

May 30<sup>th</sup>, 2007

Cristina Campanelli, Senior Prevention Programme  
Specialist, Prevention Division,  
Workers' Compensation Board (WSIB)  
200 Front St. West,  
11<sup>th</sup> Floor  
Toronto, Ontario  
M5V 3J1

Dear Ms Campanelli,

Re: Consultation on Accreditation for Ontario Workplaces

Thankyou for the opportunity to comment on the Board's important initiative on accreditation for workplace health and safety. Please find our submission attached.

We hope that our submissions will be of assistance in formulating a plan which will provide an effective tool to improve the health and safety environment of Ontario's workplaces.

We are concerned that the plan focuses on effective goals and measures. We are pleased that accreditation, if planned well, provides some opportunity to re-direct the use of experience rating incentives.

We look forward to any further opportunities to consult on this initiative.

Yours Sincerely,

**INJURED WORKERS' CONSULTANTS**

per:

Marion Endicott

## **Consultation on Accreditation for Ontario Workplaces**

Injured Workers' Consultants Community Legal Clinic has worked with injured workers for over 35 years and has had a long-standing interest in improvements to workplace health and safety. It is our view that a separate agency, which works in conjunction with the WCB/WSIB, would likely be a better forum to achieve these improvements than the Bill 99 emphasis on health and safety promotion at the Board. This emphasis, while on a critically important area of work, diverts the Board's attention from its main purpose to provide support, programmes, benefits, and services to those who have unfortunately suffered workplace injury or illness and sometimes death. Regardless of our view, Bill 99 does provide a strong mandate for the WCB/WSIB to prevent and reduce the occurrence of workplace injuries and occupational diseases.

An accreditation process is specifically mentioned in the Act as one of the means of achieving this objective and it is a concept which we have joined with others in promoting as containing potential to truly influence positive developments in workplace health and safety, in contrast to the experience rating systems.

We are pleased to take the opportunity to respond to the Board's consultation on accreditation.

We would like to focus on four main points in regard to the programme design:

1. The goal of the programme
2. The means for achieving the goal.
3. The means of measuring the results.
4. The relationship of the programme to experience rating programmes.

### **The goal of the programme.**

#### Improving the conditions of work.

To justify the expenditure of significant resources of time and money on the new programme, we must all be satisfied that the programme will have a clear goal of significantly improving the conditions of work which will lead to healthier and safer workplace environments.

Conditions-of-work includes many components, including for example, the nature, manner and pace of production, the maintenance and proper use of equipment, the relationships at the workplace, the nature and degree of training and retained knowledge, and the functioning level of policies, practices, committees, and other systems designed to ensure that workers will not be hurt or made sick by their employment.

Having the correct articulation of the goal is key to success of the programme.

The concept of the programme as presented in the consultation paper at present runs the risk of having “the reduction and elimination of workplace injuries and illness” as its goal. While it may seem odd, on the surface, not to have this as the stated goal, the serious flaw is that such a goal leads to measurement of the wrong outcomes.

It is a well-know maxim that “what gets measured, gets managed.” We already know that there is a major private claims management system in existence in Ontario with a multitude of companies that offer their services to employers to specifically reduce the lost-time injury rate through claims management. The process involved is not one of injury reduction, but statistically there is an appearance of improvement. We take note that it is these very organisations which have come to the Board, as the Accreditation Working Group (AWG), to put forward the accreditation idea.

The AWG’s recommendations are included in the consultation paper at p.22 and include two recommendations that speak to this point.

- “That the accredited companies be eligible to receive additional meaningful recognition based on actual trailing indicator performance levels”
- “That a detailed audit process be developed by the WSIB with stakeholder input and to determine in part what, **if any**, H&S performance metrics will be considered in the audit process.” (our highlight)

It is fascinating to read an apparently serious articulation that a health and safety audit could do without a review of health and safety measures. However it serves to highlight the importance of getting the stated goal right so that indeed the right outcome will be measured.

Dr. Dov Zohar, of the Institute for Work and Health, Toronto, has produced a number of papers on the importance of developing and measuring a “safety climate” in the workplace. He explains: “Safety must be understood and measured as an ongoing process of safety-policy implementation across the organisational hierarchy. The current definition of safety as “Zero Injury” is misguided because it focuses on rare (hence delayed and uncertain) outcomes, rather than on the daily managerial exchanges that engender such outcomes.”<sup>1</sup>

#### Include the Precautionary Principle

Within an accreditation process, it would be expected that to be accredited, a company would need to achieve beyond what is simply required by law. An important component of the goal of improving conditions of work would inclusion of the “precautionary

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<sup>1</sup> “Safety Climate: A New Approach for Managing Occupational Health and Safety,” Executive Summary. Dov Zohar, Ph. D. Institute for Work and Health, Toronto. May 1<sup>st</sup>, 2004

principle” articulated so forcefully in the recently released final report of the SARS Commission lead by the late Justice Archie Campbell.<sup>2</sup>

Choosing the correct goal for the programme is critical to its success in improving workplace health and safety

Even if the vision of the WSIB/WCB is “the elimination of all workplace injuries and illnesses,” the goals of programmes to achieve that vision must be clearly stated within the objective context of the programme. This clarity will more surely lead to the Board’s vision.

**We urge that if an accreditation programme is developed, its goal should be clearly stated as: *To significantly improve the conditions of work which will lead to healthier and safer workplace environments.***

**The means for achieving the goal**

The accreditation process, if well designed, could be an important, highly successful tool to protect the workers of Ontario and to engender pride and leadership in health and safety of Ontario employers.

Mandatory participation

Participation in an accreditation programme should be mandatory for all workplaces. From an implementation perspective it can be introduced on a gradual basis. If the programme was not mandatory it would surely miss the mark of the WSIB/WCB’s mandate to prevent and reduce workplace injury and illness.

If the plan were to be designed for voluntary participation, specific non-entry rules should apply:

Non-entry rules:

- Any company not part of the accreditation programme would not be eligible to participate in any monetary reward programme based on claims experience.
- Any company not part of the accreditation programme would be designated for extra inspections by the Ministry of Labour to increase protection of the workers.

Develop an accreditation process which will deal with the actual conditions of work

The components of the plan need to ensure that it is the actual conditions of work which will be improved and measured. Although the development and review of a company’s written policies and procedures will need to be an aspect of the accreditation process, it will be the actual and sustained implementation of these documents which will be the more important measure of achievement. The details of well-known tragedy at the Westray Mine in Stellerton, Nova Scotia and the results of the commission afterwards,

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<sup>2</sup> “. . . that the precautionary principle, which states that action to reduce risk need not await scientific certainty, be expressly adopted as a guiding principle throughout Ontario’s public health and worker safety systems . . .” Spring of Fear. Justice Archie Campbell, Ontario. January 2007.

should be part of the “mind-set” in Ontario’s accreditation process. The commission reported in part:

*“Regardless of the theories, philosophies and procedures management espoused on paper, most notably in its employee handbook, it clearly rejected industry standards, provincial regulations, codes of safe practice and common sense in the Westray mine.*

*Instead, management, through its actions and attitudes, sent a different message—that Westray was to produce coal at the expense of worker safety . . .”<sup>3</sup>*

#### On-site assessments of conditions of work.

Whatever other measures the plan may contain, it must include thorough on-site audits by the compensation board (WSIB) with well-trained staff to assess the conditions of work. Section 135 (2) of the WSIA gives the Board strong authority to make undertake this work which needs to be exercised in the pursuit of its vision.

Section 135(2):

#### **Inspection of premises**

(2) The Board may enter into the establishment of an employer and the premises connected with the establishment for the following purposes:

1. To ascertain whether the ways, works, machinery or appliances in the establishment or on the premises are safe, adequate and sufficient.
2. To ascertain whether all proper precautions are being taken to prevent accidents to the workers employed in or about the establishment or premises.
3. To ascertain whether the safety appliances or safeguards required by law are used and employed in the establishment or on the premises.
4. For such other purpose as the Board considers necessary to determine the proportion in which the employer should make payments under this Act. 1997, c. 16, Sched. A, s. 135 (2).

#### Conditions for Accreditation require maintenance of high standards

The programme will need a clear statement of the components of what is required for accreditation status. Without going into details, it is our sense that to achieve the benefits of accredited status, a company would need to be achieving at the required standard (conditions of work assessed as providing significant protection of workers’ health and safety beyond what is required by law.) for a period of time (say three years) to be

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<sup>3</sup> The Westray Story: A Predictable Path to Disaster. Justice K. Peter Richard, Commissioner. November 1997.

accredited. Once accredited, follow up would be required from time to time to ensure maintenance of standards. Status can be revoked.

#### Levels of Achievement

It would make sense to have levels of achievement recognised within the programme which provide increasing benefit/or reduced sanction as progression is made. If the system is voluntary, then simply the fact of seeking participation could be noted positively.

#### Entry Contract

To make the process meaningful and measurable, as each company enters the accreditation process an individualised contract should be drawn up. The contract will be based on an inspection of the conditions of work, including the presence of a strong joint health and safety committee, and will review past evidence of the health and safety status of the company including, inspection results, fines, and awards as a starting point. Confidential conversation with workers regarding the actual current conditions of work and regard for health and safety will be important. If there is no union, particular care must be taken to get candid worker input and to do so without jeopardising their job.

The contract will set out the purpose, principles, rules, and specific goals of the process. It will provide stages of achievement.

In a non-unionised setting, the contract must provide means for meaningful worker involvement and clear directions that worker education includes the fundamental rights to know, to participate, and to refuse. It must protect workers involved in improving the conditions of work from employer sanctions.

The contract will set out in its rules that health and safety improvement must be achieved through improved conditions of work and expressly must not use employee safety-incentive plans. These incentive plans have been shown to frequently lead to hiding of claims or inappropriate reduction of lost-time.

#### Contract workers

In a workplace setting that uses contract workers, many practical problems arise for ensuring high health and safety standards. Consideration should be given to criteria for full accreditation regarding use of contract workers. Accreditation should not be given if contract workers are used, with some reasonable exceptions (not exceeding say 2% of the workforce at any given time.)

#### Use of experience rating to achieve the goal

If the company is in an experience rating programme (as all Sch 1 employers presently are) the contract will provide initial protection from surcharges (to allow the company to move from claims management to concrete health and safety improvement without fear of significant financial penalty.) It will also provide that no rebates will be granted until accreditation is achieved.

### Benefit

The most important benefit of a successful accreditation is the significantly improved protection of workers and the multitude of positive outcomes which directly lead from that. It would be a point of pride for us all if this social or moral motivation could be the basis for striving for accreditation.

Do employers need a financial incentive? Probably they do.

We have suggested that a key incentive can be to tie participation and progress to the experience rating incentives. We do not favour the Board's current experience rating programmes, based as they are on the trailing indicators of claim statistics which can be manipulated by employer behaviours not related to health and safety. However, if aligned with accreditation they could achieve a level of accountability which they do not have at present. Thus a significant financial incentive would be to relieve participants of surcharges, at least for a substantial period of time, on entry to the plan, and to provide access to rebates only after full accreditation is achieved.

Market-based motivators seem to make sense. This system is what is used in Europe and although we have not studied the matter, intuitively it seems to be a benefit that produces a logical outcome: companies that put the health and safety of their workers before profit (not just on paper, but in clearly established and scrutinized practice) will be rewarded with more business opportunities. This not only benefits the companies involved, but provides a means of making the issue more public, and to encourage others to follow suit.

### Monetary rewards not appropriate.

It is NOT appropriate to provide any additional monetary rewards than what is already provided by the experience rating system. If the experience rating system is cancelled, we would not be opposed to consideration of a monetary award such as providing a lower base premium for accredited firms. Merit rating based on inspection of the ways and means of manufacture has a long tradition in our compensation legislation and can be a reasonable award for excellence. We are opposed to experience rating, however as long as it exists no other financial incentive should exist for many reasons, including concerns for the financial health of the accident fund. It could also be easily seen as double-dipping by employers receiving double rewards from the same source for the same activity.

### Grants and Loans for improving conditions of work

Actually cancelling the experience rating system would provide significant resources (approximately \$250 Million/year) which could be used not only to improve benefits and services to injured workers, but could be used to fund the accreditation programme and additionally to provide loans and outright grants to companies to assist with capital costs or programme start-up funds involved in improving the conditions of work.

## **The means of measuring results**

Measuring results is an important aspect of the programme. A theme in our submission is the importance of, measuring the right thing, having significant work-site assessments (including a review of health and safety committee minutes and interviews with management and workers and injured workers) and using a contract with clear goals to mark achievement. We have also said that for a company to achieve accreditation the standard to be reached must go beyond what is required by law, have significant worker involvement, and needs to include the precautionary principle. This level of functioning should be maintained for a period of time, such as three years, before accreditation will be granted.

The assessments need to be conducted by specialised personnel of the WCB/WSIB

**There are two categories of performance which we strenuously object to having included in an accreditation programme:**

1. Performance measurement based on accident statistics, including statistics on the number of accidents and the duration of the claims.

These are trailing, after-the-fact, indicators and as the consultation paper correctly points out they are not sufficient to ensure good prevention practice. In our view, they are worse than “not sufficient.” If trailing indicators are used as a measure of success, the whole accreditation programme runs the risk of becoming yet another dubious endeavour which can divert attention AWAY from health and safety just as much as put attention to it.

2. Return to work programmes and achievements should not be part of an accreditation goal or measure.

The only exception to this would be to specifically investigate the health and safety aspects of any return to work programme. All aspects of workplace health and safety must be inspected and evaluated, including that of the already injured.

Other than the exception noted here, return to work issues do not belong in a health and safety programme. Both health and safety and return to work are very important issues, but they are very different issues. We are fully in favour of developing a programme which will enhance the employment prospects of injured workers and we welcome the opportunity to work with the Board to develop such a programme. We are completely opposed to trying to shoe-horn return to work into the accreditation programme.

On the basis of both of these objections we find the Alberta model of accreditation the least acceptable of the models outlined in the consultation paper.

## **Relationship to Experience Rating**

Our comments on the relationship of an accreditation programme are included in our comments on other aspects of the programme.

These comments include:

- The accreditation programme must take extreme care not to duplicate the weaknesses of the experience rating programme. Part of the solutions is to measure the workplace conditions, NOT claims statistics.
- Any company which is not in the accreditation programme should not be eligible to participate in experience rating programmes.
- An accredited company must not use employee safety incentive programmes.
- A company seeking to achieve accreditation will be protected from experience rating surcharges.
- No rebates will be given to a company which is not accredited.
- No additional monetary awards will be provided as long as the experience rating systems continue.
- Consideration should be given to cancelling the experience rating programmes and using the freed up funds (approximately \$250 Million/year) in part to fund the accreditation programme and to provide grants and loans to employers to achieve improvements in conditions of work.

## **Conclusion**

We believe that the WCB/WSIB has an excellent opportunity to improve workplace health and safety through an accreditation process. We also believe that the system can be easily flawed.

If the Board begins its programme development process with the recognition of the obstacles which need to be dealt with, the programme will likely be more successful. The difficulties presented by non-unionised workplaces and workplaces regularly using contract workers requires careful consideration. The involvement of employer consultants presents ongoing pressure to make the system susceptible to claims management rather than health and safety--careful articulation of the goals and measures of success will help to counter this effect.

We believe that the following points are fundamental to the success of an accreditation programme:

- The goal is something along the lines of: significant improvement of the conditions of work which will lead to healthier and safer workplace environments.
- It is the conditions of work which must be evaluated, improved, measured, and assessed.

- Health and safety improvement must **not** be mixed up with return-to-work improvement. Return-to-work should not be part of the accreditation programme.
- Experience rating, if it continues to be used, should be integrated into the accreditation programme to promote participation: specifically companies should be protected from surcharges until accreditation is reached on the one hand, and be ineligible for rebates until after accreditation is reached on the other.

Thankyou for the opportunity to comment on this important initiative. We will be pleased to take part in any further process to develop an accreditation programme which will make the workplaces of Ontario healthier and safer for us all.

Respectfully submitted on behalf of  
**INJURED WORKERS CONSULTANTS**  
by Marion Endicott

May 30th, 2007