

THE MCGILLIVRAY REPORT (1967)

On June 16th 1966, Honourable Mr. Justice George A. McGillivray was appointed by Order in Council as a Commissioner to “inquire into, report upon, and make recommendations concerning, The Workmen’s Compensation Act, upon subjects other than detail administration.”

McGillivray placed advertisements in several newspapers and sent letters to the parties who had submitted briefs to the Roach Inquiry in 1949. McGillivray received briefs from labour and employer interests and conducted hearings in Toronto from September to November 1966.

McGillivray’s report was submitted on September 15, 1967. The report contained specific recommendations about particular areas of compensation, but included few substantive reflections upon the Act or the system. McGillivray instead chose to cite a quote from the Roach report to explain the general concept of the Act. As such, this report did not include any new statements of principle.

McGillivray reviewed the Act in great detail and made specific recommendations for amendments. Some of the notable recommendations include:

- Increasing the maximum earnings ceiling to \$7000
- That the Board recognize serious and permanent disfigurement of the head or face as an impairment to earning capacity
- There should be a review of overlapping benefits such as Old Age Security and Canada Pension.
- Reducing the waiting period for benefits to one day
- That the Board be required to draft and distribute regulations about its appeal process and the rights of claimants in the process
- The appointment of an independent workman’s adviser to assist workmen in the preparation and prosecution of claims on appeal so they would have no disadvantage in face of the formality at the Board and Appeals Tribunal. Details of this included: the adviser having access to Board records, services at no cost to workmen, and “the fact that the adviser’s services are available on request and without expense should be stated in the advisory letters to workmen.”
- Implementing a time limit of 3 months to launch an appeal of a decision.
- That workmen continue to be entitled to a free choice of health practitioner
- That a portion of compensation for cases where the worker had a pre-existing condition be paid from the Second Injury Fund
- That legislation be enacted to authorize the Board to make agreements with other provincial Boards regarding interjurisdictional claims
- That greater effort be made to post bilingual safety notices in workplaces with employees that speak a language other than English.
- That the Board must approve settlements in lawsuits where a worker did not file a claim and failure to get approval would disentitle the worker under the Act.

SUMMARY OF RECOMMENDATIONS

Briefly summarized, my recommendations are:

- (1) that the maximum earnings ceiling provided by section 44(1) of the Act be increased to \$7,000; and
that an amendment be made to permit the Board to increase the maximum earnings figure by \$1,000 whenever the year-end statistics of the Board show that 45 per cent. or more of the allowed claims for lost time compensation during any year were by workmen with gross earnings, during the twelve months' period preceding the occurrence giving rise to their claims, of more than the existing maximum;
- (2) that the provisions relating to the computation of earnings remain unchanged except for an amendment limiting the application of section 44(1) and (6) to temporary disability claimants and an amendment to section 40a regarding compensation for workmen who have suffered temporary disability following previous awards; this would make the section apply to all workmen who have previously become entitled to benefits under the Act and not to those only who have received awards for permanent disability;
- (3) that the allowance for burial expenses under section 37(1)(a) be increased to \$400 and that expense for cremation be considered a burial expense;
- (4) that the compensation payable to a widow under section 37(1)(c) be increased to \$125 per month; that the allowance payable to children where a widow survives be increased to \$50 for each child and where no widow survives to \$60 for each child; that the maximum monthly compensation stipulated in section 37(3)(b) and (c) be increased from \$150 to \$200 and that the maximum amount payable under section 37(1)(f) to dependants other than a widow, invalid husband or dependent children be increased to \$150 per month;
- (5) that the lump sum payment to a widow upon the death of her husband be increased to \$500;
- (6) that the Board may recognize serious and permanent disfigurement about the face or head as an impairment of earning capacity and may allow a lump sum in compensation therefor;
- (7) that any increased compensation or allowances for past accidents should not be assessed against employers coming within the Act now or in the future and that section 35 be deleted;
- (8) that there should be some review by all authorities of overlapping benefits; failing such a review by the year 1970 the Act should be amended to authorize the Board to have regard when awarding compensation to amounts payable under the Old Age Security Act and the Canada Pension Plan;

- (9) that the letter advising a claimant of an investigation to be made should inform him of his right to be represented at the time of the interview by an adviser of his choice;
- (10) that certain changes outlined in detail in this report be made to ensure early reporting of all accidents;
- (11) that no change be made in the manner in which "accident" is defined by the Act;
- (12) that the "waiting period" which the Act requires before any compensation becomes payable be reduced to one day with no compensation payable for the day of the accident;
- (13) that the Board be required to draft and promulgate regulations relating to its appeal procedure and the right of claimants to proceed thereunder;
- (14) that copies of advisory letters sent to workmen with respect to rejected claims be furnished to employers;
- (15) that an independent workman's adviser be appointed by the Attorney General of the province to assist workmen in the preparation and prosecution of claims on appeal;
- (16) that there should be passed a regulation of the Board requiring that any appeal be launched within three months of the decision from which appeal is taken, unless by reason of new evidence or other special condition the Board in its discretion allows leave to appeal;
- (17) that x-ray plates and reports as well as reports on post-mortem examinations be made available by the Board to a claimant upon request;
- (18) that employers contributing to the accident fund be granted the right to request a review of any weekly or periodical payment to a workman;
- (19) that amendments be made to clarify the definition in the Act of casual labour and to provide for payment of compensation to rescue workers and to those who assist in fighting a fire by reason of an order made under The Fires Extinguishment Act;
- (20) that there be no increase in the number comprising the Board at the present time and that the Board be given power by amendment to delegate its powers of adjudication and review to members of its staff;
- (21) that section 107 be broadened to authorize the investment of Board reserve funds in investments authorized for trust funds under The Trustee Act of Ontario;
- (22) that section 79 (1) be amended to provide that the Board file its annual report with the Minister of Labour in place of the Provincial Secretary;
- (23) that Board forms and memoranda be reviewed and where necessary be altered to make clear that medical aid, where referred to, includes that provided by all practitioners mentioned in section 51;

- (24) that the Board provide by regulation that a workman is entitled to have initially a free choice of practitioner;
- (25) that section 51 (12) be amended to provide that a workman's right to transportation to his physician or hospital be restricted to those located within the area or within a reasonable distance of the place of injury;
- (26) that amendments be made to sections 51 (1) and (2) to include the aid of optometrists;
- (27) that some changes for the purpose of clarification be made in sections 51 (1), (2) and (3) and that section 51 (3) be amended to authorize the Board to repair or replace clothing worn or damaged by reason of the wearing of apparatus supplied by the Board;
- (28) that in all cases in which there has been activation or aggravation of a pre-existing condition, a portion of the compensation awarded be paid from the Second Injury Fund;
- (29) that a research project be instituted to study the incidence of arthritis and rheumatism among miners, compared with that suffered by workmen in other occupations;
- (30) that additional measures be undertaken by the Board to ensure that pamphlets relating to the symptoms and treatment of caisson disease reach all workmen and others on compressed air projects;
- (31) that further study regarding permissible sound levels in industry be made and that allowances for vertigo, headaches and other complaints in cases of bilateral deafness be increased;
- (32) that legislation be enacted to authorize the Board to make agreements with other provincial workmen's compensation boards in Canada respecting claims where there has been exposure to silica dust in more than one province;
- (33) that increased research regarding the effect of dust exposure on miners be undertaken;
- (34) that where companies have a large number of employees speaking a language other than English, a greater effort be made by the safety associations concerned, to have safety notices which are furnished such companies appear in bilingual form;
- (35) that periodic inquiries be made by safety associations to make certain that promotional material furnished by them is placed at work locations;
- (36) that the Board study the possibility of producing on a uniform basis promotional material which might be of use to all or more than one of the safety associations under its control and arrange, where possible, to produce such material, and that the Board apportion the cost of such service among the individual associations in such proportion as it sees fit;

- (37) that section 86 (6a) be amended by having added thereto the following:
- "In addition thereto the Board may, subject to such regulations as to compensation and other matters as it may impose, direct that the employer provide for and bring into operation one or more safety committees at plant level";
- (38) that every effort be continued by the associations and the Board to encourage the formation of joint safety committees at plant level;
- (39) that safety meetings be held on the job where possible;
- (40) that the restrictive provision of section 53 which limits the Board to an expenditure of \$200,000 for rehabilitation purposes be eliminated by deletion of the said section from the Act;
- (41) that in addition to certain recommendations for minor changes, section 9 relating to third party recovery be amended to provide that any settlement made by a workman who has elected not to claim compensation must be approved by the Board and that a failure to obtain such approval will disentitle a workman to any further claim under the Act; in addition it is recommended that any surplus, above the costs incurred, recovered in an action by an individual employer or by the Board be paid to the claimant or his dependants under an agreement to apply such surplus against any future compensation or benefits to which he or they may become entitled.