust dismissal also exists for employees covered by a collective agreement (approximately 35 per cent of the paid workforce in Canada) since most agreements will contain a clause requiring that the employer be able to show 'just cause' in dismissing an employee.⁷ This also enables employees to use the grievance procedure to address the issue, and dismissal is a common and important grievance issue. Unlike common law protection, but similar to statutory protection, grievance procedures allow for wrongfully dismissed employees to be reinstated. These protections for persons covered by collective agreements are available to all employees, including newly disabled employees.

Special procedures for newly disabled employees would not be common in collective agreements, although it is likely that arbitrators would hold employers to a higher standard of performance in dismissing a newly disabled employee.

I.1.2 Legal obligations and binding agreements intended to promote the retention of employees who become disabled

Requirements to re-employ and accommodate the return to work of injured workers are a new and emerging area in workers' compensation in Canada. Such requirements exist provincially in Ontario, Quebec and New Brunswick.⁸ As well, the federal labour code has a return to work requirement.

Workers Compensation Act re-employment provisions

The re-employment and accommodation provisions, which are an integral part of the workers' compensation system⁹ are contained in Section 54 of the Ontario *Workers Compensation Act*, as cited previously in section I.1.1. As a matter of practice, the priorities for re-employment are with (in order of priority):

- 1) the pre-accident employer at the pre-accident job
- 2) the pre-accident employer at a comparable job
- 3) the pre-accident employer, at the next most suitable job
- 4) another employer, at a comparable job
- 5) another employer at a suitable job.

In essence, the employer must reinstate the injured worker to their former job or to a comparable job with comparable wages. A comparable job is interpreted as one with a high degree of similarity in terms of demands, rewards, status and opportunities, with comparable wages taken to be at least 90 per cent of pre-accident wages.¹⁰ The ability to perform the job is assessed *after* potential accommodations are considered.¹¹ If the worker is medically unable to do the previous or comparable job, then the employer must re-employ the worker in the first suitable job that becomes available with the employer. A suitable job is one 'which the worker has the necessary skills to perform, is medically able to perform and which does not pose a health or safety hazard to the worker or any co-worker'.¹²

In determining whether the worker can return to their previous job, consideration is given to the 'essential' duties of the job necessary to produce the actual job outcome within the normal range of productivity. This implies that it is not necessary to be able to do all tasks (only the essential ones), that hypothetical or possible future job outcomes are not relevant, and that some reduced productivity can be tolerated provided it is within the normal range of productivity. Again, these requirements are considered after any accommodations with respect to those essential duties. Alternatively stated, the essential duties are considered in light of the accommodation requirements, which significantly enhances the likelihood of the worker being able to return to their pre-accident employer to the same job, a comparable job, or a suitable job.

The re-employment requirements are based on the presumption that *reasonable accommodations* have been made. Jurisprudence in this area has generally interpreted this as involving a standard up to the point

of 'undue hardship'.¹³ In determining undue hardship, the Ontario Workers' Compensation Board has adopted the approach developed by the Ontario Human Rights Commission in their *Guidelines for Assessing Accommodation Requirements for Persons with Disabilities*.¹⁴

Those guidelines place fairly stringent obligations on employers before undue hardship is considered to have been reached - 'undue hardship' obviously implying a higher standard than simply 'reasonable accommodation'. The guidelines state that:

costs will amount to undue hardship if they are:

1. quantifiable;
2. shown to be related to the accommodation; and
- 3(a) so substantial that they would substantially affect the essential nature of the enterprise, or
- (b) so significant that they would substantially affect the viability of the enterprise.

The guidelines further indicate that the cost estimates must be firmly documented, and they must be spread over the whole organization, not just the unit doing the accommodation. The employer must make every effort to mitigate the costs through outside sources of support or subsidies. Any other benefits from the accommodation should be subtracted to arrive at net costs. The costs should be amortized or depreciated as appropriate, and may entail that the organization borrow the money if necessary.¹⁵

Accommodation can be required even if conflicts with the health and safety of workers, as long as a cost-benefit test is applied. The guidelines state that:

Where the effect of such a [health or safety] requirement is to exclude a person with a disability from the workplace or service, it may be necessary to modify or waive the health or safety requirement. Whether this will create undue hardship or not depends upon whether the remaining degree of risk outweighs the benefit of enhancing equality for persons with disabilities.

The trade-off is more likely to be allowed if the risk falls on the person for whom the accommodation is being made, and that person is willing to assume the risk.

Vocational rehabilitation

Vocational rehabilitation is an important component of the return to work strategy. Under the Vocational Rehabilitation of Disabled Persons Act, implemented in 1961, the federal government agreed to 50/50 cost-sharing with provinces and territories for vocational rehabilitation services for disabled people. The sub-governments are responsible for the design and delivery of the programs. For the most part, these and the related supports, are delivered by local non-profit groups and organizations.

Once a worker applies for workers' compensation, a Claims Adjudicator first determines eligibility by establishing that the injury is causally attributable to the worker's employment and that the worker cannot return to their pre-injury job at this stage. Once the medical condition has stabilized, the Claims Adjudicator assesses the injured worker's functional ability to return to work, either at the pre-injury job

or at some other job. If the worker is unable to return to their pre-injury job, then a Vocational Rehabilitation Caseworker handles the case. The Caseworker establishes a Vocational Rehabilitation (VR) program if necessary, and also works on re-employing the injured worker.

Legislative changes, scheduled to become effective in Ontario in January 1998 in the form of the Workplace Safety and Insurance Act, will result in the renaming of the Workers' Compensation Board to the Workplace Safety and Insurance Board and are anticipated to result in significant changes in the management of claims and the return to work focus. (See Appendix for further details.)

While assessing possible vocational rehabilitation objectives, a Caseworker may conclude either that the worker can do a modified version of their pre-injury job or suitable work available with the accident employer. If an employer is reluctant to re-employ, mediators try to bring the employer and the worker together. This achieves some form of settlement in about 75 per cent of cases.¹⁶ Failing that, a formal hearing is held to determine if Section 54 applies, in which case the employer would be required to re-employ the injured worker. If the employer refuses, the Board does not have the power to order the reinstatement of injured workers.¹⁷ The Board can only offer the worker rehabilitation services and benefits in lieu of employment, charging the employer a penalty up to the worker's earnings for the year preceding the injury. As well, the Board may award the injured worker up to the amount the worker would have received for one year if the normal compensation arrangements had occurred. In effect, this is their temporary disability payment, which is typically 90 per cent of their lost earnings if they do not work. This compensation amount may be added to the employer's penalty, effectively implying that the employer's penalty may be up to almost two years of the worker's earnings.

Binding collective agreements

Binding collective agreements must adhere to the principles of the *Workers' Compensation Act* and its accommodation requirements - that is, it is not possible to opt out of such provisions even if both parties agree. That is, the legislation takes precedence over the collective agreement which means that provisions in the collective agreement cannot pose a barrier to reasonable accommodation. If there is a conflict between the Act and the collective agreement, and the employer and union cannot agree to remove the impediment in the collective agreement, then the employer must make the accommodation in spite of the agreement. If the union attempts to thwart the accommodation, it may be added as a respondent to a complaint.

While the guidelines of the Human Rights Code indicate that the terms of a collective agreement may have to be modified, the *Workers' Compensation Act* itself specifically 'exempts' seniority provisions (Section 54(15)). This is also consistent with the limited arbitral and human rights jurisprudence that exists in this area.¹⁸ While this gives the appearance that seniority provisions have a blanket exemption from accommodation requirements, there are a number of considerations that can circumscribe that exemption. For example, if seniority is but one factor along with skill and ability, then bypassing seniority may be required for the accommodation if the injured worker has the skill and ability. Also, if seniority is a barrier to accommodation within the bargaining unit, the employer may have to find suitable work in jobs outside of the bargaining unit. As well, an injured worker who is re-employed cannot be laid off because of being least senior, if the work is then done by an employee outside of the bargaining unit.

In 1995 in Ontario, 36 per cent of collective agreements covering 51 per cent of employees covered by collective agreements contained provisions providing for special treatment of disabled workers.¹⁹

I.2 POLICIES TO OBLIGE AND ENCOURAGE ENTERPRISES TO RETAIN DISABLED WORKERS IN GENERAL

I.2.1 Obligations and binding agreements to promote the retention of disabled workers in general

Protection against dismissal

Disabled workers in general have similar protection as the newly disabled workers discussed in part I.1, except that newly disabled workers have the protections afforded by workers' compensation if they are disabled at work. Otherwise, disabled workers would have protection under common law through the courts against wrongful dismissal, some may have statutory protection against unjust dismissal, all would have protection against discrimination based on disability from human rights codes (subject to a bona fide occupational requirement), and those covered by a collective agreement (slightly under 35 per cent of the paid workforce) would have general protection against unjust dismissal.

Obligation to create a non-disabling work environment

Obligations to create non-disabling working environments are part of the general occupational health and safety laws designed to prevent occupational injury and disease.²⁰ All jurisdictions have such laws specifying detailed regulations, standards and safety rules that both employers and employees must follow. The regulations tend to be based on the recommendations of advisory agencies that have expertise in particular industries and occupations or with respect to particular chemicals or materials.

In addition, the occupational health and safety legislation of each jurisdiction imposes a general performance duty on employers and employees to promote health and safety at the workplace. The Nova Scotia Occupational Health and Safety Act²¹ is typical, requiring employers to 'take every precaution that is reasonable to ... ensure the health and safety of persons at or near the workplace' and employees to 'take every reasonable precaution in the circumstances to protect his own health and safety and that of other persons at or near the workplace'. Most jurisdictions impose equivalent requirements on independent contractors operating at the worksite, with the principal contractor usually being responsible for subcontractors.

All jurisdictions also have legislation incorporating the internal responsibility system where labour and management are to be jointly responsible for health and safety at the workplace. The rationale is that health and safety at the workplace level is fostered not so much by externally imposed laws and standards, but rather by internal self-regulation through joint labour-management communication and co-operation reflecting the unique circumstances of each workplace. The intent is to instil a health and safety mentality throughout the organization, from the chief executive officer to middle management and to all employees. Legislatively this has been established by guaranteeing workers three fundamental rights: the right to know or be informed of workplace hazards and how to avoid them; the right to refuse unsafe work (subject to procedural requirements); and the right to representation through a joint labour management health and safety committee at the workplace.

Enforcement²² of occupational health and safety legislation involves a mixture of information provision, mediation and moral persuasion (usually for those who allegedly unintentionally violate the legislation) and sanctions and penalties for those who intentionally or habitually violate the legislation. Government health and safety inspectors can investigate as part of a routine audit or in response to a complaint. Routine audits are becoming uncommon because of cutbacks in budgets, and complaints are uncommon in non-union environments because of the fear of reprisals. Inspectors will usually first try to mediate voluntary compliance. If that does not work, they can issue a 'stop-work' order. Ultimately, they can recommend prosecution, usually through the regular courts. While this has strong social sanctions, it is a long and costly procedure, requiring that guilt be established 'beyond a reasonable doubt.' Employers can escape liability by showing that they exercised 'due diligence' in trying to avoid the accident. For these reasons, prosecution is relatively rare and tends to occur reactively after the accident has occurred, and not proactively to avoid the accident. Fines are generally regarded as low, but they are increasing in most jurisdictions. Penalties can include imprisonment, and criminal charges such as murder or manslaughter are possible, but these have been exceedingly rare. The penalties can apply to directors and senior officers of corporations.

Some jurisdictions, notably British Columbia, allow the agency responsible for investigating (in that case the Workers' Compensation Board) to directly impose penalties rather than to have to prosecute through the courts. There is a right of appeal to a higher authority within the agency, in that case, the Appeals Division. The procedure is quicker and less costly and is often applied proactively when there is a risk of an accident occurring, rather than reactively only after an accident has occurred. Also, there is greater likelihood of securing convictions because the civil standard of proof of guilt, requiring only a 'balance of probabilities', is less onerous than the criminal standard of 'beyond a reasonable doubt' that is required in the courts.

Employment equity legislation

Disabled persons are one of four designated target groups under the federal Employment Equity Act of 1986.^{23, 24, 25} The other designated groups are women, visible minorities and Aboriginal persons. Such legislation currently exists, however, only in the federal jurisdiction and in Quebec, and is mainly a public sector phenomenon. The Act applies to employees in the federal jurisdiction: air transport; banking; bridges and tunnels; broadcasting and communications; federal crown corporations; federal public service; feed, flour and seed mills; grain elevators; longshoring; energy and mining; pipelines; postal contractors; rail transport; interprovincial road transport; and water transport; these groups are subject to federal (as opposed to provincial) legislation, although enterprises may be in private ownership. The Act did not, however, cover federal employees: the rationale for excluding them was that the federal government was voluntarily adapting employment equity, in part through its negotiation process under collective bargaining. However, in 1996 the federal government extended coverage to its own employees under a revised Employment Equity Act. The Federal Contractors Program of 1986 extends similar coverage to employers with 100 or more employees and with federal government contracts of \$200,000 or more in value.^a

^a At 31 March 1998 one Canadian dollar was equivalent to 0.7034 US dollars.

Quebec's employment equity requirements are part of its human rights legislation, and they apply to government departments and agencies, as well as organizations with a government contract of \$100,000 or more. Ontario also passed employment equity legislation in 1994 but rescinded it in 1996. Employment equity requirements occasionally can also be part of other laws such as the Ontario Police Act, applying to municipal police forces and the Ontario Provincial Police. Employers and institutions bound by the federal Act must submit annual reports to the Canadian Human Rights Commission, which may implement a problem-solving strategy, and to HRDC, which has the power to impose fines in the event of non-compliance.^{26, 27}

Employment equity tends to involve four basic steps. First, an internal audit of the organization is conducted to determine the internal representation of the four designated groups, including disabled persons. Second, this internal representation is compared with the corresponding group's external representation in the externally available labour market. Third, goals or targets are established for matching the internal representation with the external availability pool. Fourth, plans are established for achieving these goals. Employers must identify possible barriers that might be limiting the employment opportunity of designated group members, develop an employment equity plan aimed at promoting a fully equitable workplace (including measures to remove barriers), and make all reasonable efforts to implement an appropriate plan. (This is discussed further in III.1.1.) Government statistics, based mainly on census data, are available to enable employers to determine the representation of the target groups in the population and to develop their recruitment plans accordingly.

Evaluations of the federal employment equity programs generally show that they tend to be focussed on women rather than the other target groups, including disabled persons. In general, they conclude that they have not improved the representation or pay of disabled persons.^{28, 29, 30, 31, 32, 33}

I.2.2 Voluntary policies to persuade and encourage enterprises to retain disabled workers in general

Voluntary employment equity initiatives

Voluntary employment equity initiatives^{34, 35} have been adopted as part of local ordinances in a number of city and municipal governments including Toronto, Winnipeg, Saskatoon, Regina and Vancouver. As well, prior to the extension of employment equity legislation to its own employees in 1996, the federal government had a voluntary program.³⁶ Components of that program included: establishment of numerical targets for each of the four target groups including disabled persons (see I.2.1); action plans to improve their representation; special employment offices and programs for the designated groups; and special training programs for public service managers. Special programs were developed for each of the designated target groups. For disabled persons this included the Access Program, an on-the-job training program to assist disabled persons with insufficient work experience to compete equitably for positions in the government. As well, a policy directive gave managers authority to provide equipment and other special services for disabled persons.

Some private sector organizations have adopted voluntary programs, although the exact extent is not known. Such programs, however, are generally regarded as not being extensive. Blakely and Harvey,³⁷

for example, found a low level of voluntary commitment to employment equity amongst Ontario firms, especially for target groups other than women. Only one of their 58 organizations compared their internal representation numbers to those in the external availability numbers in the relevant labour market. Low levels of effective implementation were also documented in Jain and Hackett³⁸ based on a national sample of firms believed to have employment equity groups.

Voluntary enterprise-level agreements are also not common. Between 1978 and 1983, for example, federal government consultants contacted approximately 900 firms to sign agreements to undertake voluntary employment equity initiatives. Only 34 (i.e. less than four per cent) agreed to do so despite the fact that they were prompted to do so and the commitment was completely voluntary with no sanctions.³⁹ Similarly, for ten years prior to the federal contractors compliance legislation on employment equity, the federal government had tried to encourage and facilitate voluntary employment equity. Based on a survey of 99 employers in Ontario, only 13 had adopted some form of 'voluntary' initiative in spite of the prompting of the federal government - the government that would be providing the contracts to those firms.⁴⁰

Special affirmative action programs

Voluntary special affirmative action programs are allowed in all jurisdictions, and are generally protected against charges of reverse discrimination. In the federal jurisdiction, for example, Section 15(1) of the Canadian Human Rights Act specifically permits the voluntary adoption of special programs to assist the target groups.

I.2.3 Financial incentives which encourage enterprises to retain disabled workers in general

A number of financial subsidies are available to employers who employ disabled people. These subsidies are available to recruit and maintain the employment of disabled workers.

Quebec has the most experience in subsidies to employers for hiring disabled persons, through its *Contrat d'integration au travail* program.⁴¹ Evaluations of that program indicated that the positive effects were temporary, and that it did not increase the income, employment or quality of life of program participants. In contrast, more favourable effects were found for the federal Individualized Subsidized Job (IJS) component of the Job Development Program of the Canada Jobs Strategy.^{42,43} Favourable effects of IJS were found for the employability and earnings for participants with disabilities. Those favourable effects were attributed to a number of program design features: outreach to ensure the participation of disabled persons; individualized, tailor-made training and placements; integration with accommodations at the worksite; and close links with the private sector.

Provinces can have their own wage subsidy programs designed to encourage employers to expand their hiring, and they can be targeted towards specific disadvantaged groups such as disabled persons. The New Brunswick Skills Program,⁴⁴ for example, provides a full subsidy of the wage of \$6.25 per hour to employers who hire disabled workers. The subsidy lasts for a maximum of 20 weeks and must be for activities that would not have otherwise taken place. The New Brunswick Partners Program provides a wage subsidy of 50 per cent for permanent full-time jobs and 30 per cent for seasonal jobs, up to a maximum of \$6.00 per hour for 40 hours per week. The maximum duration is 24 weeks, sequenced as 8

weeks reimbursement, 8 weeks no reimbursement and 16 weeks reimbursement. For seasonal jobs, funding is available for 10-14 weeks.

Wage subsidies can also be available through the federal government Opportunities Fund For Persons with Disabilities announced in the 1997 federal budget.⁴⁵ The fund is worth \$30 million per year for three years, and is to be allocated throughout the country in proportion to the working age population of persons with disabilities. It will be used to assist those not eligible for Employment Insurance (EI) support. The purpose is to work in partnership, especially with organizations representing persons with disabilities, to reduce barriers to labour market participation and to support innovative approaches to employment or self-employment. Eligible coordinators include: businesses; organizations; band/tribal councils; municipal governments; public and educational institutions; and individuals. Employment benefits that may be supported through the fund include: targeted wage subsidies to help offset the incremental cost of hiring a person with a disability; targeted earnings supplements; job creation partnerships, self-employment including income support, coaching and technical assistance to unemployed individuals setting up a business; training to help individuals to take courses; case management to support the development of personal action plan; and disability management strategies. The fund can also be used for overhead costs by delivery agents, income support, disability supports to ensure successful participation in training or employment, and the costs of workplace modification. Human Resources Development Canada is currently establishing a mechanism to track participants, in order to evaluate the effectiveness of the intervention.

Wage subsidies to disabled persons are also part of some of the specific programs established by the federal government under the new Employment Insurance system which replaced the former Unemployment Insurance System in 1990. The intent of the new system is to encourage active labour market adjustment for persons who qualify for Employment Insurance, rather than to provide more passive income maintenance programs through unemployment insurance. To do this, some of the conventional unemployment insurance money was reallocated to labour market programs. Many of those programs represent a continuation of adjustment assistance programs of the federal government, albeit under different names. In general, these programs are targeted to general Employment Insurance clients, without specific mention of disabled persons as a target group, although unofficially there is likely to be more flexibility in allowing eligibility for target groups at risk such as disabled persons. For some of the programs, however, disabled persons are specifically mentioned in the fact sheets from Human Resources Development Canada, describing the programs. For example, the Targeted Wage Subsidy program applies to individuals who have been unemployed for a long time and are having difficulties finding work. Workers with disabilities are specifically mentioned as a target group. The subsidy can be used for up to a year and a half but the average duration is between 26 and 30 weeks. In normal circumstances, the wage subsidy does not exceed 60 per cent of the total wages paid to the individual for the period of the agreement. The amount could vary over the agreement period, for example, being 75 per cent during the first 26 weeks, 60 per cent for the next 26 weeks, and 40 per cent during the final 26 weeks. Eligible employers include businesses, non-profit organizations, band/tribal councils, municipal and provincial/territorial governments, and public and educational institutions.

The federal Job Creation Partnership can also provide financial assistance for projects that create temporary jobs so that EI clients can gain work experience. The amount of assistance is negotiated with the sponsor,

with eligible sponsors including businesses, non-profit organizations, band/tribal councils, municipal and provincial/ territorial governments, and public health and educational institutions. The maximum term of a project is 52 weeks. The financial assistance may include personal support costs such as assistance for persons with disabilities.

Tax relief is provided under the Income Tax Act to employers who retain disabled workers in that accommodation requirements including modifications to existing buildings and devices to improve access to the business do not have to be depreciated, but are immediately deductible for the full cost.

Under experience rating, employers receive a rebate on their premium costs in a range of WCB revenue programs for reductions in the incidence and duration of claims. In some jurisdictions, there are additional programs which provide rebates on individual claims where there is a prior condition that contributes to the claim. This was originally adopted to provide incentives in the hiring of disabled workers, but has never been successful for that purpose since it is only triggered after the fact upon application.

I.3 POLICIES AND PROGRAMS TO SUPPORT DISABLED EMPLOYEES AT RISK TO RETAIN THEIR EMPLOYMENT

I.3.1 Financial incentives directed at employees whose continued employment is at risk because of disability

As indicated in section I.2.3, most wage supplements and subsidies are directed at employers to encourage them to hire or retain target groups including disabled persons. Of course, this indirectly goes to employees at risk because of disability since they effectively get the post-subsidy wage, and their employment can be positively affected.

Individuals with disabilities can get tax relief through a Disability Tax Credit (DTC) involving a fixed amount for those who qualify on the basis of their disability status. As well, Medical Expense Tax Credits (METC) are available for specific approved medical expenses for disabled persons.^{46,47} Employer-provided allowances for taxi fares, para-transport, parking and attendant care were also made non-taxable in 1991 for individuals eligible for the Disability Tax Credit.

The level of benefits for disabled people also functions as an incentive to work or return to work. This is discussed further in II.2.1

I.3.2 Programs which support a move to another employer or to self-employment

As discussed previously in section I.1.2, vocational rehabilitation (VR) programs are an integral component of a job retention and return to work strategy for injured workers under workers' compensation. The priorities are to return the worker to their pre-accident employer, but if that cannot be accomplished then the VR can be geared to support a move to a suitable job at another employer or even to self-employment.

When workers' compensation benefits are paid out as a lump-sum benefit (scheduled benefits based on the severity of the injury) the normal procedure is to pay an annuity as monthly payments. This was the case for permanent, partial disabilities in Ontario before 1990, after which such compensation became based on wage loss with a lump sum component for non-economic loss. The non-economic benefits are paid out either as a lump sum or monthly award and dependent on the worker's choice (see 2.1.1). The benefit was not altered if the employee moved to another employer or to self-employment, and in that sense it could be used to finance such a change in employment. In fact, to facilitate any change to self-employment, the total payment could be paid as a single lump-sum if it was used to set up one's own business.

Government training and labour market adjustment assistance programs can also support a move to another employer or to self-employment. Disabled persons can access these programs, and are often explicitly or implicitly targeted for such programs. Explicit targeting occurs to the extent that they are mentioned as a specific target group for such programs. Implicit targeting occurs to the degree that their disadvantaged status would make them more likely to receive the support through the administrative decision-making that is often involved in allocating the funds under such programs.

A number of federal programs, for example, would provide support to move to another employer or to self-employment. Unemployed individuals collecting Employment Insurance (EI) are eligible for the Self-Employment fund,⁴⁸ which explicitly provides financial assistance for up to a maximum of 52 weeks to facilitate their starting up a new business. Individuals continue to receive their regular EI benefits and these may be 'topped up' to a locally determined rate or an individually negotiated rate. Other participants negotiate a rate of income support or receive a locally determined flat rate. Participants may be eligible for personal supports, for example, assistance for disabilities. The program is funded by Human Resources Development Canada (HRDC) out of the EI fund. HRDC contracts with a third party or partnering agency for the delivery of the service. Eligible third parties include businesses, local community organizations, individuals, public health and educational institutions, municipal, provincial/territorial governments, and band/tribal councils. The partnering agency is responsible for a number of functions: evaluating the business plan proposal; assessing client suitability for self-employment; recommending proposals to HRDC; assisting the participants in developing and implementing their business plan; offering technical and other advice; and directing clients to other support services as needed or available.

For disabled persons not eligible for EI benefits, the federal government operates the Opportunities Fund for Persons with Disabilities.⁴⁹ As discussed in section I.2.3, support can be provided in a number of areas including self-employment. The support can come in the form of income support, coaching and technical assistance to unemployed individuals setting up a business. Other aspects of the program could provide support for moving to another employer, although this is not an explicit purpose.

I.4 BENEFICIARIES

I.4.1 Impact of definitions of disability and eligibility criteria on access to and coverage of policies

Definitions of disability and enterprise, and rules and procedures for determining eligibility, can have important implications for access to and the coverage of policies to promote the job retention of disabled workers.

In policy circles and documents⁵⁰⁻⁵³ in Canada the view and definition of disability has generally evolved from a medical view to a functional view to an environmental or socio-political view. The medical view generally regards people with disabilities as a special class of 'ill' people. The functional view emphasises the consequences of an impairment for an individual in terms of being able to function. It is used in the Health Activities Limitations Survey (HALS), and is based on an individual's self-reported ability to perform activities of daily living. In the functional definition, disability is also sometimes defined partly in vocational terms, such as 'permanently unemployable'.

The environmental view emphasizes the interaction between the individual and the environment rather than simply the medical or functional limitations or characteristics of the individual. It is characterized by the definition of disability developed by the World Health Organization (WHO) in 1980 with its emphasis on multiple levels^{54 68}:

- *Impairment* - a physiological, anatomical or psychological loss or abnormality of function (e.g., deafness, paraplegia).
- *Disability* - a restriction of functional ability and activity caused by an impairment (e.g., loss of hearing, reduced mobility).
- *Handicap* - A social or environmental disadvantage resulting from impairment or disability (e.g., communication, access to buildings).

Implicit in the WHO definition is the concept that an impairment need not lead to a disability, and a disability need not result in a handicap. A handicap results from the interaction between the characteristics of the individual and the environment. This has important policy implications since it shifts the emphasis from the person to the broader environment. It suggests that the program and policy focus should be on exploring ways of modifying societal barriers in order to be able to accommodate people with their differences. This is in contrast to the medical and functional view of disability, which suggests a focus on modifying or adapting individuals.

The broader environmental view of disability is reflected in Canada's constitution, given the interpretations of Section 15 by the Supreme Court citing the failure of society to make reasonable accommodations and to fine-tune its structures so that they do not result in discrimination against people with disabilities.⁵⁵

The broader environmental definition of disability also has significant implications for the focus of evaluation studies and the interpretation of their findings. It suggests that evaluation studies should consider the extent to which programs and policies attempt to accommodate the needs of people with disabilities and the degree of their success in doing so. For example, evaluation of employment programs,

rather than considering the capacity or incapacity of individuals with disabilities to work, should identify barriers to employment, what circumstances or supports could overcome them, and the extent to which these were applied and were effective ... It is, of course, quite appropriate for different programs to have different objectives and eligibility requirements. But the confusion of eligibility requirements with definitions, and the lack of consistency in the way disability is defined can make comparisons across programs difficult or impossible. This has implications for the design and conduct of evaluation studies, and suggests caution in interpreting data obtained from across different programs.⁵⁶

The report of the Social Security Review regarding Persons with Disabilities argues that determining eligibility for programs or benefits should be a different matter from clearly defining the target population. 'A common failing is to confuse the definition of disability with the eligibility criteria. It is important to remember that it is acceptable for different programs to have different objectives. However, it is not the definition of disability that should change from one program to another, but rather the eligibility criteria.'⁵⁷

In Canada, however, the tendency has been to define disability on the basis of the intentions of programs. 'Thus eligibility criteria often act as de facto operational definitions. Despite support in principle for the WHO definition of disability, programs in Canada tend to define eligibility in terms of a combination of medical, functional and vocational criteria, often also taking into account the cause of the disability and the circumstances under which it occurred - at the workplace, in an automobile accident, and so forth.'⁵⁸

Under the anticipated Ontario Disability Support Program Act, various provisions are planned that theoretically are meant to support return to work. These include a definition of disability (criterion of eligibility) that distinguishes 'substantial' from 'severe' disability, and more rapid reinstatement rules for those claimants who try to return to work but do not manage to sustain it. The definition of disability under the Act is to be (in addition to the individual meeting financial and residence criteria for social assistance):⁵⁹

- the person has a substantial physical or mental impairment that is continuous or recurrent and expected to last one year or more;
- the direct and cumulative effect of the impairment on the person's ability to attend to his or her personal care, function in the community and function in a workplace, results in a substantial restriction in activities of daily living; and
- the impairment and its likely duration and the restriction in the person's activities of daily living have been verified by a person with the prescribed qualifications.

Exception:

- A person is not a person with a disability if the person's impairment is caused by the presence in the person's body of alcohol, a drug or some other chemically active substance that the person has ingested, unless the alcohol, drug or other substance has been authorized by prescription as provided for in the regulations.

It is not known, though it may be assumed, that the current definition of disability as rendering the individual unemployable will have a considerable restrictive effect on return to work. The incoming definition, however, still requires the claimant to demonstrate substantial impairment for at least one year

or risk not qualifying for assistance. Furthermore, these definitional and reinstatement supports for return to work are merely a passive, slight lowering of some barriers, not substantial programmatic changes to support return to work. Thus far, there appear to be no mechanisms developed for social assistance workers to identify claimants who would most benefit from return to work strategies and either to make the appropriate referrals or provide the claimants with adequate information to pursue them independently.

A vast amount of legalistic wrangling occurs in many programs and policies with respect to the definition of various concepts: 'reasonable accommodation' up to the point of 'undue hardship' in the area of reasonable accommodation requirements under human rights and workers' compensation; the interpretation of 'unjust dismissal' and whether the employer had 'just cause' in the area of dismissal protection at common law, under arbitration or under statutory protection; the concepts of 'due diligence' and whether the employer's guilt is 'beyond a reasonable doubt' in criminal law or 'beyond the balance of probabilities' in civil law in enforcing health and safety legislation; the issue of 'injury arose out of and in the course of employment' and 'maximum medical rehabilitation' in workers' compensation, and the concepts of 'suitable and available' employment in the return to work decision and for determining compensation in wage loss systems. The interpretation and adjudication over these concepts has important implications for the eligibility and coverage of disabled workers in programs that deal with job retention.

I.4.2 Disabled workers who benefit and those who miss out

As indicated previously, the job retention of disabled workers can be affected by a wide range of legislative, institutional and policy initiatives. These include: protection against unjust dismissal through various procedures; protection against discrimination via human rights legislation and the constitutional Charter; affirmative action through employment equity legislation and contract compliance; and return to work and reasonable accommodation requirements through workers' compensation and human rights regulations. While each of these mechanisms can facilitate the job retention of injured workers, each of them also had significant gaps whereby disabled workers miss out on the benefits they can provide for job retention.

In the area of protection against unjust dismissal, proceedings through the courts tend to be used only by higher level personnel. Proceedings through union grievance procedures applies only to those covered by collective bargaining. Statutory protection exists only in the federal jurisdiction, Quebec and Nova Scotia.

The most important mechanism for job retention is workers' compensation. However, the workers' compensation legislation is affected by the extent of coverage of employees. In Canada, that degree of coverage averages around 87 per cent but it varies considerably by jurisdiction, ranging from lows of around 70 per cent of the workforce in Manitoba and Alberta, to slightly over 80 per cent in Ontario, to almost universal coverage in British Columbia and Saskatchewan, and slightly over 90 per cent in most other jurisdictions.^{60, 61, 62} Most Acts exempt some specific occupational groups such as domestics (although not in Ontario) and professional athletes. The following industries or occupations are excluded from coverage in at least one jurisdiction: casual or seasonal employees; farm labourers; volunteers/non-profit organizations; independent truckers; teachers; clergy; and banks and financial institutions. Some jurisdictions also do not require mandatory coverage for small firms, although they may voluntarily opt-in. Effective coverage of disabled persons under workers' compensation, of course, may also be limited by

other considerations such as the work-related cause of the disability and the types of disabilities that are covered.

Employment equity legislation requiring employers to employ the designated groups (including disabled persons) in the same proportion as their representation in the externally available workforce, is largely a public sector phenomenon, existing mainly in the federal jurisdiction and Quebec (discussed in section I.2.1). Similarly, employment equity as part of legislated contract compliance exists only in the federal jurisdiction and Quebec. As noted earlier, in the federal jurisdiction the legislation applies only to establishments of 100 or more employees with federal contracts of \$200,000 or more in value; in Quebec, the application is only to government departments and agencies, and to organizations with a government contract of \$100,000 or more. Clearly, the vast majority of the Canadian workforce is not covered by employment equity legislation.

With respect to the *cause of the injury*, the most important restriction is that workers' compensation protection requires that the injury 'arise out of and in the course of employment.' Attribution of the source of the injury is obviously difficult given that many injuries and diseases have multiple causes, long latency periods, and are difficult to detect and diagnose, especially in the case of syndromes and diseases. Musculoskeletal disorders, including soft-tissue injuries, represent the largest single category of work disability; in Ontario, between 60 and 65 per cent of all lost time claims are soft-tissue injuries, with injuries to the back being the largest single group.⁶³ The issue is further complicated by greater employee turnover associated with restructuring, and the decline of traditional manufacturing with its 'fixed worksites'. In such circumstances, disabled workers may miss out on the benefits of job retention, although others of course may benefit in the other direction to the extent that they can get non-work related injuries covered.

The dilemma is aptly illustrated in the following statement by one doctor and occupational health specialist in describing the Canadian system⁶⁴:

Compensation law is based on an all-or-nothing concept; there is no proportionality in the allocation of cause or effect. However, the nineties is a world of degenerative, overuse, and neoplastic conditions as well as multiple life stressors, all of which may be claimed to have arisen out of work. Lack of specificity in exactly what is covered by workers' compensation constitutes an important barrier.

Under workers' compensation, the other important restriction related to the cause of the disability is that it cannot arise out of 'wilful misconduct' on the part of the employee. Coverage usually can be denied if the employee engaged in horseplay or fighting, or if the employee did not wear proper safety devices, providing that the employer had a policy of enforcing those rules.⁶⁵ Coverage is still allowed, however, if the employee were a completely innocent party (e.g. the worker was injured by others engaged in the horseplay or fighting) or if the injury is a permanently disabling injury.

With respect to the *type of disability*, workers' compensation tends to focus on accident-based injuries usually associated with a particular event. Stress-based disabilities are generally not covered unless they emanate from a specific traumatic event at the workplace, although repetitive strain injuries can be recognized if they arise out of a work process. In the case of occupational diseases, the disability can be

associated with the accumulation of work-based exposures and hazardous substances. These pose particular challenges for workers' compensation because of the multiple causes (especially interactions with lifestyle factors) and long latency periods. Most jurisdictions in Canada enumerate the specific occupational diseases that are covered.⁶⁶ Typical, although not universally recognized diseases include: chemical burns; contagious or infectious diseases; dermatitis; allergic conditions or reactions; freezing or frostbite; heatstroke; hearing or loss of impairment; inflammations and irritations; systemic poisoning; respiratory conditions; and radiation effects. Such coverage, however, varies considerably across the jurisdictions: 10 or fewer are recognized by one province and the two territories, while British Columbia recognizes some 70 diseases. As well, requirements for the disease to be considered as 'work-related' and hence for the disability to be covered, vary considerably across jurisdictions. In some, employment must be the 'dominant' cause of the disease, while in others it must only be a 'significant' contributor to the disease.

These requirements, and their variation across jurisdictions, can mean that some disabled workers may not benefit from workers' compensation including its job retention policies. Furthermore, as pointed out by one observer⁶⁷: 'The burden of proving the link between the workplace and the disease falls upon workers and not the employer or the Boards. Also, the potentially long latency periods can result in a situation where the liable employer is no longer in business.' Clearly, job retention does not matter if there is no job to retain.

With respect to the *degree of disability*, compensation programs like the Canada Pension Plan (disability component) or private long-term disability plans in organizations tend to focus on severe or prolonged disability, often with little expectation of the disabled person returning to work. Workers' compensation generally has a strong emphasis on return to work, and hence job retention is more of an issue in that program. Workers' compensation does cover all degrees of disability; that is, there is no minimum threshold or maximum ceiling.

With respect to *occupation and industry*, as discussed in I.4.2, there is considerable variation across the different jurisdictions in the extent of coverage of workers' compensation across occupations and industries in Canada. Common exclusions include: casual or seasonal employees; farm labourers; volunteers/non-profit organizations; independent truckers; teachers; clergy; and banks and financial institutions. One source⁶⁸ lists approximately 50 occupations/ industries that are excluded in some of the different Canadian jurisdictions.

With respect to *tenure* or service of employees, a minimum length of service (e.g. one year in Ontario) may be required before re-employment rights occur under Workers' Compensation. Also, as indicated in I.1.2, the Ontario Act itself specifically 'exempts' seniority provisions and this practice tends to be followed in grievance arbitration jurisprudence when this issue comes up in arbitrations over the interpretation of the terms of collective agreements. Since approximately 35 per cent of the workforce is covered by collective agreements, this could potentially be an important factor in limiting the job retention of disabled workers. There are a number of factors, however, that may circumscribe that limitation. If seniority is but one factor along with skill and ability, then the reasonable accommodation requirement may mean bypassing seniority if the injured worker has the skill and ability. Also, the seniority restriction applies only within the bargaining unit. If seniority is a barrier to accommodation within the bargaining unit, the employer may

have to find suitable work outside of the bargaining unit. As well, an injured worker who is re-employed cannot be laid off because of being least senior if the work is then done by an employee outside of the bargaining unit.

With respect to *gender and minority group* status, there are no explicit factors that would make them more likely or less likely to benefit from job retention policies. The exception is that both women and visible minorities, along with disabled persons, are members of the four target groups covered by employment equity legislation, including the contract compliance aspect of that legislation. In that sense, they may be more likely to be retained; that is, their disability status and being female and/or a member of a visible minority group would all count towards enhancing the internal representation of those target groups for employers. As well, women and visible minorities are groups that are enumerated for protection under human rights legislation and hence their job retention may be enhanced for that reason. In contrast, to the extent that language is an issue, minority groups may be deemed less employable if they do not meet language requirements.

Age also is an enumerated factor for protection under human rights legislation, but not for employment equity legislation. Older workers may thus be protected against age discrimination in relation to job retention although they may also, of course, be subject to more age discrimination in spite of the protection of the law. In essence, employers may use disability status as an excuse for not retaining the jobs of older workers, especially if they are more expensive for other reasons, including pension and fringe benefit obligations. Given the discretion that often exists in determining such factors as maximum medical rehabilitation, or the ability to return to work or to find suitable and available employment, older workers may be deemed less employable and not under as much pressure to return to work. As well, the benefit period for them for vocational rehabilitation may be shorter if they are approaching retirement age, and VR may be slower for older workers to the extent that there is an interaction between age and vocational rehabilitation.

I.5 JOB RETENTION POLICIES IN CONTEXT

I.5.1 The salience of policies for job retention within the context of national policy to promote the employment of disabled people

Current disability policy in Canada is often cited⁶⁹ as building upon the 1981 report *Obstacles: Report of the Special Committee on the Disabled and the Handicapped*.⁷⁰ That report is credited with placing disability issues within a broader framework of human rights and citizenship, rather than as a health, medical or welfare issue. This was formalized when Section 15 of the Canadian Charter of Rights and Freedoms of 1982 granted persons with mental or physical disabilities the right to equality under the constitution. This is also reflected in federal and provincial human rights legislation.

As discussed previously in section I.2.1, the federal employment equity legislation of 1986 is intended to promote the employment of four target groups: disabled persons, women, visible minorities and Aboriginal persons. Employers covered by that legislation are to have an internal representation of those groups that is similar to their representation in the externally available workforce.

At the federal level,⁷¹ a Minister Responsible for the Status of Disabled Persons was designated and what is now the Office for Disability Issues was created in 1983. The Standing Committee on Human Rights and the Status of Disabled Persons was established in 1987. That committee was instrumental in initiating the National Strategy for the Integration of Persons with Disabilities in 1991. That interdepartmental National Strategy was a five-year initiative to bring people with disabilities into the social and economic mainstream of society. Its objectives centred on equal access, economic integration and effective participation of people with disabilities, including access, integration and participation in labour market activities.

In 1996, a federal Task Force on Disability Issues was appointed to investigate the role of the federal government in this area. The task force was inter-ministerial, established by the Ministers of Human Resource Development Canada, Finance, Justice and National Revenue so as to deal with the range of issues relevant to disabled persons. The importance of integrating disabled persons into the labour market was emphasized in the report of the task force.⁷² This is further evidenced by the fact that the Minister of Human Resources Development acknowledged his responsibility for disability issues and indicated that he would be placing priority on improving the access of disabled persons to the services and programs of Human Resources Development Canada.⁷³ This was to be facilitated by the Opportunity Fund of \$30 Million per year for three years (detailed in section I.2.3).

Job retention is consistent with the emphasis placed on the importance of labour market income as it relates to other policy initiatives. For example, it is consistent with the general recognition that it is preferable to integrate disabled workers into 'real world' employment rather than to have them work in sheltered workshops.^{74, 75, 76, 77} It is also consistent with the emphasis in relation to social assistance (welfare) that it is preferable to empower recipients to earn their income rather than receive it as a transfer payment. Earned income promotes self-sufficiency and self-esteem, and integration into the workplace provides disabled workers with the associated social interactions as well as labour market income. Taxpayers also appear to have a strong preference for recipients of transfer payments to work if they are able to do so; this is highlighted by the trend towards workfare whereby recipients who are employable are required to do some community or other work as a condition of receiving their transfer payment.

There appears to be a shift in emphasis from more general policies that improve access to work to more specific policies that emphasize job retention. This may be part of the more general emphasis on systemic discrimination whereby equality of *opportunity* is not regarded as sufficient for persons with different 'starting points'; rather, the emphasis is placed more on the results or outcomes, in this case jobs and the earnings from those jobs. Return to work has been stated as the 'gold standard outcome where functional status and employment status meet'.⁷⁸ Reasonable accommodation requirements are a key component of that strategy, and are emphasised in human rights legislation, workers' compensation legislation and grievance arbitration under collective bargaining. The interpretation of this concept, and especially that it be required up to the point of undue hardship, is constantly being dealt with through the courts, tribunals and arbitral jurisdictions. In the area of accommodation requirements, the phrase 'duty to accommodate' is emphasized as opposed to the phrase 'reasonable accommodation'.⁷⁹ In the area of workers' compensation, job retention in the form of requiring the time-of-accident employer to retain or accommodate the return to work of the injured worker is also emphasised in part to ensure that employers (and customers who purchase their products and services) bear the costs of the injuries that result from their employment decisions. In that regard, ensuring that injured workers are able to return to their time-

of-accident employer is particularly important since empirical evidence suggests that the cost of accommodation requirements are otherwise shifted back to workers in the form of lower wages if they return to an employer other than the time-of-accident employer.⁸⁰ The emphasis on job retention may also be part of a broader strategy of governments to shift to employers more of the costs of conventional government services such as vocational rehabilitation and transfer payments. The pressure for such cost-shifting comes from the pressure on governments to reduce deficits. Given the resistance to tax increases to reduce such deficits, this leaves expenditure reductions as the only alternative. In such circumstances, shifting responsibility to employers becomes an attractive option to abdicating responsibility by cutbacks in expenditures on government programs.

I.5.2 Most prominent job retention policies

It is difficult to make clear statements about the policy attention given to the retention of newly disabled workers compared to the retention of workers who are already disabled. It is the case, however, that considerable emphasis is being placed under workers' compensation to facilitate the return to work of newly injured workers to their time-of-accident employer. This is to be achieved by means of vocational rehabilitation and reasonable accommodation requirements. The emphasis on return to work for newly disabled workers in particular is a key aspect of workers' compensation reform being proposed in Ontario under Bill 99 (see Appendix). More stringent return to work requirements are being proposed for newly disabled workers that will be coming into the system in the future. For those who are already disabled, the conventional emphasis on vocational rehabilitation will continue.

As indicated in section I.1.1, both newly disabled workers and workers who are already disabled are protected against unjust dismissal on the basis of their disability status, whether through common law, grievance procedures (for workers covered by a collective agreement), or statutory protection under employment standards for non-union employees (albeit this exists only in the federal jurisdiction, Quebec and Nova Scotia). Both newly disabled workers and workers who are already disabled also have the protection of human rights legislation that prohibits discrimination on the basis of disability status and imposes a 'duty to accommodate' on the part of employers. They are also one of the four target groups under employment equity legislation.

I.6 IMPLEMENTATION OF JOB RETENTION POLICIES

I.6.1 The effectiveness of institutional arrangements for monitoring and enforcement

Assessing the effectiveness of institutional arrangements for monitoring and enforcement of job retention obligations under the workers' compensation program would require assessing the effectiveness of each of the legislative, institutional and policy initiatives which affect the job retention of disabled workers. Such an overall assessment is beyond the scope of this analysis. However, some broad generalizations can be made, focusing on the effectiveness of supervisory and enforcement agencies and the division of institutional responsibilities.

With respect to protection against unjust dismissal, common law protection is generally regarded as realistically available only to higher level personnel given the expense of going through the courts. The statutory protection that exists in the federal jurisdiction, Quebec and Nova Scotia for non-union employees generally requires a complaint to be initiated. Such individual complaints are not likely to be prominent, in spite of the legislative protection against reprisals from the employer. Protection against unjust dismissal through the grievance procedure is likely to be more effective, since unions have both the incentive and resources to push for such protection.

General protection through the anti-discrimination provisions of human rights codes or the constitutional charter is also complaints-based, and such procedures are costly and time-consuming.

Employment equity laws (mainly in the federal jurisdiction) are more proactive in that they do not require a complaint, but rather require employers to have a plan in place to ensure that their internal representation of the four target groups (including disabled persons) is comparable to their external representation in the externally available labour market. In general, however, the resources of the enforcement agencies (i.e. the Human Rights Commission) are spread thinly, making it difficult for them to mount an extensive enforcement strategy. In part for this reason, emphasis is often placed on trying to obtain a voluntary mediated solution. As well, as discussed previously in I.2.1, evaluations of employment equity initiatives generally show that they tend to be focused on women rather than other target groups. In general, they have not improved the internal representation or pay of disabled persons.

In workers' compensation systems like Ontario, where there is an obligation for the job retention of injured workers, and where there are reasonable accommodation requirements that are stringent, at least in the regulations, there is more potential for the enforcement agencies (in this case the Workers' Compensation Board) to be effective in monitoring and enforcing the job retention obligations. There is no consensus, however, on the actual as opposed to potential effectiveness of the enforcement agencies, in part because of the limited time period over which the job retention obligations have been in place.

I.7 INTERACTIONS BETWEEN EMPLOYMENT POLICIES AND PROGRAMS

I.7.1 Ways in which employment policies complement and contradict one another

The employment policies described so far were not designed as part of a co-ordinated strategy to facilitate the job retention of disabled persons. There is some co-ordination and integration with respect to benefit compensation (discussed later) but not with respect to job retention. Each policy generally has its own rationale, with disabled workers usually being just one of many groups that have access to the programs, and with job retention usually not being a specific objective, although it may well be facilitated by the policies.

The protection against unjust dismissal, for example, was designed to deal with general issues related to the termination of any employees; disabled employees were simply one group who could benefit from such protection. Human rights codes have disabled persons as an enumerated group, but this has to do with protecting them against discrimination on the basis of their disability status, not for the explicit purpose of facilitating job retention. Employment equity legislation does have disabled persons as one

of the four target groups, but the rationale is more to offset systemic discrimination than to facilitate job retention.

Workers' compensation is the only policy that specifically emphasizes the job retention of injured workers, and that specific obligation on employers is part of the legislation only in some jurisdictions such as Ontario. Even in these circumstances, the job retention obligation under workers' compensation legislation is not specifically designed to be complementary to the other initiatives. The exception is that the Ontario workers' compensation system has explicitly adopted the reasonable accommodation guidelines of the Ontario Human Rights Code. In that sense, the Ontario workers' compensation system and the Ontario human rights legislation are complementary in that they both use the reasonable accommodation guidelines of the human rights code.

While the various employment policies so far described were not designed to be complementary, they may have that effect in that they all can facilitate the job retention of disabled workers. They do not do so, however, in a fashion that would occur if they were consciously designed to be complementary, in which case, for example, they would try to cover workers who fell through the cracks of one system.

While they are not explicitly complementary, the different policies generally do not contradict one another in the sense of working at cross purposes with respect to job retention. There can be contradictions in the total system, but they tend to occur more with respect to eligibility and benefit determination, as one program tries to shift costs to another (discussed later).

I.7.2 Impact of the distribution of responsibility for employment policy

Jurisdiction over different issues related to employment policy in Canada is divided between federal and provincial authorities, and this has often given rise to jurisdictional disputes and ill-defined channels of responsibility.

Most labour legislation (regulating such dimensions as labour relations, employment standards, anti-discrimination, human rights, workers' compensation, and health and safety) is under provincial/territorial jurisdiction. The federal jurisdiction in those areas covers only about 10 per cent of the workforce, mainly in sectors that span the different provinces such as federal government, transportation, communication, the postal service and banking. The federal jurisdiction has no workers' compensation legislation. Rather, the Canadian Labour Code requires that federally regulated employers provide coverage that is equivalent to that of the province in which the person works.

The federal government is also responsible for the Canada Pension Plan (CPP) which is a mandatory employment-based universal public plan where benefits are based on lifetime earnings. Quebec administers its own equivalent plan. Both have a separate disability component, providing special disability benefits to persons who have a severe and prolonged disability that is not work-related. The federal government is responsible for unemployment insurance (now termed employment insurance) and public employment exchanges. The federal government also funds social assistance or welfare, largely through a cost-sharing arrangement with the provinces. While training is a provincial responsibility, the federal government has

exerted considerable influence in this area through its spending powers by simply offering to pay for certain training programs. As such, training has become a joint federal-provincial responsibility, although the federal government is currently in the process of devolving that responsibility to the provincial governments.

Human Resources Development Canada (HRDC) is the department charged with the primary responsibility for carrying out the federal government's obligations and initiatives in the areas of labour market and social policy. In the disability area, however, other departments also have a stake - Finance for government taxes and expenditures; Justice for the constitutional Charter; and National Revenue for income tax policy. The inter-government responsibility in this area is reflected in the fact that the 1996 Federal Task Force on Disability Issues was appointed by the Ministers of Human Resources Development, Finance, Justice and National Revenue.

Labour legislation in Canada is usually administered by quasi-judicial administrative agencies or tribunals that have been given legislative authority to administer the law. For example, labour boards administer the collective bargaining law; employment standards agencies handle complaints and some inspections for employment standards laws; human rights commissions deal with anti-discrimination cases; workers' compensation tribunals deal with appeals over compensation claims; and health and safety agencies deal with complaints and inspections over health and safety. The decisions of such administrative boards and tribunals are subject to judicial review by the courts, although the courts are generally reluctant to interfere with the expertise of such administrative agencies. This is especially the case for labour tribunals. Decisions are usually overturned only if they violate principles of procedure.

These complexities can be illustrated with respect to the previously discussed programs that influence the job retention of disabled workers. Unjust dismissal protection through the courts is handled by the civil law system of each jurisdiction. Unjust dismissal protection through grievance arbitration under collective agreements is handled through arbitral jurisprudence as established by administrative labour boards in each jurisdiction. Statutory regimes that provide protection against unjust dismissal for non-union employees are governed by the employment standards legislation of those jurisdictions that provide such laws. Anti-discrimination legislation that prohibits discrimination against disabled persons is embedded in the human rights codes of each jurisdiction, and administered by a human rights tribunal. Employment equity legislation, which exists in the federal jurisdiction, is administered by the federal Human Rights Commission. Workers' compensation is administered by workers' compensation boards, and health and safety legislation usually by departments of labour, albeit both functions are sometimes carried out by the workers' compensation boards, as is the case in British Columbia.

Clearly, in the general area of labour and employment policy, and in the particular area of disabled workers, responsibility is divided in many ways: across national and provincial levels; across different departments and agencies; and across different laws, policies and programs. It is difficult to co-ordinate across any one of these dimensions; it is virtually impossible to co-ordinate across all of them. It is difficult enough to know what goes on in workers' compensation across the different jurisdictions, or to know how workers' compensation relates to other laws and policies within a jurisdiction. It is virtually impossible to be informed of how all of the laws, policies and programs relate across all jurisdictions, and departments within those jurisdictions.

In such circumstances, lines of accountability are likely to be blurred and ill-defined. Especially in times of budget cuts, different departments and agencies will likely try to shift responsibilities and the associated costs to other departments and agencies. Retrenchments in unemployment insurance, for example, can lead to workers trying to access workers' compensation, and vice-versa.⁸¹ Retrenchments in workers' compensation can lead to attempts to obtain support through the Canada/ Quebec Pension Plan disability component,⁸² or private long-term disability plans. Cutbacks in workers' compensation can also lead to attempts to shift the regulatory burden to employers in such forms as stronger return to work and reasonable accommodation requirements. This is not to say that increases in any one part of the system have occurred because of retrenchments in other parts. However, the divided responsibility can increase the incentive to shift costs to other jurisdictions or departments.

This can mean inconsistent treatment for injured/disabled workers if they are shunted from one system to the other. As well, it can mean inconsistent treatment across systems. For example, workers' compensation systems may argue that the injury was not work-related and therefore should be covered by CPP disability, since CPP is universal and not just work-related; CPP disability may argue that it was work-related and therefore should be covered by workers' compensation. This also means, however, that abuses to the system can occur if injured/disabled workers try to access particular programs not on the basis of what is appropriate for their particular circumstances, but rather on the basis of ease of eligibility and generosity of benefits.

The complex distribution of responsibilities also means that support for disabled workers will reflect the different institutional values of different departments and agencies, as well as political differences especially across jurisdictions. With parties to the left, right and centre of the political spectrum, this means that workers with similar disabilities may get very different treatment in different jurisdictions, as well as over time in the same jurisdictions, as political fashions change.

I.8 LINKS TO LABOUR MARKET FACTORS

I.8.1 Elements in labour market policies which influence the effects of job retention measures

As discussed previously, the job retention of disabled workers is influenced by a number of labour market policies: unjust dismissal protection (through the courts mainly for senior level personnel, grievance arbitrations for workers covered by collective agreements, and employment standards legislation in some jurisdictions for non-union employees); anti-discrimination legislation and the constitutional Charter; employment equity legislation, mainly in the federal jurisdiction; and workers' compensation legislation, especially in those jurisdictions like Ontario that have a reemployment obligation and reasonable accommodation requirements.

Other aspects of labour legislation could also indirectly affect the job retention of disabled workers. Wage-fixing legislation (e.g. minimum wages, pay equity or equal pay for work of equal value, wage extension by juridical decree, and fair wages in government contracts), in theory could reduce the employment opportunity of disabled persons, although this is not likely to be substantial in practice. Furthermore, exemptions can be established for such workers if that were deemed appropriate.

Restrictions on long hours of work can facilitate the job retention of disabled workers to the extent that the long hours otherwise would have inhibited their retention.

In general, the Canadian labour market is under increasing pressure to be flexible and adaptable, with pay more directly linked to performance. This in part reflects the pressures from global competition and trade liberalization, as well as the restructuring that is occurring. As well, costly regulatory initiatives are 'on the defensive' in part because of the inter-jurisdictional competition for business investment and the jobs associated with that investment. Governments are reluctant to introduce or sustain costly labour market policies and regulations if they jeopardize business investment decisions and job creation. This is especially the case in jurisdictions with more conservative market-oriented political regimes.

This means that regulations to enhance the job retention of disabled workers are likely to be on the defensive. Certainly, there is increasing pressure to show that they are cost-effective. The greater wage flexibility that is occurring could enhance the employment prospects of disabled workers, albeit at the expense of them being more marginalized at the lower end of the wage spectrum - a spectrum that is already becoming more polarized.

Occupational health and safety regulations are under these same pressures. There may be some reluctance to engage in inter-jurisdictional competition in ways that could jeopardize the health and safety of workers; nevertheless, the market imperatives and political pressures are strong. The survival of health and safety regulations will likely be increasingly tied to their ability to be shown to be cost-effective in reducing costly accidents and workers' compensation and other disability claims - an ounce of prevention is worth a pound of cure.

Labour market policies for workers with disabilities are also under competing pressures from other disadvantaged groups. This is perhaps most starkly illustrated in employment equity initiatives for the four target groups - women, visible minorities, Aboriginal persons, and disabled persons. Youths are also experiencing significant labour market adjustment programs, as are new generations of immigrants. While a 'business case' can often be made for valuing diversity, it can be a more difficult case for workers with a disability, especially if there is a perception of costly accommodation requirements.

Clearly, labour market policies to facilitate the job retention of workers with disabilities will be under increasing pressure. Their survival will increasingly depend upon the extent to which they can be shown to be cost-effective in reducing costs elsewhere in the system and in utilizing an otherwise underutilized and productive resource.

I.8.2 Changes in labour market demand and the structure of the labour market

The demand side of the Canadian labour market has been subject to substantial changes, many of which can have important implications for the job retention and job loss of disabled workers.

Global competition and trade liberalization have put pressure especially at the lower end of the labour market, because the competition is generally from low-wage countries competing in part on the basis of

low labour costs. To the extent that disabled workers are disproportionately employed in those jobs, they may be disproportionately affected by such increased competitive pressures.

Technological change has also been substantial, especially associated with the 'information economy' and the computer revolution. Such change has also contributed to wage polarization, and in that sense may adversely affect workers with disabilities. However, the technology itself can obviously also facilitate their integration into the workforce.

Industrial restructuring, especially from manufacturing to services, has also contributed to wage polarization. To the extent that service sector jobs are more accommodating to the needs of disabled workers than were the physically demanding and rapid-paced jobs of manufacturing, the restructuring may benefit disabled workers.

Public sector retrenchment, and especially a decline in public sector employment, is likely to adversely affect the job prospects of disabled workers to the extent that they are disproportionately employed in the public sector. This may reflect various factors: public sector buildings themselves may be more accommodating to the extent that they are required to provide access to disabled persons in general; employment equity is stronger in the public sector; and the public sector is under more political pressure to be a model employer.

Canada's high unemployment rate, at least relative to that of the United States, also likely has a disproportionately adverse effect on disadvantaged workers including disabled workers. They are likely to be 'last-in and first-out' in response to such demand fluctuations. A tight labour market is generally regarded as a 'first line of defence' against poverty, and this would certainly apply to disabled workers. (The official Canadian unemployment rate is nearly 10 per cent overall - and this does not factor in many individuals, including those working part-time while seeking full-time work;⁸³ however, it is 24 per cent for those aged 18 to 29. The estimated population of disabled people in Ontario is approximately 16 per cent; and, even when the economy is strong, 60 per cent of people with disabilities are unemployed).⁸⁴

The demand-side changes in the labour market are also having substantial effects on the nature of work itself. Employers have an increased demand for non-standard workforces in various forms: part-time work; limited-term contract work and casual employment; self-employment; temporary help; telecommuting where people work out of their home and are 'connected' to their office via telecommunications systems; and home work where they produce a subcontracted product. In many cases, these jobs are considered undesirable because they can be poorly paid and afford little or no protection from unions or labour standards. They reflect a contingent or just-in-time workforce, geared to the just-in-time delivery needs of employers. This can pose particular challenges for disabled workers since they are less likely to be covered by the labour laws and policies that could benefit them. However, these jobs can also be opportunities to the extent that they also meet the flexibility needs of disabled workers. This is also the case with many of the new workplace practices such as flexible worktime arrangements and job sharing. Early and flexible retirement practices can free up jobs for disabled workers, and they can facilitate partial retirement on the part of disabled workers themselves.

Clearly, changes emanating from the demand side of the labour market are creating both increased challenges as well as increased opportunities for disabled workers.

II. BENEFIT AND COMPENSATION PROGRAMS

The purpose of this Part of the report is to examine how social benefit and compensation programs affect possibilities for disabled workers to retain or rapidly resume their employment. The main focus is on the application of benefit programs in employment; that is, opportunities to combine earnings with income from disability benefits, workers' compensation or other employment-related reparations. The obstacles presented by systems for out-of-work benefits are also examined. The theme covers cash benefits and payouts and, where significant, allowances against taxable income. Programs may be funded from tax revenues, or from earmarked or general insurance funds to which employers and/or employees contribute.

The first section presents information about workers' and other compensation programs. This is followed by a discussion of arrangements for combining benefits and earnings from work. Provision is then considered for income support out of work, and its effects on work resumption. The final section examines interactions between disability benefit programs and employment policies.

II.1 COMPENSATION PROGRAMS FOR WORK-RELATED INJURY OR ILLNESS

II.1.1 Principal compensation programs for work-related injury or illness

A wide range of compensation programs exist for work-related injury or illness. While only the workers' compensation system requires that the injury arise from the course of work, the others can compensate claimants for work-related injuries. Furthermore, others like the Canada/Quebec Pension Plan disability, employment insurance disability, and employer sponsored Long Term Disability are work-related in that they are based on employment and the payment is earnings-related. The compensation is also affected (usually eliminated) if the recipient returns to work. Social assistance for disabled persons can also be work-related in the sense of covering work-related expenses but being reduced if people earn income.¹⁻⁵

Workers' compensation

Workers' compensation is the main program for compensating injured workers for work-related injuries. Such programs exist in each province and territory. For workers in the federal jurisdiction, the federal government has separate agreements with each province and territory to administer their respective legislation according to the jurisdiction where the employee works. Historically, workers' compensation was established as a compromise of the legal rights of workers to sue their employer for personal injury.

Compensation is for medical and other treatment, vocational rehabilitation expenses and lost earnings. The system is based on the principles of collective liability on the part of employers and compulsory insurance for workers, guaranteed by a publicly administered insurance fund. Employers in a given class of industry or occupation are jointly liable for the costs of all injuries related to that class.

The system is financed from payroll taxes, based on percentage of insurable payroll. Assessment rates vary by industry. For example, in Ontario they are approximately 1.3 per cent of payroll in the government sector and 8.5 per cent in construction, with average assessment rates of 3 per cent of payroll.

Compensation rates are based on the earnings of the injured worker at the time of the accident. A ceiling is placed on the annual amount of earnings considered to be insurable for the worker; however, maximums vary considerably among provinces. Compensation is payable to the injured worker for temporary or permanent disability, and to surviving dependents in the event of the worker's death. In all jurisdictions, payments are non-taxable. Compensation levels are based upon a proportion of the worker's insurable earnings prior to the accident, and the extent and duration of the disability. Increasingly, Boards are compensating on the basis of expected wage loss based on the worker's earning capacity after the injury, and not just on the basis of impairment.

In most jurisdictions, *temporary disability* compensation and the degree of disability, full or partial, is determined after medical examinations. In Quebec, such a distinction does not exist. Workers are entitled to full benefits as long as the injury makes them incapable of doing their job. In Ontario, workers may receive total disability benefits, in spite of being only partially disabled, if they are available for suitable employment or co-operate with rehabilitation efforts.

The amount of temporary disability compensation is then determined according to legislated guidelines and subject to specified maxima. Temporary *total* disability payments usually amount to 75 per cent to 90 per cent of earnings loss, depending on the jurisdiction. Temporary *partial* disability is compensated as a proportion of earnings based upon earnings impairment, the degree of disability, or a combination of the two.

Wage loss compensation may be payable for the duration of earnings loss or disability, or to age 65. In New Brunswick, Quebec, Ontario, Manitoba, Saskatchewan and the Yukon, earnings loss benefits are payable to age 65, at which time an annuity or supplemental retirement pension becomes payable. In Quebec, benefits are reduced by 25 per cent for the first year after this date, by 50 per cent for the second year and by 75 per cent for the third year. A person who is disabled at age 63 will receive regular wage loss compensation for two full years before such benefits are converted to an annuity.

Permanent disability compensation occurs when a worker has reached a point of maximum medical recovery as determined by medical examination, or when temporary disability payments otherwise would expire, typically after a year.

In the case of permanent *partial* disabilities, two main types of compensation systems prevail. Payments can be based on a disability rating schedule ('meat-chart') established by the Board. The schedule is designed to approximate the percentage of permanent disability experienced by the worker based on a medical assessment of the worker's residual impairment. This disability rating or percentage is then multiplied by the worker's pre-injury earnings to determine the amount of compensation. A disability rating of 35 per cent implies that the worker has permanently lost 35 per cent of their earnings capacity, and hence they would be compensated by 35 per cent of their earnings. This percentage would apply whether the injury actually affected their earnings by 35 per cent or by a larger or smaller amount. In effect, the payment is not conditional upon their actual earnings or work behaviour after the injury. This system applies in British Columbia, Alberta, Prince Edward Island and the Northwest Territories.

The other jurisdictions base permanent partial disability compensation on the basis of a percentage of *expected wage loss* after the injury. Earnings losses are estimated on the basis of the difference between what the person could be expected to earn if their pre-injury wage continued, compared to their actual wage after the injury. Periodic re-assessments are made (e.g. after one year, three years and six years in Ontario) to ensure that compensation benefits are equivalent to the difference between pre- and post-accident earnings. If the Board deems that their actual post-injury wage is not representative of what the claimant could earn, they may deem them to have a higher wage based on 'suitable and available' employment. In addition to this compensation for future economic loss, a lump-sum amount is also awarded for non-economic loss, based on the degree of permanent disability and independent of the person's earnings. That degree of disability is determined in the same fashion as the disability rating schedule, with the percentage being multiplied by a fixed amount (e.g. around \$50,000 in Ontario) to yield a lump-sum amount independent of the person's earnings. That amount is typically adjusted for the age of the worker. For example, in Ontario, it is adjusted downwards by about \$1,000 for every year that the worker is older than age 45 (to a minimum of around \$28,000 for 100 per cent disability) and upwards by \$1,000 for every year the person is under the age of 45 (to a maximum of around \$74,000 again, for 100 per cent disability). Workers who are permanently injured but experience no wage loss would receive only the non-economic loss benefit.

Permanent *total* disability benefits are paid to injured workers whose injury leaves them totally disabled and unable to return to work. In systems that use the disability rating schedule, the disability rating is in effect 100 per cent, so that 100 per cent of lost earnings are compensated. In wage loss systems, the post-injury wage effectively is set to zero so that the wage loss is 100 per cent. If the injury is fatal, the death benefits are paid to the workers' family.

In all jurisdictions, benefits to surviving dependants are paid in cases of the worker's death from a work-related injury or illness. Compensation includes a lump-sum payment for funeral and other related expenses, as well as ongoing benefits based on the deceased worker's earnings. The amount and duration of the benefits vary according to the age and employability of the surviving spouse as well as the number and ages of dependent children. In most jurisdictions, depending upon the age and circumstances of the surviving spouse, benefits continue until death or remarriage.

The Canada/Quebec Public Pension Plans

Disability earnings replacement for workers can also come from the disability component of the employment-based Canada/Quebec Public Pension Plans. The CPP is a compulsory federal government-sponsored, pay-as-you-go social insurance plan funded through compulsory earnings-related contributions from employees, employers and the self-employed. Quebec operates its own similar plan, the QPP. The plans are financed out of payroll taxes with equal contributions from employers and employees. While the main purpose of the plan is to provide retirement pensions based on earnings histories, the plans do have special disability components, accounting for about 17 per cent of the total benefits paid out by the plans. CPP/QPP disability payments are work-related in the sense that they are available only to persons who have contributed to these employment-based plans. Their disability itself, however, does not have to arise from employment, as is the case with workers' compensation.

The Canada Pension Plan Legislative definition of disability is quite strict. For a person to be eligible for CPP Disability benefits, they must be judged to have a severe and prolonged mental or physical disability and be incapable of regularly pursuing any substantially gainful employment.

Disabled workers are eligible if a medical examination reveals an impairment in which a physical or mental disability is so severe and prolonged that an individual is unable to pursue regular gainful employment. Severe is interpreted to mean that the condition prevents the worker from working regularly at any job. Prolonged is interpreted to mean that the condition is long-term or may result in the person's death. In essence, the disability must seriously affect the contributor's ability to earn income and must be likely to do so for more than a temporary period. As well, the person must have contributed to the plan for at least five of the past ten years, or at least two of the last three years.

Earnings replacement involves a monthly, taxable benefit that consists of a flat rate component, plus 75 per cent of the contributor's retirement pension (which in turn is related to their earnings history). Benefits for dependent children are also paid. A three month waiting period applies to clients on their first application, but is waived in the case of a disability occurring within five years of an earlier disability. Benefits are paid until the recipient begins receiving normal retirement benefits under the normal provisions of the plan, usually at age 65.

At present, CPP Disability recipients who are found to be able to return to work, but have not yet found work, have their benefit ceased. The possibility that benefits can be paid to CPPD clients while they conduct a job search has been proposed and is being investigated.

CPP Disability beneficiaries can do volunteer work while receiving benefits provided that they still have a severe disability which prevents them from doing paid work on a regular and gainful basis.

Three agencies administering the CPP report to HRDC: the CPP Pension Appeals Board, the CPP Review Tribunal, and the CPP Advisory Board.

Employment Insurance sickness benefits

Employment Insurance sickness benefits are available to workers who are covered under the new Employment Insurance (EI) Act which replaced the former Unemployment Insurance Act and the National Training Act, with most changes coming into effect in 1996.⁶ Eligibility does not require that the sickness arise out of employment, but the compensation is employment-related in the sense that recipients have to be part of the employment insurance scheme and therefore have built up eligibility according to that scheme. The vast majority (over 90 per cent) of the paid workforce, however, is covered by employment insurance. To qualify for benefits, workers must have been employed for a period of 12 to 20 weeks (depending upon the regional unemployment rate), with the requirement having changed in 1996 to be in terms of hours so that part-time and interrupted employment could also count towards building eligibility. Employment insurance is financed out of a payroll tax of approximately 3 per cent of earnings for employees and 4 per cent of payroll for employers.

To be eligible for the special sickness benefits, claimants must be incapable of work by reason of illness, injury or quarantine. Incapable of work is defined as 'not being able to perform the functions of his/her regular or usual employment or suitable employment'. Suitable employment, for example, could include

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'light duties' if the person was not able to perform 'heavy duties.' Unlike regular EI claimants, those receiving EI Sickness Benefits do not have to prove their capability and availability for work since sickness impedes normal activity.

The basic EI benefit is equal to 55 per cent of weekly insurable earnings up to a maximum of \$413 per week for applicants with a minimum of 700 hours of insurable employment in the past 52 weeks. Sickness Benefits are payable for a maximum of 15 weeks. If the person is in a low-income family (net income of less than about \$26,000) and has children, they may receive the family supplement which increases the benefits up to 65 per cent of earnings. There is a two-week waiting period before benefits are paid. During that period any income received will be deducted from the subsequent benefits. This applies to workers' compensation benefits and group insurance benefits, but not to money received from a disability pension, workers' compensation payments from a permanent settlement, and supplemental insurance benefits under a private plan approved by HRDC.

In 1994-95, EI sickness benefits amounted to approximately \$450 million dollars paid to 35,000 beneficiaries who received an average weekly payment of \$250 for 10.6 weeks.

Employment benefits and supports are administered by HRDC's Human Resource Centres of Canada (HRCCs). The federal government is negotiating for these or similar benefits and supports to be administered by provincial or other agencies. It is not clear whether the federal government will impose any mandates on the provinces, territories or other agencies that will make provisions consistent, or how much these might vary.

Long-Term Disability Compensation

Long-Term Disability (LTD) compensation can also be available for employees with disabilities. It is essentially a benefit provided by employers, usually through insurance purchased from an insurance company. Some large organizations 'self-insure' or self-fund their program, although they usually have it administered through an insurance company. LTD may be part of the personnel policy of an organization, or part of a collective agreement in a unionized establishment. It can also sometimes be purchased on an individual basis or through professional groups. It is almost invariably a secondary payer to workers' compensation and CPP/QPP disability payments.

Eligibility typically requires that the person be 'permanently unemployable' although the cause does not have to arise from employment. Typically, claimants must be unable to do their 'own employment' during the first two years of disability, but thereafter unable to do 'any employment for which they are reasonably qualified'. In essence, after being on LTD for 2 years, they may be required to take on other employment for which they are qualified to maintain eligibility.

Earnings replacement is in the range of 60 to 70 per cent of pre-disability earnings, commonly without indexation (except in the government sector). A common additional provision is a 'cap' in the 85 per cent range on disability income from all sources. Some policies have rehabilitation and partial disability provisions.

Social assistance

The Canada Assistance Plan (CAP), established under an Act of the Ministry of Finance, came into effect in 1966, setting a 50/50 federal-provincial funding relationship for specific social and welfare service expenditures. It was replaced in 1996/97 by the Canada Health and Social Transfer (CHST), but some payment agreements made under CAP are yet to be completed. (It is uncertain how long these final stages of replacement will take, due to the existence of different conditions in the provinces and territories, and the uncertainty of whether and to what extent the transfer is indexed; but it is expected that no remnants of CAP funding will remain anywhere in Canada approximately by the early teens of the next century.) The CHST combines funding for social and welfare policy with health and post-secondary education in a single block transfer and tax points, to be allocated at the discretion of provincial and territorial sub-governments. This is consistent with formal federal-provincial jurisdictions as established by Canada's Constitution in 1867, though it breaks with practice over recent decades, during which the federal government has played a greater role in coordinating consistency amongst the provinces through fiscal incentives.

The federal CAP provided for two types of provincial assistance: (a) *basic assistance*, or cash benefits to eligible households; and (b) *special assistance*, cash or in-kind benefits to offset the costs of health- or disability-related needs. Such assistance are essentially available as a 'last resort.' They are 'needs-based' and hence require a means test for determining eligibility and the amount of that eligibility. Given their often greater 'needs' and fewer 'means', persons with disabilities often have to access social assistance. Approximately 20 per cent of social assistance cases are headed by a disabled person, with the majority of these being single.

Since it is a 'last-resort' program, it is a secondary payer to all other programs. In effect, any payment from workers' compensation, CPP/QPP disability, employment insurance, and LTD would be considered as income, with the welfare benefit reduced accordingly.

Social assistance is employment-related mainly in the sense that employment earnings would lead to a reduction of social assistance. In fact, the 'clawback' is typically 75 per cent or more in that social assistance is reduced by the amount of earnings. In that sense, recipients are said to face a 75 per cent or greater 'implicit tax' on their earnings. The tax may be higher if they incur work-related expenses or also lose in-kind benefits such as housing or childcare subsidies. Work-related expenses can be considered as legitimate 'needs' for social assistance recipients, especially for disabled persons, and hence be compensated by social assistance.

An applicant requesting assistance because of illness or disability is generally required to submit a medical certificate indicating the level of impairment and the potential for rehabilitation. This may be waived in the initial determination of eligibility where the disability is obvious.

All provincial programs have design features affecting disabled persons, including one or more of the following: higher exemption levels on assets and income, higher basic assistance levels, special disability-related allowances and supplementary coverage for health and medical services.

The design, delivery and administration of social assistance is the responsibility of the provinces although some uniformity is obtained by federal cost-sharing arrangements. Eligibility requirements for persons with

disabilities can vary across the jurisdictions. For example, in Ontario a disabled person over 18 years of age who has a major mental or physical impairment that is likely to continue for a prolonged period of time, and who is severely limited in activities pertaining to normal living (as verified by medical findings), is eligible for assistance. Additional benefits may be granted to recipients with severely disabled dependent children.

In Newfoundland, adults, children or families are eligible for social assistance if they are unable to provide (in whole or in part) the necessities essential to maintain, or assist in maintaining, a reasonably normal and healthy existence by their own efforts, because of mental or physical incapacity. Applicants must submit a medical certificate in order to determine eligibility for benefits. In Manitoba, a person who is unable to earn a sufficient income to support themselves or their dependents as a result of a physical or mental disability that is likely to continue for an indefinite period of time, may qualify. Applicants must provide medical evidence to be eligible. In Saskatchewan, 'disabled person' means a person whose major reason for requiring assistance is a mental or physical disability. Disability includes: mental or physical illness, mental or physical disability, unemployability resulting from personality problems, and learning disability. Alberta has a separate program as an alternative to social assistance for severely and permanently disabled adults. The Assured Income Support for the Severely Handicapped (AISH) is designed as an alternative to welfare for persons who have reached their full potential for training, rehabilitation or gainful employment and who are substantially limited in their ability to earn a living because of their disabling condition. An individual's income affects their eligibility and level of benefit.

Clearly a wide range - some may say a 'bewildering' array - of compensation programs exist for work-related injury or illness. Some, like workers' compensation, require that the injury arise from the course of work. While the others do not require the injury or illness to be work-related, they can compensate for work-related injuries. Furthermore, the Canada/Quebec Pension Plan disability, employment insurance disability, and employer sponsored Long Term Disability are work-related in that they are based on employment and the payment is earnings-related, with the payment being reduced or eliminated if the recipient returns to work. Social assistance for disabled persons can also be work-related in the sense of covering work-related expenses but being reduced if people earn income.

II.1.2 Features of the compensation process which affect job retention and return to work

The discussion here will focus on the workers' compensation system as described in section II.1.1 since it is the one that deals explicitly with compensation for work-related injuries.

Since workers have essentially given up their right to sue in return for the 'no fault' payments under workers' compensation, they then have no recourse to common law remedies through the courts. Workers who are not covered, however, could have potential access to personal injury damages through the courts. In such circumstances, they would have a monetary incentive not to return to work since damages would be awarded, in part, on the basis of lost income. They would have a duty to mitigate their losses, but this can be extremely difficult to monitor and enforce.

The main feature of the workers' compensation process that affects the return to work decision, is the earnings replacement rate in wage loss systems. As indicated previously in section II.1.1, such systems typically compensate workers for 75-90 per cent of their lost earnings. This creates a potential powerful monetary disincentive to return to work, since, for example, in systems like Ontario which compensate for 90 per cent of lost wages, the worker effectively only increases their earnings by 10 per cent if they return to work. This is so because they effectively lose their WC benefits if they return to work; that is, their benefits are 'clawed back' or 'implicitly' taxed-back. The clawback or implicit tax may actually be higher than 90 per cent if they also lose in-kind or other benefits by returning to work, or incur commuting or other costs associated with returning to work. This is an inevitable by-product of any income maintenance system that seeks to provide income support and then reduces that support (to save on transfer costs) as individuals are able to earn their own income. This is the also the case, for example, with CPP/QPP disability, EI sickness benefits, employer-sponsored LTD and Social Assistance.

As stated in one review⁷: 'People with disabilities who may have significant potential for employment face the prospect of losing their disability income entirely by undertaking rehabilitation, training, education or returning to work. If they are found to be no longer 'unemployable', they may lose their 'categorical eligibility' for assistance from the disability income systems, perhaps forever. Reviews and evaluations inevitably identify this 'welfare' trap as an issue of central importance, but are equally inevitably unable to identify solutions. ... The 'welfare trap' is an enormous obstacle ... Report after report in Canada, both at the federal and provincial levels, has shown a poor record of return to work by disability income system recipients.' Of course, their poor record of return to work can also reflect their ongoing unemployability as well as the reluctance of employers to hire disabled workers.

Systems that provide fixed, lump-sum awards (i.e. scheduled payments according to the disability rating schedule) do not have this potential adverse incentive effect since the same payment is made irrespective of the degree to which the individual returns to work. Of course, these fixed sums are not designed to specifically replace lost earnings, and hence do not serve that insurance function. The only incentive effect the fixed payments have is that the income may enable the individual to be able to afford not to have to work, or work full-time, if they do not want to. However, it is also the case that the income may enable them to be able to afford to move to a job that they prefer, and this better job match may sustain their long-run employability. If the unconditional payment is also paid out as an initial lump sum rather than as graduated payments in the form of an annuity, it may be easier to use to finance job search activities.

In part to offset the reduced monetary incentive to return to work that is inherent in the systems that compensate for wage loss, such systems tend to have more stringent administrative regulations to 'encourage' return to work and job retention. As is the case in Ontario, they may put strong obligations on employers to retain the injured employee in their former job or a suitable job and to accommodate their return to work. They may have strong vocational rehabilitation requirements. Importantly, they may have more stringent claiming procedures. For example, in Ontario, workers who are receiving permanent disability payments are assessed one year after the injury, and subsequently re-assessed after three years and six years after the injury. At those points in time, if it is perceived that they are not earning up to their capability, they can be 'deemed' to be able to earn a certain level of income based on 'suitable and available' employment. Their wage loss compensation will then be based on the difference between their actual earnings (which could be zero) and what they are deemed to be able to earn in a 'suitable and

available' job. The determination after the sixth year after the injury becomes the final determination for wage loss compensation. Under the proposed legislative reforms of Bill 99 (see Appendix), workers must always report any significant changes. Therefore, in theory there may never be a final determination.

Clearly, trade-offs are involved in designing compensation to encourage the return to work. Systems that reduce the monetary incentive to return to work will likely have more stringent administrative requirements on both employers and employees so as to encourage such a return.

Qualifying or waiting periods also vary across the different jurisdictions in Canada. Such qualifying periods require the claimant to wait a certain number of days before they can receive compensation. The average qualifying period in Canada was slightly over one day in 1993, declining from 4.15 days in 1961.^{8, 9} Waiting periods can reduce workers' compensation costs because claims that are shorter than the qualifying period are not compensated. They may be compensated by the employer, especially in unionized environments where that provision may be negotiated into a collective agreement. Qualifying periods may also be retroactive in that the claim is paid from the day of the accident if the claim period exceeds the qualifying period; in effect, such retroactivity simply eliminates short claims from the compensation system. If such retroactivity does not exist, then the qualifying period reduces costs essentially by not compensating the first few days of the claim. Qualifying periods can also reduce costs by saving on the administrative costs of processing small claims that are shorter than the qualifying period. Since the administrative costs are somewhat fixed, then that saving can be a large fraction of a short claim. It is easy to imagine, for example, the processing cost of a one-person day (from the injured worker, the employer, and the workers' compensation agency) in which case it would cost a day's pay to get compensation for a one-day claim.

Qualifying periods are analogous to deductibles in insurance policies.^b They are a form of co-payment in that the employer or the employee pays for the first x dollars of the claim, where x is the lost pay associated with the qualifying period. While deductibles can save on claims cost through such co-payments as well as administrative savings, they could have a perverse incentive effect if they encourage the parties to convert what would otherwise have been a short-duration claim (that is now ineligible because of the qualifying period) to a longer claim so that it exceeds the qualifying period. This incentive could be reduced, of course, if retroactivity is not allowed, in which case the co-payment exists through the qualifying period.

II.1.3 Influences of key actors involved in the process

Government agencies

Government agencies are involved in all aspects of the various dimensions of the compensation system for work-related injuries or disease. Under workers' compensation,^{10, 11} for example, the scheme is administered by a Board, established by statute. The process typically begins with a claims adjudicator, with most claims settled at this stage. Unsettled claims then go to an internal review board. Unsettled claims after this stage can then be appealed, sometimes to an appeal panel that is internal to the Board in

^bIn that vein, the concept of a deductible may be contrary to the notion of 'no fault' under workers' compensation.

some jurisdictions, and independent of the Board in other jurisdictions. Judicial review by civil courts is done only on grounds of procedural and jurisdictional error or breach of natural justice. Claims that are in process are handled by a benefits adjudicator who monitors the workers' progress and encourages their return to work - an area that is contentious when employees resist being pressured to return. If the injured worker has not returned usually within a year after the accident, then the process generally requires medical evaluations to determine if the worker has reached the point of maximum medical recovery. After this point temporary disability payments would be replaced by permanent disability payments, of a partial or total nature. Government agencies can also be involved in medical rehabilitation and/or vocational rehabilitation, although these services can also be contracted out. In addition to being involved in these various aspects of workers' compensation, government agencies are involved in administering the CPP disability program (done by Human Resources Development Canada), as well as in administering social assistance if that should be necessary. Although Long-Term Disability programs are under provincial jurisdiction, they are not regulated extensively by government agencies.¹²

In Canada, the state (i.e. the government in each jurisdiction) is the insurer; in essence, the insurance is provided by a public monopoly with insurance carriers not competing with that monopoly. This is done essentially through pay-as-you-go funding with payroll taxes of current generations of workers paying for the benefits of those receiving workers' compensation.

The private sector

Private insurers are involved mainly in the private Long-Term and Short-Term Disability programs provided by employers. Insurance companies may provide the insurance and administer the plan, or they may simply administer the plan for large organizations that 'self-insure' by simply self-funding the plan.

Unions

Unions are involved mainly as advocates for their members in dealing with claims through the workers' compensation system, and possibly the CPP disability system should that be necessary. As well, they may negotiate LTD plans with employers and represent their members' interest if they go on LTD. The grievance procedure can also be used to grieve over any disability compensation issues that are negotiated into the collective agreement. With respect to return to work issues, unions can represent their members' interests at the Board to make sure that return to work does not occur 'too soon' through coercion. When it does occur, they can represent the injured workers' interest in the job retention policies and accommodation policies of employers. Tensions can arise, however, when these interests clash with the 'sacred cow' of seniority.

Employers' organizations

Employers' organizations lobby governments when reforms are being contemplated and legislation is being revised. As well, they have representation on workers' compensation Boards, as do unions.

Advocacy organizations

Ontario has established both an employee and an employer advocacy system, respectively through the Office of the Worker Advisor and the Office of the Employer Advisor, both funded by the Workers' Compensation Board. They operate at arm's length from the Board, and have advisory councils drawn from the client groups. Their role includes representation, advice, outreach, education, policy research and

advocacy. The advocacy organizations have been criticized as fostering an adversarial climate and increasing the number of appeals that have clogged the system and led to delays.^{13, 14} This in turn has led to recommendations to downsize the Office of the Worker Advisor and limit its function to advisory and representation services to non-unionized injured workers, and to eliminate the Office of the Employer Advisor and provide small business advisory services directly through the Board.

II.1.4 The effects of compensation on job retention, return to work and exit from employment

A number of Canadian econometric studies have found (with some exceptions) that increases in benefit generosity under workers' compensation increases both the frequency of claims and their duration. In that sense, they have likely reduced or slowed the return to work. The studies generally focus on claims incidence and duration, rather than the specifics of job retention or the return to work to the time of accident employer or return to work to another employer. The results were based on data from Quebec,¹⁵⁻¹⁹ Ontario,^{20, 21} and for all Canada.²²

Two studies do focus more explicitly on the decision to return to the labour force. Both are based on Ontario data and both find that higher benefit rates are associated with lower probabilities of returning to work.^{23, 24} Both studies also review the more extensive U.S. literature that tends to show similar effects, mainly for temporary total disability. The study by Butler *et al.* also highlighted that the initial returns to employment may considerably overstate the longer-run measure of success. Specifically, they found that, while 85 per cent of permanently injured workers returned to work after their injury, only about 50 per cent remained employed after their initial return to work.

It should be emphasized that the economic studies that emphasize the importance of monetary incentives are often criticized by advocacy groups and others as simply 'thinly veiled' rationales for lowering the benefit rates and for 'blaming the worker'. Their concern often is that this 'rationale choice' perspective redirects attention from what they perceive to be the biggest barrier which injured workers face - the failure of employers to provide suitable work - and masks the fact that many workers on permanent disability are living below the poverty line. Clearly, this is an area where there is considerable controversy.

II.1.5 Effects on job retention and return to work resulting from the interaction between compensation programs and out-of-work benefit programs

As discussed previously, almost all of the compensation programs have monetary incentives that discourage the return to work. This is especially strong when the compensation is reduced as earned income is increased. When the monetary incentive to return to work is small, then administrative rules and regulations invariably are put in place to facilitate and oblige the return to work. This is especially the case when a degree of discretion can be involved and it is difficult to monitor the nature of the injury or illness.

The various compensation programs interact in the sense that payment for one is often based on being ineligible for another, or it is a 'top-up' to others. To a certain extent, the different programs serve different purposes and hence eligibility rules could be expected to differ. But the fact that the different

programs are related (but not fully integrated) can mean that the payers will often try to save on payments by shifting claimants to other programs, and claimants may try to access different programs on the basis of ease of access. It also means, however, that claimants could fall between the cracks if they are shifted from one program to the other, but denied eligibility in each because the payers hope the cost will be picked up by another program.

II.2 OPPORTUNITIES TO COMBINE WORK AND BENEFIT

II.2.1 Provision for combining income from work and from disability-related benefits

Under wage-loss workers' compensation, a worker's benefits can be continued (subject to maximum insurable earnings and the percentage limit) if there is a wage loss resulting from the injury or, to facilitate return to work, if the worker initially works fewer hours (work hardening or graduated return to work). This arrangement usually applies only for a limited period of time. Otherwise the Board stops benefits when it considers that the worker could have gone back to work; however, actual return to work or the availability of suitable work is not required to enable the Board to terminate a worker's benefits.

In the case of permanent disability benefits based on work-related functional impairment, no benefit reduction occurs if the disabled person earns an income from work.

Under other programs, the amount of income support is reduced as individuals earn additional income, and the monetary incentive to return to work is accordingly reduced. This is the case, for example, with respect to public pension disability benefits, employer-sponsored long-term disability benefits, social assistance or welfare benefits, and even personal injury awards made through the courts. In the case of CPP, beneficiaries who return to work may continue to receive benefits during a three-month trial period to ensure that they have in fact regained the capacity to work and to help them with the transition; if, after three months, a disability client is still working on a gainful basis, benefit payments will stop. These CPP arrangements, however, are marginal at best and subject to intense scrutiny by the administrative agency.

Employment insurance provides some additional support training on the job as well as training allowances.

II.2.2 Impact of definitions of disability or capacity for work on access to and coverage of benefit programs

The importance of the definition of disability and capacity for work in affecting access to and coverage of benefit programs was extensively discussed previously in I.4.1. This section will illustrate those issues with respect to the Canada Pension Plan Disability component.

The Canada Pension Plan legislative definition of disability is quite strict. For a person to be eligible for CPP disability benefits, they must be judged to have a severe and prolonged mental or physical disability and be incapable of regularly pursuing any substantially gainful employment.

A 'Substantially Gainful Occupation (SGO) benchmark'²⁵ is a figure calculated by the government unit responsible for administering the benefits. This number represents the amount under which an individual with employment earnings less than this amount can still be deemed *disabled*, and thus collect CPPD benefits. In most circumstances, an individual earning above this amount does not qualify under the guidelines.

Due to the fact that the definition of disability is tied to 'capacity to work', it is difficult for CPP Disability clients to access benefit programs that promote job retention. However, in 1993, CPP initiated a vocational rehabilitation pilot with the objective of helping selected CPPD clients return to work. This pilot was successful and a vocational rehabilitation program is being integrated into the CPP. This program will benefit people who are motivated to return to work and whose physicians agree that they can cope with a work-related rehabilitation program.²⁶

II.2.3 Disabled workers who benefit and those who miss out

Individuals with annual earnings of less than the pro-rated Years Basic Exemption (\$3,500) are not eligible to receive CPPD benefits.

II.3 TRANSITION BETWEEN BENEFITS AND WORK

II.3.1 The effects of the disability benefit system on return to work

The disability benefit system has strong monetary disincentives to return to work. This is an inevitable by-product of the fact most of the programs seek to replace much of the lost earnings of persons who are disabled. If they return to work they forgo the disability benefit payment; that is, the disability benefits are 'clawed back' as income is earned. This too is an inevitable by-product of the need to save on program cost by not paying benefits to those who can return to work.

The higher the income replacement from the disability benefit, the closer the program comes to serving its insurance purpose of replacing lost earnings. However, the higher the income replacement, the lower the monetary incentive to return to work. The income replacement, for example, is around 90 per cent in most workers' compensation systems that are based on compensating for wage loss, it is around 75 per cent in most social assistance programs, 70 per cent in long-term disability programs, and 55 per cent in employment insurance programs. The actual replacement rates may be lower because of ceilings. In effect, this means that individuals who return to work effectively increase their income by 10 per cent in workers' compensation wage loss systems, 25 per cent under social assistance, 30 per cent under LTD and 45 per cent under employment insurance. The real increase in their income may be less if they incur work-related expenses or lose eligibility for other in-kind benefits.

In many circumstances, the fact that there is little monetary incentive to return to work is irrelevant. Individuals are simply not able to return to work given their disability. This may be the case in the more severe and chronic cases like CPP/QPP disability or employer-sponsored LTD programs. In other cases,

individuals will return to work irrespective of the monetary or other incentives. Their motivation may be non-monetary, and relate to such factors as preferences for work-related activities, a concern with irreversibly losing skills and experience, or a reluctance to accept transfer payments. In other cases, there may be more discretion and people may simply respond to the monetary incentives (or lack thereof) especially if others are doing so and they feel they have paid into the system or their job is unappealing in the first place.

Inevitably, when the monetary incentives to return to work are substantially reduced, then stronger administrative, regulatory requirements are put in place to encourage - indeed oblige - individuals to return to work and employers to accommodate that return to work. This is the case, for example, with workers' compensation wage loss systems, where more stringent regulations are put in place in various areas: return to work and reasonable accommodation requirements placed on employers; vocational rehabilitation requirements; pressures on workers from claims managers; and the possibility that recipients will be deemed to be able to earn more from other suitable and available employment.

In that vein, the choice often becomes one of encouraging a return to work through monetary incentives or through regulatory requirements. Being more generous in one area inevitably requires being more stringent in the other. Obviously, the policy challenge is to strike a balance between the two.

II.3.2 Provisions for financial support to disabled workers for transition between benefits and work

Most disability compensation programs in Canada have an 'all-or-nothing' feature that discourages return to work. This weakness has been recognized with respect to many of the programs. Human Resources Development Canada has done a number of evaluations of the various disability income support programs, and this message comes across in their analysis.

In commenting on the requirement that recipients are often required to prove that they are unable to work, for example, they state²⁷:

But, as a consequence, people with disabilities who may have significant potential for employment face the prospect of losing their disability income eligibility *entirely* [emphasis in original] by undertaking rehabilitation, training, education or returning to work. If they are found to be no longer 'unemployable', they may lose their 'categorical eligibility' for the disability system, perhaps forever. Unemployability, and its inverse, 'employability' are 'all-or-nothing' concepts. A system based on 'unemployability' as a key definitional concept is, in effect, assuming that persons with disabilities can be neatly divided into those who can work and those who cannot. In reality, however, a very significant percentage of persons with disabilities falls into a 'grey' area between the two. Some can work, but only part-time. Some could work if barrier removal and individual accommodation were in place. Some could work if only they had transportation. There is a whole range of individual circumstances. But if any prospect of long-term security is to be maintained for the individual and his or her family, our 'system' usually pressures that person (and his or her health advisors and advocates) to maintain status as an 'unemployable' person. Otherwise he or she risks, not only the loss of long-term income security,

but also other consequential benefits, such as drug coverage and rent-geared-to-income housing. ... What appears to be needed is a more flexible approach to eligibility for disability income protection which will take into account significant disadvantages in employment, even where that disadvantage has been successfully overcome for an extended period. This more flexible approach should also allow for continued eligibility for those able to work only part time or on a periodic basis. Continued eligibility for drug and other essential health benefits should, in particular, be ensured for those people with disabilities who enter the work force, especially those at lower income levels. Disability income systems in Canada have begun to move in this direction, but too tentatively to achieve significant results as yet. Of course, barrier removal and individual accommodation must be effectively in place for this to succeed.

In commenting on the CPP disability program, they further state²⁸:

From the consumer [recipient] perspective, there is great concern that a person who undertakes rehabilitation or return to work, but is unable to keep a job, will nevertheless be found categorically ineligible. From this all-or-nothing approach, the design and regulations of CPP disability benefits has a very significant work disincentive effect. This is an important contributing factor to its low return to work percentage among recipients (less than 1 percent annually, although virtually every CPP disability recipient has been in the workforce and many have very extensive employment histories).

II.3.3 Effect of entitlement to benefits in kind on return to work

As part of their income support, persons with disabilities can receive in-kind benefits. Some may be linked to employment, such as training allowances under employment insurance, or vocational rehabilitation under workers' compensation. Special equipment may also be provided. Other in-kind benefits may not be linked to employment, such as prescription plans or housing allowances that are geared to income.

Entitlements to in-kind benefits linked to employment obviously can facilitate the return to work - that is often their very purpose. If they return to work, claimants can lose benefits such as the training or vocational rehabilitation, but that should not deter them from returning since their purpose was simply to facilitate that return. In-kind benefits such as special equipment would also not likely be jeopardized by returning to work.

As indicated in II.3.2, however, recipients who return to work risk losing in-kind benefits that are geared to income, such as prescription plans and housing allowances. When combined with the loss of compensation benefits, these losses can augment an already high clawback or 'implicit' tax, possibly to the neighbourhood of 100 per cent or even more. Under workers' compensation, in-kind benefits such as medical expenses could also cease if the person returned to work and the medical expenses were no longer deemed necessary. Clearly, this loss of in-kind benefits that are related to income or the return to work decision itself can be a deterrent to returning to work.

II.3.4 Co-ordination between agencies in assessment for benefits eligibility

There does not appear to be extensive co-ordination across agencies in the assessment and classification of the disabled worker for benefits eligibility. There is generally a ranking in terms of first-payer, second-payer etc. CPP disability is a primary payer from which other disability income payments are not deducted. QPP in Quebec, however, is a secondary payer after any workers' compensation payments.²⁹ Workers' compensation is a secondary payer in some jurisdictions, with benefits being reduced by any CPP payments.³⁰ Recipients of temporary total disability payments also are not entitled to EI benefits.³¹ Payments under a group sickness or disability wage-loss plan or workers' compensation temporary partial disability plan are treated as earnings in the EI program. Employer-sponsored LTD is almost invariably a second-payer to CPP/QPP disability and workers' compensation.³² Social assistance is a payer of 'last resort' with payments being reduced by the amount of any other payments.

As indicated previously, the lack of co-ordination can lead to agencies trying to cost-save by shifting claimants to other systems. As well, retrenchment in one system can lead to claimants shifting to other systems, especially when injured worker advocates are aware of the ease or difficulty of accessing the different systems. It is also the case, however, that injured workers could 'fall between the cracks' if they are shunted from one system to another. This could be the case, for example, if some programs argue that the injury was employment-related (in which case it would be eligible for workers' compensation) while workers compensation argues that it was not employment-related.

Reviews of the different disability income systems have also generally not been co-ordinated. As stated in one analysis,³³ 'All the disability income systems discussed in the previous system have been the subject of major policy reviews in Canada during the past decade. ... detailed reviews have tended to focus on disability income systems "one at a time", without considering their inter-relationships, which can give a very misleading picture of what is happening. For example, if the eligibility criteria under one disability system are made more restrictive, people with disabilities who otherwise would have qualified for it typically wind up claiming from another system.'

Co-ordination problems in the Canadian system emanate from various factors. There is a multiplicity of programs - workers' compensation, CPP/QPP disability, employment insurance, employer-sponsored LTD, and social assistance. Some are under federal jurisdiction, others are under the various provincial/territorial jurisdictions. Workers' compensation is based on injuries that arise from work. Others compensate for disability arising from any source, but are restricted to persons with a work history of contributions (CPP/QPP disability, EI sickness, employer-sponsored LTD). Eligibility rules differ, especially with respect to the definition of disability. The 'order of payer' varies, with some deducting income received from others. In many circumstances it is difficult to understand the intricacies of one program. That issue is compounded by the multiplicity of programs and their integration features.

III. EMPLOYMENT SUPPORT AND REHABILITATION SERVICES

This Part examines the integration of personal support and rehabilitation services within the workplace. It deals with the external support services available to individual workers and their employers where continued employment is at risk because of disability. (Internal services, initiated and managed by enterprises, will be covered in Part V.) The discussion also includes services for early return to work once employment has been lost.

The main focus is on service interventions which support job retention by employees who become injured, ill or disabled and also their return to employment during the process of recovery. It concerns active rehabilitation services that help disabled people to recover capacities and skills, as well as services that support their re-adjustment to work. (Services involving adaptations to the work environment and to working arrangements will be discussed in Part IV.)

More specifically, sections III.1 to III.5 will cover policy about employment-related personal support and rehabilitation services, provide details of services and their providers, and describe the service beneficiaries. The remaining sections will examine the factors influencing the effectiveness of support services for job retention and early return to work. They include a discussion of relationships between the various employment support and rehabilitation services, their relationship to the employment sector, and their interaction with employment policies and compensation and benefit programs.

Note

This Part will only examine services that apply across all Canada and within the province of Ontario.

III.1 POLICY AND RESPONSIBILITY FOR POLICY AND PROVISION

III.1.1 The main bodies responsible for employment support and rehabilitation policy, and links to other agencies with employment or benefits/compensation responsibilities

Federal

At the federal level, the main body responsible for policy related to employment support and rehabilitation is the Ministry of Human Resources Development of Canada (HRDC). With a budget of approximately \$57 billion and more than 22,000 full-time employees across the country, HRDC is the largest of 21 federal ministries. It is presided over by the Minister of Human Resources Development, although there are provisions for the appointment of a Minister of Labour within HRDC as well. This arrangement indicates the origins of the ministry in 1996 from the re-organization of several preceding ministries.

To understand the imperatives and constraints shaping HRDC's employment support and rehabilitation policy and programs, some understanding of the Acts that form them is necessary. Of the 25 Acts that form the legislative bases for the Department's mandate,¹ the following guide employment support and rehabilitation strategies at the federal level: the Canada Assistance Plan and Regulations, and the Canada Health and Social Transfer; the Canada Pension Plan; the Employment Equity Act and Regulations; the Employment Insurance Act and Regulations; the Government Employees Compensation Act and

Regulations; and the Vocational Rehabilitation of Disabled Persons Act. The Canada Labour Code and Regulations, which also falls under the aegis of HRDC, establishes no mandate for the purposes of this section of the questionnaire. Following is a brief discussion of the implications of each of these for employment support and rehabilitation:

The Canada Assistance Plan Act and Regulations (CAP)²⁻⁵ and Canada Health and Social Transfer (CHST)

The Canada Assistance Plan (CAP), and the more recent Canada Health and Social Transfer (CHST) which replaces CAP, have been described in II.1.1. The CHST devolves to provincial governments the responsibility for and control over a large variety of social policy programs, including those pertaining to employment support and rehabilitation in the event of acquired disabilities.

The special assistance provided under CAP includes such employment supports as prostheses and assistive devices, rehabilitation services, and casework/counselling/assessment/referral services.⁶ (It should be noted that access to these benefits is limited to fairly narrowly-defined populations, specifically welfare recipients; other populations, such as injured workers or motorists, access services through different routes.) As will become evident, provincial policies are in great flux, partly because of the change from the CAP to the CHST. With the transition to CHST underway, and provinces acquiring the discretionary power to allocate more of the transfers to health or education than to welfare or social policy, if they wish, the HRDC appears to see a possible role for itself in mediating voluntary provincial agreement to policy directions: '...the Minister of Human Resources Development will invite representatives of all provinces and territories to consult and work together to develop, through mutual consent, a set of shared principles and objectives that could underlie the non-health care aspects of the transfer.'⁷ It is uncertain how or even whether the federal government will be able to influence policy for this particular sub-population of the disabled under the new funding mechanism.

The Canada Pension Plan⁸

The Canada Pension Plan (CPP, see II.1.1) does not stipulate any employment support or rehabilitation interventions, as its pensions are based on the assumption of labour-market ineligibility or unemployability (see III.3). Nonetheless, a National Vocational Rehabilitation Pilot was launched on a trial, voluntaristic basis under the Act in 1993 (see III.1.2). At this juncture, it should be noted that candidates for vocational rehabilitation must first have shown eligibility for a long-term pension.

Employment Equity Act and Regulations

As was noted in I.2.1, the Employment Equity Act requires employers to identify possible barriers that might be limiting the employment opportunity of people from the four designated groups, and develop and implement a plan to remove any barriers. Theoretically, such barriers might include a lack of employment support or rehabilitation strategies for existing or potential disabled employees, thereby creating incentives for such policy. In practice, however, the Act is unclear about the practical measures that employers must implement in order to meet their mandate. For example, would substantial numbers of female or visible-minority employees make up for a paucity of disabled and Aboriginal ones? Would hiring a person with a relatively easily-accommodated disability suffice in place of retaining an employee who acquires significant impairments through illness?

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Employment Insurance Act and Regulations (EI)^{9, 10, 11}

As was noted in II.1.1, EI was introduced in 1996. It will entirely phase out the former Unemployment Insurance program within approximately 3 years. Its mandate is two-fold: (a) to provide financial support to the temporarily unemployed; and (b) to assist claimants in re-entering the labour market as quickly as possible. To meet the mandate of the Act, HRDC has re-organized the former Canada Employment Centres (CECs) into Human Resource Centres of Canada (HRCCs), which administer several benefits programs targeted at return to work. To fund these initiatives, EI redirected \$800 million from income support to employment benefits, and established a three-year, \$300 million fund to generate economic growth and create new jobs.

At the same time, in November 1995, the federal government stated a general intention to withdraw from labour market training, demarcating it as part of the province's jurisdiction over education. In May 1996, it announced the Labour Market Development Proposal, a framework for provincial and territorial control over the design and delivery of the active employment measures outlined in the federal EI Act. (See below for active measures.) To date, all provinces but Ontario and Saskatchewan have signed these labour market agreements.

Government Employees Compensation Act and Regulations

Workers in the federal jurisdiction who become injured in the course of work, have their income and rehabilitation benefits administered by the Workers' Compensation Board, under the appropriate Act of the Ministry of Labour, in the province in which they work. Where work-related injury is concerned, responsibility for all employment support and rehabilitation policies for federal employees depends on provincial policies, as do other benefits.

Vocational Rehabilitation of Disabled Persons Act

Under this Act (see I.1.2), the Vocational Rehabilitation of Disabled Persons (VRDP) provides ongoing support, including supported employment (i.e. job coaching and assistance to maintain productivity, or wage subsidy to compensate for reduced productivity) for individuals who have not had substantial labour market experience, regardless of level of income. Generally, it has been used for those with significant physical and cognitive impairments, though it has also included cost-sharing of services related to alcohol and drug rehabilitation.

At this time, the federal and provincial/territorial governments are in the process of renegotiating and replacing this agreement with a new one to be called the Canada-Provincial/Territorial Multilateral Framework on Employability Assistance for People with Disabilities. Cost-sharing will be replaced by block federal funding to jurisdictions based on a set formula, and alcohol and drug treatment will not be covered.¹² While the transition occurs, the VRDP, which was scheduled to end on 31 March 1997, has been extended for one year, and its budget held constant from the previous year.

The Human Resources Investment Fund

To meet the mandate established by these Acts with respect to employment support and rehabilitation (particularly Employment Insurance), HRDC has established the Human Resources Investment Fund (HRIF), which has developed a number of active re-employment benefits programs, as follows:¹³

- *Targeted Wage Subsidies.* Financial incentives to employers to provide recent work experience to those who have been unemployed for a long time or who face special barriers to employment.
- *Self-Employment Assistance.* Financial and other supports to encourage unemployed people to become self-employed.
- *Job Creation Partnerships.* These are special projects, developed together with the provinces, the private sector, or labour and community groups, particularly where the local economy makes jobs especially scarce.
- *Skills Loans and Grants.* Provides loans or grants to help cover costs of training or education. (These are available only with the co-agreement of the province or territory where the applicant resides.)

Eligibility for these re-employment benefits is restricted. Those who do not qualify are directed to a variety of self-help electronic resources, available through their local HRDC or through private computing access.

The above initiatives were implemented with the 1996 federal Budget. The 1997 federal Budget also announced an Opportunities Fund, administered by HRDC (described in I.2.3). The Opportunities Fund finances programs similar to those available through the HRIF but specifically for disabled people.

Provincial

As is clear from the above, the existing federal framework provides latitude for provincial policy initiatives. At least in Ontario (and most likely across the country), the situation has developed historically, and continues to develop, such that an individual who becomes disabled during the course of his or her working life will be able to access employment support and rehabilitation largely on the basis of the mechanism of injury or illness, and his or her relationship to the labour market. The organization of policy responsibility reflects this history, and there is virtually no coordination across policy 'silos'^c to create consistency in employment or rehabilitation policy for disabled people.

In Ontario, relevant policy is organized primarily on the basis of whether the disability occurred in the course of work, in a vehicular accident, or as a result of some other injury or illness. Therefore, it is easiest to discuss policy responsibility as it relates to these categories:

Disability that occurs in the course of work^{14, 15}

Any disability that arises from an incident that can be linked clearly to work conditions or tasks is managed according to policy and legislation of the *Ministry of Labour*, administered by its agencies, the Workers' Compensation Board and the Appeals Tribunal. For some years, the activities of the Board, which are funded entirely by employer contributions and which include employment support and rehabilitation policies and programs, have been mandated by the Workers' Compensation Act. Under the Workplace Safety and Insurance Act, due to come into force in 1998 (cf. I.1.2), both job retention and return to work provisions and mandates will be changed - as will be discussed below.

^c North American researchers and consultants use this term to refer to quite separate policies which operate in relative isolation (as 'islands') from each other even though there should be some logical connections.

Disability that occurs in a vehicular accident

Disabilities arising from non-work-related traffic accidents, involving privately insured vehicles, are managed according to the auto insurance policy brought out by the *Ministry of Finance*, which oversees all economic policy. The policy consists of two parts: the Insurance Act and amendments to it, and a Schedule of Accident Benefits. Ontario has had a partial no-fault system since 1989. Previously, there were some no-fault provisions, but these were minimal and the majority of cases were dealt with through tort. Since 1989, three successive governments have revised the policy, making changes to benefit provisions for rehabilitation strategies, which roll together employment and vocational measures along with medical and psychosocial ones, as well as to income benefits.

The Insurance Act is regulated by the Ontario Insurance Commission, an agency of the Ministry of Finance. The Commission is charged with both regulating the insurance industry and protecting consumers. There is no explicit or institutionalized relationship, with respect to setting policy for employment of disabled people, between the Commission, the Ministry of Finance, and other relevant policy-setting bodies. Recently, there has been some discussion of the possibility of establishing a 'payers' group' that would coordinate rehabilitation strategies amongst various institutions (including employers, insurers, and government) but, to the best of our knowledge, this has not been implemented (according to personal communication with Ministry of Health officials).

Disability occurring through other injury or illness

Individuals with acquired disabilities who are unable to make claims either through the workplace or through motor vehicle insurance are subject either to the policies of other types of private health and disability insurance, the relevant benefits of which are generally structured according to policy holder-insurer contracts rather than by government policy, or they are subject to the provisions of health and welfare policy. In Ontario, these constitute separate policy areas. Employment support and rehabilitation policies do not necessarily constitute combined or coordinated strategies, and raise questions about the relationship between health and other policy areas.

Rehabilitation

Rehabilitation here is understood to mean a broad variety of measures with an explicit common goal: the resumption of vocational activities. Under the Canada Health Act, some rehabilitation, such as occupational and physical therapy (including work hardening, vocational assessment, etc.), is available in the public health care system, so long as its provision conforms to the Act, i.e. it is deemed medically necessary and is provided in a hospital, physician's office, or under the aegis of a physician. Very few therapists have independent billing privileges for public health insurance (the Ontario Health Insurance Plan, OHIP). Rehabilitation policy in respect of these services is set by the *Ministry of Health*, with input from a number of divisions and branches:¹⁶ the Strategic Priorities Resources and Legislation Policy Unit, Health Strategies Group, Rehabilitation, has made policy recommendations suggesting that the 'medical necessity' of rehabilitation measures be reconsidered, i.e. that its basis for public provision be reconsidered; the Assistive Devices Branch of the Population Health & Community Services Division operates the Assistive Devices Program and the Home Oxygen Program; the Institutional Health Division's Hospitals branch funds hospital-based rehabilitation; the Health Insurance and Related Programs Division operates the Ontario Health Insurance Plan for some rehabilitation services outside hospitals; and the Long-Term Care Division sets programs for home care and in-home services, amongst others.

The *Ministry of Community and Social Services* has jurisdiction over legislation regarding welfare provision, including for disabled people. Currently, the relevant Acts in respect of this Ministry are: the Family Benefits Act (which distinguishes disabled claimants from general welfare claimants, regulated by the General Welfare Assistance Act), and the Vocational Rehabilitation Services Act. At this time, two new Acts are in second reading: the Ontario Works Act 1997 (for general welfare claimants), and the Ontario Disability Support Program Act (ODSPA) 1997 (for disabled claimants). These will repeal the three above-mentioned Acts. ODSPA, if enacted (and all indications are that it will be), will establish policy directions for employment support (including vocational training and the like, though not other aspects of vocational rehabilitation) and for income support for disabled people.

Equal Opportunity Plan

Finally, the *Ministry of Citizenship, Culture and Recreation* has established an Equal Opportunity Plan to assist employers in 'ensure(ing) there is no discrimination in hiring or promotion decisions, improving Ontario's education and training system to give all Ontarians the skills they need, and changing people's attitudes.'¹⁷ The Plan replaces the former Employment Equity legislation, in order to meet the requirements of the Ontario Human Rights Code. Stressing that it is 'based on co-operation, not coercion' (the current government campaigned on a platform of 'Removing Barriers to Growth' and 'Less Government')¹⁸ and naming no specific designated groups, the Plan nonetheless singles out disabled people as facing particular employment barriers and establishes a 'fund to support access and accommodation for persons with disabilities to participate in both the paid workforce and the volunteer sector.'

Municipal and local

A final important point is that some responsibility, or potential for initiative, devolves to municipal levels of government as well. The City of Toronto, for example, has a much lauded policy for helping workers who become disabled both retain their jobs and return to work.¹⁹ Recent provincial legislation, however, has amalgamated the City with 5 adjoining boroughs and the Metropolitan level of government that united them since 1953; the new municipality of Toronto, an amalgamation of these 7 sub-governments, comes into effect in January 1996. Programs developed within any one, such as the City of Toronto's return to work program, will have to be amalgamated with those of the others. It is more likely, given fiscal constraints, that the City's more progressive program will be pared back rather than the other programs being increased to its level.

It is not possible, within the scope of this report, to detail the many different policies and strategies at the municipal and local levels. (Furthermore, these too are being radically reorganized in Ontario, where legislation is being brought forward amalgamating numerous municipalities, including the six cities and one regional government that currently make up the Metropolitan Toronto area. Combined with these changes are increased downloading for costs of services to the municipalities. It is not known what the combined effects of these two changes will be on municipal-level policy and programs with respect to job retention and return to work, amongst other employment issues, of the disabled people.)

III.1.2 The relative priority accorded to support for retention, return to work and first time entry to employment

Few of the policies discussed above explicitly prioritize job retention and establish a framework for putting in place measures to ensure it. Indeed, it is not possible even to say that the policies under review explicitly distinguish between job retention, return to work and first time entry to employment. Rather, they each contain elements that could be used towards any, depending on the case and depending on employer commitment to job retention. Thus, it is being presumed here that, for job retention to be considered a prioritized policy goal, the policy would have to link support measures with clear mandates for employers to retain disabled workers' jobs, i.e. the policy instrument would lean more towards legislated mandates than towards the creation of incentives or, still less likely to create a sense of prioritization, exhortation for voluntary action, the latter two of which are more likely to assist in return to work with a new employer or first-time entry.

Ontario's current Workers' Compensation Act incorporates legislated mandates for employers to comply with both job retention and return to work measures.^{20,21} In order to meet these mandates, the Workers' Compensation Board has established various external supports for employers, as well as the framework for employers to develop or pursue others (see III.2). As noted, however, the Act is due to be replaced by the Workplace Safety and Insurance Act. This Act primarily emphasizes measures to prevent injury, then the facilitation of return to work if injury occurs, to be managed by the employer, and then compensation. Re-employment measures are to be, as far as possible, voluntary and coordinated between the employer and employee.

Under the current legislation, an employer is obligated to either offer re-employment in the same position to an injured worker who has been employed for at least one year, or 'to provide the worker with alternative employment of a nature and at earnings comparable to the worker's employment' at the time of injury, to provide the Board with information regarding re-employment measures, and to co-operate with the Board's re-employment plans for the worker (Bill 165, Workers' Compensation Act 1994, Section 54). The priorities for the Board's re-employment strategies are (in order) for the worker to return to the pre-accident employer, either in the pre-accident job, a comparable job or a job which best matches the worker's current skills. If these are not possible, the next option is employment in a suitable job with another employer (see I.1.2).²²

These provisions remain in the new legislation. However, with its enactment, the first line of intervention, with respect to vocational re-entry, is to be decided between the employer and employee, not the compensation board. There will still be an obligation to re-employ if the worker is deemed medically able to perform the essential duties of the pre-accident job. Failing that, the employer must attempt 'to identify and arrange suitable employment that is consistent with the worker's functional abilities and that, when possible, restores the worker's pre-injury earnings'. An obligation exists to accommodate the workplace to the worker's residual functional abilities unless doing so would cause 'undue hardship' to the employer. The employer's obligations with respect to return to the workplace are subject to a maximum of two years from the date of onset or, if earlier, one year from the time that the employer is notified by the Workplace Safety and Insurance Board that the worker is medically able to perform the essential duties of pre-injury employment. However, the Board's services in preparing a re-entry plan are not mandatory but

recommended (i.e. they 'should' rather than must be put in place), and only if the employer does not voluntarily take the lead, or is unsuccessful, in assisting the worker to return. In the event of difficulty or dispute between the employer and employee regarding return to work, the Board will attempt to mediate. However, a considerable amount of time may first pass and the worker or employer will need to make the decision and take the steps to contact the Board,²³ since the Board is not obligated (i.e. 'may') to monitor return to work activities.

Experience rating (see I.2.3), however, acts as an incentive for employers to return an employee to the workplace as quickly and effectively as possible.

Under Ontario's motor vehicle accident policy, there is no explicit obligation for the employer to retain the job. All responsibility falls to the insurer, and the only link to employment legislation is through the Canadian Labour Code. Thus, the commitment to help the claimant retain previous employment (if it existed), or to return him/her to alternate or new employment, and under what conditions of pay, etc., will be affected by financial incentives for the insurer to do so, these being created by the combination and balance of no-fault and tort provisions.

Under previous legislation (Bill 164 and its accompanying Statutory Accident Benefits Schedule, or SABS), generous income and rehabilitation (including vocational) benefits, combined with a prospect of long-term pension exposure, may have created a high incentive for the insurer to return the claimant to work, preferably with the time-of-accident employer since a claimant whose job is retained is that much less difficult to return to work than one who has no job, particularly in a high-unemployment labour market. The current provincial government's new policy (Bill 59, the Automobile Insurance Rate Stability Act, 1996 and its accompanying SABS) substantially changed those no-fault parameters and increased access to court. In addition, it gave the insurer new powers about whether to agree to treatment plans, including vocational rehabilitation and support plans. It is uncertain at this time what effect this has had on either job retention or return to work, so it is hard to say how it prioritizes these issues. It may be deduced, however, that a significantly lowered income benefit (from \$1,000/wk. maximum to \$450/wk. maximum, depending on previous income) shifts the incentive from the insurer to return the claimant to work, preferably with the previous employer, to the claimant either to return quickly or to remain away in order to maximize tort potential.

Other provincial policy at this time primarily supports voluntaristic strategies. Except to the extent that the employer is (a) bound by federal Employment Equity legislation, (b) concerned about recourse to the Human Rights Commission, (c) committed to reducing long-term disability benefits exposure, or (d) committed through collective agreements, these policies are more likely to enhance return to work or first-job strategies for those with acquired disabilities than they are to prioritize job retention.

Vocational rehabilitation has not been a traditional focus under the federal Canada Pension Plan's disability benefits (CPPD), although it is provided for in the legislation. In general, the structure of the program minimizes the potential for such focus.²⁴ Nonetheless, a fully voluntary National Vocational Rehabilitation Pilot for CPPD claimants was initiated in 1993, with its priority of employment goals being to return the client to:

1. the pre-disability job with the pre-disability employer;
2. modified work with the pre-disability employer;
3. comparable work with a new employer;
4. alternative work with any employer.²⁵

However, it is less clear that the intention is helped to fruition by the structure of the program. Thus, it probably would not be entirely accurate to assume from the statement of priorities that job retention is in fact prioritized by the nature of the policy and its attendant legislation.

HRDC's strategy for developing programs through the HRIF (Human Resources Investment Fund) to meet the mandates of the new Employment Insurance Act and Regulations bears the following characteristics that help to understand how employment goals become prioritized by the arrangements:²⁶

- due to eligibility criteria, the majority of clients will be receiving Employment Insurance benefits (i.e. there is no job to be retained);
- most clients will be routed primarily to the HRCC's (or other agency's) self-help products, such as databases, and relatively few will receive employment support measures, which will require close case management; and
- each HRCC/other agency will determine target populations for active support measures, beyond the four populations designated by federal Employment Equity. (It is unclear whether the provinces/territories/other agencies that sign federal agreements to offer the services will need to abide by this legislation.)

These characteristics suggest that the HRDC/HRIF programs effectively prioritize return to work over job retention. At the same time, the targeting of disabled people, in combination with eligibility criteria (see III.3.1), which make the programs accessible to those at risk of losing an employment relationship because of acquired disability, might open a window for funding job retention strategies. For the most part, the eligibility criteria for HRIF funds eliminate most disabled people, except those with a history of attachment to the labour market.

Additionally, various HRDC programs contribute to non-governmental agencies such as: (1) the Canadian Council on Rehabilitation and Work, a fully national body that provides research and preparation of resource material to assist in the integration of disabled people into the labour market; or (2) JANCANA, a Canadian arm of the US-based Job Accommodation Network (JAN), whose mission is the provision of accommodation information to assist in the hiring, retraining, retention, or advancement of persons with disabilities. It is difficult to pinpoint whether job retention or return to work strategies are prioritized, since this depends on who uses the services and how. For example, employers and consultants may use them to help meet Employment Equity mandates, or to reduce long-term disability or workers' compensation exposure when workers become newly injured.

In conclusion, if the policy instrument used is any indication of the assignment of priorities, then, overall, it is reasonable to conclude that prioritization has not emphasized job retention and, furthermore, is shifting gradually even more towards voluntaristic measures that would be more applicable, generally, to return to work than to job retention.

III.1.3 The weight given to employment support and rehabilitation policies for disabled people in the national system

There is nothing that could be accurately called a 'national system,' in the sense of coordinated federal and sub-government policies that, furthermore, also integrate policy areas such as labour, the economy, financial institutions, and health with deliberate attention to their combined effects on issues of concern, such as disability and employment.

As noted in the section on motor vehicle accident insurance, the weight ascribed to active measures will vary and change according to specific policy instruments in place, which may change quite regularly. No overarching 'umbrella' has been put in place to try to unite the strategies that have developed over time in various programs. Other writers have noted that, in the past, emphasis on active measures has been generally low in Ontario, with significant long-term costs.²⁷ Recently, at both the federal and provincial (Ontario, in this case) level, policy changes suggest a greater emphasis on active measures; a review of the documents certainly indicates such an emphasis, as well as more stress on the cooperation of clients in pursuing active measures (see, for example, the HRDC/HRIF's HRCC Handbook on Employment Benefits and Support Measures). These policy changes no doubt play a role in the considerable growth of agencies and firms providing case and disability management services that has been noted in the literature.^{28, 29a & b}

But without assessing whether there is a link between active measures in rehabilitation and employment support on the one hand, and labour policy that mandates job retention and accommodation on the other, it is difficult to talk of a *system* that supports these measures. What is called 'active rehabilitation' varies on a spectrum from medical, therapeutic and vocational intervention for the individual, which continues to be stressed, to active workplace and labour market intervention, which is less stressed.

III.2 SUPPORT SERVICES FOR JOB RETENTION

III.2.1 The main funders and providers of services offered to support job retention

Funding for retention strategies cannot be separated entirely from that for return to work strategies, since services offered by the same organization may be used in either case. While it is possible that there are some organizations, particularly private consulting ones, that have made a specialty of assisting employers in retaining newly disabled workers, a comprehensive survey to identify these or their prevalence was not conducted. It is more reasonable, given the legislative and policy framework that has been described, to assume that funding for the strategies will be combined, though, as already discussed, prioritization of strategies will vary.

For the sake of ease, the following will be considered services specifically supporting job retention, vs. those supporting return to work strategies (as they are distinguished by the definitions used in this study): case management; worksite accommodation consulting and technical services; and job skill/functional capacity assessment, re-education and training. (Major return to work services that do not overlap with these include: job search skills and assistance; and vocational placement.) It is important to point out here that the focus in this section is on non-health-care services. Nevertheless, many clinical therapists provide therapeutic services that support job retention and return to work. As has been noted, their funders will be found in the Ministry of Health, private insurers, and private individuals. Their services cannot be disaggregated readily into those provided to advance work ability from those provided to advance functional ability at home or at leisure. For these reasons, rehabilitation that straddles the treatment boundary is not addressed separately here as services that support job retention.

Case management

It must be stated first that the majority of case management is carried out not by individuals who are expressly understood to be doing it, but by 'gate-keepers' to the system, i.e. primary care-givers, usually physicians. Furthermore, those providers actually known as case managers are an currently unregulated and diverse lot. Nonetheless, they are being treated as a separate category here because their explicit goal is the promotion of job retention and return to work of various types of claimants, while that is not the explicit goal of primary care-givers.

Federal funding for case management is available through the HRDC's HRIF and Opportunities Fund programs, the latter being more likely to be used specifically for job retention. As explained in the last section, eligibility requirements make the latter more likely to be used for job retention purposes. Indeed, those claimants who qualify must be case managed, with close record keeping (HRDC *HRCC Handbook*). Delivery may be carried out by federal public employees in HRCCs, by service delivery partners, or by provincial/territorial public employees and their service delivery partners, where new agreements have been signed. It is uncertain what kind of case management arrangements employers who make use of HRDC Opportunities Fund programs specifically for job retention services must make, i.e. whether they have an option to employ their own case managers, or must use staff affiliated with the program providing the funding or agencies that have been approved. It is also uncertain what criteria are in place for selection of service delivery partners, and whether these may vary by province or territory where agreements have been signed. Potential service delivery partners have been identified as other government and sub-government departments, non-government agencies, social agencies, school boards and training institutions, Chambers of Commerce, local planning boards, unions, unemployed workers, community action groups, and charitable foundations.³⁰ As should be evident, the field is so fragmented that it is not possible to disaggregate all the services to identify those that would particularly utilize federal funds to provide job retention services specifically.

Provincial funding is also in a state of flux, as has been noted already. There are no Ontario provincial programs identified specifically to provide internal case management services for disabled people, particularly newly disabled working-age adults. The Vocational Rehabilitation Services division of the Ministry of Community and Social Services may have been accessed for related services, but the *VRS Act* is being repealed by the *Ontario Disability Support Program Act* now before Committee, and will be

phased out gradually over the next several years. There is a proposal in place for a new system of supports to employment for people with disabilities under the Act.³¹ Again, however, the focus in the documents appears to be on individuals 'who are not yet in the labour force'³² rather than those who are risk of losing their labour-force attachment. Identified service priorities include several that could assist job retention, but not case management specifically, suggesting that this service will need to be funded in other ways. Delivery is to be by 'local service coordinators who will be selected through a competitive process based on their ability to provide the best quality of service and achieve the greatest possible impact on employment outcomes for their clients. Service coordinators will be expected to work in partnership with people with disabilities and employers in their communities.'³³ This presumably would include private rehabilitation consulting companies that provide case management services.

The Ministry of Citizenship, Culture and Recreation is also establishing two funds, to be administered by a Schedule III Agency (the Trillium Foundation), to fund similar partnerships, some of which may presumably include case management services.

Employers fund case management services through payments to the Workers' Compensation Board. These services are also delivered by WCB employees. The new *Workers Safety and Insurance Act* changes the process by which employer-Board-employee reporting and case management relationships are formed, and it is unclear who will be responsible for providing case management services to newly disabled workers. It is conceivable that this will become an enterprise-level strategy, with employers able to coordinate job retention strategies either using their own internal staff or contracted services.

Private casualty (automobile) insurers fund job-retention strategies for claimants employed at the time of the accident. Some have developed their own internal staff (often simply adjusters) for managing claims, but the majority have employed private rehabilitation consulting companies.³⁴ The current auto policy in Ontario creates the potential for a greater direct role to be played by the insurer's internal staff.

One innovative pilot project has been undertaken in British Columbia, aimed at improving return to work outcomes for clients with disabilities through a collaborative inter-agency case management approach. This pilot tests the first ever 'virtual' integrated delivery of rehabilitation, retraining and return to work for clients who are simultaneously involved with some combination of the Insurance Commission of British Columbia (ICBC), Workers' Compensation Board (WCB), Canada Pension Plan (CPP), a private insurer, or employment insurance in partnership with the disability community. This strategic partnership will apply new approaches/solutions to overcome disincentives and barriers to employment while identifying options for future systemic improvement. The pilot project is funded by a grant from the Human Resources Development Corporation (HRDC) Canada to the British Columbia Paraplegic Association to organize the 18-month pilot, and fund the evaluation of the mid-point and final reports on the pilot project.

Adaptations, accommodations, training and education

The same funders identified above would be involved here, with one important exception: the federal government will phase itself out of funding training and education by the year 2000. Providers and coordinators of these services come entirely from the non-government sector, ranging from community and advocacy groups to for-profit consultants and assessors (e.g. private clinics performing functional capacity assessments, modification recommendations, work-hardening programs etc.) to product

manufacturers and retailers. The funding programs that have been described are, in many cases, available for education and training offered both through public colleges and universities and private facilities. The Ontario Ministry of Community and Social Services has made explicit its own intention to cease service provision.

Additionally, some facilities funded through the Ministry of Health provide assessment, therapeutic, and adaptive services. These may include orthoses and prostheses clinics, and rehabilitation medicine departments (which provide services directly), as well as the Assistive Devices Program, which funds services delivered by private providers.

III.2.2 Relationships between the providers of services and bodies with policy responsibilities

These relationships have been described above, with the exception of accreditation. Types of accreditation vary broadly, depending on the service being provided. Accreditation for rehabilitation consultants, i.e. private providers of case management and coordination services, has traditionally been based in Ontario on expert credentialling and/or registration as a Regulated Health Professional. As the field has grown during the 1990s, however, at least in Ontario, accreditation with the Canadian Association of Rehabilitation Professionals has become sought by casualty insurers, even though such accreditation may be gained by a regulated health professional, a social worker, or the holder of an undergraduate degree in English literature. Even the most established, respected firms rarely require it of their consultants, understanding them to be held more accountable by the terms of their regulating colleges than those of CARP, and have had their senior staff pursue them primarily to satisfy insurers, who have put stock in the uniform accreditation.³⁵ Bill 59 (see III.1.2) empowered the government's Minister of Privatization, within the Ministry of Finance, to strike an Accreditation Task Force for rehabilitation consultants, which is being co-chaired with the president of a major insurer. To date, however, no recommendations or policies have emerged.

III.2.3 The range and types of services provided

A full range of services exists. The issue is: which services can be accessed, by whom, under which programs, and in how timely a fashion, i.e. what is the structure of the policy that applies depending on the nature and mechanism of the impairment, and how have services developed under it? In general, however, it should be noted that a trend towards self-help and information services can be detected, particularly in public programs such as those to be implemented under Ontario's proposed new *ODSPA*, and its *Equal Opportunity Plan*, and the federal government's new HRCCs (Human Resource Centres of Canada, which replaced the former Canada Employment Centres). These will rely heavily on self-help directories for most of their clients. The ability to access the services that some of these directories lead to, and to do so quickly enough so as to promote job retention, will depend on the motivation of employers as well as that of the injured individuals, and that motivation is structured by the policies that have been discussed.

III.2.4 Characteristics of enterprises using external support services for job retention

No study was identified that isolated job retention supports and the enterprises that use them.

The policy information described so far suggests that significant enterprises using external support services will be: casualty insurers; sectors at high risk of lost-time workers' compensation claims and high experience-rated payments (such as hospitals, the automobile industry); and perhaps sectors strongly mandated by federal Employment Equity legislation.

Their use of external services can be anticipated to depend on many factors, including:

- ability to pay for private services (hospital workers, for example, though they experience a high rate of lost-time injuries, are less likely to be referred to these in the current fiscal climate; large industrial or pharmaceutical manufacturers, however, may find it more efficient to contract out these services on an as-needed and consulting basis rather than have staff ergonomists and case managers);
- general economic climate. In the current high-unemployment climate, employees who become disabled are more likely to be 'downsized' and not to pursue redress through Human Rights or Labour Code legislation. There is a trend for employers to be less receptive to job retention strategies, even in cases where casualty insurers are paying for services: there is a general attitude that, if the employee can no longer perform the tasks, there are several others who are willing and who can.³⁶
- eligibility for public services.

Most of the eligibility criteria for public funding and services are based on the characteristics of the individual rather than those of her or his employer. For example, casualty insurance claimants can apply to the Ministry of Health's Assistive Devices Program and receive financing towards purchases that would aid in job retention, and have these 'topped up' by the insurer if a more expensive device is indicated. Similarly, insurers may access community-based assessment and re-training programs offered through non-profit organizations such as, for example, the Jewish Vocational Services, or through other Ministry of Health-funded facilities, such as hospital-based rehabilitation departments (not all of which provide vocational rehabilitation assessment and services, but some do). The latter may also be funded partly by employers, through WCB contributions that have been used by the Board to establish a network of Community Clinic treatment facilities and Regional Evaluation Centres, which are sometimes in private clinics and sometimes in hospitals. In the past, it was not unusual for hospital-based facilities, private clinics, and community agencies to charge differentially for services, depending on who the funder was. For example, rates had been established historically with the WCB on a standardized basis, but developed on the basis of what the market would bear where private insurers were concerned.

Some community agencies offered services free or at low cost to individuals but at much higher costs to insurers. This may have been justified on the basis that the individuals had no recourse to private insurance funding, e.g. prior to 1989, when many non-workplace disabilities acquired in motor vehicle accidents were managed primarily through the public and non-profit community system while the individual awaited the outcome of tort decisions. With changes to automobile insurance increasing no-fault provisions since

1989, however, there has been a dramatic increase in incentives for insurers to seek quick, effective and early interventions, and an equally dramatic increase in a private marketplace to help them do so. Now, with the introduction of Bill 59 and the Accident Insurance Rate Stability Act in 1996, the way is paved for insurers to seek standardized rates (along with accreditation), and there has been talk of a 'funders' group' to establish these (as was mentioned in III.1), but this has not yet proceeded. These sorts of evolving structures and institutions, in concert with changing legislation in related areas, such as workers' compensation, will likely have implications for the characteristics of enterprises using external support services and of the services themselves.

As already noted, HRCC's employment support programs are accessible primarily on the basis of the individual's labour-market attachment. It is conceivable, however, that employers could establish programs that help disabled employees access HRIF and Opportunity Fund programs that would promote job retention. Simply training their own occupational health services employees, where these exist, about the existence of these programs would be an example.

At the provincial level, the Ontario government has established its Equal Opportunity Program to help meet the terms of the Ontario Human Rights Code. The program has been divided into three main components that provide some external support services that could be used for job retention purposes: a web site, providing open access to listings of services in all sectors (public, private for-profit and not-for-profit) that would be supportive; the \$1.5 million Access Fund - recently topped up by the announcement that 10 per cent of video Lottery revenues flowing to the province will be directed towards various social programs - to assist employers and the community in making sites barrier-free (which could conceivably to job retention, although it is not the purpose of the fund to be used to assist job retention); and it has announced plans for a \$2.25 million 'Community Connections' fund. These, however, are available so as to make a facility generally more accessible, rather than to accommodate any individual who has become disabled. Furthermore, they are not available to for-profit enterprises.³⁷

III.2.5 The prevalence of externally provided support services

In general, as has already been discussed, external services for job retention are less prevalent than those for return to work, although this varies amongst policy areas; how various services are used (i.e. whether the same ones may be used for both ends) will depend on many factors already discussed.

There is a discernible trend towards provision in the private (both for-profit and not-for-profit) sector, and away from any provision in the public sector. It is less clear at this time how this will play out over the long term with respect to shaping patterns of external vs. internal support provision.

III.2.6 Arrangements for external providers to organise support in the workplace

There are few institutionalized arrangements for external providers to organise support in the workplace.

In Ontario, the only such explicit arrangements exist under the Workers' Compensation Act, which requires employers to work together with the Board in ensuring access to and information about the workplace and the worker's specific job. The incoming Act will alter these arrangements, and leave it to employers to make their own.

Ontario formerly had a Ministry of Labour arm's-length, bipartite agency, the Workplace Health and Safety Agency, which established relationships with various sectors in order to produce training materials and enterprise-level interventions intended to be used for injury prevention, job retention in the event of disability, and increased workplace accessibility for disabled people. The Agency was terminated by the current Conservative government shortly after it took office in June 1995.

Under the auto policy, insurers and their representatives are entitled to gain access to the workplace in order to gain accurate information about the actual demands of the time-of-accident job (if one existed). This may serve as the basis for case managers and vocational rehabilitation consultants to make contact with the employer and attempt to establish a relationship that would focus on job-retention measures.

III.2.7 The extent to which services support job retention

The services available *per se* would support job retention adequately if policy links and clear mandates existed to facilitate their full and appropriate use. Also, because job retention services specifically are increasingly to be found in the non-public sectors, access to them becomes an issue. Access to case management services either through public programs, or as motivated by policy requirements, is restricted. Research for this report revealed no study that has collected information about the success of job retention measures in cases of acquired disability. Part of the difficulty is the number of different policy areas under which the research would need to be done. It might be expected, for example, that outcome measures would exist under the auto policy, where private insurers' fiscal incentives to manage costs are theoretically high. But, according to one respondent,³⁸ there is no 'hard and fast' research about outcomes even here. Also, any information that tracks outcomes of individual companies (either insurers or consultants or providers) is proprietorial and held by the companies, although it is possible that the Insurance Bureau of Canada might have aggregated information supplied by insurers themselves. Speaking anecdotally, one respondent said that evidence from this one sector suggests services are only as effective as larger labour-market and economic policy and conditions require them to be; at this time, she said, that is not very effective. Again, speaking only of this one sector and speaking anecdotally, insurers' use of external case management services appears to be decreasing since the implementation of Bill 59, which makes case management mandatory only when a 'catastrophic injury' has been sustained, and otherwise discretionary. In many cases, she found, insurers were retaining case managers to provide one or two visits to the worker and worksite to assess what basic supportive equipment might be available, and then the insurer-external support relationship is ended, so it is not possible to know what the outcomes are.

The structure and disaggregation of the various policies that make external support services necessary or desirable in the first place, combined with the highly fragmented nature of the 'market' in which they have developed, means that there is little consistency in their very ability to support job retention.

III.3 USERS OF SUPPORT SERVICES FOR JOB RETENTION

III.3.1 Eligibility criteria and procedures for identifying users

Federal programs

Support services specifically for job retention do not exist through the federal CPPD (Canada Pension Plan Disability) program. As has been discussed, the Employment Insurance Act and the Employment Equity Act form the basis for various programs through HRDC. These have been subdivided, in broad terms, into programs administered through the Human Resources Investment Fund (HRIF) and the Opportunities Fund (OF). Eligibility for the former is based on the following criteria³⁹:

- those who are receiving insurance benefits at the time of the application. (These benefits need not necessarily be through Employment Insurance; they may also be other insurance benefits, social assistance benefits, workers' compensation payments, a CPPD benefit, or other income through private sources, such as family support payments or investment income⁴⁰);
- those who received insurance benefits in a period that ended no more than three years before they asked for assistance; and
- those returning to the workforce after a parental claim that began no more than five years previously.

Even so, meeting these criteria does not grant automatic access to funding. Above and beyond them, individual case managers (through the HRCC or a partner agency) must make a decision about various personal characteristics of the applicant, such as: does she or he belong to one of the groups that have been determined within the particular community or local labour market to represent a priority target group; whether the client displays the initiative, commitment, and planning ability to be self-motivated and, in the case of self-employment initiatives, whether the client has some financial resources of his or her own to contribute to the project. The same programs and eligibility criteria exist for disabled people through OF, though clearly the applicant's disability will play a dominant role, and funding is available for longer (78 weeks, as opposed to 50 under HRIF). As is readily evident, these eligibility criteria and the process involved may make it difficult for some relatively newly disabled workers to access these services quickly enough for them to have an impact on job retention, unless there is already a case manager involved through some other policy or agreement.

Provincial Programs

There is a broad range of provincial, and provincially-funded municipal or local programs, agencies and associations (some of which also receive funding from various federal programs, such as the national Vocational Rehabilitation of Disabled Persons Program, see III.1), and it is not possible to address the eligibility criteria of all of them. Of those programs that are maintained and operated by the provincial government, the Ministry of Community and Social Services' Vocational Rehabilitation Services division is being phased out, as has been described. Eligibility criteria for funding through the new programs that could be used for job retention purposes, administered by the Ministry of Citizenship, Culture and Recreation, are still being developed.

Other insurance-based schemes (WCB, auto/casualty, health and disability)

Eligibility in these cases varies according to the insurance policy and effective legislation. The workers' compensation boards would be able to track effects on job retention if their mandated relationship to the employer puts them in a position to follow outcomes. For example, this has been the case over recent years in Ontario. No indication has been found, however, of how effects on job retention will be determined under the new legislation, which changes the triadic employer-Board-employee relationship to a diadic one of employer-employee. With respect to the automobile insurance, it would be necessary to collect information at the level of the individual insurers as well as providers and, as has been discussed, this is not known to be available.

In general, it is not possible at this time to address the enormous question of the effects of these disparate, uncoordinated programs on job retention. However, the new HRIF/OP programs under the HRDC have implemented a process for measuring outcomes over the coming years.

III.3.2 Disabled workers who benefit and those who miss out

The most salient determinant of which disabled workers benefit and those who miss out is the type of injury or illness.⁴¹ Another crucial factor may be occupation, since different sectors are likely to be faced with different job retention imperatives for their workers depending on the implications for them of Employment Equity legislation, workers' compensation experience rating, and the like. Specific studies of the implications of this situation with respect to gender, age, ethnic origin, etc. were not found. Those jobs with the strongest employer attachments, which are likely to be the base for the greatest benefits with respect to the issues under consideration here, are increasingly highly-skilled professional, 'knowledge-based' ones. Working-age people who are injured in automobile accidents or in work-related accidents (while in the employ of a WCB-covered employer) or who have long-term disability through an individual or employment-based benefits package, will have different types and amounts of job retention and return to work strategies and services, depending on the regulations (which differ under casualty insurance and workplace insurance) or negotiated packages.

In general, however, there is a shift in the economy towards part-time work, often home-based, most of it done by women, and towards service-related jobs, most done by women or youth. Job growth in Canada during the 1980s occurred primarily in the service sector, which accounted for 90 per cent of growth;⁴² many of these positions are part-time, low-wage jobs offered by employers too small to be captured by the Workers' Compensation Act or to offer extended benefits to employees. The category of working-age individuals who are not covered by an insurance-based plan comprises a growing sector of the labour market, and they will have access only to what is available in the public system. The same applies to people who are self-employed and have not purchased private health and disability insurance. Public services, however, are becoming increasingly constrained or are being phased out. The multi-payer structure creates multi-tier provision.

III.4 SUPPORT SERVICES FOR RETURN TO WORK

III.4.1 The main services for return to work

Most of the policies, programs, and services described above conflate job retention with return to work and first-time entry. Both casualty insurance and workers' compensation insurance provisions have led, in recent years, to the existence of services focused on job retention. Additionally, there is a trend towards employers retaining case managers to reduce long-term disability claims under extended-benefit policies, so as to reduce their insurance premiums. (The health and disability insurance industry is separate in the Canadian insurance sector from casualty insurance, although some companies offer both). The majority of services outside these policy areas, however, are more likely to be employed for return to work and first-time entry purposes. Funders and providers are the same as those that have already been discussed, spanning a vast range of public, private for-profit, and private not-for-profit and non-profit bodies. (As has been noted, the public sector is increasingly less involved in direct provision, and funding is undergoing attrition due to changes in funding mechanisms, such as block funding rather than cost sharing, and programmatic cutbacks or holding funding steady despite increasing demands.) The vast majority of external case management provision in the above cases is private. The more specialized services are then provided through other private organizations, both for-profit and not-for-profit.

Some of the programs that have been discussed emphasize return to work strategies for disabled people. For example, under the conditions of the CPPD program, applicants must have had a past significant attachment to the labour force (i.e. it would not support first-time entry strategies) and they also must meet the definition of disability that was established in 1965: 'A contributor will be regarded as disabled if an examination reveals a medically determinable impairment in which physical or mental disability is so severe and prolonged that he is unable to secure regular, substantially gainful employment.'⁴³ Nonetheless, as has been described, a National Vocational Rehabilitation Pilot was implemented after criticisms were made in 1989 that the Plan should and could be making efforts at rehabilitation, rather than passively compensating. Clients who voluntarily agreed, were referred to external rehabilitation consultants (case managers).

The programs mandated by the New Employment Insurance Act (HRIF and OF programs) also target those with a prior attachment to the labour force. Funding and provision have been described.

Computerized data banks, such as those that are available through the Internet (funded by federal and provincial governments) or those that are available at Human Resource Centres of Canada, are available to any Canadian, whether job-seeker or employer, and so could be used for all the purposes under discussion here. The HRCC's computer banks provide information about job availability in the area and across the country, about their requirements, and about what training programs exist to help unqualified job-seekers upgrade their skills. An Electronic Labour-Exchange is also being developed for the HRCCs that will allow employers and job-seekers to identify each other. A similar program has been established in Ontario, the Equal Opportunity Website, which includes a section on 'Persons with Disabilities at Work,' intended to direct employers and the disabled to 'the resources they need to open doors to employment for persons with disabilities.'⁴⁴ As has already been noted, this level of self-help return to work resource, which could also be used for first-time entry or job-retention purposes, is on the rise. Ontario's previous

government also funded a wage-subsidization project, Jobs Ontario, to support re-employment initiatives, available to all unemployed persons, but this no longer exists.

Another important funder specifically of return to work and first-time entry programs is the provincial government, which has jurisdiction over education and training in the Canadian Constitution (providing the justification for the federal government's relatively recent announcement that it would retreat by the year 2000 from training initiatives). In Ontario, the Ministry of Education and Training combines federal transfer funds, with provincial and municipal funds to make available several re-employment and first-time employment programs. Providers are generally community colleges. The main programs with relevance to people with acquired disabilities are apprenticeship and the Career and Employment Preparation Program (CEPP). Apprenticeship programs are available if the applicant is at least 16, has grade 10 education, has already found an employer willing to hire and train him, and meets whatever other criteria the employer requires. The contract, which is arranged between the apprentice, the employer and the provincial government, sets out the terms, including the content of both on-the-job and classroom training, the pay scale, and the minimum duration of the training period. CEPP includes an Information and Referral Service (a self-directed, drop-in service), an Employment Planning and Preparation Service, and an On-the-Job Training component.⁴⁵ Programs are available to young people aged 16-24 years or disabled people up to the age of 29; availability to other adults is restricted to some centres. Anyone may use the self-help Information and Referral Service. Access to the Employment Planning and Preparation services is restricted to those who are at least 16 years of age, out of school, unemployed, and not receiving EI or WCB benefits. The On-the-Job Training component is available the age groups described above, except that adults older than 24 (29 if disabled) must also be receiving social assistance.

Many not-for-profit community-level organizations also exist that offer skills training, job search and some job placement services, such as the Canadian Council on Rehabilitation at Work, the Canadian National Institute for the Blind, the Canadian Paraplegic Association, and a vast network of Community Living centres; they are too numerous to mention. Similarly, there is a large and growing contingent of private consulting companies.

III.4.2 Integrating return to work services into work environments

There is no federal or provincial policy mandate for integrating return to work services into work environments. Individual programs, however, exist at various levels that support such integration. The HRDC's HRIF and OF Wage Target Subsidy programs, for example, are specifically designed for on-the-job training for a period of 30 to 50 weeks, with subsidization of up to 50 per cent of earnings. Employers must be willing to train the individual (a contract is signed stipulating the type of training to be provided, and time-lines with goals for doing so), must have been in business for at least three years, and must show that no other worker is being displaced to accommodate the trainee. One job placement/employment consultant in private practice reports,⁴⁶ on the basis of nearly 20 years experience, that placement of those with acquired disabilities is particularly difficult, and generally occurs only where companies have developed internal policies to increase hiring of the disabled. Magna International Inc., for example, has set a target of 5 per cent disabled employees by the year 2000. As has already been noted, federal training programs are being phased out by the year 2000. Currently, all applicants are directed to the satellite

coordinator of services (often a not-for-profit organization, such as the March of Dimes). These satellite areas have been allotted set funding; when it expires, there will be no more.

Provincial on-the-job (OTJ) training and apprenticeship programs exist through the Ministry of Education and Training in Ontario, as described above. These, however, are primarily available to youth between the ages of 15 and 24, though disabled applicants up to the age of 29 are eligible. As has also been noted, Ontario formerly had a Jobs Ontario program. The Ministry of Community and Social Service's VRS also historically coordinated vocational rehabilitation, including OTJ training, for social assistance claimants with a medically-certified disability. Under the incoming legislation for social assistance, there is no discernible program specifically for supporting OTJ training efforts, although there is the potential for referral to agencies that provide it. However, it is not clear from where the funding for these efforts will come; it would appear that it will be based more on internal enterprise initiatives and resources.

OTJ training also will form part of the strategies used by case managers under workers' compensation and automobile accident legislation. Funding here will come from employers and insurers. Its constraints will depend on how the cost-benefit implications are worked out. Case managers handling long-term disability claims sometimes receive funding from the employer for retraining, both within the enterprise and elsewhere, in order to be able to close the file, but the amounts are usually very small, between approximately \$1,500 and \$3,000.

The effects of these programs with respect to numbers successfully placed is not known at this time.

III.4.3 The types of enterprise providing return to work opportunities in co-operation with employment support and vocational rehabilitation services

There are no specific type of enterprise committed to providing work opportunities in cooperation with the services that have been described. As has already been stated, different policy areas mandate different levels of enterprise commitment to re-employment strategies. This, however, is applicable, within the definitions of this study, only to job retention. Other than employment equity legislation, there is no mandate for employers to provide such opportunities, and this legislation essentially applies only in the federal jurisdiction. Furthermore, these policy instruments do not apply discernibly more to some types of enterprises than others, beyond the same jurisdictional issues. In other words, enterprise-level cooperation with return to work programs and strategies for disabled people will vary according to the combination of (a) policy instruments used, e.g. financial incentives such as wage subsidization, or exhortation, and (b) current labour market needs and opportunities. For example, in the early to mid-1990s, the construction industry in Ontario was experiencing a severe downturn, and it was extremely difficult to gain enterprise-level cooperation for either job retention or return to work for construction workers who had become disabled through automobile accidents. Currently, the majority of programs available through Ontario's Apprenticeship program are in the following four sectors: industrial; construction; motive power; and service.⁴⁷ One interviewee⁴⁸ reports that, currently, most opportunities for those with acquired disabilities exist in the light manufacturing sector, such as computer component assembly, quality control, other goods assembly, food processing, and packaging, since these generally involve work-stations that are amenable to accommodation. It is more difficult to place disabled clients

in the service sector, where accommodation is more difficult and employers are smaller. Clearly, the type and degree of disability will have further effects with regard to the issues here.

A number of community-level organizations provide paid supported employment and re-training opportunities. For example, the Canadian National Institute for the Blind operates a workshop where trainees, as their skills improve, are reimbursed. The level of reimbursement, however, is below minimum wage and the experience is not meant to replace entry into the regular labour force.

III.5 USERS OF SUPPORT SERVICES FOR RETURN TO WORK

III.5.1 Mechanisms for identifying and accepting users who have left their employment

Many of the data bank and referral services are available through self-referral. Mechanisms under the auto policy and workers' compensation and insurance systems have already been described. Since the workers' compensation system is pertinent specifically to job retention, and since it has been addressed in some detail, it will not be discussed further here. To summarize, however: under current legislation in Ontario, the Board must be notified immediately of a lost-time incident, and must itself contact the worker within 45 days of notice of the accident if the worker has not yet returned to work to assess the worker's need for vocational rehabilitation services. The WCB must provide or coordinate such services, and the employer must comply⁴⁹; under incoming legislation, the Board need only become involved in a labour market re-entry plan if the worker is unlikely to return to the time of accident employer because of the nature of injury or other reason, or if the employer is unable to arrange suitable work that restores pre-injury wages.⁵⁰

The waiting period for return to work strategies under the auto policy varies according to the legislation and policy effective at a given time and place; as has been pointed out, these have changed three times in the past eight years in Ontario. The waiting period will be affected on the basis of the extent to which the insurer is exposed, under the policy, to the risk of long-term rehabilitation and income benefit costs, and the nature of the injury involved. It will also vary from company to company, since each will develop its own strategy for dealing with the legislation. Some are very quick to refer claimants for case management, which will route them to various rehabilitation and placement programs (physical and occupational, psychosocial, vocational), while others are very slow or do not do so at all. Indeed, the requirement to do so is currently limited under Ontario legislation to cases of catastrophic injury. Under former Ontario legislation, the family physician or primary caregiver was the 'gatekeeper' to services, and anything that he or she referred the patient to or prescribed for the patient had to be provided. Under current legislation, Bill 59, the insurer has more rights of veto, or to 'manage' the care that is reimbursed. Variation exists with respect to what constitutes a return to work program for individuals. In some cases, it will be referral to a case manager and a full range of indicated services. In others, it will be whatever the primary caregiver determines is necessary and is able to secure the insurer's agreement to fund. To collect data on typical waiting periods would be a considerable undertaking. The most basic condition for acceptance to basic strategies is purchase of automobile insurance. The condition for immediate referral to case management, which is most likely to act quickly on job-retention and return to work plans, is catastrophic injury (which covers paraplegia, quadriplegia, amputation or other loss of both arms or of an arm and a

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leg, total blindness, and severe brain injury or severe mental trauma, necessitating considerable supportive care.⁵¹ The definition is such that only those at the very greatest risk of not returning to work will be referred.

Similarly, the eligibility criteria under the programs affiliated with Employment Insurance have also been covered. Unfortunately, it is not known what the typical waiting periods are for entry to the various programs, which are fairly new.

Eligibility for the Canada Pension Plan Disability benefits, which is the entry point to the National Vocational Rehabilitation Program, is conditional on the applicant having paid into the plan for a minimum of 2 of the past 3 years, or 5 of the past 10 years. With respect to the NVRP, the following data sets address questions of referral process and processing time⁵²:

How clients heard about NVRP (n=242)⁵³

| | % |
|---|------|
| Received call from a Rehabilitation Officer | 64.7 |
| From the NVRP brochure/other publications | 11.0 |
| From a HRDC Client Service Centre | 3.7 |
| Self-referral | 11.5 |
| Word of mouth | 3.2 |
| Other type of third-party referral | 6.0 |

**How CPPD clients (n=3,622) assessed their own potential to work,
grouped on basis of length of time on CPPD⁵⁴**

| | (<2 yrs) | (2-5 yrs) | (6-9 yrs) | (>9 yrs) |
|-----------------------------------|----------|-----------|-----------|----------|
| Not able now or in future | (62.1%) | (68.5%) | (76.0%) | (76.9%) |
| Not able now, but maybe in future | (17.9%) | (10.8%) | (7.6%) | (4.6%) |
| Able now, but with limitations | (20.0%) | (20.6%) | (16.4%) | (18.5%) |

NVRP processing time before referral to consultant (n=518)⁵⁵

| | <i>%</i> |
|----------------------|----------|
| One month or less | 35.4 |
| Two to three months | 22.6 |
| Four to six months | 15.6 |
| More than six months | 26.4 |

Length of time on CPPD when rehabilitation began

| | <i>%</i> |
|------------------------|----------|
| Six months or less | 21.6 |
| Seven to twelve months | 20.1 |
| Thirteen to 24 months | 29.0 |
| 25 to 60 months | 21.8 |
| More than 60 months | 7.4 |

Individuals who are not receiving CPPD benefits, are not eligible for the EI/HRIF or Opportunities Fund programs (see III.3), and are not receiving workers' compensation, may be eligible for assistance through the Ontario government's Ministry of Citizenship, Culture & Recreation Equal Opportunities programs, the Ministry of Community Services' Vocational Rehabilitation Services (which is in the process of being phased out, under anticipated repeal by the incoming Ontario Disability Support Program Act), and the Ministry of Education and Training programs. Eligibility for the soon-to-expire VRS comprises: Ontario residency, being 16 or more years of age, and difficulty finding or keeping jobs due to disability.

III.5.2 Arrangements for user choice and user control of service packages

No such arrangements are known to exist, beyond the self-help services described. Several policy areas, however, including motor vehicle accident insurance and the HRIF and OF programs described, have begun to emphasize the importance of client involvement in planning and client self-motivation. In the case of many auto insurers, rehabilitation and vocational intervention and treatment plans are required to take the form of quasi-contracts, signed by all parties involved, including the claimant. This may or may not be an indication, in various cases, of user choice or control of services.

III.5.3 Disabled workers who benefit and those who miss out

Some of the same considerations apply as in III.3.2. In addition, however, these return to work services may benefit those with restricted or no previous labour-market attachment. But it is only obvious that job-retention strategies would benefit primarily those who have such attachment.

Increasingly, benefits accrue to those who are able to navigate their way through a highly fragmented system, or who have advocates who assist them in doing so. These are most likely to be individuals whose disability has direct repercussions for an insurer or employer that are quantifiable to the extent that referral to case management is likely. Individuals with weak attachments in these regards are most likely to miss out, particularly if barriers exist to their own ability to navigate the system, such as language barriers, lack of education or insight, depression, etc. Also, middle-aged workers (who are also at high risk of being displaced in the current economy and least likely to find comparable re-employment) are least able to take advantage of the provincial education and training programs.

III.6 DESIGN AND DELIVERY OF EMPLOYMENT SUPPORT AND REHABILITATION SERVICES

III.6.1 The effects of the distribution of responsibility for provision of services

As is evident, Canada has a highly fragmented, decentralized system with respect to the issues under consideration here. This is not only because of constitutional provisions for jurisdiction and provincial/territorial variation, which may then be devolved to municipalities however the provincial government wishes (municipalities are not recognized as having any jurisdiction in the Constitution beyond that given to them by the province), but also because of the multiple ministries involved within each province, each of their relationships to municipal and local sub-systems, and the highly diffused structure of payers and providers that has been created. The implications of this for accountability and for a hydra-like market of funders, providers, and services are vast and a potential topic of considerable research. This high degree of fragmentation would make it difficult for people to know what is available — not only disabled people themselves, but even the consultants and case managers assigned to them in relatively rare cases. Furthermore, the programs available are in a constant state of flux at each level, with changes in policy provisions and funding arrangements sometimes happening so quickly that it has not been possible seriously to assess the effects of the last set before the new one is in place. Problems of sheer unmanageability, as well as of access even to basic health-rehabilitation services such as physiotherapy have been documented, although not quantified^{56a & b}: the multi-tiered rehabilitation sector that has developed as a result of these diffuse arrangements is unlike any other health-care sector, belying the cherished Canadian idea of a single-tier system.

At a more micro-management level, the coordination of services depends on incentives for the various players to cooperate, and these are made extremely complex, and often perversely undermined, by the relationships structured by the policies and programs, e.g. between insurance carriers, claimants, employers and providers. Additionally, many programs are currently subject to considerable cutbacks and downsizing. Fewer staff make it harder for individuals even to contact the administrators in many cases.

It has become easier (though not easy) for a case manager to locate employers directly who might provide job-training possibilities than to contact administrators of programs. Disabled workers who do not have such a case manager attached to their claim (and there are fewer of them because of the policy changes that have been noted) are distinctly disadvantaged by the current organization of services.

III.6.2 The effect of relationships between services on their effectiveness

Many of the effects of relationships between services on their effectiveness have been touched upon already. Since no data examining them specifically have been found, particularly with respect to their effectiveness, definitive answers could not be given without considerable primary research. The following, however, may be points of speculative interest with respect to this question.

A current issue in Ontario concerns the proper role of caregivers in certifying disability. (Recently, a family practitioner in Toronto was shot and killed in his office when he would not provide such certification for a patient seeking disability benefits.) The Ontario Medical Association is developing its own policy to try to disentangle the dual, conflicting roles that the current system demands of caregivers. There are many other such tangled relationships, wherein the various players have financial interests that may create conflicts, e.g. personal injuries lawyers, who seek to prove that their clients are permanently and severely disabled in order to maximize benefits, referring their clients to rehabilitation clinics of which they are owners or part-owners, where providers try to maximize recovery, which would undermine maximization of benefits; rehabilitation and vocational consultants and case managers pressured to close files simply by documenting as much as is needed for the insurer to justify stopping benefits; employers seeking to lower their worker's compensation and long-term disability insurance premiums, being given the power to case manage their own injured employees, with no mechanism for accountability in place; clients caught in the middle of conflicting pressures to remain ill and others to recover; job seekers streamed according to their histories of labour-market attachment, such that precisely those who most need assistance are least likely to find it; a growing trend towards self-help and exhortations to individuals, combined with fewer instruments for creating the opportunities towards which they are, theoretically, helping themselves. As one report noted, the term 'self-reliance' is increasingly being used to cloak or justify deregulation.⁵⁷ There are a multitude of contradictions, disincentives, and barriers built into or arising as unintended consequences from the current system, in which fragmentation characterizes everything from policy arrangements to service provision to outcome tracking.

III.6.3 The results of vocational training and rehabilitation

Ontario Workers' Compensation Board year-end statistics for 1990-1995 provide the following overview of vocational rehabilitation recipients annually, and the number of them returning to work with the time-of-accident employer (i.e. job retention - JR) or with a new employer (return to work - RTW):

**Ontario Workers' Compensation:
Vocational Rehabilitation Activities and Outcomes 1989-1995⁵⁸**

| | 1989 | 1990 | 1991 | 1992 | 1993 | 1994 | 1995 |
|--------------------------------|------------------|------------------|------------------|-------------------|-----------------|------------------|------------------|
| <i>Number referred</i> | 16051 | 28083 | 37251 | 28704 | 26574 | 20199 | 21022 |
| <i>JR (no. & %age)</i> | 3,057 (19%) | 4,865 (17.3%) | 8,657 (23.2%) | 10,211 (35.6%) | 9,577 (36%) | 7,709 (38.2%) | 8,076 (38.4%) |
| <i>RTW (no. & %age)</i> | 3,260 (20.3%) | 2,640 (9.4%) | 2,148 (5.8%) | 2,357 (8.2%) | 2,297 (8.6%) | 2,356 (11.7%) | 2,430 (11.6%) |
| Total JR/RTW (%age) | 39.3% | 26.7% | 29% | 43.8% | 44.6% | 49.9% | 50% |

These figures show that roughly between 40 and 50 per cent (with the seeming anomalies of 1990 and 1991) of vocational rehabilitation recipients re-entered the workforce. What is notable, however, is the changing balance between job retention and return to work (this may be important in a high-unemployment context), and also the slight overall growth in total job retention and return to work figures. On the other hand, it is also important to note that these statistics very likely do not capture the medium-term or long-term effects of acquired disability on labour-market re-entry.^{59, 60}

Of the clients of the National Vocational Rehabilitation pilot, approximately 1 per cent of those aged 20-49 (or about 180 per year) had vocational rehabilitation services delivered through an outside contractor between 1993-96. Success was defined as (a) completion of the rehabilitation plan and (b) file closure (which is presumed here to mean entry into the labour market, although the documentation does not spell this out.) Of the clients who were referred to the program within 12 months of receiving CPPD benefits, 36.4 per cent completed the program and, of these, 63.6 per cent had their files closed; figures for clients referred between 12 and 24 months were, respectively, 39.1 per cent and 60.9 per cent; and for those referred more than 24 months after, they were 44.4 per cent and 55.6 per cent.⁶¹

The programs mandated by the New employment Insurance Act (HRIF and OF programs) are too new to be able to assess their effectiveness. As with the CPPD programs, no documentation was found giving a detailed breakdown of what sorts of providers were used, and the correlation between these categories and return to work rates. The HRDC's Handbook for HRCCs, however, notes that its Job Bank kiosks have a 'track record of placing 500,000 workers in jobs each year representing about 8 per cent of the total number of job placements across the country. This compares well to the 1 per cent of total placements performed by private sector firms, but offers much room for growth.'⁶² However, these figures refer to 8 per cent and 1 per cent of all hirings that occur, not of all placements for the unemployed that are undertaken, much less of those undertaken for workers with acquired disabilities. Moreover, they refer

to job placement services, not to all services towards vocational rehabilitation. (Indeed, the term vocational rehabilitation itself may be problematic. It may mean just job-finding services, such as resume writing, interview skills, job-search skills, trial placements, and the like or alternately it could include work hardening, functional evaluation, and a gamut of other interventions that might be considered by some to bridge into treatment. There is not a clear point at which activities/interventions move from the realm of 'medical' rehabilitation to that of 'vocational' rehabilitation.)

III.6.4 Arrangements for outcome-related funding and financial incentives to staff

No outcome-related funding arrangements or financial incentives to staff are known to exist at the public or not-for-profit level. In the private-sector consulting companies, however, some aspect of this operates when insurers or other funders retain companies on the basis of their records for file closure (be it because the claimant was successfully rehabilitated, or accepted a financial offer to close the case, or was documented to be 'inappropriate' for further services e.g. due to non-compliance with plans).

III.7 LINKS WITH EMPLOYMENT POLICIES

III.7.1 The effects of employment policy obligations and agreements on opportunities for vocational rehabilitation

Employment policy obligations and agreements are more likely where equity legislation, labour code, workers' compensation, or collective agreement infractions might bring significant risks. Quantifiable effects are not known.

III.7.2 The effects of financial incentives to employers on opportunities for vocational rehabilitation in the workplace

Opportunities to benefit from apprenticeship and wage subsidization programs are relatively few, and it is difficult to imagine many employers being driven to seek workers, particularly disabled ones, in these programs in the current high-unemployment marketplace. Nonetheless, some employers do particularly seek them out, although hard data are not known.⁶³

III.7.3 The relative priorities given to disabled people and other client groups

There is relatively little to distinguish the support given to disabled people from that given to other groups (except under already identified policies where substantial costs accrue to known payers, such as known employers or insurers). The greatest priority is given to those individuals with the strongest labour-market ties and/or with private insurance.

III.7.4 Effects of changes in labour market structure and demand on opportunities for rehabilitation in the workplace

Some labour-market structural factors have been discussed (III.3.2). It has not been quantified yet how these have affected opportunities for rehabilitation in the workplace. On the one hand, it may reasonably be assumed that part-time, casual and contract workers are less likely to have opportunities for vocational rehabilitation because of their weak employer- and labour-market attachments. On the other hand, it is possible that the employers in these situations may see benefits in hiring through wage subsidization programs, although (again) it seems unlikely in a market where many low-wage workers are available without any limitations or modifications necessary. In the City of Toronto, for example, unemployment has been kept at a relatively low rate of 7.7 per cent despite a 16 per cent drop in employment and a 15 per cent drop in jobs since 1989. This is attributed, in part, to the fact that 70 per cent of working-age Torontonians were either working or actively seeking employment, compared to 60 per cent today.⁶⁴

Many polities are struggling to cope with a changing global economy. Some have implemented shorter work weeks as one mechanism for doing so, as have some corporations: the British Columbia forest industry recently proposed a plan to create 6,500 new jobs while moving to a shorter work week and eliminating overtime.⁶⁵ This would have a potential effect on employment opportunities for other displaced or unemployed workers, including those who have acquired disabilities. In Ontario, however, the current government introduced its Bill 49, An Act to Improve the Employment Standards Act (ESA), in 1996. It is currently reviewing the ESA, which has been in place since 1968, through its Red Tape Review Commission. One of the recommended amendments to the Act that the Commission has made is increasing the maximum work week from 48 hours to 50 hours.⁶⁶ This may have broader ramifications for employment and re-employment opportunities in general.

III.8 LINKS WITH BENEFIT AND COMPENSATION PROGRAMS

III.8.1 The relationship between funding of benefit and compensation programs and vocational rehabilitation policies and services

As has been described, the greatest availability of vocational rehabilitation services, and the most defined policy with respect to them, exists where their receipt is linked to other benefits, especially income benefits. This varies, of course, partly depending on how expansive those other benefits are, and what other obligations (such as those to re-employ) are mandated; and also perhaps depending on what the relationship is between those who must pay the benefits and those responsible for increasing re-employment opportunities. For example, the employer responsible for both income benefits and re-employment measures under the outgoing workers' compensation legislation in Ontario, is more likely to seek vocational rehabilitation for the worker, as is the case with the insurer who must pay income benefits while seeking full rehabilitation. But in the case of social assistance recipients, where the income-benefits payer has no strong instruments for increasing employers' willingness or efforts to re-employ, opportunities are fewer and the responsibility is seen to fall more with the recipient. In the area of auto policy, where recent Ontario legislation has decreased cost exposure for casualty insurers, there has been a drop in referrals for case management.⁶⁷

III.8.2 The co-ordination of the assessment of eligibility for disability benefits and vocational rehabilitation services

Assessment of eligibility for disability benefits is generally the necessary precondition for assessment of vocational rehabilitation needs. How and by whom such assessments are done will vary, however. For the purposes of private insurance, workers' compensation insurance, CPPD or disability-based social assistance, the family physician (or other primary caregiver) certifies disability initially, and may or may not coordinate further rehabilitation efforts (though generally not, since most family practitioners do not see this as their area of specialization). If such certification comes into dispute, there are different mechanisms in each policy area for attempting to resolve the matter. Assessment of eligibility for vocational services will then proceed through different channels, under different policy areas, depending on the degree to which the policy necessitates the provision of such services. It may be carried out by specialists, as was the case formerly under automobile insurance, or by WCB and other program employees, or by insurance adjusters, as the current Ontario auto policy allows. It is necessary to distinguish, nevertheless, between assessment of need, which may require specialist input, and assessment of eligibility (or decisions about allocation), which may not. Sometimes, a decision about the former is all that is needed to justify the latter, but not always. For example, insurance adjusters under the current auto policy may decide that a recommended intervention is not appropriate, or can be substituted.

III.8.4 Arrangements to combine receipt of benefits with rehabilitation in the workplace

Under the outgoing Ontario workers' compensation legislation, all parties have an obligation to participate in job modifications (either to the task or to the workplace) that are indicated by an assessment. It is not known how much of the file closure statistics can be attributed to this one variable.

IV. ADAPTATION OF WORK AND WORKPLACE

Part IV is concerned with practical solutions to adapting the work-station, workplace and job procedures to the needs of workers who become disabled. It focuses on external services available to enterprises to assist them in making adjustments, whether those services are accessed directly in the marketplace or via agencies. External services may provide advice or practical help both in adjusting the demands of the job and in adapting the work environment, temporarily or permanently. They may operate as private consultancies, voluntary bodies, quasi-governmental agencies, or as part of employment services.

The initial sections of this Part consider policy responsibilities, details of providers, funders and users, technical advisory services, sources of technical equipment and advice about accommodating work routines. Later sections focus on the factors which affect the success of adaptation services in promoting job retention and return to work.

Introduction

It is not possible, in the Canadian context, to separate work and workplace adaptations that are intended for the needs of workers who become disabled, from other job retention and return to work strategies. This is with respect to most matters relating to their policy, programs, and service organization. The funding sources for changes to disabled people's work environment will be from many of the same sources that have already been described in some detail in Part III, are offered within many of the same programs, and are to some extent largely determined by the conditions discussed in section III.8. The situation is similar for the provision of services, except that aspects of these may come from companies and individuals with different specializations.

There is no consistency in Canada regarding which specialists are required to assess the need for, or provide and implement, adaptations to work itself under any given policy area. Many of the same players will be involved: occupational therapists and physical therapists (both of which are regulated health professionals in Ontario), and kinesiologists. All of these are involved in job-retention and return to work strategies, in activities ranging from functional capacity assessment to work hardening and preparation, case management, including labour-market assessments and negotiations with employers (though this may also be done by job-placement specialists). They may also be involved in recommending or implementing workplace adaptations. In addition, in the area of workplace adaptations, there will be ergonomists, engineers, and other 'human factors' specialists. These providers are not currently regulated in any way; though organizations such as the Human Factors Association of Canada set their own educational and experience-based credentials for membership. Finally, they will be found scattered across mostly the private for-profit sector, either in their own businesses or employed by enterprises, and some providers of various sorts are available through not-for-profit organizations, such as the Canadian Council for Rehabilitation and Work. A few physio- and occupational therapists will be found in the public sector providing such workplace and job-task assessments, and some ergonomic services are available through the WCB for disabled workers, and through other public sectors (see below).

For these reasons, many of the questions in this section are not answerable in the detail that would be optimal. Indeed, many are not answerable at all because the primary research is not known to exist.

Comments will only be made to the extent that they are distinct from those in comparable sections in Part III.¹

As in the previous Part, this Part will only examine services that apply across all Canada and within the province of Ontario.

IV.1 RESPONSIBILITY FOR POLICY AND PROVISION

IV.1.1 The main bodies responsible for work environment policies

Work environment policies are set provincially by Ministries of Labour and the related Occupational Health and Safety (OHS) Divisions, under the Occupational Health and Safety Act. Generally, the provincial Acts adhere closely to the provisions in Part III of the federal Canada Labour Code, establishing standards to ensure the protection, safety and health of all employees, including: proper training, safe work procedures, and necessary protective equipment, devices and clothing.

Enterprises will then establish their own internal policies and procedures, depending on their resources and incentives. For example, in many large enterprises and organizations, an occupational health and safety department will be established. Since extended-health and long-term-disability benefit premiums can be very costly, and since experience rating under workers' compensation creates an incentive not only to return injured workers to the workplace quickly but to prevent injury, it is not unusual for these departments to take an interest in both maintaining health and safety standards and in promoting adaptations, since these can be used both for preventive and rehabilitative purposes.

IV.1.2 Comparison of the attention given to policies which promote job retention and those which promote access to work

The incentives for prioritizing job retention under both WCB and auto legislation have already been described. These incentives would apply whether we are talking about changes to the individual or to the workplace. The chief priorities under the OHS Act and many OHS departments are with injury prevention.

IV.1.3 The main providers of technical and advisory services

Historically, in Ontario, the main provider of such services has been the Workers' Compensation Board. Because of a series of legislative changes in the auto policy since 1989, which created greater incentives for insurers to return claimants to work, a large and growing private market has also developed, since insurers could not access the infrastructure developed under WCB provisions. With the anticipated changes under Bill 99 (see Appendix), direct provision by the WCB will decline and possibly even disappear.² This will mean either that supply in the external private marketplace will increase to meet the increased demand (more employers now added to client base, along with insurers), or that more

enterprises will develop internal services (so that internal policymakers will be linked directly to providers), or that neither will happen, or at least not to any great extent, because the balance of incentives will not promote heavy investments in the rehabilitation of disabled workers (i.e. the incoming legislation may shift 'responsibility' for returning injured workers to the workplace to the employer, but may also decrease the imperatives of that responsibility).

Otherwise, most providers of these services, insofar as they are required to meet the needs of workers who become disabled (the focus of this study), will be in the private sector, either independently or on the staff of enterprises.

Some other providers exist in the public sector, arising from other policy mandates. For example, the Ontario Ministry of Labour has ergonomists on staff whose services are used in cases such as work refusals when job safety is at issue, or to enforce the development of preventative programs put in place by the OHS Act. Also, the federal government's National Research Council (Ministry of Industry, Trade and Technology) has its Industrial Research Assistance Program. Under this program, a network of coordinators across the country, most typically affiliated with a university, provides research and scientific services in the area of technology development to enterprises, in order to support economic productivity and competitiveness. While these scientists, including many ergonomists and industrial engineers, may certainly provide services that would secondarily support job retention and return to work initiatives for disabled people (e.g. enterprise initiatives to decrease injury risks on production lines), that is not a primary mandate of the program.

IV.1.4 The relationship between providers of technical and advisory services and providers of employment support and rehabilitation services

In the case of WCB, providers of technical and advisory services were generally staff; those of employment and rehabilitation services might have been either staff or sub-contracted evaluation and treatment centres, the latter being subject to regulations with respect to the nature of the facility. Other than WCB, historically, these two categories of services have constituted separate specialties, with providers found primarily in the private market and, to the extent that has already been described, in the public sphere. In the current climate, there are fewer and fewer of the latter, and the trend in the private sector is towards mergers. That is, small specialized enterprises are combining in order to provide comprehensive disability management services, traversing the spectrum from treatment-type interventions (physiotherapy, functional assessment and work-hardening, behavioural modification, etc.) to employment support (such as job-placement interventions) and technical/advisory support (adaptations of the workplace). In some cases, they continue to be separate services and providers, coordinated by a case manager. It is not possible to quantify the situation beyond noting these trends.

IV.2 TECHNICAL AND ADVISORY SERVICES FOR MODIFICATIONS TO WORKSTATION AND WORKPLACE

IV.2.1 Technical and advisory services available to enterprises in respect of modifications

Organizations such as the Canadian Council on Rehabilitation and Work, a national body with its head office in Toronto, act as central clearing-houses that parties can contact for resource information. The same is true of the Human Factors Association of Canada, which is a trade association (i.e. it represents only members, not the full spectrum of possible providers). Otherwise, as has already been described, services are scattered through the private sector; it would be virtually impossible at this point to catalogue them.

The previous section will have made it evident that there is scarce public funding for individual workplace modifications, with the exception of Ministry of Health programs such as the Assistive Devices Program; otherwise, there is none, unless one considers those cases in which the public sector is itself the employer and makes the adaptations. Non-profit organizations, such as the March of Dimes, the Canadian Paraplegic Association and the like, will make some funding available. But the majority of funding for these types of services will come either directly from enterprises or from insurers.

IV.2.2 Services specifically directed towards job retention

It is not possible to distinguish any services specifically directed towards job retention in the Canadian context. The same services may be used for either job retention or return to work.

IV.2.3 The availability of technical and advisory services and their use by enterprises

A full panoply of services and providers exists, but many enterprises do not know about them. There are few central organizations, clearing houses or concerted efforts to educate employers. Regarding current trends: the intense market competition that has developed under the highly fragmented policy areas and programs, and the lack of regulation, have led to a vast, disorganized range of providers, along with corollary confusion amongst users. For example, definitions of qualified providers are contentious: many occupational therapists (OTs) advertise themselves as qualified to do workplace assessments and modifications, while many ergonomists feel OTs lack the special training to enable them to distinguish amongst the many industrial factors involved, such as office ergonomics vs. systems ergonomics. No framework exists for guiding enterprises in using these services.

It is not known which sectors or enterprises are using these services. The question of whether enterprises are using external or internal services, and which are using one or the other, has not been quantified or studied, as far as is known by any of the sources contacted for this section.

IV.2.4 Factors which encourage or discourage the use of technical and advisory services

Some factors were described under section IV.2.3. Awareness is a major barrier to appropriate use. Many employers cannot identify that they have a problem that could be resolved, much less the type of problem it is, i.e. whether to call someone able to provide office ergonomics advice, such as about computer station design, or systems advice, such as about the inter-relationship of various workstations that must be coordinated in many production lines. The major sources of information are partisan - people selling their own services or the services of members. And now there are to be more computerized data banks to sort through, which function as little more than synopsized telephone books.

Since almost all funding for these services must come directly out of the budgets of enterprises or out of insurance reserves, and are purchased largely from private providers, the question of application procedures and eligibility criteria is largely a moot one. Some organizations have turned to ergonomic assessment and technology in an effort to increase productivity and competitiveness. While this is not primarily for the benefit of disabled workers, it may sometimes work to their advantage secondarily, as has been noted.

IV.3 TECHNICAL EQUIPMENT

IV.3.1 The provision and funding of equipment to meet individual needs

No programs that are external to enterprise-level initiatives are known and so it is not possible to comment on their conditions and targets. Most provision and funding of this level of intervention occurs under the WCB (historically) and private insurance. The file closure data of these funders and providers does not disaggregate provision of these services from that of others.

IV.3.2 Comparison of the availability and use of provision to support job retention and provision to support access to work

Again, no data are known to exist about this, but extrapolating from the policy framework and from the WCB's year-end statistics, it is reasonable to say that most provision of technical equipment under the WCA/WCB, and very likely under long-term disability policy also, has supported job retention. Such provision under casualty insurance, however, may support more return to work, since many of the most difficult cases in this policy area are those where the claimant has no employer to whom to return, i.e. job retention is not possible.

IV.3.3 Factors which encourage or discourage take-up by employees and by enterprises

There is one point in addition to those mentioned above: as capital investments in enterprises are tax-deductible, this may sometimes act as an encouragement for employers.

With respect to employees, the culture of the organization could presumably affect employees' willingness to use new equipment in general, and the willingness of individual employees who acquire disabilities to do so.

Again, there is no known data that would assist in answering this question any further than speculation.

IV.4 ACCOMMODATING WORK ROUTINES TO THE DISABLED WORKER

IV.4.1 External advice services which assist in the adjustment of work routines to individual needs

As with the other services, these are primarily provided by private disability management groups or consultants, except in the case of the WCB. The chief conditions for access are incentive and the ability to pay. With the anticipated changes to Ontario's workers' compensation legislation, the conditions will become similar to those in the private sector. At this time, it is uncertain whether the Board will retain any of its ergonomists. Bruce Matthews, President of the Human Factors Association of Canada, says that his membership is making a submission to the Board, recommending that it retain at least several ergonomists. Otherwise, in the event that disputes are referred to the Board (as the legislation requires), there will be no internal ability to resolve them.

IV.4.2 Disabled people who benefit and those who miss out

No quantitative data were found. It is most likely that companies that have heavy capital investments may be less likely to make further equipment changes and more likely to attempt accommodations in the work routine, e.g. industrial and other manufacturers with complex production lines.

IV.6 DESIGN AND IMPLEMENTATION

IV.6.1 The effects of inter-agency collaboration in the design and development of adaptive technologies

The only such collaborations discovered in the course of research were the NRC/IRAP initiative, and the work of the federal Defense and Civil Institute of Environmental Medicine, neither of which has intentional or direct implications for disability issues. Most research occurs in educational institutions, perhaps spurred in part by what is seen to be market demand. If private-sector manufacturers are conducting research, the information is not being shared.

IV.6.2 Factors in control, funding, management or staffing which impede or facilitate adaptation services

Since the majority of the control and funding of such services occurs at the enterprise level, depending largely on both external and internal policy incentives or mandates, there will be huge variation.

IV.7 LINKS WITH BENEFIT AND COMPENSATION PROGRAMS

IV.7.1 Arrangements for the joint funding of adaptation services

There are few opportunities for the joint funding of adaptation services aimed at the individual in the jurisdictions examined here (Canada and the province of Ontario). Programs such as those of the Ontario government aim to increase the general accessibility of public space. Otherwise, it is up to individual sectors to establish and fund their own initiatives for such services.

IV.7.2 Opportunities to receive rehabilitation benefits in adjusted working arrangements

These are known to exist only under the provisions of workers' compensation or private automobile or health and disability insurance.

IV.8 The most relevant factors affecting the potential of job adaptation measures to promote job retention and return to work

As with many of the other issues dealt with in this Part, the most relevant single factor is very likely the lack of policy integration and the lack of policy 'teeth'. Although it has not been quantified, it is probable that the larger economic climate has implications for the potential of these measures to be implemented or to promote job retention or re-employment. Currently, the voluntaristic nature of activities structured by policies and their instruments means that employers have considerable latitude.

Furthermore, adaptations in the form of technologies are likely to be more expensive, and those in the form of task modifications more labour-disruptive, than other initiatives (such as treatment, re-training or anything that has greater impact on the individual than the workplace). At least, their up-front costs will appear much greater. Thus, these strategies are probably even less likely to be used (unless, that is, they are implemented for the purposes of generally increasing productivity and competitiveness, as ergonomic initiatives often are, thereby having a spillover benefit for disabled workers). In addition, it may be that employers would have even fewer obligations to adapt workplaces and routines than they would to provide other measures, because of the 'undue hardship' clauses in relevant legislation. Other than these general observations, it is difficult to address this issue without going to specific sectors. For example, enterprises with high training costs may reap greater advantages by retaining workers than training new ones.

Finally, related to the larger lack of policy integration is a problem that the Institute for Work and Health identified in its reports on Ontario's rehabilitation services: 'There is no integrated system that organizes all the services needed by people with disabilities. Services are highly diffused.... (and) the rehabilitation services sector is ... highly dispersed, disorganized, and difficult, if not impossible, to navigate.'³

V. ENTERPRISE STRATEGIES

This final Part provides information about effective enterprise policies, management systems and programs to retain workers whose continued employment is at risk because of disability. The focus is on activities which are introduced and managed by enterprises as an integral part of human resource and workplace relations management. It includes both integrated policies for the management of disability and specific practical initiatives in the workplace to promote job retention.

V.1 CORPORATE POLICIES AND PLANS

V.1.1 The development and prevalence of corporate employment policies and plans for the retention of disabled employees

As has been noted in previous sections, the development and therefore prevalence of enterprise-level policies and plans will be linked to public sector policies and plans. The latter, however, are highly disaggregated due to a combination of jurisdictional issues and changing funding models. The following comments are offered, however, to highlight broadly observable trends.

Some collective agreements between employers and unions in heavy industry after the Second World War contained provisions calling upon employers to make efforts to retain disabled workers, especially those injured and made ill by the workplace. There was no systematic enforcement of these provisions primarily because they were voluntary rather than mandatory, i.e., they used exhortation and argument to try convince employers to make best efforts. Alternative light duty jobs constituted the main plan. Two major barriers to more comprehensive interventions as identified in a 1989 review of vocational rehabilitation services provided by the Workers' Compensation Board of Ontario were the unwillingness of employers to modify work duties or environments themselves, and jurisdictional issues between different unions with common employers.¹ There was no external strategy to promote the employment of disabled workers.

A later development, again primarily in the unionized sectors, was Employee Assistance Programs (EAP). These programs assisted workers with non-work-related psychosocial problems having health implications, such as divorce or substance abuse. They also sometimes addressed direct health problems, such as non-work-related heart attacks. A person or persons in the workplace were designated as the EAP contacts and would help the worker to obtain appropriate treatments for the health problems. The hallmark was cooperation and confidentiality. Workers were promised the strictest confidentiality so that they were not put at risk for discrimination.

Modern corporate programs such as claims management or disability management are primarily associated with increasing workers' compensation costs and changes in the pricing mechanisms for premiums in workers' compensation, principally experience rating (see I.2.3), and are generally limited to early return to work or early intervention only. Beginning in some provincial jurisdictions as early as the 1970s, these enterprise programs became more common throughout the 1980s and now are more widespread in the 1990s although we have no real idea how prevalent they are. The vast majority of enterprise programs are 'modified work' or 'early return to work' and provide only temporary adjustments to the disabled person's

work to facilitate early return to work. As was noted in Part III, there is only a tenuous connection between early return and longer-term success.² Anecdotally, the range of adjustments seems to depend on corporate culture. Some programs offered by larger employers, especially in the pulp and paper, mining, steelmaking and auto manufacturing sectors, are comprehensive, including medical support, alternative work, rehabilitative work, and ergonomic interventions. More common, however, are temporary reductions in workload and hours, or reassignment designed on the principle of 'work hardening' or 'easing the worker' back to work.

Job retention policies that include assistance for workers whose disabilities have not been determined to be work-related are much less common and are restricted again to larger corporations and enlightened smaller employers. In cases where there is private insurance, there is less financial incentive for employers, except those who self-insure, and fewer services are provided compared to workers' compensation. Recent decisions of the Canadian Supreme Court on employers' and unions' obligations under the Human Rights Code to accommodate disabled workers seems to have acted as an impetus for unions in particular³ to pressure their employers to use return to work programs for these workers as well.

There is no independent data on the current prevalence of corporate employment policies, their adequacy or effectiveness. With few exceptions, evaluations have been done in-house and are expressed primarily as financial savings for the company only, i.e. they do not provide a basis for a comparison of strategies. Thus, it is unclear to what extent results are due to a particular local corporate culture as opposed to representing transferable policies and plans.

V.1.2 Prominent actors and influences in the development of policies and plans for the retention of disabled employees

Initially programs were primarily human resources and union initiatives. In more recent years WCBs have played a significant role in providing support and emphasis on return to work programs. In some jurisdictions (Quebec, Ontario, and New Brunswick), changes in the WCB benefit structure were accompanied by regulatory changes imposing obligations on employers to retain the employment of persons who had been injured in their workplace providing some workers with an additional mechanism to the Human Rights Code to obtain state assistance in return to work. In Ontario, the implementation of these provisions led to greater activity by the WCB to encourage employer compliance and the development of enterprise-based programs. The expansion of experience-rating programs in conjunction with changes in the adjudication process have emphasized the importance of return to work. Gradually, the compensation systems have moved early return to work to the forefront of adjudication, prior to the payment of benefits. Consequently the issue is presented to the employer and the worker from the beginning of lost time. The shift to wage loss compensation and 'deeming' (the reduction of a worker's wage loss benefits based on income which the WCB decides the worker could make in suitable work, whether or not that work is available) has lessened the Boards' interest in the long-term viability of retention options, hence the focus on early return to work in most enterprise retention policies.

Medical directors of a few large corporations played an early and significant role in opening corporate doors to job retention strategies for injured workers. In co-operation with the unions, comprehensive

programs have been developed. As indicated earlier, industrial unions have played an historic and current role in the development of comprehensive workplace job retention strategies, both as advocates for their injured members as well as partners in the process of developing and identifying programs and placements through joint committees and collective bargaining. In British Columbia, the sectoral association of employers in the forestry industry and the associated sectoral relationships with their unions led to the creation of the National Institute for Disability Management and Research (NIDMAR), a non-profit, independent labour/management joint initiative in disability management which has developed a six week curriculum to train disability managers.

External consultants have had a mixed impact. Growing numbers of physiotherapists, rehabilitation workers, ergonomists and others have made more readily available a wide range of services which can be used to provide medical and vocational rehabilitation programs and provide evaluations to identify possible workplace adaptations. These were discussed in earlier sections on external support services. On the negative side, however, the focus of the majority of for-profit providers has been 'claims management,' emphasizing strategies to reduce the incidence of WCB claims by appealing workers' claims and focusing on the revenue programs which give employers rebates.^{4, 5} This approach is considered by worker representatives, some WCB officials and appeal bodies to have had a detrimental impact on labour relations as well on the WCB funding mechanism and on the development of successful enterprise-level job-retention programs.

With the recent exception of British Columbia, which announced a labour policy strategy that includes accommodation of disabled people as one of its components, the government role in this area has been non-existent. Other external agencies, with which employers or unions can work to develop internal policies and plans, have been noted in Parts III and IV.

V.2 CO-ORDINATED RESPONSES TO DISABILITY

V.2.1 The development and prevalence of integrated disability management systems

There are very few integrated disability management systems within enterprises. Those that do exist are most likely to be found in very large employers, such as the forest industry.⁶ Moreover, the vast majority of workplaces which have any 'system' to provide return to work do so solely for employees who have made successful claims under the WCB and primarily only as early return to work or modified duty, although some larger corporations who self-insure for their employees' non-work related injuries and illnesses have integrated disability management within their own operations.

At a broader level, no inter-enterprise integrated systems are known to exist in Canada, other than the 'umbrella' framework created by Workers' Compensation Acts and Boards. The mechanism of injury, attachment to the labour market, and public/private divisions in funding all form bases for the disintegration of strategies, as opposed to integration. Also, as has been discussed in the previous sections, the potential for the framework to create integration may change from province to province. For example, Ontario's changing legislation will decrease the prospects for integration by devolving control to private enterprises.

V.2.2 The characteristic features of integrated disability management systems

For the very few enterprises that do provide an internally integrated approach, some characteristic features are: 1) the system applies regardless of the cause of the disability; 2) there are persons such as disability managers who are responsible for the program; 3) there is joint labour/management agreement on the program; 4) there is an independent dispute resolution procedure; 5) both short- and long-term accommodations can be made to the job; 6) there is a temporary modified work component to facilitate early return to work; 7) front line supervisors are given a vested interest in the success of the program; and 8) there is agreement with respect to acquisition and distribution of medical information with appropriate confidentiality and informed consent policies.⁷

Coordination between departments is also a key feature in larger operations (large size being itself a key feature).⁸ In these cases, it is more likely than in smaller operations that a combination of medical, occupational safety and health, human resources, and managerial divisions, as well as union representation, exists in the first place. The maintenance of close contact between employer and employee has been noted to be an important factor in success, and may be more likely to occur where internal resources and allocations of responsibility exist to support it.

V.2.3 Prominent actors and influences in the initiation and development of integrated disability management systems

The development of integrated disability management systems has been idiosyncratic and highly dependent on individual corporate cultures. The only programs which have independent verification are joint union-management ones.⁹ Some larger non-union employers claim similar programs and success, but there has been no independent verification of their claims or way to compare their results.

Recently, non-profit organizations, some based in advocacy for injured workers, have turned their minds towards enterprise return to work strategies. Some government and corporate money has been available to allow the development of research and curriculum for comprehensive disability management. The most extensive is the British Columbia based NIDMAR's six week certificate program.

V.3 PRACTICAL PROGRAMS AND INTERVENTIONS IN THE WORKPLACE

V.3.1 Enterprise programs targeted at employees potentially absent from work because of disability

There is no generally collected data on the prevalence of enterprise programs. Employee Assistance Programs provide support primarily for workers with emotional and social problems to receive treatment without leaving or losing their jobs. These programs are found primarily in unionized workplaces because unions have been the most prominent actors in their development, and are more common in larger industrial enterprises.

V.3.2 Enterprise personal support programs

EAPs generally emphasize counselling and direct employees to services. None are known to provide personal care assistance, medical or therapeutic support, transport, or retraining at an internal level.

V.3.3 Enterprise-initiated programs to adjust the workplace and work-station

There is no publicly available data on the prevalence of these programs. There is anecdotal evidence that some companies, such as large automotive producers and pharmaceuticals manufacturers, which have experienced significant incidences of compensable musculoskeletal and repetitive strain injuries, have hired ergonomists to assist in the redesign of workstations. The redesign of cash register stands in some larger grocery store chains is another case in point. However, these are frequently initiated to decrease lost-time costs rather than specifically to benefit newly disabled employees, although they may have spill-over benefits for them. Along similar lines, many of these innovations have also been associated with significant reductions in the workforce, including opportunities for disabled workers, as a result of the new technology. Thus the impact on the population of new disabled workers is unknown and very likely mixed.

V.3.4 Enterprise initiatives aimed at co-workers

While there would be little dispute that the idea of co-worker education is very important, there is no evidence of programming to encourage support from co-workers or other staff. Collective agreements provide some education, in that collective agreements are voted on by all the workers in the bargaining unit. Many management initiatives around team management, however, create competitive environments, e.g. by awarding safety prizes to teams or departments having the fewest lost-time injuries; these have the paradoxical effect of leading to negative impacts on newly disabled workers. Injured workers' groups and organizations of persons with disabilities have produced some materials and organized community forums. Some employers have been interested in the 'Speakers Bureau' where injured workers are brought into the workplace to talk about their injury and its consequences to employees. However, there are no formally recognized initiatives in the area, thus identifying the lack of any common forums to discuss what is adequate return to work.

V.3.5 Evidence of outcomes of practical programs and interventions in the workplace

Some recent research has compared three British Columbia worksites utilizing the NIDMAR disability management approach (see V.1.2) to document substantial benefits to disabled workers.¹¹ The study looked at a pulp and paper mill, a saw mill and B.C. Hydro, the provincial electric utility. It also included case examples of experiences of particular injured workers, interviews with labour, management and government, and a literature review of disability management practices and outcomes of different countries.

Although other research on the effectiveness of programs is generally lacking, the Institut de Recherche en Santé et en Sécurité du Travail du Québec (IRSST) and the Institute for Work & Health (IWH), both funded primarily by the workers' compensation systems in their respective provinces, have begun systematic collection and analysis of primary and secondary data. These developments suggest the possibility of eventually developing an informational data base for integrating, promoting and evaluating the success of enterprise strategies.

V.4 WORK ACCOMMODATIONS

V.4.1 Schemes initiated by enterprises to adapt working hours and work demands

In order to facilitate early return to work, some enterprises have been open to providing programs which allow the worker to return to full employment gradually, either by reducing the number of work hours initially or by reducing the tasks. The expectation is that, over a period of time, the worker will return to full capacity and to regular hours and duty. WCB or the insurer can supplement the reduced wages that often result. Longer-term or permanent modifications are less common.

The principal incentive of this practice for the enterprise has been experience rating, because the early return to work translates into reduced benefit pay out and therefore reduced premiums. The impact on workers is less clear. The gradual return to work has been seen as positive, because it accommodates the worker's need to cope with disability and previously being away from work. It is the long-term consequences that are less clear, i.e. when the worker cannot return to full capacity or the WCB or insurer is unwilling to subsidize lower wages.

V.5 'RETURN TO WORK' PROGRAMS

V.5.1 Enterprise-led 'return to work' programs targeted at employees absent from work because of disability

The vast majority of enterprise-based programs are for early 'return to work' because of the financial incentives provided by WCB. Their prevalence is not known..

Several public corporations and entities have implemented programs, such as the City of Toronto, BC Hydro, and others. As was noted already (see III.1.1), the future of the City of Toronto's program is currently tenuous, due to recent legislative changes. Specific primary data on its past outcomes is available though not gathered, but the program is noted, in secondary sources, to have achieved a high level of success.¹⁰ The Ontario Hospital Association's Women's Directorate and the Ontario Ministry of Health also funded a Physical Demands Analysis Project in the early 1990s, under the impetus of the province's then Employment Equity legislation (which was repealed by the current government). The study was spearheaded by the Mississauga Hospital's Occupational Health Services Department's Well Back Program. The results were then made available to all Ontario hospitals wishing to use them as the basis

for a variety of initiatives, including injury prevention, disability management and return to work strategies.¹²

Under the Canadian Constitution Act, 1867, the provinces have exclusive jurisdiction over non-renewable natural resources, such as forestry and electrical energy. Enterprise-level organization and ownership of these have been mixed public and private. In British Columbia, as in other provinces, hydro has been a provincial crown corporation, and data regarding the development and outcomes of its return to work program is thus available, and forms the basis of the following.¹³ BC Hydro's manager of Health and Safety reported in 1993 that medically-related absences were growing, with an annual cost of approximately \$15 million. In June 1994, a bi-partite Return to Work Group was formed, and an official Return to Work Program was launched that November.

Most private-sector information about programs is proprietary, or simply too fragmented at this time to be gathered. As a result, no secondary data evaluating private-sector programs has not been identified, except for one case study.¹⁴ Furthermore, this case is not unique to Canada, since it involves Weyerhaeuser Company, a forest products company with operations in 42 US states and 3 Canadian provinces. (This highlights the potential impact of trade agreements on national- and enterprise-level disability management strategies.) Weyerhaeuser has been self-insured since the 1950s, but used primarily external services for its compensation programs until the early 1980s, when rising costs led it to establish regional claims offices that developed 'modified duty or light duty assignments' for injured workers.¹⁵ The mandate was broadened to return to work programs in the early 1990s, and a Transitional Return to Work Program was developed.

V.5.2 Components and outcomes of enterprise-led 'return to work' programs

Most programs provide short-term modified work to encourage early return to work. There is anecdotal evidence to suggest that these programs range from simply bringing the worker back to the workplace to sit in an office/lunch room, to more appropriate modifications. These may range from reassignment to 'light duty' jobs or adjustments to the pre-accident jobs with heavier tasks off-loaded to healthy co-workers. Relatively few firms provide long-term accommodations for permanently disabled workers.

Evidence of outcomes is sketchy, though some is presented below. In general, there have been marked decreases in claims costs for employers because experience rating programs do provide rebates to employers who reduce the duration of their claims. The benefits to workers are less well marked because of the lack of follow-up in evaluations. Workers with musculoskeletal and repetitive strain injuries are known to have higher risks for recurrences of their disability with consequent challenges to their employability. Anecdotally, recurrences seem to occur more frequently and earlier with aggressive return to work programs with less income support for subsequent lost time and eventually the worker is forced to leave when the workplace runs out of accommodations.

The most positive results have been in programs where there is joint labour/management agreement, and a person responsible for the successful delivery of the program. There is a conflict for management between participation and the perverse outcomes related to experience rating, where opposing worker

entitlement can be rewarded with lower premium costs, even if the worker is ultimately successful. In the meantime, return to work is severely compromised.

BC Hydro's Return to Work Program is open to anyone on medical disability, regardless of union affiliation or the mechanism of illness or injury. Each case is managed by a team consisting of the employee, the treating physician, the employee's supervisor or manager, rehabilitation treatment providers, a Human Resources representative, and the Occupational Safety and Health Coordinator (who identifies workplace factors). If needed, a Return to Work Facilitator also becomes involved, acting much like a case manager. Program evaluation after the first 15 months revealed the following changes:¹⁶

| | 1995 | 1996 |
|---|--------------|-------------------|
| Total number of sick days | 2,732 | 2,573 |
| Number of days off long-term disability income continuance. | 1,083 | 934 |
| Workers' compensation premiums. | X (baseline) | X minus \$700,000 |
| Absences lasting longer than 10 days. | 82 | 52 |

It must be noted, of course, that neither the statistical significance of these figures nor their relationship to the Program itself has been analyzed.

It is unclear from the literature what the specific components of the Weyerhaeuser Company's Transitional Return to Work Program are.¹⁷ Its outcomes have been as follows:

- a decline of 18 per cent in workers' compensation claims from 1994 to 1995, resulting in WCB premium reductions of more than \$5 million;
- a 24 per cent reduction in lost workdays that has been attributed directly to the program; and
- a 6 per cent decrease in the lost-time incident rate from 0.86 per 100 employees in 1995 to 0.81 per 100 employees in 1996.¹⁸

V.6 MOST PROMINENT STRATEGIES

The most prominent strategies are those which are built around:

- 1) response to financial incentives and regulations;
- 2) a represented workforce;
- 3) joint labour/management co-operation on the issue; and
- 4) improvements in service with development of not-for-profit interventions.

V.7 DEFINITION AND ASSESSMENT OF DISABILITY

V.7.1 The effect of perceptions of 'disability' on enterprise job retention programs

Generally, there are higher rates of unemployment amongst persons with disabilities than amongst those without. Additionally, persons whose disabilities are non-visible and non-traumatic seem to have unique, compounded difficulties gaining credibility in the workplace. There is much higher employer distrust of them and worker frustration amongst them. Review of pertinent legislation (Workers' Compensation Acts, automobile policies, extended benefits policies, and social assistance policies) reveals the contentious nature of defining compensable disability. As was noted in Part III, Ontario's social assistance plan was recently revised so that substance dependence no longer qualifies as a form of disability, and the provincial auto policy was revised to severely restrict benefits for all those whose injuries are not 'catastrophic,' which is further narrowly defined to mean nearly total incapacitation. And, under the incoming *Workplace Safety and Insurance Act, 1996*, limitations have been put in place on claims for mental stress or chronic pain.¹⁹

Many musculoskeletal and repetitive strain (as known as cumulative trauma) injuries are not accidental but cumulative. However, the very process of reporting a claim appears more straightforward when an 'incident' or 'accident' has occurred. The most persistent disabling feature in many musculoskeletal diagnoses is pain, which is considered 'subjective' and therefore more under 'voluntary' control. Accommodation is made more difficult because it requires change in organizational climate or culture as well as equipment changes.

The designation 'work-related' is often crucial for a disabled person's job retention because it determines the availability of financial incentives for the employer, which in turn often triggers the retention program. The increased adversarial nature of worker's compensation brought on by experience rating and for-profit consultants' 'claims management' strategies has also adversely affected the development of retention strategies by employers.

V.7.2 The effect of procedures for assessing disability at work on access to enterprise job retention and 'return to work' programs

The most prevalent tool for assessing disability at work is the functional abilities assessment (FAE), which involves a medical assessment of the disabled person with a view to establishing restrictions or limitations in function. Jobs are then matched through an evaluation of the physical demands of the available job.

There are few standards and less research about the effectiveness of this method.²⁰ FAEs are too frequently subjective judgements by treating personnel independently of accurate documentation about the work risks; information about most workplace physical demands is incomplete, static and disconnected from the actual workplace process.

While efforts have been made to come up with more 'objective' FAE measurement tools, and some providers do recognize the need to assess the actual workplace, not only for equipment but also for organizational issues, a great deal of research is still required to develop adequate measures in this area.

V.8 INTERNAL RELATIONSHIPS

V.8.1 Effects of the relationship between actors within the enterprise on strategies to promote job retention

There is anecdotal evidence that, unless those responsible for the day-to-day operation of the enterprise have a defined interest in job retention by disabled workers, they will seek ways to avoid that responsibility because of the negative effect on productivity requirements. There are fewer and fewer 'light duty' opportunities where the reduced productivity of the disabled worker does not have an impact on the 'bottom line'.

Co-workers are often resistant to accommodation if it overrides seniority provisions in collective agreements and involves 'bumping' (or taking the place of) a healthy worker. In workplaces, a 'hierarchy' of preferred jobs develops, which can be taken advantage of later in life with accumulated seniority, in order to reduce workload. Where accommodation involves identifying particular jobs as exclusive to injured workers, resistance and resentment develops. However, the general restructuring of workplaces is eliminating many of these jobs in any event since very few, if any, enterprises consider the impacts of workplace restructuring on disabled workers' job retention.

V.8.2 Effects of recruitment and remuneration practices on job retention

As support programs, such as workers' compensation, cut back on the range of services they provide and try to tailor program costs more and more to the individual workplace, there are increasing disincentives on employers to hire persons with disabilities, especially those with musculoskeletal problems and repetitive strain injuries. Collective liability, which was the basis for workers' compensation for decades, has been all but abandoned in many jurisdictions, reducing the capacity of the WCB to distribute costs throughout the industry. Claims costs are now subject to competition through experience rating. In the absence of insurance or WCB payments, enterprises are reluctant to provide income maintenance for a disabled worker who can only return to work at a job with a lower paying rate.

There is widespread concern among worker advocates and unions that, because early return to work disconnects the injured worker from the WCB or insurance provider, particularly with the introduction of new workers' compensation legislation in Ontario,²¹ subsequent recurrence and job deterioration are not being addressed. The absence of regulation or financial incentive on the employer after the point of initial return may be contributing to job deterioration and loss for permanently injured workers downstream, as identified in previously mentioned studies.²²

V.8.3 Opportunities for and obstacles to internal job retention measures

Larger, more complex enterprises have examined the internal barriers to job retention strategies, as indicated in V.8.1 above. Corporate responses have varied, but include departmental responsibility for job retention, i.e. the department is responsible for accommodating the workers who become disabled in that department. However, continuous corporate restructuring seems to be reducing options more and more.

V.9 LINKS WITH EMPLOYMENT POLICY OBLIGATIONS, RECOMMENDATIONS AND INCENTIVES

V.9.1 Enterprise compliance with disability employment obligations and agreements

There are very few disability employment obligations with which compliance is required, and then only following an application from an individual worker and subject to a number of restrictions. Moreover, there is little documentation of this area, but widespread anecdotal comment. Many injured workers' organizations claim that the dominant response of employers to experience rating has been adversarial, with the focus on fighting claims rather than accommodating disability. Return to work programs are seen as very temporary at best, lasting a few days until production demands require the worker to either return to regular duty or quit. WCB enforcement is limited and haphazard, and often institutionally satisfied by a phone call to the employer only. A survey on vocational rehabilitation and re-employment by the Canadian Injured Workers Alliance claims a 70 per cent unemployment rate among injured workers with permanent disabilities.²³

Because there is no routine follow-up, it is impossible, except anecdotally, to determine how systemic these problems are. However, we do have research that strongly suggests that initial return to work is not a good indicator of success.²⁴

There is little evidence of significant accommodation.

V.9.2 Congruence between enterprise strategies and external practice recommendations and standards

The only independent evaluations of compliance with an external standard is the study which was carried out of six workplaces in the forest products industry in British Columbia. Each of these workplaces had participated in the NIDMAR curriculum. The independent evaluation looked at whether implementation of the disability management program based on the curriculum had been successful.²⁵

V.10 ENTERPRISE STRATEGIES AND BENEFIT/COMPENSATION PROGRAMS

V.10.1 Opportunities for disabled employees to join, self-fund or top-up workplace health benefits and pension plans

Some statutes require an enterprise to continue employer contributions to the worker's private insurance or pension scheme for a specific period after an accident or until the worker returns to work. If the scheme requires worker as well as employer contributions, the worker must continue his or her contributions as well. Insofar as the scheme addresses disability, most private insurance schemes explicitly exclude coverage for work-related injuries or illnesses.

In a few workplaces, mostly in the public sector, unions have been able to bargain a top-up to pre-accident wages for injured members, at least while they are on temporary disability benefits. However, this has been outlawed in at least two provinces.

The law does not permit disabled workers to claim eligibility for more than one public program (e.g. CPPD or EI) at the same time.

Public programs allow contributions only from employed people, so there is no possibility for unemployed disabled people to join, self-fund or top up.

V.11 LINKS WITH EMPLOYMENT SUPPORT AND REHABILITATION SERVICES

V.11.1 Enterprise responses to externally funded support and advisory services

Some employers take advantage of externally provided resources; others do not. Corporate culture seems to be the determining feature. The competition between external providers without any common standards or regulations makes choice very difficult and often expensive.

V.11.2 Co-funding and partnership between enterprises and other agencies

Partnerships between enterprises and other agencies have had a limited impact on job retention at the enterprise level. Specific examples in a recent research project in Sherbrooke, Quebec²⁶ and British Columbia²⁷ stand as exceptions to the rule.

V.11.3 Opportunities and barriers to effective co-ordination of external support services and enterprise programs

Dramatic regulatory shifts have increased the focus on return to work but the absence of independent research and research-supported standards makes it very difficult to choose a provider. Furthermore, since

most regulatory change is currently being accomplished without the support or agreement of organized labour, the short-term prospects of effective co-ordination are questionable.

V.11.4 Opportunities for and barriers to disabled workers' co-ordination of their workplace support

In Canadian law, the organization of work is the exclusive prerogative of management, subject only to collective agreements with unions and the right of the worker, whether disabled or healthy, to refuse unsafe work. In the absence of regulations or a union contract, the disabled worker's ability to co-ordinate workplace support is dependent on the largesse of his or her employer or the applicability of the Human Rights Code. Most Human Rights complaints take years to resolve and seldom result in job retention. Compensation is a more likely result. Recent decisions under collective agreements confirm the right of the arbitrator to address discrimination as an issue opening possibilities in unionized workplaces through negotiation.

*Workers with Disabilities Project - Accommodation and Partnership Program*²⁸

This program trains disabled workers to 'drive' their own services. The program notes the value of empowering workers to negotiate with decision-makers for assistance; this self-directed approach was useful in job searches, return to work efforts and a variety of service situations. The series of training sessions began in January 1997 and offers fourteen modules, at no cost, to individuals with long-term health problems and disabilities who want to learn about accommodation.

At November 1997, the results for graduates of five courses (n=51) indicate that 62 per cent who were seeking accommodated work did secure jobs; 13 per cent found active self-employment and 10 per cent reported that they are established workers in mainstream workplaces and maintained employment while completing the course. Furthermore, 27 per cent of graduates applied for mainstream, non-segregated vocational/educational/training courses and secured admission. There is a plan to offer the course modules via the Internet.

V.12 LINKS WITH SERVICES FOR ADAPTATION OF WORK AND WORKPLACE

V.12.1 Enterprise response to external services to undertake adaptations

The principal issues are costs and savings. Long-term relationships between an enterprise and one external provider are rare. Most relationships at present are ad hoc.

V.12.2 The match between available services and user requirements

In the absence of personnel within an enterprise whose job and training are to co-ordinate services, the response is idiosyncratic. Availability of assistance directly from Boards is shrinking with cost-cutting and privatization.

APPENDIX

Workplace Safety and Insurance Act (Ontario)

Bill 99 was enacted in October 1997 as the Workplace Safety and Insurance Act. The Workers' Compensation Act was simultaneously repealed. The new Act was implemented on January 1, 1998. The aim of the new Act was to refocus the system towards the prevention of workplace injury and illness, restore the financial viability of the system, refocus the system as a workplace insurance plan, and get injured workers back to work in a safe and timely manner.¹

Among the provisions of the Act are:

- The new Workplace Safety and Insurance Board's mandate is expanded to include the prevention of workplace injury and disease, and the promotion of health and safety.
- A reduction in the level of benefits from 90 to 85 per cent of pre-injury net average earnings (applying only to injury and illness that occur after January 1, 1998). This will serve both to restore the system's financial viability and encourage return to work.
- To ensure benefits are provided only for injury and illness caused by work, no benefits will be provided for chronic mental stress. Compensation will continue for chronic pain, while an independent scientific study into chronic pain is commissioned by the Board.
- Workers must apply for benefits within six months of the date of injury and consent to the release of information to the employer about the worker's functional abilities and limitations at different points after the injury. This is to help the workplace parties to co-operate in return to work.
- Workers and employers must make and maintain contact during the recovery period and co-operate in return to work efforts. Employers must attempt to identify suitable employment at the workplace that is consistent with the worker's functional abilities and, when possible, restore the worker's pre-injury earnings. Workers must co-operate in health care and other return to work measures required by the Board (now renamed the Workplace Safety and Insurance Board). These obligations will take effect on July 1, 1998.
- Injured workers who are unable to return to work with their accident employer, will be assessed for a labour market re-entry plan. This plan is designed to help workers re-enter the labour market and reduce the loss of earnings due to the injury.
- The Board will promote workplace self-reliance in preventing injuries and illnesses, and will assume a guiding and facilitating role, to monitor, mediate and resolve disputes in the return to work process.

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1. Alina Gildiner contacted the Canadian Council for Rehabilitation and Work, the Institute for Work and Health, the Human Factors Association of Canada, and Brock University's Industrial Technology Assistance Program. None of these organizations or individuals were able to provide data regarding many of the questions in this section, particularly those that attempt to link interventions to policy, or quantify availability, allocations, outcomes, and the like. Telephone interviews were conducted with the following individuals: Janet Lynch, President, Human Factors Solutions, Inc., Toronto, Ontario, Canada, (416-535-6960); Bruce Matthews, President, Human Factors Association of Canada, Malton, Ontario (905-567-7193) and President, BGM Human Factors Engineering, Toronto, Ontario (416-798-2139); and Tony Strifler, Industrial Technology Assistant (National Research Council, Industrial Research Assistance Program), Brock University,

St. Catherines, Ontario (905-688-5550, ext. 4208). Mr. Matthews stated that he was unaware of any literature that addressed issues of need, demand for, or utilization of these services, nor of any literature that looked at the relationship of services to policies and programs. The majority of the literature in the field is technical in nature, he said. This was corroborated by literature searches of HealthSTAR and Social Science Abstracts, ranging from 1991 up to October 1997. The keywords disability, modification, work, workplace, and adaptation were used in various combinations and no directly relevant articles were found, certainly none addressing the Canadian context.

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