



Labour Market Re – Entry and The Injured Worker - A Paradigm Shift An Editorial Perspective

By Peter N. Sholdas*

In the eyes of some injured workers the concept or idea of “getting retrained” triggers an unexplainable fear or an intolerable level of anxiety.

Why such an overwhelming feeling of helplessness on the part of the worker in getting retrained into a new occupation? For many, the answer lies in the uncomfortable thought of returning to a classroom setting, which may represent feelings of humility and great uncertainty with respect to their remaining years in the workforce.

This article will attempt to capture a shift in paradigms in what the WSIB once termed “vocational rehabilitation” to what was more commonly known as Labour Market Re-Entry and a shift to what the WSIB most recently (as of December 1, 2010) terms “work reintegration” and its impacts on the injured population. This article is not a step by step manual of the mechanics of how Labour Market Re-Entry is administered but instead provides a critical analysis of the impact the WSIB decision makers in this area have on the injured worker population in general and some of the inherent contradictions which lie within. From here on in the article will refer to the abbreviated formats for both Vocational Rehabilitation (VR) and Labour Market Re-Entry (LMR).

It has always been the intention of the VR case worker as it was once termed to maximize the earnings potential of an injured worker by providing those with the skills and aptitudes to retrain at almost anything so long as it brought them as close to their pre – injury earnings as possible. This quite often meant extensive lengthy training for those high wage earners who qualified for it and for some others more than one plan to reflect and accommodate for the inconsistencies and mistakes along the way. This led to years of VR training for some workers with literally no end in sight thus adding to highly inflated compensation costs along the way. the end result for many – still no job at the end of the school program and for the really lucky ones remarkably (after years spent in a classroom setting) a wage loss benefit payable till age 65.

What would help to explain the millions of compensation dollars spent in VR training while in some cases, very little to show in terms of re – employment. Was / is there some way to regulate the way in which these programs were administered and their associated costs in order to minimize the catastrophic effects on the compensation system in general?

The introduction of Bill 99 in 1997 revealed a dramatic shift to the way in which WSIB training programs were administered by “outsourcing” this part of the job to Disability Management / Vocational firms which specialized in this area . The anticipated end result : private Labour Market Re – entry Consultants assisting injured workers in the development of specific individualized Rehabilitation

training plans designed to maximize ones training potential while mitigating the loss of earnings caused by the injury . The WSIB decision makers relied on who they felt were the “ Vocational Specialists “ as the ones better equipped to assist injured workers by developing Individualized training plans best suited to each ones skill sets. In theory what would seem like a very logical progression turned out to be for the most part an exercise in futility where the opinions expressed by the “Specialist“ were at times ignored or bypassed by the decision makers themselves and / or in some cases tailored to the specifics of the case manager for avoiding the prolongation of LOE benefits in some cases.

There exist countless examples of injured workers quite capable and willing (in terms of IQ and Aptitude) to participate in retraining programs designed to restore their earnings capacity who’s end goals were instead thwarted in favor of limited training in a direct entry capacity. Some, unfortunately not even provided with even the most basic of literacy skills designed to pursue direct entry type jobs. The end result: First, non properly trained injured clients expected to pursue employment opportunities with little or no skill sets while suffering a dramatic decrease in their Loss Of Earnings benefits as a result. Second, a back log in the appeals process leading to untimely delays in having workers appeals heard.

As a practitioner in the field the question which remains unanswered is why a fundamental shift from the original mandate of maximizing the earnings potential of the client by providing them with an appropriate designed towards re – employment? When did the WSIB change its philosophy with respect to allowing these clients to be active participants in identifying SEB (Suitable Employment or Business) options designed to help them come close to what they were earning before?

These questions and many others display unfortunately the inconsistencies in applying policies and procedures at an operational level. These service providers who spend countless hours in working with the clients in trying to develop an appropriate training venue who submit costly plan proposals only to have their efforts thwarted in favour of something less time consuming and in many cases substituting the true interests of the client while not maximizing their potential .What was the purpose then of the so called “vocational expert” in providing their recommendations in the first place?

As a practitioner of 15 plus years in this field I am convinced that there has occurred a shift in the Boards “agenda” if you like with intense scrutiny surrounding the duration and in some cases the prolongation of LOE benefits while in training programs and the subsequent wage loss paid to clients. In terms of statistical data, the 2004 WSIB Annual Report cited all LMR benefit costs paid in 2004 was 194 million compared to 157 million in 2003 representing a 23.6% increase from the previous year. Furthermore, out of the reported 5 different benefit types paid in 2004 LMR program costs represent 23.6% (the highest) of all benefits paid with the next highest being Health Care benefits at 15.8 %.

In many cases, this has led to the Case Manger applying their own subjective criteria while at times ignoring objective data pertaining to learning potential in minimizing the training provided to the worker while attempting to mitigate where possible the Loss Of Earnings caused by the injury. The end result, much shorter training programs where the workers learning potential is in fact not maximized leading to under employment.

As of December 1 / 2010 the WSIB has introduced what is now termed “Work Reintegration Policies (formerly known as Labour Market Re-entry) is attempting to once again re-define the manner in which the WSIB allows injured clients to reintegrate back into the work force.

Inherent to this new approach appears to be a focus on the “injured worker “ as being an active participant in identifying a SO (suitable occupation) which maximizes existing skills interests and aptitudes in restoring pre – injury earnings capacity the 2 prior approaches (what was known as Voc Rehab and LMR) seemed to adhere to similar mandates in theory however in practice a different set of subjective rules was applied by the decision maker in some cases.

In reviewing this new set of policies there exists an inherent contradiction from the outset. Later in the policy it reads that this new approach will reintegrate workers into suitable, available and sustainable work all within a reasonable cost structure. While generally plans will not exceed 3 years in duration. Having said this, the question then becomes how does this new approach deal with the high wage earner whose aptitudinal skills deem him or her capable of a lengthy training program geared towards maximization of earnings potential? It remains to be seen whether or not the WSIB decision makers (under this new model) will revert back to old patterns in simply setting out a plan which appears realistic allowing for minimal training leading to in some cases a substantial wage loss benefit paid to the injured worker or will they stand behind their mandate by providing the client with what they term “input and choice” into their futures.

Given the host of factors discussed previously (surrounding the costs associated with outsourcing and LMR training) this new “in house” model or work reintegration approach will in my opinion, likely continue with a “shift” already in place. Lengthy vocational training programs remain a thing of the past substituted instead for a much more cost effective streamlined approach in assisting injured workers to return to the workforce.

**Peter N. Sholdas, Licensed Paralegal, Sholdas & Associates Advocacy & Mediation Services*