

The Wyatt Report and the Grey Paper

The Wyatt Report was released in June of 1978 by the Ontario Government. It purported to be a very complex and thorough reassessment of Workmen's Compensation financing and benefits, prepared by a firm of consulting actuaries. It amounted to a compendium of money-saving ideas - the first major step in a cut-back campaign against injured workers.

A number of themes or philosophies underly the recommendations in the report, and these can be quickly summarized.

First, benefit decisions should be made in bulk based on a process of weighing the human implications against the cost implications in total. When this approach is adopted it is possible to argue that although a larger number of injured workers will be grievously affected by a cut-back of certain benefits, this cut-back is justified if the cost savings are large enough. As will be noted below, many of the Wyatt recommendations would have precisely this effect, but can be justified given this philosophy.

Second, in terms of funds available to be distributed as benefits, there is a fixed pie, so that a benefit increase in any one area must be eventually noticed by a decrease somewhere else. The possibility of increasing employer assessments to thereby increase the funds available, is rejected.

Third, injured workers do not have a right to compensation, and more particularly, they do not have a right to a post-accident standard of living fully equivalent to the pre-accident standard of living.

Fourth, workers always "select against the system". This is attributed to the "human condition" rather than dishonesty, per se.

Thus, benefits must always be significantly lower than pre-accident income to preserve the financial incentive to work, and the financial incentive to return to work as quickly as possible after an accident. It is argued that there must be a gap even in cases where workers are rated as 100% permanently disabled, because these workers especially need an incentive to return to work!

Fifth, Canada is not economically competitive because of high labour costs which in turn are due to high compensation costs! It is even argued that inflation is caused by high compensation costs! Needless to say, no economic statistics are given in support of this incredible view. The fact that high compensation costs may reflect an inefficient firm, and that if a firm cannot operate efficiently and safely - to the extent that it cannot compete due to high compensation costs - it should not operate at all, is ignored. The Wyatt premise seems to be that it is totally acceptable for a firm to break the backs of its workers in order to make a profit - and society must maintain the discarded workers.

In light of the above philosophies, it is hardly surprising that the specific recommendations contained in the Wyatt Report denigrate the fundamental rights of injured workers. Only a few of the recommendations can be dealt with in this brief summary.

It is recommended that All Workmen's Compensation Board payments should be offset against any Canada Pension Plan or other payments. It is also recommended that the present practice of not contributing to C.P.P. or U.I.C. when a worker is in receipt of Workmen's Compensation Board payments, should be continued. These recommendations reflect a complete lack of understanding of the

different benefit schemes. The usual situation is that an injured worker receives a small Workmen's Compensation Board pension (10%-20%) and yet may be eligible for a CPP disability pension since Canada Pension Plan has somewhat broader criteria. The total income is often \$300 per month or less. It is hard to see this as a "financial incentive". The second aspect is that an injured worker may have spent years either unemployed and/or in receipt of temporary total Workmen's Compensation Board benefits; before receiving a small Workmen's Compensation Board pension. Since Canada Pension Plan contributions have not been made, if five years have passed out of the most recent term with no contributions, then this worker simply cannot qualify for a Canada Pension Plan disability pension. This problem could be avoided if Workmen's Compensation Board payments were deemed employment earnings, and appropriate deductions made.

Regarding Unemployment Insurance contributions, it is argued that these are unnecessary, because there is no loss of benefit rights on periods of short term disability (104 weeks) and Unemployment Insurance is irrelevant in permanent disability situations. In fact, however, Unemployment Insurance only becomes irrelevant in cases of permanent total disability, and there are many cases of temporary total disability of more than 104 weeks duration. In these latter cases there is a clear loss of benefit rights. It is conceivable that an injured worker with a 10% Workmen's Compensation Board pension may be in and out of work while in receipt of a pension supplement. If an injured worker is laid off due to lack of work he or she might not qualify for a Workmen's Compensation Board pension supplement, but could not qualify for Unemployment Insurance in the absence of contributions. This is a very typical fact situation, and it makes no sense.

It is also recommended that Section 41(1)(b) of the present Workmen's Compensation Act should be deleted. This section provides for payment of full compensation to an injured worker

who is only partially temporarily disabled, if that worker is looking for and willing to accept suitable modified work. It is argued that Section 41 (1)(b) is inconsistent with the permanent partial disability scheme - and the solution is to equalize downwards to the lower cost level by eliminating the section. Of course, another approach would be to liberalize the administration of pension supplements. It is argued that Unemployment Insurance payments can fill the gap, thereby created. The focus is on the fact of employment, rather than the cause of the unemployment (disability due to a compensable accident). There is no reason why an injured worker should be forced to look to Unemployment Insurance - especially when Unemployment Insurance is paying less and less, and making these decreasing payments harder to obtain. In addition, as outlined above, an injured worker simply may not be able to qualify for Unemployment Insurance if there have been no contributions.

It is also recommended that there should be no payment of disability income benefits for the duration of a strike or lay-off except where the period of disability begins before the strike or before notice of lay-off. The implicit premises are clear -- most workers injured after the proposed cut off periods have fallen prey to the weaknesses of the "human condition". These workers (in bulk) do not deserve compensation, and the cost implications are significant. Although there may be a few workers actually injured due to circumstances beyond their control, these individuals must be sacrificed for the general good of "cost implications in total". A classic case of the operation of the Wyatt premises!

It is also recommended that for disability claimed after the worker has retired no benefits should be payable. Compensation for disability is clearly not being seen as a fundamental right.

It is also recommended that a wage ceiling on maximum covered earning should be retained. In a similar vein, it is recommended that retroactive wage settlements granted after commencement of disability should be ignored in the calculation of pre-accident earnings. The cost-saving implications are obvious!

It has been noted elsewhere that the Wyatt Report must be considered as one of the most odious documents put out by the right wing in recent years. Indeed, it was rumoured that the Report was so odious that even the Ministry of Labour put it on the back burner. Even if this is in fact what happened (and probably it was not) the Wyatt Report had a great deal of impact at the Workmen's Compensation Board. Perhaps this is not surprising since the authors had worked very closely with the Workmen's Compensation Board during the preparation of the report.

In December 1979 the Workmen's Compensation Board published its own paper entitled Current Issues in Workmen's Compensation (the Grey Paper). The Grey Paper surpasses the Wyatt Report with its cutback recommendations. The Grey Paper attempts to justify these cutbacks in terms of the best interests of society, as represented by the consumer. Superficially this is a more objective perspective than that of the best interests of industry. In reality however, the best interests of the consumer always seem identical to these of industry in the analysis presented by the Workmen's Compensation Board in the Grey Paper. The link is that consumers "are concerned about the prices of Ontario-produced goods and may look for lower paid alternatives from the countries where overheads, including worker's compensation costs, are lower." (pg. 2) Consumers supposedly are also concerned about rising unemployment which "may in part" be attributable to these higher Ontario production costs.

It is also suggested that if consumers realized how high compensation benefit levels are they would feel that a disincentive to employment exists. In effect the Grey Paper has adopted the most objectionable of the Wyatt assumptions. Nowhere in the Grey Paper is it recognized that adequate worker's compensation is a fundamental right of all injured workers. This is especially objectionable given that the Grey Paper ostensibly claims to discuss and recognize the concerns of organized labour, groups representing injured workers and those who identify with them. Significantly, the Grey Paper does not even purport to discuss the actual concerns of injured workers! Indeed, this would conflict with the anti-injured worker bias which permeates the entire Grey Paper.

The Grey Paper makes only a few recommendations, but all of these will have a significant negative import on injured workers. Many of the recommendations are disguised as mere points of view to be considered. This pretence need not be maintained here.

The first recommendation is that the present practice of a ceiling on earnings covered, should be retained. It is noted that if there were no ceiling, an executive earning \$100,000 per annum could receive compensation benefits at the rate of \$75,000 given a coverage of 75% of pre-accident earnings. There are two fallacies here. First, workers; compensation should not be confused with management compensation. There are very few workers with incomes in this range. Second, if a worker is earning a comparatively high wage, there is no reason why that worker's fundamental right to compensation at the 75% level must be abrogated. All injured workers are entitled to maintain identical pre-and post-accident standards of living. There is nothing inequitable in this proposition.

The second recommendation is that the present compensation rate equal to 75% of gross earnings, should be changed to a rate of 90% of net pay. While the Paper purports to be objective, there is a failure to note the existence of other possibilities such as a compensation rate of 100% of gross pay. It is clear that the proposed rate will mean lower payments to the majority of injured workers. In addition, there is a failure to note that this rate would also apply to permanent pensions as well as temporary benefits. Since permanent pensions are usually at a 20% disability rating, or lower, even a compensation rate of 100% of gross pay cannot create a "financial disincentive" to employment! The statistical analysis in the Grey Paper only involves calculations based on either 100% benefits or a 100% pension. Thus, the analysis skirts over the most common situation, and in so doing loses most of its force.

The third recommendation is to change the basis for measuring permanent disability from estimated impairment of earnings capacity, to actual loss of earnings on an ongoing basis. This is a reversion to the system used when the Workmen's Compensation Act was first passed - hardly a progressive step. The specific proposal is to pay a small lump sum related to the severity of the permanent disability. Additional payments may be payable if an injured worker can prove that his or her low earnings after the accident are due to the compensable disability. In effect a worker will have to justify the claim for a pension every year. This system will be open to the abuses currently seen in the Workmen's Compensation Board's administration of Section 42(5) pension supplements. There will be countless excuses used by the Workmen's Compensation Board to deny pension payments, i.e. low savings are due to the poor general employment situation, rather than the disability; the worker is not looking hard enough for a high paying job; the worker is slack on the job and this is why earnings have not risen, etc. This new scheme has tremendous cost-saving implications, since it takes money from workers judged to have no wage loss and gives to those who do. From the tone of

the paper one can guess which will, in the Board's mind, be the largest group, and this must be why it is advocated. It represents a complete abrogation of the worker's right to compensation.

The permanent disability system as it presently exists clearly is inadequate - not by definition but by lack of definition. While this approach seriously needs revision (See Decision #8 attached to last Section) one feature of it is important - it generates a secured income that injured workers can rely on. Unlike discretionary benefits under Section 42(5) the pensions are not subject to being cut off at any moment. In the attempt to deal with the problems of the pension, the Grey Paper attacks the aspect which protects injured workers from Workmen's Compensation Board abuses, and emphasizes that which opens injured workers up to more abuse.

The fourth recommendation is to maintain the status quo and not commence indexations of payments to the cost of living. It is feared that indexations might create a windfall income for a few injured workers. Indexation is one of the firm Union of Injured Workers' demands, for obvious reasons.

The fifth recommendation is that compensation payments should be offset against all other "social income: such as Welfare payments, or Canada Pension Plan pensions. This was a Wyatt recommendation, and the same criticisms still apply.

It is our concern that the Weiler Study has been commissioned in order to implement the Wyatt and Grey Paper recommendations. It is therefore important to perceive these documents for what they really are - the front line in the cutback campaign against injured workers. If this is recognized, and counter-recommendations are proposed to the Weiler Study, it may be possible to prevent the full implementation of these cutbacks. These are some of the real issues which must be dealt with, and must not be

obscured by Tory Government and Workmen's Compensation Board rhetoric.