

Injured Workers' Consultants

Representing injured workers free of charge since 1969

17 November 2008

Shafiq Qaadri, Chair
Standing Committee on Social Policy
Room 1405, Whitney Block
Queen's Park,
Toronto, Ontario
M7A 1A2

Dear Mr. Qaadri:

Re: Committee hearings on
Bill 119 - Workplace Safety and Insurance Amendment Act, 2008

Injured Workers' Consultants is a community legal aid clinic providing legal advice and representation to injured workers without charge since 1969. In addition to case by case representation, our mandate includes seeking improvement to the legislation and policy for the benefit of injured workers. We are very pleased to have the opportunity to make a submission on Bill 119.

Full coverage of all workers has been a fundamental principle of Ontario's workers' compensation system since the founding report of Sir William Meredith in 1913. In 1996, the Ontario government report of Minister Cam Jackson noted that Ontario was in an embarrassing last place regarding the percentage of the workforce covered by workers' compensation and recommended expanding coverage. The Ontario Workplace Safety and Insurance Board commissioned a study on this which concluded with the recommendation to expand coverage to all workers in Ontario. Bill 119 takes an important, but small first step towards this goal.

When you review the research that has been done to date as discussed below, we hope you will agree that there is no valid reason not to extend coverage to all workers. Even in the construction industry, the proposed exemption of workers doing home renovation is inconsistent with the principle behind the Bill. It is a vague and unprincipled exemption that will become a loophole that is costly and difficult to administer.

In the June 1996 Jackson Report, the previous government suggested that coverage could be expanded to include all workers in a mere 18 months (page 35).

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~ A Community Legal Aid Clinic ~

Justice delayed is justice denied and we see no basis for the long delay in implementation proposed for Bill 119, which deals with a much small number of workers.

The 1913 Meredith Commission Report – Fundamental Principles

Ontario's workers' compensation system, and indeed every province's workers' compensation system is based on the fundamental principles established by a Royal Commission on Laws Relating to the Liability of Employers headed by the Hon. Sir William Meredith, Chief Justice of Ontario. In his final report, published in 1913, he recommended certain fundamental principles that were subsequently adopted as the basis of Ontario's workers' compensation system.

Justice Meredith supported the principle that the new workers' compensation system ought to cover all employments: *“There is I admit no logical reason why, if any, all should not be included...”* (page 9). Justice Meredith chose not to recommend starting with coverage of all employment for reasons of practical and political expediency. On a practical level, to begin a new system that brings in all workers in the province could be too much for any system to handle:

“Another reason why it is not expedient to bring these omitted industries within the scope of the Act is that by doing so the initial work of the board would be very greatly augmented and the risk would be run that it would be so overburdened as practically to paralyze its operations...if these industries are to be brought in, that should be done later on.” (page 9)

Meredith made provisions for bringing in more industries to his system later on. As we approach 100 years since these fundamental principles were established, we suggest that Ontario's workers have waited long enough for equal access to justice under our workers' compensation system.

The 1996 Jackson Report: New Directions for Workers Compensation Reform

In June 1996, when Minister without portfolio Cam Jackson released his report on workers' compensation reform, he expressed the view that the time has come to address the gaps in coverage under Ontario's workers' compensation system:

“Since coverage under the Act is largely a product of historical circumstance rather than a result of a rational process which takes into consideration the nature of the industry or the type of employment, many anomalies result...The resultant uncertainty provides firms with an incentive to avoid their statutory obligations by seeking to be characterized as non-covered industries.” (page 35)

He found that Ontario, the birthplace of modern workers' compensation, was in an embarrassing last place when it comes to giving the protection of that system to its workers and employers. Minister Jackson reported that *“only some 70 per cent receive the benefits and protection of the Act, the lowest level of coverage of any jurisdiction in*

Canada.” He noted that it was predicted to decline to 65% within five to ten years as some older industries decline while new and emerging industries are unintentionally left out of the Act (page 33).

Minister Jackson toured the province holding public hearings on the subject of workers’ compensation. His report provides the business case in support of expanding the coverage of Ontario’s workers’ compensation system:

“There are compelling business and insurance reasons for expanding coverage under workers’ compensation legislation. Like any insurance plan, the WCB system requires a sufficiently broad revenue base to ensure ongoing financial viability. That base should include, in addition to higher risk industries, lower risk industries since they play a vital role in maintaining the solvency of the insurance plan. Broader coverage would ensure the long term durability of the system by ensuring that lower risk industries, as well as new and emerging industries, are included in the revenue base.” (page 34)

The Jackson Report recommended:

“Require the WCB to undertake consultations and a full financial review to determine appropriate extensions of coverage to employers and their workers based on sound insurance and business principles, and to address implementation issues and stakeholder concerns.” (page 36)

The 2003 WSIB Coverage Report: Brock Smith Coverage Review

In the Spring of 2002, the Board conducted a review of key coverage issues, including the treatment of independent operators and, (as Minister Jackson had predicted) the lack of coverage for about 35% of the workforce at that time. The Minister of Labour directed the WSIB to undertake further research into the financial impact on employment in the industries to which coverage would be extended. That was completed and included in the report of Brock Smith, Chair of Coverage Review for the WSIB Board of Directors dated November 17, 2003 (copy attached).

The WSIB coverage review culminated in the recommendation:

“...that the Act should be converted to the exclusionary principle whereby all workers and employers are covered except where specifically excluded...”(page 2).

With regard to independent operators, in all industries, the report recommended that coverage should be compulsory. It was also specifically recommended that the executive officer category be eliminated so as to close a loophole that might be used when compulsory coverage is implemented.

The Concerns of Those Opposed to The expansion of Coverage

History Shows Claims of Disaster to Industry are Groundless

From the very beginning of workers' compensation, organizations such as the Canadian Manufacturers Association and later the Canadian Federation of Independent Business have complained loudly that disaster will befall the industries of the province if the government moves forward with workers' compensation reforms. Those groundless, rhetorical complaints were dismissed nearly 100 years ago by Chief Justice Meredith and his comments ring true today. Sir Meredith, a former leader of Ontario's Conservative Party, was not unsympathetic to the importance of the concerns of industry to Ontario's economy. But he recommended:

“That the existing law inflicts injustice on the workingman is admitted by all. From that injustice he has long suffered, and it would, in my judgment, be the gravest mistake if questions as to the scope and character of the proposed remedial legislation were to be determined, not by a consideration of what is just to the workingman, but of what is the least he can be put off with; or if the legislature were to be deterred from passing a law designed to do full justice owing to groundless fears that disaster to the industries of the province would follow from the enactment of it.” (page 18)

Research Shows No Long Term Impact on Employment

In 2002, during the WSIB's public review of the expansion of workers' compensation coverage, the Canadian Federation of Independent Business expressed concerns that extending mandatory workers' compensation coverage might result in job losses in the presently uncovered industries. The WSIB commissioned an impact study by Professor Doug Hyatt of the University of Toronto whose specialty is the impact of workers' compensation policies.

Prof. Hyatt found that the concerns of the CFIB were not supported. The key finding of the study, which was looking at a proposal to extend coverage to all employment in Ontario, was:

“By seven years following the extension of coverage, employment recovers to the level that would have been expected had coverage not been extended...In summary, extending WSIB coverage to previously uncovered industries is likely to have a small but ultimately only temporary adverse employment effect.”(WSIB 2003 Final Report on Coverage)

Professor Hyatt's study was looking at the proposal to extend coverage to all industries in the province. The concerns of the CFIB have already been subjected to careful research. Research shows that any impact on jobs of extending coverage to all industries is likely to be small and only temporary and there will be no long term adverse

financial and economic impact of extending workers' compensation coverage. Prof. Hyatt also noted that while coverage extension may impose some short term additional costs, the litigation risk of these newly covered industries has been reduced to zero, which is a significant benefit.

Threats Should not Influence the Legislature

Some of the comments from businesses that have been read into Hansard suggest that the underground economy will expand if the government proceeds to extend coverage to all workers in the construction industry. In effect, this amounts to saying that businesses will cheat more if the government does not adopt their position. How would this legislature respond if an injured worker organization submitted that if the government did not improve workers' compensation benefits, the injured workers would start stealing or cheating? Threats of wrongdoing are offensive and should not deter the legislature from doing the right thing.

The Myth of Cheaper Private Insurance

Some of the responses from businesses that are reported in the debates over this Bill state that if they are going to be required to have coverage, allow them to make arrangements for cheaper insurance privately rather than through the WSIB. There is no doubt that workers' compensation is far less expensive than private insurance. The claim that the private sector can do the job of the Workplace Safety and Insurance Board is purely rhetorical.

This has been proven in other jurisdictions. For example, in 1990 Alberta retained private actuaries to study the relative costs of private insurance and public workers' compensation. The report of Crouse Dorgan Consultants Inc. was entitled *Workers' Compensation Coverage versus Private Insurance, A comparative Study* (May 1990). This report established conclusively that a public worker's compensation system can provide more generous benefits at significantly lower costs. Workers' compensation coverage is more extensive than could be provided by private insurance. Private insurance coverage does not take into consideration the Board's coverage for rehabilitation, re-employment and accident prevention.

A much bigger part of every dollar paid by employers in premiums goes to injured workers in a public workers compensation system. Research done in the United States confirms the Alberta findings. An American study entitled "Public and Private Workers' Compensation Insurance" (*Journal of Occupational and Environmental Medicine*, Volume 39, Number 2, February 1997) compared the cost of providing workers' compensation coverage by public and private insurers, which are much more similar in the United States:

"We find that public firms appear to provide workers' compensation insurance more efficiently than private firms...For every dollar of premium, the state run insurers paid out 16 cents more in benefits than private insurers."

The Workers' Compensation Insurance Rating Bureau of California reported that in California's privatized system, only 34 cents of every premium dollar actually went to injured workers' benefits and vocational rehabilitation (Workers' Compensation Insurance Rating Bureau of California, July 1990). So, in a privatized system it costs employers about \$2.95 to pay \$1.00 to injured workers. In Ontario's non-profit public workers' compensation system, about 80 cents of every dollar paid by employers actually goes to injured workers' benefits and vocational rehabilitation (Source, WSIB Annual Report, 2006, Consolidated Statement of Cash Flows). So, in Ontario's public system, it costs employers about \$1.25 to pay \$1.00 to injured workers.

Conclusion

Full coverage of all workers has been a fundamental principle of Ontario's workers' compensation system since the founding report of Sir William Meredith in 1913. Bill 119 takes an important, but small first step towards this goal. The research that has been done to date suggests that there is no valid reason not to extend coverage to all workers. Even in the construction industry, the proposed exemption of workers doing home renovation is inconsistent with the principle behind the Bill. This is a vague and unprincipled exemption that will become a loophole that is costly and difficult to administer.

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Respectfully Submitted,
Injured Workers' Consultants
Community Legal Clinic
per:

John McKinnon
Executive Director