

Disability and Work: the Legal Landscape

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Outline

- Key models of legal regimes
- What's worked and what hasn't worked in legal and policy responses to disability and work in Canada
- Disconnects between legal regimes
- Key opportunities to move forward

Models of legal regimes in Canada and abroad

- Key models of legal regimes in Canada
 - No-fault compensation (work, motor vehicle)
 - Support for supplementary costs related to disability
 - Employment Insurance
 - CPP/QPP
 - Means tested support
 - Human rights legislation
- Disability public insurance system in the Netherlands
- Quota systems in France and other European countries

What's worked to some extent?

- What's worked
 - No-fault systems replace tort law and provide significant economic support
 - Systems include economic incentives for the compensation authority and sometimes employers to invest in rehabilitation and labour market entry (re-entry)
- Workers' compensation
 - All provinces and territories
- No fault automobile insurance
 - Québec, Manitoba

What hasn't worked?

- Low wages earners in no-fault systems have little return-to-work support
 - Except for children in no-fault motor vehicle coverage
- Many workers fall through the cracks in workers' compensation systems
- In Canada, all the other systems (CPP/QPP, ODSP and EI) provide inadequate economic support which maintains people with disabilities in poverty, and employers are not at the table.

What hasn't worked?

- Experience rating in workers' compensation systems places an economic incentive on employers to bring injured workers back to work
 - Provides an incentive to weed out potentially vulnerable workers before they are injured and to avoid hiring potentially vulnerable workers including workers with pre-existing disabilities
- Anti-discrimination legislation is a complaints based system with little if any economic incentives designed to prevent discriminatory hiring practices or discrimination for reasons of disability (varies between provinces)

What else hasn't worked: Salary insurance

- Provides a safety net for workers who are eligible but many workers have no insurance in their workplaces, particularly if they are precariously employed.
 - Temporary
 - Working for a small business
 - Self-employed
- If employers' premiums are based on claims data this provides an incentive to filter out vulnerable workers, including previously injured workers, workers with invisible injuries such as mental health problems or MSK injuries

Our current system makes a great business case for discrimination



Disconnects between legal regimes

- ❑ Workers' compensation
 - ❑ Economic drivers of return to work also serve as economic drivers to exclude people with disabilities from the workplace
 - ❑ Right to return to work varies between provinces
 - ❑ Precariously employed not well protected
 - ❑ Drives precarious employment and people with disabilities often relegated to precarious employment.
- ❑ Human rights legislation
 - ❑ Complaints based system with little or no economic sanction for violation of prohibition to discriminate
 - ❑ Unionised workers have more support than non unionized
- ❑ CPP/QPP/ODSP/benefits of last resort
 - ❑ Eligibility requires a degree of disability that makes it difficult to attempt to return to work without fear of loss of benefits-disincentive to try

Two-tiered system: technical aids

- No-fault systems provide excellent support for technical aides and non-economic supports
- Outside of no-fault systems quality of non-economic supports are variable

Key opportunities going forward

- Provide real incentives to reduce discrimination at time of hiring
- Dismantle economic incentives that promote discrimination.
- Review policies to eliminate rules that punish claimants for making attempts to work
- Quota system?
- Provide real economic support for people with disabilities
 - Public salary insurance regardless of the cause of the disability
 - Universal support for supplementary costs related to disability

Which society do we prefer?

