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NORTHWEST TERRITORIES

SESSIONAL PAPER NO. 6
(Second Session, 1966)

AN ENQUIRY
CONCERNING WORKMEN'S COMPENSATION
IN THE
YUKON AND NORTHWEST TERRITORIES

DISPOSITION

Tabled	To Committee	Accepted as Read	Accepted as Amended	Deferred (to Session)	Rejected	Noted not Considered
31-X-66	31-X-66 Harvey	31-X-66				

ERRATA SHEET

Page 95 - Para 2:

Reference to Section 41 of the N.W.T. Ordinance
should be to Section 40 and
reference to Section 42 of the Yukon Ordinance
should be to Section 41.

Page 112:

The author of the quotation at the top
of page should be Alexander H. McKinnon, Esq.
(Report of Workmen's Compensation
Commission for Nova Scotia - 1958)

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INTRODUCTION

"I submit the proposed law not believing that it is the most perfect measure which could be devised nor the last word which can be said upon the subject, but as the result of careful investigation and the best thought of the Commission and as constituting at least a step in the direction of a just, reasonable and practicable solution of the problem with which it deals."

The Hon. Sir William Ralph Meredith, Chief
Justice for Ontario.
(Final Report on Law Relating to the Liability
of Employers - 1913, Ontario)

As requested by the Commissioners of the Northwest Territories and Yukon Territory, your Enquiry undertook a detailed review of the Workmen's Compensation Ordinances of the Northwest Territories and the Yukon Territory. Your Enquiry was carefully briefed as to the general lines of study and investigation we might make and, for ease of presentation, we have in general divided the report into the sections suggested.

Within each general heading we have outlined the situation as it now exists, the representations made to us, our considerations and the decisions and recommendations based on them. Where new sections or revisions to existing sections of the Ordinances were required, we have suggested such sections or revisions. A Draft Ordinance is recommended for implementation by both Territories and is a part of this report.

Public hearings were advertised at various places in the Territories and the Enquiry visited Fort Smith, Inuvik, Yellowknife, Hay River in the Northwest Territories, Watson Lake and Whitehorse in the Yukon Territory, Edmonton, Alberta and Ottawa, Ontario. Employers, labour organizations and other persons and groups concerned with the future development of the Territories made representations and recommendations. By written brief and personal appearances, interesting proposals for change or addition to the present ordinances were presented.

Your Enquiry was prepared to meet with interested groups in the Eastern Arctic, but such hearings were not held when no evidence developed to indicate that such a visit would be productive.

The members took the opportunity to discuss supplementary verbal and written briefs. The public discussions were informal and revolved around the points raised in various submissions. In addition, consultations and studies were made by your Enquiry with the administrators in the Territories and in Ottawa concerning the application of the Ordinances to the problems of Workmen's Compensation.

Your Enquiry enjoyed the fullest cooperation of employers' and workmen's organizations. Their representations both written and oral, demonstrated a fair and practical

appreciation of the meaning and purpose of the Ordinances and a very praiseworthy interest in the value of Workmen's Compensation and an understanding of the administrative problems which arise in an expanding industrial economy.

A special commendation must be given to the practical assistance the Enquiry received from the members and staff of the Alberta Workmen's Compensation Board. Your Enquiry is grateful to the Superintendent of Insurance for Canada, Mr. Richard Humphrys, for receiving us informally and for answering our questions so graciously. We are also deeply indebted to the Commissioners' staff for the practical counseling and assistance which simplified our task and contributed much to the results of the Enquiry, and specifically to Mr. C. W. Gilchrist of the Territorial Administration who acted so capably as our Secretary.

Studies Conducted

In addition to our detailed review of the Ordinances of both Territories, we have given much study to the compensation laws of the provinces of Canada and of other jurisdictions. We have also obtained great benefit from the comprehensive reports of such eminent Commissioners of Enquiry into Workmen's Compensation laws as Alexander H. McKinnon, Esq., the Hon. Sir William Ralph Meredith, Chief Justice for Ontario, the Hon.

Mr. Justice Middleton, the Hon. Mr. Justice Roach, the Hon. Gordon McG. Sloan, Chief Justice for British Columbia, the Hon. W. F. A. Turgeon, P. C., and the Hon. Mr. Justice Tysoe. Each of these reports contributes to the unfolding history and development of Workmen's Compensation law over the past half century and were invaluable references.

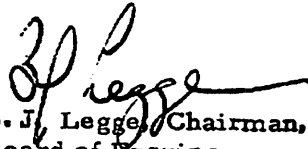
In all our deliberations, we have tried to give special consideration to the social, economic and geographic characteristics of the Territories and the special conditions and needs prevailing.

Our hearings and discussions confirm our conviction that modern Workmen's Compensation laws are in the best interest of the public, and of concern to the workman and the employer. Therefore, there is a responsibility because it is a proportion of the price of the goods and services purchased in the Territories.

We have endeavoured in our recommendations to follow well-established principles. We recognize, as every previous Commission of Enquiry before us, that Workmen's Compensation laws are more than acts of social legislation.

They are enlightened recognition of the employer's responsibility toward his workmen for the results of injury suffered in his employment.

All of which is respectfully submitted.



B. J. Legge, Chairman,
Board of Enquiry



D. H. Young, Member



C. W. Pritchard, Member

INSURANCE SYSTEM VERSUS ACCIDENT FUND

"There are two main types of compensation laws. By one of them the employer is individually liable for the payment of it, and that is the British system. By the other, which may be called the German system, the liability is not individual but collective, The laws of other countries are of one or the other of these types, or modified forms of them, and in most, if not all of them, in which the principle of individual liability obtains, employers are required to insure against it."

The Hon. Sir William Ralph Meredith, Chief
Justice for Ontario.
(Final Report on Law Relating to the Liability
of Employers - 1913, Ontario)

The Question

The first question to be considered by your Enquiry was whether there should be an Insurance System or an Accident Fund. At the present time, the Northwest Territories and the Yukon Territory are the only jurisdictions in Canada in which the Insurance System operates.

Existing Legislation

Section 3(1) of the Ordinances of both Territories requires employers to maintain insurance coverage to provide compensation for their workmen and their dependents.

Submissions to the Enquiry

Submissions by the International Union of Mine, Mill and Smelter Workers(Canada), the Teamsters Joint Council and the Northwest Territories Allied Council supported the idea

of an Accident Fund administered by a Territories Workmen's Compensation Board. The Teamsters Joint Council proposed a full-time Chairman and two part-time Commissioners or Representatives, one from the Northwest Territories and the other from the Yukon Territory. In their submission, the International Union of Mine, Mill and Smelter Workers (Canada) urged us to investigate "the possibility of introducing a completely new and different concept by combining the legislation of both Territories so as to set up a combined Workmen's Compensation Board".

Other submissions were made by employers, the Territories Mines Accident Prevention Association and Insurers. Generally these submissions supported the continuation of the existing insurance system.

Studies by the Enquiry

In the ten provinces of Canada, geographic and economic circumstances are different. The Accident Fund -- Collective Liability System, administered by Boards or Commissions has worked well. On the other hand, it is evident that in the various states of the United States of America, the individual liability and insurance coverage system has been in effect for many years in conjunction with a state fund system.

With these two contrasting types of coverage, both apparently giving satisfaction, your Enquiry approached this topic objectively, intending to ensure that the plan recommended for the Territories would be of the greatest benefit to the workmen and employers of the Territories. If change to an Accident Fund System could be demonstrated as economically sound, it would have the added advantage of uniformity with the other Canadian jurisdictions.

Your Enquiry, therefore, engaged in a study of comparable costs and statistics of alternative systems. Comparisons were made of administrative cost as a percentage of benefits in British Columbia, Manitoba, Ontario, Prince Edward Island and New Zealand. In Manitoba the study related to their administration before and after the adoption of an alternative system. Our studies led to the conclusions that administrative cost, as a percentage of the assessment, is in inverse ratio to the extent of the compensation in a particular jurisdiction. The larger the operation, the lower the unit cost for each one hundred dollars of payroll. Conversely, the smaller the operation, the greater the percentage of administrative cost.

Considerations

Even with the most optimistic projections for the future, there is no doubt that compensation in the Territories is and will be considerably smaller than other Canadian jurisdictions'. Conversion at this time to an Accident Fund System with the necessary administrative staff to deal effectively with all aspects of the Ordinance would unquestionably produce costs materially higher than at present.

Two other important aspects of the situation must also be considered. Your Enquiry believes that the workman's rights must be approximately equivalent to the rights and benefits he would receive elsewhere in Canada. The employers in the Territories must be assured that the costs charged to them are equitable and compare reasonably with those prevailing elsewhere in Canada.

Most submissions from employer groups have urged retention of the insurance system. Under it they are free to seek the lowest rates available. At the same time, the "merit rating" built into individual insurance coverage must also bear on the employers' accident prevention program.

Conclusion

Your Enquiry is satisfied that the benefits under the Compensation Ordinances will, with adoption of our recommendations, provide equitably for workmen and their dependents. We are satisfied that the Ordinances are administered efficiently under the existing system and that the referee provisions provide a proper balance and impartiality in contentious cases. The employers are satisfied that their cost is reasonable. The one major defect in the present system, that of protection for the workmen of uninsured employers, is provided for in the section of this report dealing with insurance coverage.

Recommendation

We cannot conclude from the evidence at this time that conversion to an Accident Fund administered by a Workmen's Compensation Board for the Territories is administratively necessary or economically sound.

Nevertheless your Enquiry recognizes that eventual change is inevitable and the desire for uniformity is strong. The Accident Fund systems prevailing in the ten provinces are good and the time may come when such a system will be best for the Territories. The Territories administration

should supervise the development of plans and statistics which might be vital to the reconsideration of this matter in perhaps ten years time.

At the present time and for the reasons mentioned, we recommend that the present system of insurance coverage should be continued as modified in this report.

INSURANCE COVERAGE

"We must bear in mind that Workmen's Compensation was the first major social insurance measure enacted."

The Hon. W. F. A. Turgeon, P. C.
(Report - Workmen's Compensation Commission - 1958,
Manitoba).

Existing Legislation

The regulations requiring insurance coverage are similar for both Territories in matters of Workmen's Compensation.

Limits of Insurance

The contract of insurance which an employer shall enter into and maintain in force under the Ordinances shall be for not less than one hundred and fifty thousand dollars for each workman and for not less than one million dollars for two or more workmen injured or killed in any one accident.

While these limits were adequate at the time the regulations were passed, changing economic circumstances and increasing costs make upward revision necessary.

Recommendation

Your Enquiry therefore sought out information from other sources and after consideration recommends that

the regulations be amended to provide not less than two hundred and fifty thousand dollars of coverage for each workman and not less than one million five hundred thousand dollars for two or more workmen injured or killed in any one accident.

Approved Insurers

The regulations under the Ordinances set out the categories as follows:

- (a) All insurance companies licensed to issue employer's liability insurance in Canada under the Canadian and British Insurance Companies Act, Chapter 21 of the Revised Statutes of Canada, 1952, or the Foreign Insurance Companies Act, Chapter 125 of the Revised Statutes of Canada, 1952, and
- (b) Lloyds of London.

Chosen Instrument

Your Enquiry considered the proposition that a specific insurance company might be nominated as a "chosen instrument." Such a company would obtain all compensation business from all employers in the Territories. The volume of business would reduce operating costs and, as a result, lower premium rates might be charged thus bringing some of the advantages of collective insurance coverage to individual liability.

On inquiring, however, we find that one insurance company already carries approximately ninety per cent of the risk without the need of such designation. Since there is little to be gained from a financial viewpoint and since your Enquiry would be most reluctant to suggest that an employer should not have the right to seek equivalent insurance from another carrier with a more favourable rate, we do not recommend any change in this regulation.

Payroll

An injured workman's compensation rate is based on his annual earnings or such other basis that best reflects his average earnings.

The payroll on which the employer pays for insurance protection under Section 2(t) of the Northwest Territories Ordinance and Section 2(u) of the Yukon Ordinance, however, is based on the employer's annual payroll less any amount in excess of three hundred and seventy-five dollars (three hundred and thirty-three dollars in the Yukon) earned by a workman in any month.

Thus where a workman earns high wages in a few months and establishes a high basis for benefits, his employer only pays for coverage on a monthly basis up to

the statutory monthly maximum. This results in an inequity in that the employer may pay for coverage on lower earnings than those used for determining benefits in the event of accident.

This system of monthly limits also requires the insurer to maintain a more complex bookkeeping system than would be required if annual maximums were adopted.

Recommendation

To bring the Territories' payroll reporting system into line with that of the provinces, to simplify bookkeeping procedures and to make these provisions equitable we recommend that employers insure their payroll on the actual annual earnings of the employer's workmen up to but not exceeding the recommended new maximum of five thousand six hundred dollars, as described in the Draft Ordinance as Clause (t) of Section 2.

Assessment for Administration

All insurers issuing policies for the purposes of this Ordinance are by the regulations appointed as agents of the Commissioner for the collection of the administrative assessment.

This assessment is levied under Section 42 of the Northwest Territories Ordinance and Section 43 of the Yukon Ordinance both of which provide for assessment not exceeding one-half of one per cent of an employer's payroll or \$1.00, whichever is the greater. In the Northwest Territories the actual levy is one-tenth of one per cent and in the Yukon one-fifth of one per cent. It appears to your Enquiry that this provision may be used for the purpose of creating an additional fund to provide for the workmen of uninsured employers as outlined in the next paragraph.

Uninsured Employers

While the Ordinances provide that all employers, except those specifically exempt, must obtain insurance coverage for their workmen, it is an unfortunate fact that some employers fail to provide such coverage. The Ordinances as presently constituted cannot absolutely assure that all employers do insure their workmen for compensation. The Ordinances now provide that employers can be penalized for failure to do so. In any event, it is conceivable that the employer's resources may be inadequate to meet the cost of the claims of his uninsured workmen. This would result in a workman having a legal entitlement to compensation but no provision for payment of the benefit.

New Zealand Example

In New Zealand, the Workmen's Compensation Act provided for a levy of two and one-quarter per cent of the employers' insurance premiums for the nine years ending in 1961 following which it was reduced to one and one-quarter per cent. This fund provided compensation for the injured workmen of employers who had failed to obtain insurance coverage.

All Workmen to be Protected

Your Enquiry considers that an absolute requirement of any insurance system must be the provision of coverage for all workmen without exception. It is, therefore, necessary that some arrangement be made to close the obvious gap of uninsured risk.

The Prudential Assurance Company Limited have indicated to your Enquiry that for a premium of twenty thousand dollars, they would accept the risk of coverage for any accident where the employer had failed to provide the necessary insurance. Naturally the premium for this coverage must be collected from industry generally and the assessment may be raised as permitted by Section 42(1)(a)(i) of the Draft Ordinance.

This administrative assessment would provide the funds out of which the insurance premium would be paid for uninsured employers. Under these circumstances, the workman would receive his rightful benefits and the Commissioner would collect from the employer as provided for by the Ordinances. This procedure would in no way relieve the employer of liability under the provisions of the Ordinances. Furthermore, the insurance company would develop an experience rate for this specialized insurance in the Territories so that subsequent adjustment could be made as warranted.

Enforcement

An exacting enforcement of the compulsory insurance provisions of the Ordinances will be necessary to ensure that everything is done to close the gap in compensation coverage. The enforcement sections of the Ordinances are adequate for a satisfactory administration of compensation insurance in the Territories.

Recommendations

It is considered that the provisions of Section 42(1)(a)(i) of the Draft Ordinance will permit the Commissioners to raise a sufficient sum of money for the special premium necessary to carry the cost of the additional insurance system. It should also be pointed out that recoveries from uninsured employers would be added to the special administrative fund

and thus help pay these costs as provided by the Draft Ordinance Section 3(4).

As a result of these conclusions, your Enquiry recommends that the Territories enter into a contract for the additional insurance with the Prudential Assurance Company Limited or an equally acceptable company at an initial premium of the estimated order of twenty thousand dollars per annum. Authority for such a programme is provided for in Sections 3(3) and 42(8)(c) of the Draft Ordinance.

UNIFORMITY OF COMPENSATION LAW

"I deplore any proneness to await action by another Province or by another Workmen's Compensation Board before making changes in provisions of the Act or in administrative principles or procedures."

The Hon. Mr. Justice Tysoe
(Commission of Inquiry Workmen's Compensation Act -
British Columbia, 1965).

Uniformity between the Territories

In this age of extreme mobility of labour, capital and management, it seems desirable that we have uniformity of law and administrative practice in respect to the Yukon and Northwest Territories Ordinances. Every written submission to your Enquiry recommended and urged similar legislation in both Territories. Your Enquiry concurred with this opinion and recommended an identically worded Ordinance for each of the Territories with identical benefits in each Territory and with the provision that in no circumstance would benefits be lower than previously.

Uniformity with the Province of Alberta

The evidence presented to your Enquiry and that gathered by it independently, indicated that a majority of workmen employed temporarily in the Territories but

who normally reside and work in other jurisdictions come to the Territories on a temporary basis from Alberta, British Columbia, Manitoba and Ontario in that order. Currently and probably for years to come there will be a substantial influx of workmen engaged in construction projects of limited duration, building the future greatness of Canada's north.

It therefore appears to your Enquiry that it is also natural and logical that the provisions of the Territories' Ordinances should be as uniform as possible with the provisions of the Alberta Act, providing that in no instance should this result in a reduction of benefits below existing benefits in the Territories even where these are currently in excess of those in Alberta. A further benefit of uniformity with Alberta and uniformity between the Territories, is that of ease of administration by the Alberta Workmen's Compensation Board's staff in Edmonton who carry out the responsibilities of the Referee under the Ordinances.

Uniformity with Canadian Jurisdictions

Furthermore the Enquiry recognizes the desirability of as much uniformity as is reasonable in the laws of the various Canadian jurisdictions. It is recognized

that a completely detailed uniformity is neither possible nor desirable. A fixed benefit might be considerably more advantageous to a resident in the Arctic than the same benefit might be to a workman in a highly industrialized metropolitan centre. Similarly, it is recognized that economic circumstances and needs fluctuate from jurisdiction to jurisdiction and compensation and earning limits will necessarily vary.

Recommendation

As a result of the representations made to us and the information which we have gathered, we feel that uniformity of compensation law should be developed from three points of view. In the first approach, identical Ordinances providing identical benefits for the Northwest Territories and the Yukon. Secondly, as much uniformity as is reasonably possible with Alberta from which province many of the workmen come. Thirdly, reasonable uniformity where possible with the other provinces of Canada.

The Draft Ordinance with identical provisions and benefits for both the Territories is part of this report.

APPLICATION OF ORDINANCE

"Any attempt to bring all the excluded industries under the operation of the Act would impose a tremendous burden upon the Board and would be impracticable. The expense of administration would be disproportionate to any benefit that would result."

The Hon. Mr. Justice Middleton
(Report on the Workmen's Compensation Act of
Ontario - 1932)

A. Schedule of Industries

Existing Legislation

The problem of protecting all workmen under compensation coverage is ongoing in most jurisdictions. In Section 4 of the Yukon and Northwest Territories Ordinances, the inclusion of certain industries named and described in Schedule I is provided for and other industries may be designated by regulation as the Commissioner sees fit. Furthermore, there is a discretion to him to withdraw any industry or part thereof from the application of this Ordinance.

Section 4 also applies to industrial disease described in Schedule II and to such other industrial disease as the Commissioner may designate by regulation. Industrial diseases are dealt with later in this section of the report.

Comments

The Northwest Territories Allied Council submitted to your Enquiry that "the Ordinances should apply to all persons employed in the Territories". The Council went on to say that "all employers of persons who work in the Territories whether or not the employer's place of business is located within the Territories should be required to pay assessments. "

The question of protection to workmen was also considered by the International Union of Mine, Mill and Smelter Workers (Canada) who stated inter alia that "all men employed in the Territories should have full, complete and satisfactory coverage in this matter of compensation for injured workmen, regardless of who his employer may be." On the same subject the Canadian National Railways contended that "the application of these Ordinances appeared most reasonable as it provided coverage to all classes of their employees now working in both the Yukon and Northwest Territories."

It was considered by the Enquiry that the list of industries was not absolutely clear and the Prudential Assurance Company Limited contended that the enumerated industries to which the Ordinances applied should be more sharply defined.

Conclusions

On the basis of our visit to the Territories, from the opinions expressed in the submissions and public hearings, your Enquiry proposes a new application for the protection of workmen for compensation in the Territories.

The new proposals are based on the premise that all workmen earning wages in either the Yukon or Northwest Territories should be under one or the other of the identical Ordinances. In jurisdictions like the Territories where industrial activity is relatively small, it seems desirable to your Enquiry to simplify the delineation of those protected under the Ordinances.

To draft the Statute by listing those excluded rather than by describing those included has been our aim. Few occupations are exempt from coverage in the draft Ordinance contrasted with the many now included in the sometimes obscure categories of covered occupations.

Therefore, the employer in the Territories will know that the fact of employing a workman will make him individually liable for the protection of that workman and he must insure or confirm the exemption of his employees from the Ordinances.

Recommendations

Your Enquiry recommends that this Ordinance apply to all industries and to all workmen working for an employer in the Yukon and Northwest Territories as now provided in Section 5 of the Draft Ordinance forming part of this report.

B. Voluntary CoverageExisting Legislation

Both Ordinances now apply to all industries listed in Schedule I and in addition, to those designated by the Commissioner's regulations. Voluntary application for coverage of excluded industries is available in the Yukon only under the Commissioner's amended Order 1959-81, Section 9(2)(a) and (b). This Section provides that "every establishment, undertaking or business shall be deemed an industry to which the Ordinance applies, upon notice in writing being filed with the Commissioner. This coverage continues from the date notice in writing is received by the Commissioner until the 31st day of December next following the date of the notice to the effect that coverage is no longer desired."

Recommendation

Your Enquiry agrees that voluntary coverage for excluded industries or employers should be available under the Ordinance and has provided for this in Section 5, subsections (4) and (5) of the Draft Ordinance.

C. Independent Operators

Your Enquiry also considered whether such coverage should be made available to independent operators who are not employers or workmen, but perform work of a nature which if they were workmen, would be within the scope of the Ordinances. It was concluded that since compensation is provided by private insurers, there would be little or no advantage to such persons under the Ordinances as opposed to private insurance coverage and administration under the Ordinance would be difficult.

Recommendation

Therefore we do not recommend voluntary coverage of independent operators.

D. Executive Officers

The right of an executive officer of a company to be exempt from coverage, provided by Section 3A of the

Yukon Ordinance was also considered. By such exemption notified to the Commissioner in writing, an Executive Officer may maintain his freedom of action against the party responsible in the event of accident. The Northwest Territories Ordinance does not provide such an exemption.

Recommendation

Your Enquiry believes that no Executive Officer should be protected by compensation against his will and recommends that on request, an "Executive Officer" should be exempt from the provisions of the Ordinance. Consequently freedom from coverage is protected in Section 4 of the Draft Ordinance for both Territories.

E. Industrial Diseases

Existing Legislation

Both the present Ordinances, under Section 4, provide coverage for industrial diseases as described in Schedule II. Other industrial diseases may be designated by the Commissioners by regulation.

For the good administration of social legislation it is necessary to define clearly the coverage available for industrial diseases, which arise from employment.

Conclusions

We have carefully studied the report of the Hon. Justice Tysoe describing the difficulty of interpreting the industrial diseases schedule in British Columbia where additional diseases may be added to the schedule by the Board without appearing in the Act.

Manitoba Legislation

We have also studied the provision of the Manitoba Workmen's Compensation Act relating to industrial diseases. In Manitoba, the definition of the word 'accident' has been broadened to include "conditions in a place where an industrial process, trade or occupation is carried on that occasions a disease and as a result of which a workman is disabled." This wording eliminates the need for a schedule of industrial diseases. At the same time, by deeming such diseases to be accidents, the presumption of relationship to employment is retained in the Manitoba Act.

It is our conclusion that a revision of the Ordinances on the same basis as the wording of the Manitoba Act will give clarity to the Ordinances.

Recommendations

We therefore recommend the adoption of the definition section of the Draft Ordinance which broadens the definition of 'accident'. This will favourably protect a workman who incurs an industrial disease because of his employment since this peculiar type of accident is by definition specifically included in the Ordinance.

F. Disease only Partly due to Employment

Under Section 14(2) of the Northwest Territories Ordinance and Section 13(2) of the Yukon Territory Ordinance provision is made for proportionate compensation in situations where the disability is a disease only partly due to the employment. The compensation payable bears the same proportion to full compensation as the degree of disability due to the employment bears to the whole disability.

Submission

The International Union of Mine, Mill and Smelter Workers (Canada) recommends deletion of this provision on the grounds that all workmen are medically examined before employment and that all pre-existing disability must show up at that examination. They propose that a worker who has been accepted for employment should be fully compensated.

Conclusion

While some employers require pre-employment examinations of their workmen, this is not so of all employers. All disabilities including internal conditions, susceptibilities or pre-dispositions to illness or disease are not necessarily evident at such examinations. In some cases the workman himself may not be aware of such conditions.

It is not considered reasonable to suggest that the employer, by accepting a workman for employment, automatically assumes full responsibility for any inherent weakness or tendency to disease which the workman may have.

If the proposal of the International Union of Mine, Mill and Smelter Workers (Canada) were accepted, it could reasonably be expected that pre-employment examinations would become more stringent and the opportunity to work denied to many who are capable of useful employment.

Recommendation

Your Enquiry does not feel that the existing situation is unfair either to workmen or the employers and therefore cannot recommend any change at the present time. Because of this, the present provision has been continued in the new Draft Ordinance as Section 14(2).

G. Assignment and Attachment of Compensation

Assignment and attachment of compensation is provided for under Section 15(3) of the Northwest Territories Ordinance and Section 14(3) of the Yukon Territory Ordinance where the Commissioner approves.

Submission

The International Union of Mine, Mill and Smelter Workers (Canada) contend that assignment or attachment of compensation should not be permitted.

Conclusion

Since the workmen's interests are protected by the need for the Commissioner's approval, it is not considered necessary to recommend any change at the present time and the present provisions have been maintained in the new Draft Ordinance as Subsection (3) of Section 15.

H. Autopsy

Under Section 21(6) of both Ordinances, the Commissioner may direct that an autopsy be performed when deemed necessary by the Referee, the Employer or Insurer to assist in determining the cause of death. If the dependents refuse to permit an autopsy, the Referee may reject any claim for compensation.

Submission

The International Union of Mine, Mill and Smelter Workers (Canada) propose the change in wording of the Section, requiring that where the dependents refuse to permit an autopsy the claim shall be decided on the medical evidence at the time of death.

Conclusion

Where other medical evidence is inconclusive, an autopsy is the only remaining means of determining accurately the cause of death and therefore the entitlement to compensation. Not to permit an autopsy under such circumstances prevents a complete appraisal of the claim and prohibits proper adjudication. The wording of the Ordinance provides that the Referee may reject such a claim but does not make rejection mandatory.

Recommendation

Your Enquiry does not therefore consider that the existing wording is unreasonable and cannot recommend a change at the present time. The existing provision has therefore been continued in the new Draft Ordinance, Section 21(6).

COVERAGE FOR TERRITORIAL
CIVIL SERVANTS

"It is difficult to name any industry or any hazard which is not now covered, or which is not entitled to coverage, under the elective section. Any new industry in which a hazard exists will doubtless become within the Act by Regulation of the Board."

The Hon. Gordon McG. Sloan, Chief Justice for
British Columbia
(Report Relative to Workmen's Compensation -
British Columbia, 1952)

Civil Servants in the Yukon

The Commissioner directs a Territorial Civil Service of about four hundred employees who are covered as workmen under the Yukon Ordinance. The Commissioner also directs about fifty federal employees of the Department of Northern Affairs and National Resources.

Federal employees are covered under the Government Employees Compensation Act and they claim under the Alberta Act if usually employed in the Territories, and under the Act of the Province in which they normally reside if not usually employed in the Territories.

Territorial Civil Servants are covered under the Ordinance with an insurer. They are also covered under the Public Service Superannuation Act, by federal law, which provides for benefits in the event of death.

Civil Servants in the Northwest Territories

In the administration of the Northwest Territories, federal civil servants predominate but there are also a few employees who are deemed to be federal civil servants. They are covered under the Government Employees Compensation Act and the Public Service Superannuation Act.

There is, however, a third group of employees under contract who are neither covered under the Workmen's Compensation Ordinances, the Government Employees Compensation Act, nor under the Public Service Superannuation Act. All of these employees are usually under individual contracts, and it is necessary to provide some form of coverage for them.

Your Enquiry was led to believe that the Territorial Civil Servants who are deemed to be federal employees and the contract employees will become Territorial Civil Servants when that service has been established by the Territorial Ordinance and will then be covered in the same manner as in the Yukon.

Recommendations

Your Enquiry recognizes that travelling by chartered aircraft is perhaps more hazardous in the Territories than elsewhere and where no other means of transportation exists government employees may be required to use chartered aircraft quite frequently. Under these circumstances it is necessary that the protection be adequate in case of accident.

In order to provide the degree of protection required the Draft Ordinance includes employees of the Crown in the right of the Territories and compensation is thus afforded to such employees. They will be therefore entitled to the same benefits as any other workman under the Ordinance while maintaining their right of election to take action against the owner or operator of a chartered aircraft at common law should there be an accident.

Since no compensation benefits are available for that special group of employees under contract, the Commissioner should consider the advisability of obtaining additional, separate liability insurance for them to give them parity of compensation protection with federal civil servants until such time as they become territorial civil servants who would then be protected by the Draft Ordinance.

EXEMPTION FOR NON-RESIDENT WORKMEN AND EMPLOYERS

"Under the Workmen's Compensation Act in the jurisdiction in which those employees are working, even though temporarily, the employer is also assessed in respect of them.

"In the event of an accident happening to one of those employees he may elect in which jurisdiction he will claim compensation. If he receives it in one of course he is not entitled to it in the other. "

The Hon. Mr. Justice Roach
(Report on the Workmen's Compensation Act,
Ontario - 1950)

Background

In considering exemption from the application of the Ordinances, regard must be had to the economic conditions of the Territories. This vast area, sparsely populated, provides employment often of a temporary nature in periods of great development and construction activity. Of necessity, this results in an influx of workmen whose residence and normal place of employment is in a province other than the jurisdiction of the Territories. Employers and workmen engaged in occupations under the Ordinances may, therefore, be only temporarily in the Territories. Each may have coverage through an extension

of coverage from their outside base, but this may not always be the case. This situation presents the Territories administration with problems of adequately enforcing the Ordinances.

Existing Legislation

By Order of the Commissioner, non-resident employers bringing their workmen to the Territories may obtain an exemption provided that arrangements made for the protection of the workmen are satisfactory to the Commissioner. In addition to exemption by Order, the Northwest Territories Ordinance provides for exemption of non-resident workmen who continue to be covered by a provincial workmen's compensation scheme if the employer records the names of his workmen, location and duration of employment and pays the exemption fee. Sections 3(2) and 3A of the Northwest Territories Ordinance and Section 3(2) of the Yukon Territory Ordinance are relevant. Similarly, any employer employing non-resident workmen in the Territories on a temporary basis may obtain an exemption from the Ordinance, subject to the approval of the Commissioner who may also revoke any exemption previously granted.

Comments

The Prudential Assurance Company Limited submitted that exemptions for non-resident employers are necessary to avoid duplicate assessments. Since there are difficulties in determining which workmen qualify for exemption, a more detailed definition was desirable.

On the question of assessment the Northwest Territories Allied Council contended that the Ordinance should apply to all persons employed in the Territories and all employers of persons working in the Territories should be required to pay assessments regardless of where their place of business is located. The Canadian National Railways stated that while many of their workmen are non-residents, none have been deprived of compensation benefits having claimed either under the Ordinances or under one of the provincial compensation acts.

In considering this problem it should be noted that federal government employees are separately covered for compensation benefits under the Government Employees Compensation Act.

Conclusions

For years there has been persistent criticism voiced by employers that too often they are assessed by a multiplicity of jurisdictions although the workman can only receive benefits in one jurisdiction. This was never intended and your Enquiry has made some effort to correct the conditions which gave rise to the charge. It must be kept in mind, however, that in case of an ill-founded exemption of an employer, an injured workman may be deprived of all but the right to sue at common law. Under the Draft Ordinance industry generally may be required to subsidize the guarantees provided to the workman by way of insurance through the percentage assessment for administration. The evidence available to the Board of Enquiry indicates that workmen entitled to compensation are those who are resident within the jurisdiction and work there continuously or those who reside normally and work normally in jurisdictions beyond the boundaries of these Territories.

Recommendations

Your Enquiry recommends exemptions from insurance coverage for self-insurers and from the Ordinance for employers who have obtained equivalent coverage elsewhere.

Consequently, we have drafted Section 3 of the suggested Ordinance for the sake of clarity and simplicity of exemption.

It is further recommended that employers relying on the protection of compensation from other jurisdictions should be required to file the names of the non-resident workmen with the Commissioners of the Territories.

ACCIDENTS OUT OF TERRITORIES

"The matter is complicated by the fact that the Acts of the various provinces are not uniform and the injured workman or his dependents, quite naturally, will elect to claim compensation under the particular Act which contains the more generous provisions."

The Hon. Mr. Justice Roach,
Commissioner, (Report on the Workmen's Compensation
Act, Ontario - 1950)

Existing Legislation

Compensation is payable to a workman for an accident outside the territories as provided by Section 7 of the Yukon Ordinances and Section 8 of the Northwest Territories Ordinances.

Compensation arises only if the workman's residence and normal place of employment are in the Territories, if the nature of the work is such that it is required to be performed both in and out of the Territories, and if the employment out of the Territories has lasted less than six months and is a direct continuation of employment by the same employer within the Territories.

The workman or his dependents must elect whether they will claim compensation under the law of the

jurisdiction in which the accident happened or take benefits under the Ordinances and they must give notice accordingly.

Comments

The Prudential Assurance Company Limited submitted that accidents happening out of the Territories bring into consideration the exemption section. In their opinion, if the Northwest Territories-Yukon Territory employer was operating in one of the provinces and if the employer was covered by insurance satisfactory to the Commissioner, such employer should not have to pay duplicate assessment. To date there were very few Northwest Territories or Yukon Territory concerns operating outside the Territories but the problem had arisen and should be recognized. The Prudential Assurance Company Limited hoped that "possibly the Commissioner could make some arrangement with the provincial Board involved."

Canadian Longyear Limited submitted that a reciprocal agreement between any new Commission and the compensation boards of the other provinces would be beneficial to all concerned. They felt it was important

that the employee be permitted to place his claim, either through his 'home' province or the 'Territories' plan. This would also permit the employer to pay only one assessment to the board of the province or Territory in which the work was being completed. They mentioned the Ontario Board had such a working agreement with the provinces of Quebec, Alberta and British Columbia. The validity of this argument is based on the distinction between individual and collective liability.

The Canadian National Railways were of the opinion that workmen who permanently reside within the Territories should have the protection of the Ordinances if they sustained injuries while in the course of their employment outside the Territories, "similar to the provisions of the provincial compensation acts."

The Territories Mines Accident Prevention Association pointed out in their submission that in relation to any claim, not only Silicosis, the Ordinance should provide for a limitation of liability where the claimant has rights to compensation under the laws of another jurisdiction. Under the present Ordinance it is not clear that the workman is not entitled to duplicate payment, from the territorial employer as well as from a provincial board. This ambiguity should be removed.

Conclusions

The Enquiry considered that the determining factors are usually the employer's place of business and the residence and normal place of employment of the workman. The acts of the provinces differ in wording but generally ensure protection to such workmen and through interprovincial agreements, guard against duplication of assessment by the device of paying assessment in the province where the work is done. These interprovincial agreements facilitate the handling of claims and the repayment of other boards for payments of compensation made under such agreements.

In the provinces of Newfoundland, Nova Scotia, Prince Edward Island, Manitoba and Quebec, compensation is only payable in cases where the workman or his dependents are not entitled to compensation under the law of the place where the accident happened. This may be a fair approach but requires the workman or his dependents to take the benefits available in other jurisdictions.

Your Enquiry is of the opinion that without choice of election the workman is denied certain basic rights of protection under the laws of his home jurisdiction.

Recommendation

The Board of Enquiry recommends no basic change in principle other than clarification of wording to prevent duplicate assessment, duplicate payment to the workman and to provide for insurance coverage in force at the time the extra-territorial claim is made. Section 8 of the new Draft Ordinance provides for the application of these principles.

**SUBROGATION OF RIGHTS OF INJURED
WORKMEN IN EVENT OF THIRD PARTY
LIABILITY**

"The adoption of a Workman's Compensation Scheme was done with the deliberate purpose of abandoning common-law duties, rights, obligations and remedies. Other rights different in concept and exclusive in operation were substituted."

The Hon. Gordon McG. Sloan, Chief Justice
for British Columbia
(Report on The Workmen's Compensation Act,
British Columbia - 1952)

Existing Legislation

The Ordinances of the Territories appear to give the workman the right to sue where an accident is caused by a third party other than his employer or other workman of his employer but at the same time appear to subrogate his rights to his employer. The relevant sections outlining the circumstances where an injured workman may bring action for damages against a third party and subrogate his rights to his employer are under the Northwest Territories Ordinance Section 16(4) and (5) and under the Yukon Territory Ordinance, Section 15(4) and (5).

Comments

It was the view of the Prudential Assurance Company Limited that Subsections (4), (5) and (6) were contradictory and ambiguous. They wished these subsections to be reviewed and revised for reasons of clarity.

Subsection (4) is qualified by Subsection 5 and appears to give the workman the right of action against some person other than his employer or another workman of his employer. Subsection (5) on the other hand, appears to take away from the workman the right of action and his right of action is subrogated to his employer. Subsection (6) permits the employer, upon payment to him by the third party, to accept same and release such third party. There does not appear to be any restriction on these subsections to prevent a workman agreeing to a settlement with a third party and accepting payment and giving a release without the knowledge and consent of his employer. The workman having received compensation from the time of the injury, therefore, has been in effect paid twice, and it would be difficult for the employer or the insurer to recover the compensation paid if the workman had used both the compensation and the money represented in the settlement agreed upon.

Canadian National Railways were in agreement with the general principles of subrogation as defined in the present Ordinances. However, they were of the opinion that the provisions of both Ordinances did not bar a workman

of an employer to a right of action against a workman of another employer. This right of action is denied by the majority of provincial Compensation Acts, but still exists in the provisions of the Alberta Workmen's Compensation Act, which in the experience of the Canadian National Railways has led to litigation, a practice which was to be eliminated under the original concept of Workmen's Compensation legislation.

As far as the Northwest Territories Allied Council were concerned, the subrogation of rights provided by the Alberta Act were adequate but, they should be mandatory on the part of the Commission or Board administering the Ordinance. Furthermore, compensation should ensure that the welfare of the injured workman or his family was looked after, pending any action to recover damages from a liable third party.

Conclusions

Representations were made that the provisions dealing with this subject should be clarified. Your Enquiry does not propose to depart from the present principle that only the injured workman's employer and fellow workman of that same employer are protected by the Ordinances from common law actions for personal damages resulting from a compensable accident.

Recommendation

Your Enquiry agrees, however, that an injured workman's third party rights should not be taken away from a workman by an Ordinance of the Territories and that the existing wording of Subsections (4) and (5) should be revised. The new Draft Ordinance provides for this in Section 16.

Your Enquiry is of the opinion that a workman or his employer should not even in theory be able to collect twice in respect of the same injury and this should be prevented by the suggested Ordinance under Section 16.

This will give the employer freedom from suit by his workmen while at the same time retaining the workman's rights against negligent third parties as is the accepted compensation doctrine.

WAITING PERIOD

"After discussing this problem (of waiting period) with Board Members from some of the other Provinces, who have shorter waiting periods than our own, I have concluded that their experiences do not warrant making the unequivocal argument that the increased costs of administration is necessarily too burdensome to reduce the waiting period."

Alexander H. McKinnon, Esq.
(Report on the Workmen's Compensation Commission,
Nova Scotia - 1958)

Existing Legislation

The traditional philosophy which requires a waiting period before entitlement begins is that it is a concession which should be made by the workmen. Section 14(6) of the Northwest Territories Ordinance and Section 13(6) of the Yukon Territory Ordinance provide that no compensation, other than medical aid, is payable for the first three days of disability unless the workman is disabled more than six days. Where the disability is of more than six days' duration, compensation is payable from the date of disability.

Comparisons

Review of the Workmen's Compensation Acts of each of the provinces finds varying waiting periods from one to four days.

Five of the ten provinces, Alberta, Manitoba, Newfoundland, Prince Edward Island and Saskatchewan have a one-day waiting period and compensation is payable from and including the day following the accident. In three provinces, British Columbia, Ontario and Quebec, the waiting period is three days.

It should be pointed out that in Ontario the waiting period is three calendar days which of course can include week-ends and holidays rather than working days. In British Columbia, Ontario, Quebec, New Brunswick and Nova Scotia, where the disability extends beyond the waiting period the compensation is payable from the beginning of the disability and no concession is required of the workman.

Submissions to Your Enquiry

A variety of opinions were submitted to the Enquiry. The International Union of Mine, Mill and Smelter Workers (Canada) proposed removal of the waiting period by deleting the appropriate Subsection (6) and that compensation be paid from the date of injury. The Northwest Territories Allied Council suggested that the waiting period should be one day as provided in the Alberta Act.

On the other hand, the Territories Mines Accident Prevention Association submitted that the present waiting period should stand as it is reasonable and effects no substantial inequities in practise. The Canadian National Railway Company submitted that there should be a waiting period of not less than three days following the day of the accident.

Review of Other Commissioners' Findings

Your Enquiry has reviewed the learned reports of other Commissioners on Workmen's Compensation in Canada respecting their recommendations about waiting periods. There are opinions for and against a waiting period of one day and it is apparent that each jurisdiction must be considered on the basis of what is best for the economic and industrial circumstances prevailing.

Various arguments have been expounded for retention of the waiting period and some of those in favour of retention are now cited.

In 1950 the Hon. Mr. Justice Roach reported on the Ontario Act and felt that the waiting period should not be reduced to such a short period that the cost of administering compensation to those whose disability lasts only that long

would be out of all proportion to the benefits received. Neither should it be so lengthy as to impose an unfair burden on workers whose disability lasts no longer than the waiting period.

Reporting on the British Columbia Act in 1952, the Hon. Gordon McG. Sloan stated: "There are three main reasons advanced in support of the inclusion of a waiting period in compensation legislation. First, that without it, the board would be overwhelmed by petty claims with attendant increase in administration costs. Secondly, if compensation were payable in every case from the date of disability, trivial injuries would be made the convenient excuse for holidays at the expense of the Accident Fund. Thirdly, it is a form of contribution by employees to the Fund."

In 1966, the Hon. Charles Tysoe reported on the British Columbia Act, and while in favour of retaining the present waiting period, felt that "there would be more justification for eliminating compensation for the day of the accident than for eliminating the waiting period".

In favour of reducing the waiting period was the Hon. W. F. A. Turgeon, P. C., who reported in 1958 on the Manitoba Act,

"The strongest argument that I have met with for its maintenance is that a lessening of the three-day waiting period would entail considerable additional work and additional expense upon the board to such a degree as to make the change burdensome and not worthwhile financially.

"As the result of the information I have gathered I cannot accept the validity of this argument. I think there is little to be said for it and that the change to a fairer arrangement can be made without great inconvenience and at small expense. So I would put an end to this three-day waiting period."

In recommending no payment for the day of the accident Commissioner Turgeon stated that the workman usually received his pay for the day of the injury and double payment was to be avoided. He was satisfied that the provisions of the Alberta and Saskatchewan Acts, of payment from the day after the accident met the situation fairly.

Labour representatives had stated to Commissioner Turgeon that the waiting period was "a serious injustice and imposes a definite hardship on a compensably injured man. Honest workmen, not able to afford loss of pay, will work when they should not and aggravate their condition."

Alexander H. McKinnon, a Commissioner of Enquiry for Nova Scotia in 1958 held

"If there is to be a waiting period then any time limit is susceptible to malingering. The longer the waiting period, or qualifying period, or both, the greater will be the temptation to the workman to be absent from his employment until that time has elapsed."

Conclusions

Your Enquiry has reviewed the factors concerning the waiting period in the light of other reviews as narrated herein and in consideration of the changing economic conditions in the Territories. It cannot be ignored that five provinces including the province of Alberta have already reduced the waiting period to one day. These provinces do not pay compensation for the day of accident which is in line with the thinking of Commissioners Tysoe and Turgeon.

For the same cogent reasons relied upon by Commissioner Turgeon that most workmen received wages for the day of the accident, your Enquiry concludes that it would not be wise to accept the proposal of the International Union of Mine, Mill and Smelter Workers (Canada) of compensation from the day of the accident.

While reduction of the waiting period will add something to the employer's cost, such increase is not expected to be substantial. It is likely that the added expense will to some extent be offset by eliminating the inducement for prolonging the lay-off to the full length of the waiting period in order to qualify for entitlement. In addition, less compensation will be paid for disabilities lasting more than six days since compensation will not be payable for the day of the accident.

In our opinion, there is also very real value in uniformity between the provinces and particularly between the Territories and the province of Alberta.

Recommendation

It is, therefore, recommended that Section 19, subsection 6 of the Alberta Act be adopted in both Territories with compensation payable from the day following the accident. This is incorporated as Section 14, Subsection (5) of the Draft Ordinance.

NATURE AND EXTENT OF COMPENSATION
BENEFITS

"These benefits are not granted as a matter of grace, but of right. There is no measure of charity about them."

The Hon. Charles W. Tysoc, Commissioner,
(Commission of Inquiry, Workmen's Compensation Act,
British Columbia - 1965)

Existing Legislation

The benefits for temporary disability, permanent disability and fatal cases are detailed in Sections 24 to 39 of the Northwest Territories Ordinance and Sections 25 to 40 of the Yukon Ordinance.

Claims for disability are dealt with in two ways. For temporary disability, claims are settled by the Insurer but claims for permanent disability are referred by the Commissioner for determination by the Referee. If a workman is dissatisfied with the disposition of his claim, he may apply to the Commissioner for review by the Referee. Under both Ordinances, the Alberta Workmen's Compensation Board acts as Referee in disputed claims.

Existing Benefits

While the wording of both Ordinances is similar, there is some variance in the benefits provided. For instance, a widow in the Yukon is entitled to one hundred dollars per month while the Northwest Territories widow's pension is ninety dollars per month and there are other differences.

To simplify the comparisons, a chart as shown on Page 73 shows the benefits under each Ordinance. The chart also reveals the benefits available under the Workmen's Compensation Acts of the provinces of Alberta, British Columbia, Manitoba and Saskatchewan. To complete this reference the recommendations of your Enquiry for like benefits for both Territories are similarly charted.

Uniformity of Ordinances

The need for uniformity between the two Territories in respect to Workmen's Compensation law has been accepted as desirable throughout this report.

Because social, economic and industrial conditions are very similar in both Territories, and to eliminate confusion for employers, workmen and insurers

who operate in both Territories we believe the two Ordinances should be identical as to benefits and as to the assessment of payroll in both Territories.

It is also our opinion that it would be advantageous to relate, wherever possible, without reducing existing benefits, to the benefits provided by the Workmen's Compensation Act of the province of Alberta. To illustrate the point, many of the workmen temporarily employed in the Territories are ordinarily resident in Alberta. This proposed uniformity will assist the administration of compensation for the Territories and also the Workmen's Compensation Board of Alberta as referee.

Not Retroactive

It is not proposed that any of the changes of benefits which your Enquiry recommends should be retroactive. Previous amendments providing increased benefits similarly were not retroactive and no funds exist from which we could reasonably recommend retroactive payments should be made.

Chart of Benefits

Each recommendation will be dealt with separately and in the same sequence as followed on the chart of benefits shown at the end of this Section. Reference may

also be made to the draft Ordinance contained in this report for our recommended wording in each section.

Maximum Earnings for Benefits

The principle of maximums was not argued before your Enquiry although we had many recommendations made to us as to what maximum should be set. If a workman earned more than the maximum provided by the Ordinance, he would be considered, when the award was being calculated, as earning the maximum. Similarly his employer would be charged assessment only on his earnings up to the maximum. The principle of the maximum is therefore accepted and we recommend the same maximum for both Territories and your Enquiry recommends the maximum of five thousand six hundred dollars. Adoption of this increase over the current maximums puts the figure for these economically young Territories on the same footing as that of Alberta.

Spokesmen for the International Union of Mine, Mill and Smelter Workers (Canada) and the Teamsters Joint Council urged adoption of the British Columbia maximum of six thousand six hundred dollars and the Northwest Territories Allied Council proposed a seven thousand dollar maximum.

The Mines Accident Prevention Association suggested the maximum be five thousand six hundred dollars and the Canadian National Railways considered the existing maximum adequate.

Recommendation

In arriving at our conclusions, your Enquiry took into consideration the high pay in the mining industry and the lower average earnings prevailing in the Territories. A higher maximum than that recommended would, in our opinion, unreasonably increase the maximum too rapidly for the economy of the Territories. A lower maximum than that recommended would not provide reasonably for the majority of the Territories' wage earners. Adoption of the Alberta standard is therefore considered most equitable at five thousand six hundred dollars a year at the present time.

Percentage Base

In every province of Canada, seventy-five percent of average earnings is the accepted base figure. The International Union of Mine, Mill and Smelter Workers (Canada) urged a base of one hundred percent, all other groups making submissions agreed with the seventy-five percent figure, and no evidence was submitted at the hearings which would justify your Enquiry recommending a change in the basic percentage.

Minimum Compensation for Total Disability

The existing Ordinances provide for a minimum weekly compensation for total disability of twenty-five dollars or actual earnings if less than twenty-five dollars. This is the rate applicable in four of Canada's provinces. Three other provinces provide a lower minimum and in three others the minimum is higher. Of these the highest minimum is that of Alberta which provides a minimum of thirty-five dollars per week or actual earnings if less than thirty-five dollars per week.

While the International Union of Mine, Mill and Smelter Workers (Canada) proposed a forty dollar minimum, such a figure is not considered to be warranted by your Enquiry at the present time.

Recommendation

However, it is the opinion of the Enquiry that the existing figure is too low and that a more equitable figure is the Alberta minimum of thirty-five dollars per week or actual earnings if less than thirty-five dollars per week. For the reasons stated, we so recommend.

Widows' Pensions

Both existing Ordinances provide payments for widows. In the Northwest Territories, this is ninety dollars a month and one hundred dollars a month in the Yukon Territory. Your Enquiry was encouraged by the practical approach of the large employer associations who readily agreed to upward revision of the Northwest Territories Ordinance to equal that of the Yukon.

The payment to widows of one hundred dollars is higher than the existing allowance paid in the province of Alberta and in fact is higher than those in eight of the ten provinces. Of the other two provinces, Saskatchewan's pension to widows is higher at one hundred and ten dollars a month but is sharply reduced at the age of seventy to seventy-five dollars per month. In British Columbia, the widow's pension is one hundred and seventeen dollars and thirty cents and possible of increase from time to time as related to a cost of living index.

Recommendation

There are no widows' pensions under Workmen's Compensation of the Canadian provinces which equal or exceed the one hundred and twenty-five dollars a month suggested by the International Union of Mine, Mill and Smelter Workers (Canada) and your Enquiry having weighed all the facts recommends that the Yukon widow's pension of one hundred dollars a month be uniform in both Territories.

Common Law Wives

At present a common law wife in either Territory may be awarded, at the discretion of the Referee, the compensation to which a dependent widow would have been entitled. Such compensation is paid provided the common law wife has cohabited with the workman for the three years immediately preceding his death and has had one or more children by him.

Your Enquiry studied the comments of the International Union of Mine, Mill and Smelter Workers (Canada) the Prudential Assurance Company Limited and the Territories Mines Accident Prevention Association and has given much thought to providing fairly for common law wives. As a result, your Enquiry recommends three changes to Section 25 of the Northwest Territories Ordinance and Section 26 of the Yukon Ordinance.

Re commendation

For the purposes of recognizing for compensation purposes the common law relationship, we recommend that the period of cohabitation required should be reduced from three years to two years where the common law wife has had one or more children by the deceased workman. This criterion has already been accepted in the Workmen's Compensation Act of Ontario.

Recommendation

It is our opinion that provision should also be made for common law wives who had no children by the deceased workman but where it had been clearly demonstrated that the relationship was of a lasting nature. We therefore recommend that entitlement be granted where cohabitation existed for the entire period of six years preceding the workman's death. This brings the provision for common law wives into line with the provisions of the Ontario Act which we consider equitable.

Recommendation

On the premise that a common law wife is treated equally with a legal wife for the benefits of this section, we accept the recommendation of the Prudential Assurance Company Limited and of the Mines Accident Prevention Association that the common law wife's compensation pension should cease when she marries or enters into another common law relationship and this is provided for in the Draft Ordinance, Section 25(1).

Dependent Children

The International Union of Mine, Mill and Smelter Workers (Canada) suggested that the minimum allowance should be fifty dollars a month for dependent

children and the Mines Accident Prevention Association suggested the present thirty-five dollars was reasonable. Both Ordinances provide for such children and in Section 24(1)(c) of the Northwest Territories Ordinance the monthly pension is thirty-five dollars a month. Section 25(E)(a) of the Yukon Ordinance provides monthly pensions of thirty-five dollars each for the first two children and twenty dollars each for each additional child. In both Territories, the benefits are paid to age sixteen or to eighteen if the child remains at school.

Recommendation

Your Enquiry considered the various submissions and agreed that there is a need to increase the benefits to children in the Territories. In order to mitigate the need and to conform to the Alberta standard, it is therefore recommended that forty-five dollars a month be paid in respect of each surviving dependent child until such child reaches the age of sixteen years and that the sum of forty-five dollars a month be continued to age eighteen if the child continues at school.

Invalid Children

The Mines Accident Prevention Association recommended thirty-five dollars for invalid children together with an extra allowance of ten dollars if required on the basis of need. The International Union of Mine, Mill and Smelter Workers (Canada) recommended the sum of fifty dollars.

Recommendation

Your Enquiry considers it equally imperative that the allowance for invalid children be increased to forty-five dollars which is also the allowance in Alberta and we so recommend.

Additional Benefits to Widows and Dependent Children

Provision is made for additional payments to widows and children because of illness and where the widow is dead or in an institution. This is provided in Section 24(1) (g), (h) and (i) of the Northwest Territories Ordinance and in Section 25 (g), (h) and (i) of the Yukon Ordinance. Since these sections do not provide statutory benefits but merely additional payments at the discretion of the Referee according to need and circumstance, your Enquiry does not propose any changes in these sections.

Additional Expenses of Widows

The International Union of Mine, Mill and Smelter Workers (Canada) suggested that these additional expenses be included with the burial allowances. The existing Ordinances provide for a lump sum of three hundred dollars as a contribution towards additional expenses occasioned consequent upon the death of the deceased workman. This is higher than the contribution in effect in Alberta and no change is proposed in this section.

Other Dependents

The existing benefits provided for other dependents are considered to be adequate and no changes are recommended.

Burial Expenses

Representations for increase in the pertinent sections were considered, but such arguments were not clear as to the real usefulness of increasing the awards. These might perhaps invite an increase in funeral costs and be of little real benefit to dependents.

Your Enquiry considers that the benefit of three hundred dollars provided under the Northwest Territories Ordinance is adequate under the circumstances and recommends

that the Yukon Ordinance be increased by fifty dollars so that both Ordinances provide three hundred dollars for burial expenses. This places the Territories benefit at parity with nine of the Canadian provinces.

Additional Transportation

Although distances are great in the Territories, no change is recommended in respect of the contribution to the expenses for the transportation of the body since this is already higher than that of Alberta and of five of the other nine provinces.

Payment to Widow on Remarriage

The Northwest Territories Ordinance provides for a lump sum payment of one thousand five hundred dollars and termination of her widow's pension to a widow on remarriage. The Yukon Ordinance provides one thousand dollars under the same circumstances. These allowances vary from province to province and in Alberta, it is one thousand and twenty dollars.

While the International Union of Mine, Mill and Smelter Workers (Canada) suggested that the lump sum settlement should be the equivalent of twenty-four month's pension, your Enquiry considers that the provisions of the Northwest Territories Ordinance are adequate under the circumstances.

Recommendation

We recommend that the payment to the widow on remarriage should be uniform in both Territories at one thousand five hundred dollars.

Basis of Compensation Calculation

Few problems give compensation officers more difficulty. Above all the basis of compensation is to guarantee income to replace earnings lost as a result of the injury and the calculation must be made, as it only can be, on earnings at the time of the injury. Compensation is guaranteed for the full period of the disablement and therefore throughout a lifetime if justified. This may be longer than the normal earning period where the disablement is permanent.

The sections of the Ordinances provide guidelines for the purpose of determining a fair award. If interpreted with regard to what amount "best reflects the loss of earnings resulting from the injury" this should result in equity for injured workmen. Narrow interpretations which result in an injured workman being "better off under compensation than he would be working" cannot be made on a proper interpretation of the existing Ordinances.

Your Enquiry noted the observation of the insurers that some injured workmen received more in compensation than they did in employment but your Enquiry believes that the wording of the Ordinances is satisfactory and that seeming anomalies must be a problem resulting from misunderstanding or errors in interpretation.

COMPENSATION BENEFITS IN WESTERN CANADA (LINE FIGURES)

BENEFIT	BRITISH COLUMBIA	SASKATCHEWAN	MANITOBA	ALBERTA	NORTH WEST TERRITORIES	YUKON	RECOMMENDED
MAXIMUM EARNINGS COVERED	\$6800	\$6000	\$6000	\$5600	\$4500	\$4000	\$5600
WEEKLY MINIMUM FOR TEMPORARY OR PERMANENT TOTAL DISABILITY	\$30 ^e	\$32.50 ^o	\$35 ^o	\$35 ^o	\$25 ^o	\$25 ^o	\$35 ^o
MONTHLY PENSION FOR DEPENDANT WIDOW	\$117.30 ^o ^o ADJUSTS WITH THE CONSUMER PRICE INDEX	\$110 ^o ^o DROPS TO \$75 AT AGE 70	\$78	\$85 ^o	\$80 ^o	\$100 ^o	\$100 ^o
WIDOW'S PENSION FOR COMMON LAW WIFE WHERE:	7 YEARS COHABITATION	5 YEARS COHABITATION OR 3 YEARS WHERE ONE OR MORE CHILDREN	3 YEARS COHABITATION	2 YEARS COHABITATION AND ONE OR MORE CHILDREN	3 YEARS COHABITATION AND ONE OR MORE CHILDREN	3 YEARS COHABITATION AND ONE OR MORE CHILDREN	6 YEARS COHABITATION OR 2 YEARS WHERE ONE OR MORE CHILDREN
MONTHLY PENSIONS FOR DEPENDANT CHILDREN (NO AGE LIMIT FOR INVALID CHILDREN)	\$40.80 EACH TO AGE 18 AND INVALIDS IF CONTINUING SCHOOL \$45.90 AGE 16 TO 18 \$51.00 AGE 18 TO 21 FOR ORPHAN CHILDREN \$45.90 TO AGE 18 AND INVALIDS IF CONTINUING SCHOOL \$56.10 AGE 16 TO 21 ALL PENSIONS ADJUST WITH CONSUMER PRICE INDEX	\$45 EACH FOR FIRST TWO UNDER AGE 18 AND INVALID CHILDREN. UP TO \$45 EACH FOR ADDITIONAL CHILDREN DEPENDING ON EARNINGS (MINIMUM \$20 EACH) \$60 FOR ORPHANS AND INVALID ORPHANS CONTINUE TO AGE 19 IF ATTENDING SCHOOL DISCRETIONARY ADDITIONAL ALLOWANCE FOR ORPHANS, LIMIT \$50 MONTHLY.	\$39 EACH TO AGE 18 \$48 EACH FOR ORPHANS TO AGE 18. CONTINUE TO AGE 18 IF ATTENDING SCHOOL. DISCRETIONARY EDUCATIONAL ALLOWANCE FROM AGE 16 TO 18 LIMIT \$39 MONTHLY. (\$45 FOR ORPHANS)	\$45 EACH TO AGE 18 CONTINUE TO AGE 21 IF ATTENDING SCHOOL. DISCRETIONARY ADDITIONAL ALLOWANCE DURING ILLNESS, LIMIT \$10 MONTHLY. DISCRETIONARY ADDITIONAL ALLOWANCE FOR ORPHANS, LIMIT \$35 MONTHLY.	\$39 EACH TO AGE 18 CONTINUE TO AGE 18 IF ATTENDING SCHOOL. DISCRETIONARY ADDITIONAL ALLOWANCE DURING ILLNESS, LIMIT \$10 MONTHLY. DISCRETIONARY ADDITIONAL ALLOWANCE FOR ORPHANS, LIMIT \$10 MONTHLY.	\$35 EACH FOR FIRST TWO UNDER AGE 18 AND INVALID CHILDREN \$20 EACH ADDITIONAL DISCRETIONARY ADDITIONAL ALLOWANCE DURING ILLNESS, LIMIT \$10 MONTHLY. DISCRETIONARY ADDITIONAL ALLOWANCE FOR ORPHANS, LIMIT \$10 MONTHLY.	\$45 EACH TO AGE 18 CONTINUE TO AGE 18 IF ATTENDING SCHOOL. DISCRETIONARY ADDITIONAL ALLOWANCE DURING ILLNESS, LIMIT \$10 MONTHLY. DISCRETIONARY ADDITIONAL ALLOWANCE FOR ORPHANS, LIMIT \$10 MONTHLY.
INITIAL LUMP SUM TO WIDOW	\$250	\$300	\$300	\$200	\$300	\$300	\$300
BURIAL EXPENSES	\$350	\$250 PLUS \$50 FOR PLOT	\$300 PLUS \$50 FOR PLOT	\$250 PLUS \$50 FOR PLOT	\$300	\$250	\$300
PAYMENT TO WIDOW ON REMARRIAGE	2 YEARS PENSION NOT TO EXCEED \$2500	\$2000 OR TWO YEARS PENSION WHICHEVER LEAST	TWO YEARS PENSION	\$1020	\$1500	\$1000	\$1500

COMMUTATION OF MONTHLY PAYMENTS TO
LUMP SUM SETTLEMENTS

"Commutation is the substitution of one kind of payment
for another."

(Shorter Oxford English Dictionary)

Existing Legislation

Many boards have had experience in the field of commuting compensation pensions to lump sum awards. Your Enquiry is familiar with the difficulties of deciding wisely in such matters. Indeed, the results are not notably successful even as far as the workman is concerned in the long run.

In both Territories, the Ordinances deal with commutation in Sections 22(2), 33(3), 38(2) and (2a) for the Northwest Territories and Sections 23(2), (3), (4) and (5) and 34(3) and 39(2) and (3) for the Yukon Territory.

When the Referee finds a workman entitled to a permanent partial disability award of five percent or less the Workmen's Compensation Officer in Edmonton representing the Commissioner orders payment in a lump sum to the workman. All other commutation or lump sum settlements must be approved by the Commissioner unless the workman is away from the Territories for thirteen consecutive months or more.

In this situation, the insurer may commute but if the amount is over twenty dollars per month, must have the approval of the workman.

Submissions

The Northwest Territories Allied Council contended that the commuting of pensions should be permitted only following investigation which clearly demonstrated a lump sum payment would help the pensioner to become self-supporting or otherwise benefit him to a substantial degree. Lump sum settlements should never be made in cases where the funds might very well be squandered. Conversely, there should not be commutation simply to avoid the payment of a monthly pension to the injured workman. In their experience, stated the Canadian National Railways, lump sum settlements as now provided under the Ordinances were satisfactory, particularly when the workman no longer resides in the Territories. However, it was felt that consideration should be given to amending the provisions for commuting pensions to allow for commutation where the permanent disability does not exceed ten percent.

From an equitable point of view, the Prudential Assurance Company held that Section 38(2a) of the Northwest Territories Ordinance and Section 39(3) of the Yukon Ordinance should be identical. A workman leaving the Yukon must have resided in the same province or jurisdiction for thirteen consecutive months. A workman leaving the Northwest Territories, therefore, had an advantage over a workman from the Yukon, insofar as these sections were concerned. Similarly, a workman leaving the Territory has an advantage over the workman who remains in the Territories as a lump sum settlement may be made after the workman is out of the Territories for thirteen months. Consideration should be given for commutation where the permanent partial disability is fifteen percent or less. To ensure fairness for all workmen, any lump sum settlement should be subject to the Commissioner's approval.

Osler, Hammond and Nanton Insurance Limited realistically submitted that the lack of provisions for commuting pensions to lump sum settlements which release the insurer from all future liability posed a problem. This accounted for some of the cost in providing the necessary insurance coverage because of the unknown factors involved.

Conclusions

The essential purpose of Workmen's Compensation is to offset earnings impairment due to disability. Where the impairment of earnings is high, continuing regular payments of compensation assure the workman of a dependable income. Despite this your Enquiry recognizes that there are circumstances where commutations are in the workman's best interests.

Since the Ordinances were written, economic circumstances have changed and your Enquiry is satisfied that the provisions for commutation should be broadened to provide for administrative efficiency and reasonable commutations for those who need them. At the same time there must be safeguards that the workman's right to a continuing pension be maintained when such is in his best interest. It is not recommended that there be any commutation of pensions to widows and children.

Recommendation

We recommend a new section for the Ordinances which will include all provisions for commutation previously included in Sections 22, 33 and 38 of the Northwest Territories Ordinance and Sections 23, 34 and 39 of the

Yukon Ordinance. In the Draft Ordinance, the new Section 22A(1) gives equal privilege for consideration of commutation to those living within and outside the Territories.

We recommend that pensions up to ten percent be commuted with the approval of the Commissioner because periodic, small payments are not as valuable as a useful lump sum to the injured workman. Your Enquiry confirms that pensions over ten percent should only be commuted when there is a strong balance of probabilities that this will, in the opinion of the Commissioner, help the injured workman more. The Draft Ordinance so provides.

It is also recommended by your Enquiry that all commutations be based on four percent Canadian Life Tables. These are the tables used by the Alberta Workmen's Compensation Board and in the opinion of your Enquiry will provide most acceptably for the Territories.

CHOICE OF PHYSICIAN AND MEDICAL AID

"The Board (acting on the advice of its medical staff) has a very wide authority over medical care and who should administer it. The Board pays the bills and should, within reason, call the tune."

The Hon. Gordon McG. Sloan,
Chief Justice for British Columbia
(Report Relative to Workmen's Compensation,
British Columbia - 1952)

It is commonly misstated that all Acts in the provinces give the workman the right to choose his own physician. This is not so. Such a right is not statutory in the Territories nor in six of the provinces. Only in Alberta, British Columbia, Manitoba and Quebec is the Board authorized to permit the workman to be treated by a physician of his choice.

Existing Legislation

Section 41 of the Northwest Territories Ordinance and Section 42 of the Yukon Ordinance make very broad provisions for medical aid to injured workmen. The Referee is authorized to determine all questions as to the necessity, character and sufficiency of medical aid and the Commissioner is authorized to make regulations with respect to furnishing of and payment for medical aid.

These Ordinances appear to assure quite adequately the best medical services possible for compensable injured workmen and your Enquiry can see no reason for changing them. Indeed, here as in other Canadian jurisdictions the kind of medical service invariably rendered is of high quality and the cost is met by the provisions of the Compensation Ordinances.

Submissions to Enquiry

There were submissions made to the Enquiry by the International Union of Mine, Mill and Smelter Workers (Canada) which contended that at present the workman does not have free choice of doctors. They queried how a man employed in a camp which maintains one physician could be thought to have a choice of doctors? They emphasized that the workman should definitely have the right to change doctors, if he feels he is not getting the proper and correct treatment.

The Territories Mines Accident Prevention Association submitted that starting from an injury in a remote mine, the facilities of the local first aid room or medical attendant or physician are immediately available.

No question of choice of doctors arises, and the injured man is given the best of attention with the facilities at hand. Wherever the facilities are in any way inadequate, the man is moved to the nearest hospital and this is frequently done by airplane. Usually such a move is based on the expert advice of the mine physicians, the humanitarian concern of the employer and the good business practises of the insurer. Time is seldom lost in doing this.

The Canadian National Railways agreed with permitting an injured workman a free choice of doctors. That the employer should provide reasonable medical aid was also supported. At the same time the Canadian National Railways maintain that it is necessary to retain those provisions of the Ordinance whereby an injured workman must present himself under certain circumstances for medical examination or treatment as directed by the Commissioner.

As to their method of dealing with the medical situation when a workman must be evacuated from the North, the Prudential Assurance Company Limited was specific. Their Edmonton office is notified by wire or telephone of the man's name, the type of injury and condition. If the information at hand indicates that a specialist for this type

of injury is required and one is not in the locality of the workman, then the company contacts their medical consultant in Edmonton or Vancouver for nomination of an appropriate specialist and this doctor is asked to arrange for hospital treatment under his supervision.

The Northwest Territories Allied Council accepted that the choice of doctor, except in urban areas, will be limited. A safeguard should be provided whereby workmen will not be led to believe they can insist upon another doctor from a distant locality, when a competent doctor is available in the vicinity of the accident.

Conclusion

Your Enquiry has given careful consideration to these submissions concerning the initial freedom of choice of doctor and subsequent changes of doctor and finds little evidence to support the criticism. Freedom of the initial choice of the attending physician is not a statutory right under the Ordinances, merely a general administrative practise as it is in six of the ten provinces of Canada.

We are satisfied that wherever possible and reasonable, the workman injured in the Territories is given the initial choice of attending physician. In our opinion the governing principle is the need for immediate

treatment which frequently dictates the advisability of attention by a doctor in the workman's vicinity. Under these circumstances no choice is practical and we do not believe that it can be successfully argued that freedom of choice should take precedence over the need for treatment.

As regards the workman's right to change doctors we are satisfied that the Ordinances do not work a hardship on the workman. Under the Ordinances changes may be authorized by the employer, the insurer or the Referee and we are satisfied that where change is advisable, permission is granted and where change is not in the workman's best interests, permission will be rightfully denied. This is essentially a matter of professional judgment, expertness and ethics.

Operations

The International Union of Mine, Mill and Smelter Workers (Canada) are not satisfied with the provision for authorizing operations and request that the cost of any operation be paid by the employer or insurer if any doctor declares it necessary. This is somewhat ambiguous in concept since we cannot believe that any reputable doctor would propose surgery that he did not consider necessary.

Section 41 of the Northwest Territories

Ordinance and Section 42 of the Yukon Ordinance provide as follows:

41-42 (2) "All questions as to the necessity, character and sufficiency of any medical aid furnished or to be furnished shall be determined by the Referee. "

(6) "Any major operations or operations of election require the approval of the employer or the insurer, or of the Referee on reference by the Commissioner, before being performed and in the event that such approval is not obtained, except in cases of emergency the cost thereof may be paid or not at the discretion of the Referee. "

In all Canadian jurisdictions the final decision as to the necessity, character and sufficiency of medical attention including operations rest with the administering body. This is a basic concept of Canadian Workmen's Compensation administration. It does not reflect adversely on the judgment or capability of those rendering medical attention but merely provides for orderly and reasonable discharge of the administering body's responsibility for the welfare of the injured workman. We conclude that no change is warranted.

Recommendation

It would not be wise to establish as a statutory right at his employer's expense and without his employer's approval, selection by the workman of initial treatment at some point distant from the scene of the accident.

Similarly, there seems no valid argument for amending the Ordinances regarding change of doctors. Where a workman is not satisfied with his doctor, he may request a change. Where he disputes the medical evidence regarding his disability, Section 41 of the Draft Ordinance contains an adequate facility for appeal and examination by other impartial doctors. We recommend that these provisions be continued and we are satisfied that in practise the injured workman does have the initial choice of doctor for the treatment of his disability.

OCCUPATIONAL RETRAINING
(REHABILITATION)

"Every one probably would agree that prevention is better than cure and that cure is better than compensation."

(Dodd, Administration of Workmen's Compensation, 1936, pages 714, 717) quoted by Commissioner, The Hon. Gordon McG. Sloan, Chief Justice for British Columbia - 1942 - (Report Relative to Workmen's Compensation, British Columbia - 1952)

Existing Legislation

Retraining is one of the needs of an advancing computer culture and occupational retraining is essential to the concepts of compensation administration. The Ordinances deal with retraining in Section 21A for the Northwest Territories and Section 22 for the Yukon.

Submissions by Labour and Industry

Your Enquiry was urged in the brief submitted by labour that injured workmen in need of occupational retraining and suitable for retraining should be sent to training centres outside of the Territories, until such time as facilities became established. The International Union of Mine, Mill and Smelter Workers (Canada) requested in their submission removal of the five thousand dollar limitation of rehabilitation and extension of this service

to all employed miners who were rejected for work underground due to a chest condition. The Territories Mines Accident Prevention Association suggested that it was not feasible to establish a retraining centre for workmen from the Territories and that available facilities in selected localities must be resorted to. In their opinion satisfactory facilities were usually found.

Reports of Other Commissions

Commissioner Sloan in his report on the British Columbia Act stated:

"The problem of financing a proper scheme is one upon which I hesitate to express an opinion as it involves governmental policy but it seems to me that if the burden be shared by the State and the employee and the employer groups, the strain would not be severe. Each has a vital and direct interest in the promulgation and continuance of a proper rehabilitation plan. The submission that "industry should pay for its own wreckage" cannot be considered a sound basis for a considered monetary policy for the simple reason that experience in all fields have indicated that beyond dispute the far greater percentage of accidents are occasioned by causes for which the employer cannot be held responsible.

"It seems to me the rehabilitation of injured industrial workers ought to be under the direction of the Board."

Commissioner McKinnon in his report on the Nova Scotia Act of 1958 reports:

"There are, of course, many difficulties involved in the rehabilitation of workmen but no difficulty can be considered too great if the injured workman can be successfully rehabilitated. In some cases the patient himself may have no great desire to be taught another skill, particularly where it may involve leaving his home in order to find employment at the new skill. Often too, what can be done is limited by the aptitude and educational background of the patient."

Commissioner Turgeon in his report of 1958 on the Manitoba Act, stated:

"The present-day doctor has taken upon himself the duty to guide his patient along the road to such physical and mental restoration as will tend to make it possible for him to devote himself, under skilled direction, not only to the necessary effort to remain in good health but to the further task of applying his body and brain restoration to the objective of earning his own livelihood, either by resuming his former occupation or by turning to a new one.

"In the history of rehabilitation work in connection with workmen's compensation, great honour is due to the Workmen's Compensation Board of Ontario."

Commissioner Tysoe, in his report of 1965 on the British Columbia Act said:

"There are two aspects of rehabilitation of workmen. One is medical or physical and the other vocational. The first calls for the provision of all treatment measures that will expedite recovery from an injury supplementary to good surgical and medical treatment given by the attending physician. These treatment measures lie in the field of physical medicine, in a term applied to what is commonly known as physiotherapy, occupational therapy and remedial exercise therapy. The second calls for help to the handicapped workman to care and provide for himself and his family, and for help to return to some suitable employment and to resume his proper place in society. This help is given by sound counselling and guidance, with assistance to find an appropriate job and, in some cases of substantial permanent disability, by retraining."

The Honourable Mr. Justice Tysoe

continues the classic priorities of retraining as follows:

"The order of precedence in vocational rehabilitation is as follows:

- (1) Restoring the workman to the very job he was employed in when he suffered his injury.
- (2) If he must change jobs, placing him in the new job with his old employer.
- (3) If neither is possible, placing him with another employer in the type of work he was employed in when he suffered his injury and, failing that, in a different job with another employer.
- (4) Lastly, if all the foregoing fails, attempting to retrain.

"This being so, the most important part of the work of the Vocational Rehabilitation Department is not to retrain workmen, but to keep the lines of communication with employers open continuously and in particular with each workman's employer. It is necessary to face the fact that retraining must be very much of a last resort if only because experience in Ontario, Washington and England, as well as in British Columbia, has shown that in relatively few cases it is successful. The vast majority of those injured wish to return to their old or modified jobs with their former employer. Lack of education, inability to learn

new skills, language barriers, middle and old age, and doubtful adjustment to new environment will very frequently make retraining impractical, costly and wasteful."

Comparisons

Except in Alberta, British Columbia, Nova Scotia and Saskatchewan, the maximum amount that may be spent for rehabilitation in a year is fixed in the statute; ten-thousand dollars in Prince Edward Island; thirty thousand dollars in Manitoba; twenty-five thousand dollars in Newfoundland (the Board has authority to spend up to twenty-five thousand dollars in a year for academic or vocational training for injured workmen); fifty-thousand dollars in New Brunswick and two hundred thousand dollars in Ontario, although additional funds are authorized when needed. In the other provinces no limit is placed on annual expenditures for rehabilitation services. In Alberta, since 1948 a reserve fund has been set aside for the payment of expenses incurred by the Board in retraining and rehabilitation.

Conclusions

Occupational retraining is but one aspect of rehabilitation and your Enquiry is aware of other avenues of opportunity which exist to provide assistance to an injured workman in returning to useful employment in the minimum of time and with the least residual disabilities.

In today's competitive and expanding economy with full employment in most segments of industry, there is a growing interest in and awareness of the partially disabled workman's potential. Employers and insurers alike through practical rehabilitative concepts and applications, take advantage of new opportunities to minimize time and money lost through occupational disability. They cannot afford to permit the residual abilities of any workman to go unheeded.

Opportunity and adaptability go hand in hand and often useful re-employment within the workman's capacity can be arranged with only a brief period of on-the-job training. Your Enquiry cannot over-emphasize the desirability of expanding this activity both by the employer and the disabled man in order to restore his capacity to support himself and his family. We doubt that the enlightened employer would oppose such an approach even where the permanent disability pension may mitigate the difficulties of the workman's economic situation.

Underground Workmen

The International Union of Mine, Mill and Smelter Workers (Canada) urged that Section 21A be still

further extended by addition of a proviso that an underground workman injured by a chest condition to the degree that his resumption of underground work is not advisable should be entitled to full compensation.

This request is rejected as is also the implication that such workman should be compensated, regardless of the degree of impairment, until he returns to the same, not just equivalent wages. Again it is pointed out that compensation, under the Canadian acts and ordinances, is payable for life. The occupation of underground mining is more limited in years of high earnings than are many sedentary jobs. The procedure of "deeming" loss of earnings ignores this fact.

The words 'to compensate' will surely be admitted to embrace the purpose that efforts should always be extended to assisting the compensably injured to return to as full a contributor to the economy as his residual powers following the injury will permit. This concept certainly applies to underground workmen.

Recommendation

Since the existing Ordinances permit retraining where necessary and provide up to five thousand dollars for each claim for such purposes, your Enquiry

concludes that the legislation is satisfactory and we do not propose to interfere by making changes as to limits at the present time. There was no evidence that this limit inhibited retraining of an injured workman. We continue these provisions in Section 21A of the Draft Ordinance.

SILICOSIS

"Concerning silicosis, and it would seem to be true also of other pulmonary diseases attributable to dust inhalation, only a small proportion of persons in exposure to free silica dust develop disease. In our experience this is approximately one per cent."

Letter of April 16, 1963 from Dr. A. R. Riddell *
to The Hon. Mr. Justice Tysoe.

Existing Legislation

Compensation is payable only after exposure to silica dust in the Territories for periods amounting in all to at least three years preceding disablement.

Section 41(1)(2) of the Northwest Territories Ordinance and Section 42(1)(2) of the Yukon Ordinance apply.

Comments

It would be surprising indeed if hearings connected with an economy so vitally dependent upon mining did not give rise to representations respecting Silicosis. However, the constructive approach of those appearing before your Enquiry enables us to make recommendations which should be generally acceptable.

The Northwest Territories Allied Council urged that arrangements be made with the other provinces in which the exposure occurred, in the same manner as the

* Member, Ontario Silicosis Referee Board, 1963

arrangements now in effect between various provinces covering out-of-province exposure. They requested your Enquiry to review the Silicosis coverage contained in the British Columbia Workmen's Compensation Act.

The concept of "a substantially lessened capacity for work" concerned the International Union of Mine, Mill and Smelter Workers (Canada) who recommended deletion of these words. In their opinion this provision discriminated against the married man who had to continue at work as long as he could stand up whereas a single man could remain off work and thus establish a medical record of disability. They further recommended reduction of the eligibility period to two years. The International Union of Mine, Mill and Smelter Workers (Canada) also endorsed the recommendations of the Silicosis Committee of the Association of Workmen's Compensation Boards of Canada. A copy of these recommendations which had been sent to the appropriate Ministers in the respective provincial governments was submitted for consideration by your Enquiry. These recommendations are as follows:

- (1) A minimum exposure period of two years;
- (2) That there be no time limit for filing of claim;
- (3) That all present limiting clauses as to residence should be abolished;

- (4) That accurate work records of all miners be kept and all such records filed with the appropriate Department of Mines should a particular mine cease to operate;
- (5) That adequate pre-employment chest examination, including X-Ray, should be established;
- (6) That each employee should have an adequate annual re-examination;
- (7) That there should be periodic dust counts and adequate control measures;
- (8) That authority under the respective Acts be given to each Board to make agreements with each other with respect to claims where there has been exposure in more than one province.

The Territories Mines Accident Prevention

Association argued that a three-year residence clause, similar to that of British Columbia was necessary and also recommended that no payment be made where the workman had left the Territories and engaged in exposure employment elsewhere. They suggested that liability be limited where the workman had rights under another jurisdiction and that compensation for disability due to exposure in the Territories should be divided proportionately among those employers for whom the man worked in exposure to dust.

Comment by the Hon. Mr. Justice Tysoe

In his 1965 Report on the British Columbia Act, he stated: "Industry as well as labour expressed concern over

the difficulties and problems that exist with some Silicosis claims by reason of the following circumstances. The precise time of origin of a silicotic condition is not easy to establish. The condition may have commenced many years before a claim for compensation in respect of it is valid. Some miners, by the very nature of their work, move from province to province. Such men, and immigrants from other lands, may have been exposed to silica dust elsewhere than in British Columbia but are not found to be silicotic until they are working in this province."

Conclusions

There is no possibility of making arrangements with other jurisdictions regarding exposure outside the Territories as suggested by the Northwest Territories Allied Council. Such arrangements can only be made when both parties operate under a collective liability system with administration of an accident fund by a single authority.

The words "substantially lessened capacity for work" which the International Union of Mine, Mill and Smelter Workers (Canada) requested be deleted have been retained in Section 40 of the Draft Ordinance, but the Section has been modified to provide a broader and more equitable definition of the evidence by which silicosis may be established.

Silicosis is a progressive disease which in the early stages is not disabling and does not require treatment. We cannot support the idea of payment of compensation without substantially lessened capacity for work.

The International Union of Mine, Mill and Smelter Workers (Canada) also recommended that the three-year exposure rule be reduced to two years. Although the Territories Mines Accident Prevention Association argued against this reduction, the two-year rule is one of the recommendations of the Association of Workmen's Compensation Boards of Canada and Your Enquiry has therefore included this provision in Section 40 of the Draft Ordinance.

The Territories Mines Accident Prevention Association recommended the pro rata liability principle to provide indemnity to the last employer of a disabled workman by the previous employers in the Territories which is accepted by your Enquiry. We have also provided for compensation payment proportionate to the workman's exposure in the Territories in relation to his total exposure in all jurisdictions.

Recommendations

The recommendations of the Association of Workmen's Compensation Boards of Canada which relate to claims for disability have largely been accepted by your Enquiry.

In addition to the two-year exposure rule already mentioned, the new Draft Ordinance has changed the time limit for reporting. Section 17(4)(c) of the Draft Ordinance permits one year for reporting from the date on which silicosis is diagnosed. Thus, by relating the reporting requirement to the time at which the workman's silicosis is diagnosed, some of the common problems have been overcome which have previously complicated the determination of entitlement due to the restrictions of exposure and of leaving an employer's service.

Your Enquiry does not recommend that a three-year residence requirement should be introduced as suggested by the Territories Mines Accident Prevention Association. There is no such provision in the existing Ordinance and the Association of Workmen's Compensation Boards of Canada recommends the abolition of such provisions in Canadian jurisdictions.

Your Enquiry also recommends adoption of the broader and more equitable definition of "silicosis" as contained in Section 40(1) of the Draft Ordinance.

In cases where the exposure to silica dust took place partly elsewhere than in the Territories, your Enquiry recommends in Section 40(4) of the Draft Ordinance a proportionate reduction of compensation payments.

Your Enquiry recognizes the validity of the pro rata liability principle to share the cost of the claim in respect of each employer where in the Territories exposure to silica dust occurred with more than one employer and so recommends in Section 40(5).

Your Enquiry is of the opinion that the revisions contained in the Draft Ordinance relating to claims for silicosis give effect to modest, balanced and progressive changes and we are indebted to those who submitted proposals in these matters.

ACCIDENT PREVENTION

"For reasons both humanitarian and economic the prevention of accidents should be a prime consideration in any scheme of workmen's compensation, and no system can be satisfactory which will not tend to produce the maximum of effort and result in conserving the life, health and industrial efficiency of the workman."

The Hon. Sir William Ralph Meredith, Chief
Justice for Ontario,
(Interim Report on Laws Relating to the Liability
of Employers - Ontario, 1911)

Background

Under the terms of reference your Enquiry was requested to comment on the subject of accident prevention and the feasibility of employing a Safety Engineer to enquire into and develop a Safety Code for the Northwest Territories.

Aims

In an insurance based system the initiation of a sound safety programme with policies and procedures to make accident prevention effective is necessary and financially advisable. Under individual liability each firm must aim at the prevention of industrial accidents thus keeping assessment rates at reasonable levels or pay additional insurance premiums for coverage. Undoubtedly, those employers who have carried

on a programme of accident prevention and safety regulations consistently, will have received preferential insurance rates over those employers who have had unfavourable accident records. First aid is of great value in industrial accidents and employers should have the necessary first aid kits available for use and should be compelled to employ persons capable of administering first aid to injured workmen.

References

Your Enquiry made a study of the various commission reports. Commissioner Roach in his review of 1950 on the Ontario Act dealt extensively with this subject to overcome what appeared to him to be deficiencies of the Act. His recommendations were taken from the British Columbia Act. In his opinion any completely organized system of accident prevention required as part thereof committees of employers and workmen at plant level with specific duties laid down for those committees. Excellent results had been obtained in British Columbia by the joint efforts of management and labour in the field of accident prevention. Every operation employing twenty or more workmen must maintain an Accident Prevention Committee consisting of not more than twelve nor less than four members, designated in equal numbers by the workmen and by the employer according

to the regulations of the British Columbia Workmen's Compensation Board.

Commissioner Sloan in his report of 1952 on the British Columbia Act said:

"Man cannot be made safety-minded by legislation. Unless there is the will to safety, all the regulations in the world will not by themselves prevent accidents. Alternatively, the desire to minimize hazards needs as its aid the promulgation and enforcement of fundamental regulations governing the operations of machines and the conduct of men. These two essentials must both be present in order to have and maintain an efficient accident prevention programme.

"Success of any accident prevention programme, assuming it to be intelligently designed to meet the causes of injury when understood, depends on safe working conditions and upon an active, educated and management-directed cooperation between management and labour, such as joint safety committees, training of supervisors, job training for workmen, job assignments, and pre-assignment physical appraisal."

Commissioner Tysoe in the introduction to his report of 1965 on the British Columbia Act stated:

"The prime mission of those who administer workmen's compensation and the prime purpose of the Act is not to furnish financial benefits, but to promote and encourage measures for the prevention of injury to workmen in the course of their work . . ."

Accident Prevention Regulations

The wisdom of the Commissioners regarding accident prevention was placed under review along with the submissions presented. The Ordinances of the Yukon Territory provide regulations governing accident prevention established by Commissioner's Order 1964-106 cited as the Accident Prevention (Aerial Tramway) Regulations. There are no such provisions in the Northwest Territories Ordinances. There are however, extensive regulations governing the handling and use of explosives in the Northwest Territories. In the latter regulations, nothing is to be construed as limiting the operation of the Mining Safety Ordinance and rules made thereunder.

Comments

The Territories Mines Accident Prevention Association stated by submission: "As far as is known, this

Association is the only Accident Prevention Association of employers in the Territories. It represents a combination of effort by employers, an acknowledgment of common recognition of their duties in the field. It functions on a relatively simple basis, without full time staff, but with an Executive and Standing Committees on Mine Safety and Silicosis, and also deals ad hoc with the particular problems as they arise and suggest themselves.

"It does not pretend to perform all of the functions of the several provincial associations, which operate extensive statistical and clerical services and which have permanent staffs, which are costly and require large budgets. Such are luxuries that could not be afforded by Territorial industry, and are not believed to serve any useful function. This Association is prepared to work through officials, committees, its members or their managers with mines inspectors or administration officials to cope with any problem arising."

Legislation on the subject is found in the Mining Safety Ordinance of each Territory. Local mining inspectors are located in the Territories, and supervised by Senior Inspectors in Ottawa. The standards laid down and safety practices are based upon operating experience gained in all parts of Canada.

All the principal operators employ Safety Engineers but small mines in the initial stages of development may not always have the resources to do so and will be subject to close inspection. Within the past two years this Association retained the services of a recognized expert, a recently retired Chief Mines Inspector of Ontario, as a consultant to make a survey of operations and safety practises in the Territories. The views of an outside expert were felt to be desirable to ensure that practises were consistent with latest thought. The Association has encouraged the special training of selected men at recognized safety courses outside. These trained instructors have in turn run safety courses in the Territories.

Premium ratings by the insurer take close account of accident experience in the individual operator, and the incentives and application of "merit rating" are achieved to a much higher degree.

The Governmental authorities revised the Mining Safety Ordinance in 1965 and revision of the Ordinance is undergoing final drafting at Ottawa. The Association recommends that the Mining Safety Ordinance should provide for up-to-date provisions for:

- (a) Pre-employment medical examination, including chest X-ray;
- (b) Adequate annual re-examinations;

- (c) Maintenance of accurate records of each miner and filing with the Registrar of Miners' Certificates;
- (d) Provision for the issue of "Initial Certificates" to applicants;
- (e) Provision for subsequent issue of "Miners' Certificates".

The Northwest Territories Allied Council submitted that Accident Prevention Regulations were necessary but regulations alone were not enough. The ideal situation would be where there was complete cooperation between management, labour and the Compensation Board. The aim should be to see that accidents don't happen -- not just provide payment after they happen.

In their view, British Columbia stood second to none on the North American continent and a study of British Columbia regulations was highly recommended. They suggested also that all matters relating to safety, i. e., Workmen's Compensation, Mining Safety Regulations, Steam Boilers and Pressure Vessels, Shops and Factories should come under the authority of workmen's compensation legislation. To have it otherwise would lead to duplication of effort and divided authority, neither of which is effective or desirable;

The International Union of Mine, Mill and Smelter Workers (Canada) urged in their submission the provision of a very necessary Accident Prevention Department, Industrial Hygiene and Rehabilitation departments.

The Canadian Construction Association submitted that some indication of safety requirements would be beneficial.

Comparison of Provincial Laws

The Boards in the provinces, and any person appointed by these Boards, have authority to inspect the premises of any employer within the scope of the Act to ascertain whether proper precautions are being taken to prevent accidents and whether safety appliances or safeguards required by law are being used.

In Alberta, British Columbia, Newfoundland, Prince Edward Island and Saskatchewan, the Board may order an employer to install in his plant, within a specified time, any safety device which in its opinion is necessary.

In all these provinces except Prince Edward Island, where an employer fails, neglects or refuses to provide safety devices, or where in the Board's opinion conditions and immediate danger exist which would be likely to result in injury to any person, the Board has discretion to order the closing down of the place of employment until corrective measures have been taken.

In Ontario the work of accident prevention is assigned to associations of employers, known as accident prevention associations or safety associations. The

associations operate under the Board's Safety Education Department on funds charged against the industries in the class or classes which the associations represent. The work of the associations extends to all forms of safety education and safety promotion. In British Columbia, if the Board considers that an accident was due to the failure of an employer to comply with the regulations or with the direction of the Board, it may collect from the employer the amount of compensation payable, not exceeding one thousand dollars in any case.

The Acts of all provinces except Prince Edward Island permit the Board to adopt a system of merit or experience rating. In Alberta and Ontario, if the Board considers that sufficient precautions are not taken for the prevention of accidents or that working conditions are not safe or that machinery or appliances are defective or inadequate or that first aid requirements have not been complied with, the Board may add to the employer's assessment such a percentage as it deems just.

Recommendations

Your Enquiry recommends the appointment of a joint Director of Safety for both Territories. As the justification for this appointment is shown by the results,

when the responsibility might well be divided and one Director appointed for the Yukon and an additional one for the Northwest Territories.

The function of such a Director of Safety as envisaged by your Enquiry would be to promote active effort in accident prevention. The work of such a Director of Safety would be preliminary to the drafting of relevant regulations concerning the prevention of accidents and the prevention of industrial disease in employment or places of employment.

Your Enquiry makes this recommendation and points out that judging from the "premium rates" the accident experience is already good.

First Aid

Your Enquiry furthermore recommends that the question of First Aid be carefully considered. In the two Territories where physicians are few and far between, adequate first aid treatment is of utmost importance. Employers should be compelled to have in their employ persons capable of administering first aid to injured workmen. Much suffering has been alleviated and many lives have been saved through prompt administration of first aid, and the proposed Director of Safety could continuously scrutinize and improve First Aid activity.

ACCIDENT REPORTS

"Evidence of the nature, degree and circumstances of the accident must be obtained while memories are still fresh and before witnesses and parties die or move abroad. "

The Hon. Mr. Justice Roach
(Report on Workmen's Compensation Act, Ontario -
1950)

Existing Legislation

"Forthwith" is the key word of the present legislation and it is required in Section 17 of the Northwest Territories Ordinance and Section 16 of the Yukon Ordinance, that workmen, employers and attending doctors should report accidents. Subsection 6 in each Ordinance provides for penalties on summary conviction of employers who fail to report accidents forthwith once they have knowledge or notice of it.

Submissions to the Enquiry

Several submissions were made to the Enquiry concerning accident reporting and the problems of time, distance and delay. Because delay not only impedes decision making but also, the administration of cases accepted for compensation, these matters have been considered in the Administration Section of this report.

As to the provisions of the existing Ordinances, the Canadian National Railways, on the basis of their experience, believe that they are satisfactory.

To speed reporting, your Enquiry also considered the advisability of having reports routed through the representative in Whitehorse who could then be responsible for expediting all late reports in that area. At present the Whitehorse representative is only involved at the request of the Edmonton compensation officer when delay is already apparent.

The Prudential Assurance Company Limited were satisfied with the present Ordinances and pointed out the provision of penalties for non-compliance. If charges were laid under the Ordinances, the resulting publicity would have a beneficial effect. They did not feel that they could support the idea of a full time representative of the Edmonton office stationed in Whitehorse or Yellowknife, nor could they consider having a representative of their own in these cities for economic reasons. While the Prudential's greatest difficulty lies in obtaining information from doctors, they do not feel that penalty provisions would be a useful solution.

Report of Commissioner Roach on Ontario Act 1950

While almost all commissions of enquiry into the various Workmen's Compensation Acts in Canada have dealt with delays in reporting and payment of compensation, their findings are adequately summed up by Mr. Justice Roach who said:

"In certain briefs and during the public hearings complaints were made that frequently an injured workman who had suffered a compensable injury had to wait an unreasonable length of time before receiving his first payment. The Board has confirmed to me the fact that on occasions there have been undue delays. Such delays, however, are not due to any weaknesses in the Act but to non-compliance with its provisions or the regulations made thereunder by either the employer, the workman, or the doctor. The Board informs me that once (those) completed forms have been received by it, in the very great majority of the cases, the claim is dealt with by the Claims Department and, if the injury is compensable, a cheque for the first compensation payment is forwarded to the workman within two days thereafter. The majority of delays are caused by the failure of the employer to report within the prescribed time. In a lesser number of cases the doctor is tardy in filling in and returning his report.

"I am unable to suggest any improvement in the procedure described by the Act. The Board has an adequate remedy in the penal powers conferred upon it by the Act and informed me that from time to time it has used that remedy with salutary effect.

"Labour unions could do much in educating their members with respect to the operations of the Act."

Conclusions

Delay in filing reports of accident by workmen, employers and physicians is undoubtedly a problem in administration of the Ordinances. There is no penalty on the workman for not reporting because his lack of activity in that regard impedes the solution of his own case.

Your Enquiry is satisfied from studies made that delays are not caused by inefficient staff or any weaknesses in the Ordinances. It is not felt by your Enquiry that delay would be overcome by routing reports through the Whitehorse representative. But it is concluded that much could be done by employers, workmen and doctors to reduce delays in payment by ensuring prompt filing of reports. This matter is more fully dealt with in the administration section of this report where suggestions are made for improvements such as earlier action in cases of late filing and more reliance on telephone and telegram as opposed to letter writing in emergencies.

Recommendations

It is recommended that the wording of Section 17(5) of the Northwest Territories Ordinance and Section 16(5) of the Yukon Ordinance be amended by substituting the words "within three days" in lieu of "forthwith" as is done in Section 17(5) of the Draft Ordinance.

The Enquiry considered the interesting concept of having an administrative imposition for default of reporting as is done by some workmen's compensation boards which can, in addition to penalties imposed by the courts, charge the individual employer the cost of medical aid and compensation. In the Territories where there is an individual insurance system rather than a provincial compensation board, this would be a severe penalty and your Enquiry has concluded that the best method is to rely on vigorous use of the courts in cases of non-reporting of accidents.

TIME LIMITS FOR CLAIMS AND REVIEWS

"It is not for this Commission to dispute reliable medical evidence. The Board must have discretion and if it is reasonably satisfied that the employment was not the effective cause of the disability, then that is enough. But, if all the other requirements of the Act are satisfactorily met, i. e., evidence and proof of claim, it seems harsh to turn it aside solely because a statutory time bar is in the way."

Alexander H. McKinnon, Esq., Commissioner
(Report of Workmen's Compensation Commission,
Nova Scotia - 1958)

Time Limits for Claims

Mr. A. H. McKinnon's comment about the harshness of a statutory time bar focussed our attention on this problem. Under Section 17 of the Northwest Territories Ordinance and Section 16 of the Yukon Ordinance, claims are to be reported to the employer as soon as practicable. Subsection 3 provides relief for the workmen for failure to report as prescribed at the Commissioner's discretion. Subsection 4 provides a time limit of twelve months for reporting by the workman but permits discretionary waiving of this requirement by the Referee where proof of the accident and injury are filed with the Commissioner within three years of the date of its happening, and the Commissioner is satisfied the claim is just.

Comments

As to time limits for claims, the Northwest Territories Allied Council submitted that the provisions relating to the reporting of accidents should be such that ignorance of the Ordinance and lack of experience about Workmen's Compensation on the part of injured workmen would be taken into account. The time limits for first reporting an accident should therefore be extended, having regard to the circumstances of the case.

The Canadian National Railways were of the opinion that in the interest of fairness to both the employer and the workman, there should be a time limit for the presentation of claims. The provisions of Section 17(4) of the Northwest Territories Ordinance and Section 16(4) of the Yukon Ordinance appear to be adequate with the exception of the final wording in each Ordinance to the effect that if the Commissioner is of the opinion that the claim is a just one and ought to be allowed. They contended that this resulted in the Commissioner being granted excessive powers or responsibilities with a tendency to nullify the other specific clauses of this section of the Ordinance.

Conclusions

Your Enquiry has reviewed the provisions for accident reporting and considers that the existing Ordinances provide reasonable rules for reporting accidents to employers with adequate protection to the workmen. It is also considered that the discretionary powers given the Referee and the Commissioner to consider claims where notice of accident is given as soon as practicable and the claim is considered just, are not unreasonable.

Recommendation

As a discretionary three year time limit seems to be reasonable and just to a workman for reporting an accident, which by definition includes industrial disease, we do not propose that any change be made in the existing Ordinance, and Section 17(4) continues this practise in the Draft Ordinance. An exception to this rule is silicosis which is provided for separately.

Time Limits for Review of an Accepted Claim

Section 10 of the Yukon Ordinance and Section 11 of the Northwest Territories Ordinance give the Referee the power to reconsider, rescind, alter or amend within five years from the date of the accident any decision or order previously made.

Section 22(1) of the Northwest Territories Ordinance and Section 23(1) of the Yukon Ordinance provide for review of any payment to a workman at the request of the workman, employer or insurer within five years from the date of the accident. On review the Referee may put an end to or diminish the payment or may increase it to a sum not exceeding the prescribed maximum.

Comments

The International Union of Mine, Mill and Smelter Workers (Canada) recommended, on the subject of review of compensation, the deletion of the words "within five years from the date of the accident" on the grounds that the legislation must be brought up to date. In the convincing words of their submission: "Surely no one with any thought of justice in mind would say, in effect, to a badly injured workman: 'You must fully recover from your injuries within a stated five year period, because from that day forward you will receive no further consideration, regardless of any recurrences you may suffer from your injuries as a result of your industrial accident.'"

According to one of the leading insurers, the Prudential Assurance Company Limited, the time limit for review was incorporated nearly twenty years ago when the

Ordinance was originally written. It is now the opinion of the company that this was a mistake and they suggested that this section should be rectified by the elimination of any time limit for review of the workman's claim at the request of the workman, the employer or the insurer.

Conclusions

Your Enquiry approached the problem of time limits for review from the experience of other Boards that "a claim is never closed". This differs from the legal maxim that there must be an end of litigation because in compensation matters the claims are decided by administrative tribunals and not the courts.

In most Provinces, the administration of claims accepted for compensation provides that if a workman considers his condition to have worsened and he has supporting medical evidence, his claim will be reviewed. If necessary his claim will then be re-opened and further compensation will be paid, regardless of the date of the claim.

Recommendations

Because of the difficulties encountered in interpretation of these sections and in the interest of injured workmen, your Enquiry recommends that the anachronism of a five year limit be removed. This is effected by the changes to Section 11 and 22 in the Draft Ordinance.

ADMINISTRATIVE SECTION

"It is my view, that ignorance of the Board's powers and policies is at the bottom of a great number of grievances, complaints and antagonism directed against the Board. The Board's offices are not, in the language of the late Chief Justice Hunter, 'the temple of a mysterious cult' but are the administration centre of an insurance scheme designed for the mutual protection of employee and employer."

The Hon. Gordon McG. Sloan, Chief Justice for
British Columbia, Commissioner
(Report Relating to the Workmen's Compensation
Board, British Columbia - 1942)

Office and Personnel

The Yukon-Northwest Territories Workmen's Compensation office in Edmonton is responsible for enforcement of the two Ordinances. This includes bringing claims before the Referee, the Alberta Workmen's Compensation Board, when a workman suffers permanent disability or in cases where there is a dispute. The officer in charge is Mr. L. B. Post who is assisted by a staff of six. In addition to the administration of the Ordinances, the office also provides a number of services for the Department of Northern Affairs and National Resources.

Delays

The question of delay in payment of claims was brought before your Enquiry several times. The problem seems to revolve around delayed reports. If the Edmonton office staff

receive reports on time, there is no delay in payments. Before a cheque for compensation is issued, the basic requirements and criteria for entitlement must be met. A compensable accident must have occurred to a workman in an industry under the Ordinances and the accident must have caused some degree of disablement. Therefore three pieces of information must be available to the administration office, the workman's claim for benefits, a report from a covered employer indicating the workman was in his employment when injured, and advice from a doctor that the accident has resulted in disablement.

Time Lag Survey

To determine the time lag between the occurrence of an accident and the payment of compensation your Enquiry carried out a study of claims for three different calendar months.

Approximately half the number of claims were for medical aid only. The other half were for compensation for lost time earnings as well as for medical aid. In the period under review very few lost time accidents occurred in the populous towns of Fort Smith, Whitehorse, Yellowknife, Hay River or Dawson City but many industries are located in remote areas where communications are difficult.

Delay in Reporting

The survey established that in some claims the time lag between the date of the accident and the date of the first cheque was undesirably long. The average time lag in the Northwest Territories was forty days, and in the Yukon sixty days. This calls for decided administrative improvement. It is clear, however, that the main reason for delay in paying compensation is delay in getting satisfactory reports rather than inefficient administration.

The survey indicated that while the attending doctor was prompt in forwarding a report on his first examination, many delays were encountered by the insurers in obtaining further reports concerning the continuing disability.

Conclusions

As the result of the time lag study and other evidence obtained, it appears to your Enquiry that the most common reason for delay in payment is late filing of evidence establishing entitlement. Delay in payment may often be mitigated by the employer who has adopted the practise of paying compensation where entitlement is apparent to him. He then obtains reimbursement from the insurer. There was significantly enough a lack of general criticism at the hearings about delays.

There is no valid evidence that filing claims through Whitehorse or Fort Smith or any of the larger places in the Territories could improve the promptness of settlement.

In the months subject to our review such procedure would likely have delayed payments rather than expedited them in most cases.

Recommendations

It appears to your Enquiry that the way to improve the situation is through a programme of education in compensation matters for all concerned. It is recommended that the administrative staff engage in a public relations programme to educate workmen, employers, physicians and unions as to the need for prompt submission of reports and claims. This programme should include informative booklets and posters which should be widely distributed.

More frequent field visits should be made to all large places to deal with employers and labour organizations alike. All employers and doctors should always have supplies of necessary forms to avoid delay.

Your Enquiry also recommends that the joint Northwest Territories-Yukon compensation office continue to be operated from Edmonton and that the part-time officer in

Whitehorse employed to expedite claims continue in that capacity but become a full-time Territorial Government employee and include in his duties the responsibility for reporting accidents relating to Territorial Government workmen.

In emergencies, more frequent use should be made of telephone and telegrams with fewer letters. Employers who are habitually late in filing reports should be charged in Court. The Draft Ordinance contains a three-day time limit for filing accident reports which will assist the administration in enforcing the Ordinance.

Permanent Disability Schedule

The Alberta Workmen's Compensation Board permanent disability schedule should be obtained and adopted for the Territories. This will simplify the handling of borderline and controversial claims and ensure that the workman receives his full entitlement under the Ordinances.

Administrative Assessment in the Yukon

The Yukon Government does not pay the administrative assessment levied on all other employers in the Yukon. It is our belief that they should contribute the same assessment as other employers covering workmen.

PROVISIONS FOR APPEALS

"The Board ought to ensure that the tribunal charged with the duty of passing in review or on appeal upon decisions relating to claims by workmen or their dependents is as completely independent and impartial as the circumstances will allow."

The Hon. Mr. Justice Tysoe,
(Commission of Inquiry, Workmen's Compensation
Act, British Columbia - 1965)

Existing Legislation

Your Enquiry has given considerable thought to the provisions for appeals in the Territories. Sections 9 and 10 of the Yukon Ordinance and Sections 10 and 11 of the Northwest Territories Ordinance outline the appointment and jurisdiction of the Referee. Under the authority of these Sections, the Referee has exclusive jurisdictions over all matters and questions arising under the Ordinance and referred to the Referee by the Commissioner.

The Referee

The Alberta Workmen's Compensation, in accepting the responsibility of serving as the appointed Referee, have provided a valuable service to the workmen, employers and insurers in the Territories and to the Commissioners, whose responsibility it is to ensure that justice is done. The independence of the Alberta Workmen's

Compensation Board, from any influence or bias, has guaranteed all parties concerned complete impartiality. An additional asset is their expertness in the field of Workmen's Compensation decision-making which has earned them much approval.

Your Enquiry visited the Alberta Board and had interesting discussions with them. We are satisfied with the superb manner in which the responsibilities of the Referee are administered. We are pleased to record the fact that in all the representations made to your Enquiry, there was nothing but favourable comment regarding the Referee.

Recommendation

Your Enquiry is satisfied that the Referee system provides a proper balance and impartiality in deciding contentious cases. We feel that the appeal system should be strengthened by providing in the Ordinance an opportunity for direct appeal to the Referee by the workman. It is also our opinion that every decision as to entitlement for compensation, which is unfavourable to the workman, should contain the further advice that his claim can be reviewed by the Referee on receipt of an appeal from the workman.

We recommend an addition of a new section 18A to the Ordinance to give effect to these proposals.

Your Enquiry is satisfied that with these changes and the continuing valuable assistance of the Alberta Workmen's Compensation Board, decisions based "on the true merits and justice of the case" as provided by Section 11(3) of the Draft Ordinance will continue the traditional benevolent administration of compensation justice in the Territories.

DRAFT ORDINANCE

"The Act is the workman's Charter"

Lord Macnaghten in *Ball v Hunt* (1912), AC 496.

This draft is prepared for the purpose of providing a consolidation of suggested legislative enactments, comprising the provisions of Workmen's Compensation Ordinance of the Northwest Territories as may be amended in accordance with recommendations made in the Report of the Enquiry into Workmen's Compensation in the Northwest Territories and the Yukon Territory, 1966.

DRAFT ORDINANCE

SHORT TITLE

1. This Ordinance may be cited as the Workmen's Compensation Ordinance. Short Title.

INTERPRETATION

2. In this Ordinance, Definitions.
- (a) "accident" means a chance event occasioned by a physical or natural cause and includes, "Accident."
- (i) a wilful and intentional act that is not the act of the workman,
 - (ii) an event arising out of, and in the course of, employment of the workman,
 - (iii) a thing that is done the doing of which arises out of, and in the course of, employment of the workman,
 - (iv) conditions in a place where an industrial process, trade or occupation is carried on, that occasion a disease, and as a result of which a workman is disabled, and where the disablement is caused by disease, the date of the accident shall be deemed to be the date of the disablement;
- (b) "child" includes an illegitimate child, and any child of any child and the child of a husband or wife by a former marriage, as well as any other child to whom the workman stood in loco parentis; "Child."
- (c) "Commissioner" means the Commissioner of the Northwest Territories; "Commissioner."
- (d) "compensation" includes medical aid; "Compensation."
- (e) "common law wife" includes any woman who although not legally married to him lives and cohabits with a man as his wife and is known as such in the community in which they have lived; "Common law wife."

- (f) "construction" includes reconstruction, repair, alteration, renovating, painting, decorating and demolition; "Construction. "
- (g) "dependents" means such of the members of the family of a workman as were wholly or partially dependent upon his earnings at the time of his death or who, but for the incapacity due to the accident, would have been so dependent; but a person shall not be deemed to be a partial dependent of another person unless he was dependent partially on contributions from that other person for the provision of the ordinary necessities of life suitable for persons in his class and position; "Dependents. "
- (h) "employer" means every person, firm, association, body or corporation having or deemed by this Ordinance to have in his or its service one or more workmen; "Employer. "
- (i) "employment" means employment in an industry or any part, branch or department of an industry; "Employment. "
- (j) "industry" means any establishment, undertaking, trade or business coming within the scope of this Ordinance, whether the same is carried on in conjunction with other occupations or separately; "Industry. "
- (k) "insurer" means any person or group or association of persons approved by the Commissioner; "Insurer. "
- (l) "invalid" means a person who is physically or mentally incapable of earning; "Invalid. "
- (m) "learner" means any person who, although not under a contract of service or apprenticeship, becomes subject to the hazards of an industry within the scope of this Ordinance for the purpose of undergoing training or probationary work as a preliminary to employment and in the event of a learner suffering injury in such circumstances as would entitle him to compensation, such compensation shall be based upon the wages "Learner. "

paid to beginners in the trade or business in which he is a learner;

- (n) "Lumber" includes logs, laths, shingles, ties, and all other forest products the manufacture and production of which is an industry within the scope of this Ordinance; "Lumber. "
- (o) "manufacturing" includes making, preparing, altering, repairing, renovating, servicing, dyeing, cleaning, ornamenting, printing, finishing, packing, assembling the parts of and adapting for use or sale any raw material, goods, article or commodity; "Manufacturing. "
- (p) "medical aid" includes medical and other services by all those licensed to practise the healing art in the Territories or at such place outside the Territories where treatment may be authorized and nursing, hospitalization, drugs, dressings, X-ray treatment, special treatment, transportation and other matters and things as the employer or referee may authorize or provide; "Medical aid. "
- (q) "member of a family" means wife, husband, parent, grandparent, step-parent, child, grandchild, step-child, brother, sister, half-brother, half-sister and a person who stood in loco parentis to the workman or to whom the workman stood in loco parentis, whether related to him by consanguinity or not so related; and where the workman is the parent or grandparent of an illegitimate child, includes such child and where the workman is an illegitimate child includes each of his parents or grandparents; "Member of a family. "
- (r) "mine rescue and first aid work" includes the equipment necessary for such work, the repairs thereof, the training necessary for such work and the supplies used therein; "Mine rescue and first aid work. "
- (s) "outworker" means a person to whom articles or materials are given out to be made up, cleaned, washed, altered, ornamented, finished, repaired or adapted for use or sale in his own home or on other premises not under the control or manage-
- "Outworker. "

ment of the person who gave out the articles or materials;

- (t) "payroll" means the total annual remuneration earned by all workmen of an employer in the Territories less the total annual remuneration in excess of five thousand six hundred dollars in respect of each workman; "Payroll. "
- (u) "permanent total disability" without restricting the general meaning of the term, shall be conclusively presumed in all cases where the injuries suffered consist of or include, "Permanent total Disability. "
- (i) total and permanent loss of the sight of both eyes,
 - (ii) the loss of both feet at or above the ankle,
 - (iii) the loss of both hands at or above the wrist,
 - (iv) the loss of one hand at or above the wrist and one foot at or above the ankle,
 - (v) any injury to the spine resulting in permanent and complete paralysis of legs or arms or one leg and one arm, or
 - (vi) any injury to the skull resulting in incurable imbecility or insanity;
- (v) "physician" means an authorized person skilled in the art of healing; "Physician. "
- (w) "referee" means such person or persons as the Commissioner may from time to time designate; "Referee. "
- (x) "remuneration" includes salary, wages, commissions, tips, earnings for overtime and for piece work and for contract work, bonuses or allowances, the cash equivalent of board and lodging, store certificates, credits or any substitute for money; and "Remuneration. "

(y) "workman" means a person who has entered into or works under a contract of service or apprenticeship, written or oral, express or implied, whether by way of manual labour or otherwise and includes, "Workman."

(i) any person engaged in training for mine rescue work or who with the knowledge and consent of the management or the person in charge of an authorized mine rescue crew, is doing recovery work after an explosion, accident or catastrophe,

(ii) the employees of a contractor contracting for the performance of mining operations for another person engaged in the industry of mining and also such contractor whilst actually working,

(iii) a learner, and

(vi) any person not otherwise coming within the foregoing definition, who under the provisions of this Ordinance or a regulation is deemed to be a workman.

3. (1) Except as otherwise provided by this Ordinance or any regulation, every employer in any industry shall enter into and maintain in force a contract of insurance in such form, containing such conditions, for such amount and with such insurer as the Commissioner may by regulation approve providing for payment of compensation, Employers must insure.

(a) to workmen of the employer in respect of personal injury by accident arising out of and in the course of their employment including disability by reason of disease due to the employment; and Employees.

(b) to dependents of workmen in respect of the death of a workman by accident arising out of and in the course of his employment including death by reason of disease due to the employment. Dependents.

(2) The Commissioner may by order exempt from the application of this section, for any period not exceeding twelve months, any employer who has made other arrangements for the protection of his workmen considered by the Commissioner to be at least equivalent to those provided by this Ordinance, subject to such conditions and the payment of such fee as the Commissioner may prescribe.

Commissioner may exempt employer.

(3) The Commissioner may enter into and maintain in force one or more contracts of insurance as he deems adequate to provide compensation for workmen in the Territories of employers to whom this Ordinance applies but who failed to comply with subsection (1).

Commissioner may insure.

(4) Where an employer to whom this Ordinance applies fails to comply with the provisions of subsection (1), he shall, in addition to any penalty under section 46, pay to the Commissioner the full cost of amounts of compensation payable under this Ordinance in respect of accidents causing injury to workmen of such employer during such period of time as such employer failed to comply with subsection (1), together with any assessment payable by such employer under section 42 during such period of time.

Liability for cost of compensation.

3A. (1) Any employer who employs persons in the Territories on a temporary basis, in respect of those employees who are normally resident outside the Territories and are protected by a workman's compensation or some other scheme considered by the Commissioner to be equivalent to those provided by this Ordinance, subject to such conditions and the payment of such fee as the Commissioner may prescribe, shall be exempt from the application of this Ordinance.

Exemption from application of Ordinance.

(2) Every employer who employs a workman referred to in subsection (1) shall file with the Commissioner or a person designated by the Commissioner a statement in writing setting forth the following:

Statement to be filed.

- (a) the name and address of the employer;
- (b) the name of the workman and the place where he is ordinarily resident;
- (c) the nature of the work to be performed by the workman and the location of such work;
- (d) the estimated duration of the workman's employment in the Territories and the estimated weekly wages payable to workmen for such employment; and
- (e) such other information as the Commissioner may require.

(3) The first statement that an employer files pursuant to this section in any year shall be accompanied by a fee of ten dollars.

Fee payable.

3B. The Commissioner may by order exempt any area or areas of the Territories from the application of this Ordinance.

Exemption of area.

3C. The Commissioner may revoke any exemption made under section 3, 3A or 3B.

Revocation.

4. (1) This Ordinance does not apply to an executive officer of a corporation who has notified the Commissioner in writing that he wishes to be exempt therefrom.

Executive officer.

(2) For the purposes of this section, "executive officer" means a person who is employed by a corporation and who has power to guide or control the policies or purposes of that corporation.

5. (1) This Ordinance applies to all industries except farming or ranching and to all workmen engaged in such industries but does not apply to

Application.

- (a) persons whose employment is of a casual nature and who are employed otherwise than for the purposes of the employer's trade or business;
- (b) outworkers;
- (c) domestic servants;
- (d) professional persons, such as doctors, lawyers, accountants, engineers or their employees;
- (e) employees of financial, insurance, real estate, brokerage or agency firms or the like where primarily clerical work is engaged in.

(2) For the purposes of subsection (1) any employment by or under the Crown in right of the Territories is deemed to be employment in an industry to which the Ordinance applies.

Civil servants included.

(3) The Commissioner may add to or withdraw from the application of, or exemption from, this Ordinance any establishment, undertaking, trade or business.

Power of Commissioner.

(4) Where the employer of an establishment, undertaking, trade or business to whom this Ordinance does not apply files a notice in writing with the Commissioner to the effect that he desires this Ordinance to apply to such establishment, undertaking, trade or business and complies with all the provisions of this Ordinance, such establishment, undertaking, trade or business is deemed to be an industry to which this Ordinance applies.

Notice by employer.

(5) Where an establishment, undertaking, trade or business is deemed to be an industry to which this Ordinance applies under subsection (4), the application of this Ordinance shall continue in effect until the 31st day of December next following the date notice in writing is received by the Commissioner to the effect that it is no longer desired that this Ordinance apply to such establishment, undertaking, trade or business.

Notice by employer for withdrawal.

6. (1) Members of the family of an employer employed by him and dwelling in his house as members of his household shall not be deemed to be workmen within the scope of this Ordinance and compensation shall not be payable to them unless in the application for insurance they are specifically named as workmen of the employer and are on his payroll.

Conditions as to payment of compensation to members of family of employer.

(2) An employer who is himself insured against injury or death by the terms of a contract of insurance entered into by him under this Ordinance for the protection of his workmen is deemed to be a workman for the purpose of this Ordinance.

Employer deemed to be workman.

(3) Every employer who is insured as described in subsection (2) shall include in the payroll referred to in subsection (1) or section 42, while so insured an amount not exceeding five thousand six hundred dollars annually and the amount so included in respect of any such period shall, for the purposes of this Ordinance and any contract of insurance entered into by him under this Ordinance, be deemed to be his annual remuneration.

Amount to be included as employer's remuneration.

7. (1) For the purposes of this section "equipment" includes teams, trucks, tractors, bulldozers, drag lines, power shovels, boats, nets, snowmobiles, barges, canoes, any type of machine or equipment used in connection with the construction and maintenance of roads, other equipment or apparatus as the Commissioner may by regulation designate.

Equipment.

(2) Where, in any undertaking, a person enters into an arrangement for the supplying of equipment to another person (hereinafter in this subsection and in subsection (4) referred to as the "principal"), if the person supplying the equipment

When persons operating equipment deemed workmen.

(a) operates it himself or hires another person to operate it, and

(b) is paid or to be paid for the services of both equipment and operator,

the person operating the equipment shall be deemed to be a workman of the principal, unless the person supplying the equipment is otherwise insured under this Ordinance, in which case the person operating the equipment shall not be deemed to be a workman of the principal, but, subject to subsection (1) of section 6, shall be deemed to be the workman of the person supplying the equipment.

(3) Where, in any undertaking not coming within subsection (2), a person enters into an arrangement for the performance of work for another person (hereinafter in this subsection and in subsection (4) referred to as the "principal"), and, notwithstanding that the arrangement may also provide that he supply materials, equipment or other services, if the person undertaking to perform the work

Persons performing work deemed to be workmen.

(a) performs the work himself,

(b) has another person perform the work for him, or

(c) has another person assist him in the performance of the work,

the person performing the work shall be deemed to be a workman of the principal unless the person undertaking to perform the work is otherwise insured under this Ordinance, in which case the person performing the work shall not be deemed to be a workman of the principal, but, subject to subsection (1) of section 6, shall be deemed to be the workman of the person undertaking to perform the work.

(4) Where, in the opinion of the Commissioner, it is advisable to do so, the Commissioner may by regulation provide that any class of person who, but for this section, would not be deemed to be workmen of a principal, shall not be deemed to be workmen of such principal.

Regulations.

8. (1) Where an accident that would entitle the workman or his dependents to compensation under this Ordinance if the accident had happened in the Territories happens while he is employed elsewhere than in the Territories, the workman or his dependents are entitled to compensation under this Ordinance if,

Accident elsewhere than in Territories.

- (a) the nature of the employment is such that in the course of the work or service which the workman performs, the work or service is required to be performed both within and without the Territories;
- (b) the employment out of the Territories has immediately followed employment by the same employer within the Territories;
- (c) the employment out of the Territories has lasted less than six months; and
- (d) he is not entitled to claim compensation for the injury under the law respecting compensation for injuries to workmen in force in the place where the accident occurs.

(2) Where by the law of the country or place in which the accident happens the workman or his dependents are entitled to compensation or other remedy in respect of it, the workman shall give notice of the accident and circumstances thereof to his employer within six months of the happening of such accident.

Notice of Accident.

9. Every employer to whom this Ordinance applies shall pay

Employer to pay compensation.

- (a) to a workman in respect of personal injury by accident arising out of and in the course of his employment including disability by reason of disease due to the employment, and
- (b) to the dependents of that workman in respect of the death of that workman by accident arising out of and in the course of his employment including disability by reason of diseases due to the employment, compensation as provided in this Ordinance.

10. The Commissioner may designate from time to time a person or persons to act as referee.

Commissioner may appoint referee.

11. (1) The referee has exclusive jurisdiction either with or without notice to any person or persons interested, to examine, inquire into, hear and determine, all matters and questions arising under this Ordinance and referred to the referee by the Commissioner, and the action or decision of the referee thereon is final and conclusive and is not open to question or review in any court, and no proceeding by or before the referee shall be restrained by injunction, prohibition or other process or proceedings in any court or be removable by certiorari or otherwise into any court, nor shall any action be maintained or brought against the referee in respect of any act or decision done or made in the honest belief that the same was within the jurisdiction of the referee.

Powers and jurisdiction of referee.

(2) Nothing in subsection (1) shall prevent the referee, either with or without notice to any person or persons interested from reconsidering any matter that has been dealt with by it or from rescinding, altering or amending any decision or order previously made, all of which the referee has authority to do.

Power to reconsider, rescind, alter or amend decisions.

(3) The decisions of the referee shall be upon the real merits and justice of the case and he is not bound to follow strict legal precedent and no decision or ruling of the referee is binding upon him as a precedent for any other decision or ruling, the intent of this provision being that each case shall be decided on its own merits.

Provisions as to decisions of referee.

(4) The referee has the like powers as a court for compelling the attendance of witnesses and of examining them under oath and compelling the production and inspection of books, papers, documents and things.

Attendance of witnesses and production of documents.

(5) The referee may cause depositions of witnesses residing within or without the Territories to be taken before any person appointed by the referee in manner similar to that prescribed by the Rules of the Territorial Court.

Evidence by deposition.

(6) The referee may act upon the report of any person appointed by the referee to make an inquiry.

Power of referee to act on report.

(7) The person appointed to make the inquiry has for the purposes thereof all powers conferred upon the referee.

Power of person appointed to make inquiry.

(8) Without thereby limiting the generality of the provisions of subsection (1) of this section, it is declared that the exclusive jurisdiction of the referee extends to determining

Exclusive jurisdiction of referee.

- (a) whether an injury has arisen out of or in the course of an employment within the scope of this Ordinance;
- (b) the existence and degree of disability by reason of an injury;
- (c) the permanence of disability by reason of an injury;
- (d) the degree of diminution of earning capacity by reason of an injury;
- (e) the amount of average earnings;
- (f) the existence, for the purpose of the Ordinance, of the relationship of any member of the family of an employer or of a workman;
- (g) the existence of dependency;
- (h) whether or not an industry or any part, branch or department of any industry is within the scope of this Ordinance;
- (i) whether or not any person or aggregation of persons, is an employer within the meaning of this Ordinance;
- (j) whether or not any person is a workman within the meaning of this Ordinance; and
- (k) whether or not any workman is entitled to compensation under this Ordinance.

12. (1) The referee may in any case where it is deemed necessary and shall on the application of an employer or workman interested in any order, ruling or decision of the referee, issue a certificate embodying the substance of any such order, ruling or decision.

Issuance of Certificate embodying substance of order.

(2) If an award of the referee is not paid within sixty days the workman may file the referee's certificate with the clerk of the Court and such certificate has the same force and effect as if it were a judgment of such Court and execution against the employer may be issued thereon.

Enforcement of order by execution.

13. The Commissioner may

- (a) make regulations for the prevention of accidents and industrial diseases among workmen; and

Regulations.

- (b) make such other regulations and prescribe such forms as are deemed expedient for carrying out the provisions of this Ordinance and not inconsistent therewith.

14. (1) Where in any employment to which this Ordinance applies, personal injury by accident arising out of and in the course of employment is caused to a workman, compensation shall be paid unless

Compensation to workman when payable.

- (a) the injury is attributable solely to the serious and wilful misconduct of the workman and death or serious disablement does not result from it; or
- (b) the injury occurs as a direct result of action taken by an enemy of Canada, or action taken in combatting any such enemy, or in attempting to repel a real or apprehended attack by any such enemy.

(2) Where the personal injury consists of disease in part due to the employment and in part due to causes other than the employment, compensation shall be paid in the same proportion to the whole of the compensation that would have been payable had the personal injury been wholly due to the employment, as the part thereof that is due to the employment is in proportion to the whole of the personal injury.

When disease partly due to employment.

(3) Where a workman is found dead at a place where the workman had a right in the course of his employment to be, it shall be presumed that his death was the result of personal injury by accident arising out of and in the course of his employment, unless there is evidence sufficient to rebut the presumption.

Presumption of death by accident in certain cases.

(4) Where the accident arose out of the employment, unless the contrary is shown, it shall be presumed that it occurred in the course of the employment, and where the accident occurred in the course of the employment, unless the contrary is shown, it shall be presumed that it arose out of the employment.

Presumptions that accident occurred in course of employment or out of employment.

(5) If the injury does not disable the workman longer than the day of the accident, no compensation other than medical aid shall be paid, but if the injury disables the workman longer than the day of the accident compensation shall be paid from and including the day following the day of the accident.

Compensation payable where workman disabled longer than one day.

15. (1) Except as authorized by the provisions of this Ordinance, it is not lawful for any employer, either directly or indirectly, to deduct from the wages of his workmen any part of any insurance premium that he is or may become liable to pay, or to require or to permit any of his workmen to contribute in any manner towards indemnifying him against any liability that he has incurred or may incur under this Ordinance.

Prohibition of unauthorized deduction of amount from workman's wages.

(2) It is not competent for a workman to agree with his employer to waive or to forego any of the benefits to which he or his dependents may become entitled under this Ordinance and every agreement to that end is absolutely void.

Waiver of right of compensation invalid.

(3) Except as herein otherwise provided, no sum payable as compensation or by way of commutation of any periodical payment in respect of it, is capable of being assigned, charged or attached unless with the approval of the Commissioner.

Unassignability, etc. of compensation

(4) If and when compensation payments have been made to a workman beyond the period of his disability or to a dependent in an amount in excess of that to which he is entitled, the amount of the overpayment may be recovered by the employer as a debt due to him by such workman or dependent, as the case may be, and without in any way limiting the employer's remedies for recovery, may be set off against any compensation that may be or become payable to such workman or dependent.

Recovery of overpaid compensation.

16. (1) All claims for permanent disability, whether total or partial shall be determined by the referee on being referred to him by the Commissioner.

Permanent disability to be determined by referee.

(2) All claims for temporary disability shall be determined by the insurer or other person designated by the Commissioner for the purpose in accordance with this Ordinance except that if an employee who has been awarded

Temporary disability.

compensation for a temporary disability notifies the Commissioner that he is dissatisfied with the disposition of his claim, such claim shall at the request of the Commissioner be reviewed by the referee who shall make such disposition of the claim as he deems appropriate.

(3) The rights and compensation payable under this Ordinance are in lieu of all rights and rights of action statutory or otherwise to which a workman or his legal personal representative or his dependents are or may be entitled against the employer of the workman or against any workman of the employer, by reason of personal injury to or death of the workman arising out of any accident happening to the workman while in the employment of the employer, and no action in respect of such personal injury or death lies against the employer except for compensation to which the workman is entitled under this Ordinance.

Rights under this Ordinance in lieu of all rights of action against employer.

(4) Where an accident happens to a workman in the course of his employment in such circumstances as entitles him or his legal personal representative or his dependents to an action against some person other than his employer or another workman of his employer, the workman or his legal personal representative or his dependents shall, within four months after the happening of the accident, or, in event of death, within four months after the death, bring such action or claim such compensation.

Action for damages against third person.

(5) If the workman, his legal personal representative or his dependents elect to bring an action, no settlement of such action or cause of action shall be made without the written approval of the employer, but where the amount recovered in the action or settlement is less than the amount of compensation payable under this Ordinance the workman, his personal representative or the dependents, as the case may be, shall be entitled to the difference.

Approval of employer required for settlement.

(6) Where in any case under subsection (4), the workman or his dependents elect to claim compensation, such election shall not restrict or impair any such action against the party or parties liable but in every such claim the employer shall be subrogated to all the rights of the workman or his legal personal representative or his dependents and may maintain an action in his name or in the name of the workman or his dependents, and in

Subrogation of employer to rights of employee.

respect of such action the employer shall have jurisdiction to determine whether an action shall be maintained or whether the right of action shall be compromised, but any settlement by compromise requires the approval of the Commissioner.

(7) Where by such action or settlement the employer recovers and collects a greater sum than the amount of compensation, including the capitalized value of all past and future payments for disability, medical aid, or death benefits to which the workman or his dependents is entitled under this Ordinance, the amount of the excess, less costs, shall be paid to the workman, his legal personal representative, or his dependents, as the case may be, upon the workman, his legal personal representative, or his dependents furnishing a release from any further claim upon the employer in respect of the accident up to the amount received and paid but such release shall not prejudice any right to additional compensation arising from circumstances not provided for in the computing of the amount of compensation, such as, complications developing from the injuries suffered in the accident, increases in cost of providing medical aid, or increases in the amount of benefits for injury or death provided under this Ordinance.

Workman to receive excess over benefits.

17. (1) In every case of injury to a workman by accident in any industry within the scope of this Ordinance, it is the duty of the workman or in the case of his death, the duty of a dependent, as soon as practicable, after the happening of the accident, to give notice thereof to the employer.

Notice to employer of accident.

(2) The notice shall give the name and address of the workman and is sufficient if it states in ordinary language the cause of the injury and where the accident happened.

Contents of notice.

(3) Failure to give notice as required by virtue of subsections (1) and (2) unless excused by the Commissioner on the ground

Failure to give notice a bar to claim unless excused on certain grounds.

(a) that notice for some sufficient reason could not have been given;

(b) that the employer or his superintendent or agent in charge of the work where the accident happened had knowledge of the injury; or

(c) that the Commissioner is of the opinion that the claim is a just one and ought to be allowed;
is a bar to any claim for compensation under this Ordinance.

(4) No compensation is payable in respect of any claim unless notice of the claim is given to the employer or the Commissioner,

Time limit
for making
claims.

- (a) in the case of an accident other than a disease, by the workman within twelve months of the happening of such accident, or where death resulted from such accident, by a dependent within twelve months from the date of death; or
- (b) in the case of a disease other than silicosis, by the workman within twelve months from exposure to conditions in a place where the industrial process, trade or occupation occasioning the disease was carried on prior to the disablement, or where death results from such disease, by a dependent within twenty-four months from such exposure; or
- (c) in case of silicosis, by the workman within twelve months from the date upon which he is found to have silicosis as set out in subsection (1) of section 40, or where death results from such silicosis, by a dependent within twelve months from the date of death;

but the referee may, notwithstanding subsection (2) of section 16, on proof of the accident and injury being filed with the employer or the Commissioner within three years of the date of its happening, award compensation where

- (a) the workman gave notice of the accident to his employer as soon as practicable after its occurrence, and
- (b) in the opinion of the Commissioner the claim is a just one and ought to be allowed.

(5) Every employer to whom the Ordinance applies having knowledge or notice of the happening of an accident or of the allegation of the happening of an accident to a workman in his employ, shall forward to the Commissioner and the insurer within three days after the same comes to his knowledge or notice, notification of the happening of an accident and shall at the same time forward to the workman a copy of such notification, and the employer shall also, in the event of the injured workman or the allegedly injured workman returning to his work or being able to return to his work, forward to the Commissioner and the insurer

Notice of
accident to
Commissioner
by employer.

within twenty-four hours after the fact of the return or ability to return comes to his knowledge, notification thereof and make such further and other reports respecting the accident or alleged accident and workman as may be required by the Commissioner.

(6) Every employer who fails to make any report required by virtue of this section, unless excused by the Commissioner on the ground that the report for some sufficient reason could not have been made, is guilty of an offence and liable upon summary conviction to a penalty not exceeding fifty dollars and costs, and in default of payment to imprisonment for a period not exceeding three months.

Failure of employer to make report of accident an offence.

(7) In case an employer fails to make any report required by virtue of this section, the Commissioner may make a special investigation of the accident and of the facts and circumstances surrounding it and may charge the cost of such investigation against such employer.

Special investigation of accident by Commissioner where employer fails to report. Report of accident by attending physician.

(8) A physician who attends an injured workman shall forward to the Commissioner, in duplicate,

- (a) a report within two days after the date of his first attention upon the workman;
- (b) upon the first and fifteenth days of each month progress reports, during such time as the injured workman is unable to work as a result of the injuries;
- (c) a final report within three days after the workman is in his opinion able to resume work; and
- (d) from time to time such reports in respect of the injury in such form as may be required by the regulations.

(9) The physician shall also give all reasonable and necessary information, advice and assistance to the injured workman and his dependents in making application for compensation and in furnishing in connection therewith such certificates and proofs as may be required, without charge to the workman.

Physician to give information advice and assistance to workman.

(10) Payment of a medical account for medical services rendered to an injured workman does not of itself constitute the making of a claim by such workman or acceptance of a claim.

Payment of medical account not to constitute making of claim by workman or acceptance of claim.

18. (1) A workman who claims compensation or to whom compensation is payable under this Ordinance shall submit himself for medical examination in such manner and at such time and place as the employer, the insurer or the referee may require.

Medical examination of workman.

(2) A workman is not required to submit himself for examination save as required by the employer, the insurer or the referee.

(3) If a workman does not submit himself for examination as and when required by the employer, the insurer or the referee so to do or in any way obstructs an examination, his right to compensation, or if he is in receipt of a periodical payment, his right thereto, shall be suspended until the examination has taken place, and the condition found upon such examination shall, unless the referee otherwise directs, be deemed to have been the condition of the workman in relation to his disability at the date for which the examination was called.

Failure to submit to examination

18A. Every workman has a right of appeal to the referee from a decision of an insurer or person designated by the Commissioner in respect of compensation, and notice of every such decision shall inform the workman of his right of appeal.

Right of appeal and notice.

19. (1) If and when a workman claims,
(a) a greater disability than that allowed him;
(b) a continuance of compensation beyond the period allowed;
(c) error in some feature or circumstance of his claim as affected by his physical condition; or
(d) that the medical opinion upon which the disputed finding was made is erroneous;
and makes a request in writing to the Commissioner for examination under the provisions of this section, the Commissioner shall refer the claim to the referee who, after consultation with the workman's attending physician, if any, may nominate four or more duly qualified medical practitioners.

Nomination of medical practitioners.

(2) From the medical practitioners so nominated two shall be selected in the following manner:

Two selected.

(a) the referee shall notify the workman and the insurer by registered mail of the names and addresses of the medical practitioners

nominated and each may select from the said names one such medical practitioner, such selection to be made and communicated in writing to the referee within thirty days after the mailing of the notice by the referee;

- (b) if one of either the workman or the insurer fails to make a selection within the time provided or if both select the same medical practitioner, the referee shall select one other medical practitioner from those nominated;
- (c) if both the workman and the insurer fail to make a selection within the time provided, the referee shall select two medical practitioners from those nominated.

(3) The two medical practitioners selected shall examine the workman and certify to the referee as to

Examination of workman.

- (a) the condition of the workman,
- (b) his fitness for employment,
- (c) if unfit, the cause of such unfitness,
- (d) the extent of his temporary or permanent disability by reason of the injury in respect of which he has claimed compensation, and
- (e) such other matters as may in their opinion or in the opinion of the referee be pertinent to the claim.

(4) If after examining the workman the two medical practitioners are unable to agree on the matters in respect of which their certificate is required they shall select a third medical practitioner from the list of those first nominated, and in event of their being unable to agree on a third practitioner the selection shall be made by the referee and the three so selected shall examine the workman and the decision of the majority shall be certified to the referee with respect to the matters set out in subsection (3).

Selection of third practitioner if disagreement.

(5) The certificate of the medical practitioners is conclusive as to the matters certified unless the referee at any time directs otherwise.

Certificate conclusive.

(6) The referee may of his own motion or at the request of the employer or insurer require a workman to be examined under the provisions of this section, and may without any request from a workman nominate a list of medical practitioners and notify the workman and the

Referee may require examination.

employer, whereupon the examination shall be proceeded with under the provisions of this section in the same manner as if a request had been made by the workman,

(7) A reference in subsection (2) to an insurer shall in any case where there is no insurer, be construed as a reference to the employer.

19A. (1) Subject to subsection (2), where a workman to whom compensation is payable leaves Canada, he shall not be entitled thereafter to receive compensation until permission to reside outside of Canada is granted by the employer if the employer is exempted from the application of section 3, the insurer or the referee.

Workman
leaving Canada.

(2) Where in the opinion of the referee the disability resulting from the injury is likely to be of a permanent nature and the referee so directs, the workman is entitled to the amount of periodic payments accruing due while a resident outside of Canada if he proves in such manner as may be prescribed by the referee his identity and the continuance of the disability in respect of which the periodical payments are payable.

(3) Where a workman leaves Canada and subsequently claims compensation for a disability allegedly suffered in the course of his employment in the Northwest Territories, the employer shall not be liable for compensation unless the workman returns at his own expense to Canada for such medical examination as the employer, insurer or referee may require.

20. Where an injured workman

- (a) changes physicians without prior authorization from the employer if the employer is exempted from the application of section 3, the insurer or the referee except when referred by the original physician to another physician,
- (b) persists in unsanitary or injurious practices that tend to imperil or retard his recovery, or
- (c) refuses to submit to such medical or surgical treatment as, in the opinion of the employer or insurer based upon independent expert medical or surgical advice is reasonably essential to promote his recovery,

Supervision of
payment of
compensation.

the employer or insurer may, with the consent in writing of the referee, reduce or suspend the compensation of that workman.

21. (1) Where in any case, in the opinion of the referee, it is in the best interests of an injured workman, in order to cure or relieve him from the effects of the injury, to provide a special surgical operation or other special medical treatment, the employer shall provide such surgical operation or other special medical treatment.

Special surgical or medical treatment.

(2) Where in the case of any claim for compensation the referee is of the opinion that the injury would be alleviated to some extent by the supplying of any apparatus usually provided in such cases, the employer shall supply such apparatus to the workman, but any such action shall not affect in any way the payments made to the workman.

Special apparatus.

(3) To aid in getting an injured workman back to work and to assist in lessening or removing any handicap resulting from his injuries, the employer shall take such measures and make such expenditures as the referee may deem necessary or expedient.

Measures taken by employer to get injured workman back to work.

(4) The employer shall provide for the repair, maintenance or renewal of any apparatus provided by him which becomes in need of repair, maintenance or renewal by reason of accident or ordinary wear and tear and through no misconduct on the part of the workman, so long as the disability in respect of which such apparatus was supplied continues.

Repair and renewal of special apparatus.

(5) The employer shall assume the expense of replacement and repair of dentures, eyeglasses, artificial eyes or limbs or hearing aids, broken as a result of an accident arising out of and in the course of employment of the workman.

Replacement and repair of broken dentures, eyeglasses, etc.

(6) If an autopsy is deemed necessary by the referee, the employer or the insurer to assist in determining the cause of any death, the Commissioner may direct that the autopsy be made within a time to be fixed by him, and if the dependent or dependents refuse to permit the autopsy, the referee may reject any claim for compensation under this Ordinance.

Autopsy directed by referee.

(7) Where the death of a workman to whom this Ordinance applies occurs while he is confined to a hospital, the hospital authority shall report the same to the employer and the Commissioner immediately after the death has occurred.

Report of death by hospital authority.

21A. (1) Where a workman suffers a permanent disability and the referee is of the opinion that occupational retraining is desirable, the referee may

Occupational retraining of workman.

- (a) direct the type of training to be undertaken by the workman, and
- (b) order the payment by the employer or insurer of the cost of the occupational retraining including travelling, a living allowance, room and board, tuition, books, tools and equipment up to an amount not exceeding five thousand dollars for any one workman of the employer.

(2) In this section "occupational retraining" means the training of a workman in an occupation other than the occupation in which he was disabled.

22. (1) Any payment to a workman may be reviewed at the request of the workman, employer or insurer, and on the review the referee may put an end to or diminish the payment or may increase it to a sum not beyond the maximum hereinafter prescribed; the referee shall forthwith notify the Commissioner and the Commissioner shall forthwith notify the employer of any such appeal.

Review of compensation.

(2) The employer may in any case where in his opinion, the interest or pressing need of the workman or any dependent warrants it, advance or pay to or for the workman or the dependent such lump sum as the circumstances warrant and as the employer may determine, and any sum so advanced or paid shall be on account of and chargeable against the compensation payable to the workman.

Advances and payments on account.

(3) Where any person entitled to compensation under this Ordinance is committed to a jail or prison, compensation is not payable to him for the period of his confinement therein, but the whole or any part of the compensation may be paid to any dependent of any person so committed.

No compensation paid during confinement in jail or prison.

(4) If any person entitled to compensation under this Ordinance is committed to any institution, the compensation otherwise payable to or in respect of such person may, with the approval of the Commissioner, be paid to the dependent wife or other dependents of such person.

Payment of compensation where workman committed to an institution.

(5) The employer or the insurer may, from time to time, require from any person entitled to compensation, whether a workman or dependent, such particulars of his place of residence, address and other information relative to the disability and compensation, as he may deem necessary, and pending the receipt of such particulars, may withhold further payments.

Compensation withheld pending receipt of particulars as to place of residence, etc.

22A. (1) Where the impairment of the earning capacity of the workman does not exceed ten per cent of his earning capacity instead of weekly or other periodical payments, the employer shall, unless in the opinion of the Commissioner it would not be to the advantage of the workman to do so, direct that such lump sum as may be deemed to be the equivalent of it shall be paid to the workman.

Lump sum payments.

(2) Where compensation is payable in respect of partial or total disability and the impairment of the earning capacity of the workman exceeds ten per cent of his earning capacity at the time of the accident, no commutation of periodical payments shall be made except on the application of the workman and on the approval of the Commissioner.

Idem.

(3) Where a lump sum payment has been made to a workman or a dependent as a settlement in full of his claim and has been so accepted by the workman or dependent, such workman or dependent is not entitled to receive or be paid any further or other compensation for or in respect of the degree of disability for which he was being compensated, but this subsection does not in any way affect the application of the provisions of subsection (4) of section 21.

Idem.

23. Where a workman is entitled to compensation and it is made to appear to the Commissioner,

Payment of compensation to wife and children under certain conditions.

(a) that a spouse, child or children dependent upon the workman and residing in the Territories are without adequate means of support and are or are apt to become a public charge or a charge upon private charity, or

(b) that a spouse, child or children dependent upon the workman and residing outside the Territories are not being supported by the workman and an order has been made against him by a court of competent jurisdiction for the support or maintenance of the spouse or children or for alimony, the Commissioner may order the compensation to be diverted in whole or in part from the workman for the benefit of the spouse or children of the workman.

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| <p>24. (1) Where death results from the injury, the amount of the compensation shall be</p> | <p>Compensation for death.</p> |
| <p>(a) the necessary expenses of the burial of the workman, not exceeding three hundred dollars;</p> | <p>Burial expenses</p> |
| <p>(b) to a dependent widow or dependent invalid widower as a contribution to the additional expense occasioned consequent upon the death of the deceased workman, where the accident occurred on or after the 1st day of January, 1956, the sum of three hundred dollars;</p> | <p>Contribution to additional expense.</p> |
| <p>(c) where the death occurred away from the workman's usual place of residence and in the opinion of the referee the transportation of the body seems desirable,</p> | |
| <p>(i) the necessary expenses of transporting the body from the place of death to the usual place of residence up to but not exceeding one hundred dollars; or</p> | |
| <p>(ii) the expense necessarily incurred for such of the transportation that takes place within the Territories up to but not exceeding one hundred dollars, where the usual place of residence of the workman is outside the Territories and it is proposed to transport the body to that place;</p> | |
| <p>(d) to a dependent widow or dependent invalid widower,</p> | |
| <p>(i) where the accident occurred on or before the 31st day of December, 1955, a monthly payment of fifty dollars,</p> | |
| <p>(ii) where the accident occurred on or after the 1st day of January, 1956, and on or before the 31st day of December, 1961, a monthly payment of seventy-five dollars, or</p> | |

- (iii) where the accident occurred on or after the 1st day of January, 1962, and on or before the 31st day of December, 1966, a monthly payment of ninety dollars, or
- (iv) where the accident occurred on or after the 1st day of January, 1967, a monthly payment of one hundred dollars;
- (e) to a dependent child under the age of sixteen years, other than a dependent invalid child,
 - (i) where the accident occurred on or before the 31st day of December, 1961, a monthly payment of twenty-five dollars, or
 - (ii) Where the accident occurred on or after the 1st day of January, 1961, a monthly payment of thirty-five dollars, or
 - (iii) where the accident occurred on or after the 1st day of January, 1967, a monthly payment of forty-five dollars,
 the payments to be continued until the child attains the age of sixteen years or dies whichever event is the earlier.
- (f) to a dependent invalid child irrespective of his age,
 - (i) where the accident occurred on or before the 31st day of December, 1961, a monthly payment of twenty-five dollars, or
 - (ii) where the accident occurred on or after the first day of January, 1962, a monthly payment of thirty-five dollars, or
 - (iii) where the accident occurred on or after the 1st day of January, 1967, a monthly payment of forty-five dollars,
 the payments to be continued for as long as, in the opinion of the referee, it might reasonably have been expected had the workman lived he would have continued to contribute to the support of the child.

(g) where a workman leaves no widow or widower or where a surviving widow or widower subsequently dies or is confined to a jail, prison or institution, the employer shall make from time to time such additional payments not exceeding ten dollars monthly to a dependent child under the age of sixteen years, or to a dependent child over the age of sixteen years and under eighteen years while attending school, or to a dependent invalid child, as in the discretion of the referee appears necessary to adequately maintain and support such child;

Additional payments to dependent child or dependent invalid child.

(h) to a dependent widow in necessitous circumstances because of illness such additional amount as the referee may see fit up to but not exceeding fifteen dollars a month for such period as to the referee may seem appropriate by reason of the illness;

Additional payment to widow in necessitous circumstances.

(i) to a dependent child or a dependent invalid child such additional amount because of illness as the referee may see fit up to but not exceeding ten dollars per month for such period as may to the referee seem appropriate by reason of the illness;

Additional payment to child because of illness.

(j) to a dependent child over the age of sixteen years and under the age of eighteen years at the date of the death of the workman, such amounts as would have been paid to the dependent child under section 26(1) at and subsequent to his age at the date of the death of the workman had the child been under the age of sixteen years at the date of the death, subject to the same conditions as payment under that section.

(2) In subsection (3), unless the context otherwise requires,

Definitions.

(a) "existing household" means any household where all the children entitled to compensation are maintained and taken care of by one foster-mother;

"existing household."

(b) "foster-mother" includes a natural mother

"Foster-mother."

(3) Where the workman leaves no widow or the widow subsequently dies and it seems desirable to continue the existing household, and an aunt, sister or other suitable person acts as foster-mother in keeping up the household and maintaining and taking care of the children entitled to compensation in a manner which the referee deems satisfactory, the foster-mother while so doing is entitled to receive the same compensation for herself and the children as if she were the widow of the deceased.

Compensation payable to foster-mother.

(4) All payments to foster-mothers under the provisions of subsection (3) shall cease when all the dependent children who constitute the existing household have ceased to be entitled to compensation.

Duration of payments to foster-mothers.

25. (1) Where a workman for the six years immediately preceding his death cohabited with a dependent common law wife, or where a workman for the two years immediately preceding his death cohabited with a dependent common law wife by whom he had one or more children, and leaves no dependent widow, the compensation to which a dependent widow would have been entitled under this Ordinance may, in the discretion of the referee, be paid to such common law wife, until such time as she marries or cohabits with a man.

Compensation payable to common law wife.

(2) A dependent common law wife receiving or entitled to receive compensation under the provisions of this Ordinance may not be paid compensation for acting or claiming to act as a foster-mother to the children of the deceased workman.

26. (1) Where a dependent child approaching the age of sixteen years is attending an academic, technical or vocational school and making progress satisfactory to the referee, the referee may, in his discretion, order the payments of compensation to be continued in respect of the dependent child until such time as the dependent child

Extension of compensation for dependent child attending academic, technical or vocational school.

- (a) fails to make satisfactory progress at the school;
- (b) ceases to attend school; or
- (c) attains the age of eighteen years.

(2) Where a dependent child who is receiving payments under subsection (1) attains the age of eighteen years during a school year the referee may order the payments of compensation to be extended to the end of the current school year.

27. Where the only dependents are persons other than those mentioned in subsection (1) of section 24, section 25 or section 26, the compensation shall be a sum to be determined by the referee, reasonable and proportionate to the pecuniary loss to such dependents occasioned by the death, but not exceeding

Compensation
for other
dependents.

(i) fifty dollars per month to a parent or parents and not exceeding in the whole eighty-five dollars per month where the accident occurred on or before the 31st day of December, 1955, or

(ii) seventy-five dollars per month to a parent or parents and not exceeding in the whole one hundred dollars per month where the accident occurred on or after the 1st day of January, 1956.

28. Any payment to or for a child may be made to the parent of the child or the referee may direct that the payment be made to such other person or be applied in such manner as it may deem best for the advantage of the child.

Payment to
parent or other
person for
child.

29. Where a dependent widow remarries, she shall be paid a lump sum of fifteen hundred dollars, and the monthly payments to her shall cease with the payment of the monthly payment for the month in which her remarriage occurs.

Lump sum paid
when widow
remarries.

30. Where a person is receiving or is entitled to receive a pension because of the death of a workman and subsequently becomes entitled to a pension because of the death of another workman such person shall not receive both pensions but shall be paid the greater of the two.

Only one pension
payable.

31. (1) Where a dependent is not a resident of Canada, he is not entitled to compensation unless by the law of the place or country in which he resides the dependents of a workman to whom an accident happens in such place or country, if resident in Canada, would be entitled to compensation, and where such dependents would be entitled to compensation under such law, the compensation to which the non-resident dependent is entitled under this Ordinance shall not be greater than the compensation payable in the like case under that law.

Dependent not
resident in
Canada.

(2) Notwithstanding the provisions of subsection (1), the referee may order payment of such compensation or sum in lieu of compensation to any such non-resident dependent as may be deemed proper.

32. Where permanent total disability results from the injury, the amount of the compensation shall be a weekly payment during the life of the workman equal to seventy-five per cent of the average weekly earnings of workmen employed at similar work in the same occupation as determined by the referee.

Compensation for permanent total disability.

33. (1) Where permanent partial disability results from the injury, the referee shall estimate the impairment of earning capacity from the nature and degree of the disability by reason of the injury and award compensation accordingly based upon seventy-five per cent of the average weekly earnings of workmen employed at similar work in the same occupation as determined by the referee.

Compensation for permanent partial disability.

(2) When deemed just, the impairment of earning capacity may be estimated from the nature of the injury having in view the workman's fitness to continue the employment in which he was injured or adapt himself to some other suitable occupation.

Nature of injury to be considered.

(3) Notwithstanding the provisions of this section, the referee may in case a workman has been seriously and permanently disfigured about the face or head or otherwise permanently injured, recognize an impairment of earning capacity and may allow lump sums of periodical payments, or both, as compensation.

Permanent disfigurement.

34. Where temporary total disability results from the injury, the amount of the compensation shall be a weekly payment so long as the disability lasts, equal to seventy-five per cent of the workman's average weekly earnings, computed in accordance with the provisions of section 37.

Compensation for temporary total disability.

35. Where temporary partial disability results from the injury, the employer or referee, as the case may be, shall estimate the impairment of earning capacity from the nature and degree of the disability by reason of the injury and award compensation accordingly based on seventy-five per cent of the workman's average weekly earnings computed in accordance with the provisions of section 37 but such compensation is payable only so long as the disability lasts.

Compensation for temporary partial disability.

36. In case of workmen suffering injury by accident arising out of and in the course of the employment while doing rescue work in a mine after an explosion, accident or catastrophe or in any other industry or the premises

Injury while doing rescue work in a mine.

thereof during or immediately after a fire or other catastrophe for the saving of human life, the compensation payable in such case shall be computed on the basis of one hundred per cent in lieu of the seventy-five per cent as herein otherwise provided.

37. (1) The average weekly earnings of a workman for the purposes of this Ordinance shall be based upon the earnings of the workman during the previous twelve months in industries to which this Ordinance applies where the same are ascertainable except that where by reason of the shortness of the time during which the workman has been in the employment of his employer or the casual nature of the employment, it is impracticable at the date of the accident to compute the rate of remuneration, regard may be had to the average earnings which were earned by a person in the same grade of employment for the previous twelve months, but nothing in this subsection applies to any case in which the basis of compensation is fixed by section 32 and section 33.

Manner of computation of average weekly earnings.

(2) Where in any case in the opinion of the employer or the referee, as the case may be, the provisions of subsection (1) are inapplicable, the employer or the referee, as the case may be, may award compensation having regard to the earnings of the workman at the time of the accident.

Where provisions of subsection (1) inapplicable.

(3) For the purpose of ascertaining the amount of compensation payable under the provisions of sections 32 to 36, average weekly earnings shall be computed in such manner as is best calculated to give the rate per week at which the workman was being remunerated, but no so as in any case to exceed

Computation of average weekly earnings.

- (a) three thousand dollars per annum, where the accident occurred on or before the 31st day of December, 1955,
- (b) four thousand dollars per annum, where the accident occurred in the period commencing on the 1st day of January, 1956, and ending on the 31st day of December, 1961,
- (c) four thousand, five hundred dollars per annum, where the accident occurred in the period commencing on the 1st day of January, 1962, and ending on the 31st day of December, 1966, or
- (d) five thousand six hundred dollars per annum, where the accident occurred on or after the 1st day of January, 1967.

(4) Where a workman is receiving compensation for a permanent or temporary disability, he shall not receive compensation for any further or other disability in any amount that would result in his receiving in the aggregate compensation in excess of that payable for total disability.

No compensation for further or other disability in certain cases.

(5) Where a workman has received a lump sum in lieu of the periodic payments that otherwise would have been payable for a permanent disability, he shall for the purposes of the preceding subsection be deemed to be still in receipt of periodic payments.

Where lump sum paid in lieu of periodic payments.

(6) Where the workman had entered into concurrent contracts of service with two or more employers in industries to which this Ordinance applies under whom he worked at one time for one such employer and at another time for another such employer, his average weekly earnings shall be computed as if his earnings under all such contracts were earnings in the employment of the employer for whom he was working at the time of the accident.

Computation of average weekly earnings in certain cases.

(7) Where the employer has been accustomed to pay to the workman a sum to cover any special expenses entailed on him by the nature of the employment, the sum so paid shall not be reckoned as part of the earnings.

Sum for special expenses not part of earnings.

38. (1) The amount of compensation to which an injured person is entitled for temporary total or permanent total disability under the provisions of this Ordinance shall not be less than thirty-five dollars per week, or where his average earnings are less than thirty-five dollars per week, the amount of such earnings.

Minimum compensation for total disability.

(2) The employer or the referee, as the case may be, may, wherever it is deemed advisable, provide that the payments of compensation may be monthly or semi-monthly instead of weekly, or where the workman or dependent is not a resident of the Territories, or ceases to reside therein, the employer or the referee, as the case may be, may fix the periods of payment, but if a workman or dependent entitled to compensation at the rate of twenty dollars a month or more files with the employer or the referee, as the case may be, a request in writing that the compensation payable to him be paid semi-monthly, the compensation payable to such workman or dependent shall thereafter be paid semi-monthly.

Periods of payment.

(3) For the purpose of ascertaining the amount of compensation due, such amount may be computed on a daily basis.

Computation on daily basis.

(4) Where a workman or dependent is under the age of twenty-one years or is under any other legal disability, the compensation to which he is entitled may be paid to him or be applied in such manner as the employer or the referee, as the case may be, may deem best for his advantage.

Payment to persons under legal disability.

(5) Where the workman was at the date of the accident under twenty-one years of age the compensation payable to such workman may, upon his attaining the age of twenty-one years, be paid on the basis of the earnings at the time of the accident of workmen of the age of over twenty-one years employed in an occupation similar to that in which the workman was employed at the time of the accident.

Compensation payable when workman becomes twenty-one.

39. In fixing the amount of payment, regard shall be had to any payment, allowance or benefit which the workman may receive from his employer in respect of the period of his disability, including any pension, gratuity or other allowance provided wholly at the expense of the employer.

Consideration of allowance or benefit from employer to workman.

40. (1) In this section, "silicosis" means a fibrotic condition of the lungs caused by dust containing silica and evidenced by specific x-ray appearances or results of other scientific tests or examinations, and accompanied by a substantially lessened capacity for work.

"Silicosis"

(2) Nothing in this Ordinance entitles a workman or his dependents to compensation, medical aid or payment of burial expenses for disability or death from silicosis, unless in the opinion of the referee the workman has been exposed to dust containing silica in his employment in the Territories for periods amounting in all at least to two years preceding his disablement.

Compensation not paid for silicosis in certain cases.

(3) The provisions of subsection (2) do not prevent allowance of any claim due to silicosis that the referee considers is entirely due to employment in the Territories.

Application of subsection (2).

(4) Where it can be shown that the workman was exposed to the inhalation of dust containing silica elsewhere than in the Territories, the amount of compensation payable shall be reduced by the proportion that his work elsewhere so exposed bears to the total period he has worked so exposed.

Where exposure partly elsewhere.

(5) Where it can be shown in respect of a claim due to silicosis that the workman was exposed to the inhalation of dust containing silica during employment by more than one employer in the Territories, the cost of the claim in respect of each employer shall be shared in proportion to the time that the workman was so exposed in the employment of each such employer.

Where in Territories exposure with more than one employer.

41. (1) The employer shall furnish or provide for the injured workman such medical aid as may be reasonably necessary at the time of the injury and thereafter during the disability to diagnose, cure and relieve from the effects of the injury, and the Commissioner may make regulations with respect to the furnishing of and the payment for medical aid to injured workmen.

Medical aid.

(2) All questions as to the necessity, character, and sufficiency of any medical aid furnished shall be determined by the referee.

(3) When the employer provides or is liable to pay for medical or other remedial attention as hereinbefore provided, the amount payable to any person in respect of medical or other remedial attention or any action lies against the employer for or in respect of any amount greater than that fixed by the referee, nor in any event against the injured workman, his employer or any other person in respect to such attention, except, however, that when the employer provides or is liable to pay for hospital services, the amount shall be at such rates as have been mutually agreed upon by the employer and the hospital authority

Amount of medical aid.

Hospital services.

(4) Where a workman is undergoing treatment under the direction of the referee or the employer in a district, settlement, or place other than that in which the workman ordinarily resides and does not receive free board and lodging from his employer, the employer shall pay to such workman a subsistence allowance, while the workman is undergoing such treatment,

Subsistence allowance

- (a) at the rate of six dollars per day, while the workman continues to maintain his house or other residence in the district, settlement, or place in which he ordinarily resides;
- (b) at the rate of three dollars per day, where the workman does not so maintain that house or residence; or
- (c) in either case, such lesser amount as may be determined by the referee on reference by the Commissioner.

(5) The referee may contract with doctors, nurses, and hospitals or any other institutions for any medical aid required, and, in the case of a workman who has been rendered helpless through permanent total disability as a result of an injury, may order the provision of such other treatment services or attendance as in his opinion are required as a result thereof and the employer shall pay any charges or expenses incurred thereunder or in connection therewith in respect of any workman for whom he is responsible.

Contracts for medical aid and hospitalization.

(6) Any major operations or operations of election require the approval of the employer or the insurer, or of the referee on reference by the Commissioner, before being performed and, in the event that such approval is not obtained, except in cases of emergency the cost thereof may be paid or not at the discretion of the referee.

Operations.

(7) Under no circumstances shall a workman be charged any amount to supplement that paid or to be paid by his employer or an insurer for services to which the workman is entitled under this Ordinance.

No charge for services.

(8) Every employer shall, at his own expense, furnish to any workman injured in his employment who is in need of it, immediate conveyance and transportation to a hospital or to a physician or to the workman's home or to such other place as the condition of the workman requires him to be sent, and any employer who fails to do

Transportation of injured workman.

so is liable by order of the Commissioner to pay for such conveyance and transportation as may be procured by the workman or by anyone for him.

42. (1) Subject to subsection (2) and (3), each employer shall

Assessment of insured employers for administrative purposes.

(a) annually, on the date that the whole or any part of the annual premium on his contract of insurance entered into under this Ordinance is first due, pay to the Commissioner or to a person authorized by him, as his agent in that behalf an assessment of

(i) such percentage, not exceeding one-half of one per cent, of his estimated payroll for the twelve month period commencing on that date, as the Commissioner from time to time prescribes, or

(ii) one dollar,

whichever is the greater; and

(b) within thirty days after each anniversary of the date referred to in paragraph (a), submit to the Commissioner in prescribed form a statement of his actual payroll for the twelve month period preceding such anniversary date.

(2) Notwithstanding paragraph (b) of subsection (1), within thirty days after the date on which an employer ceases to be an employer or his contract of insurance expires, whichever first occurs, he shall submit to the Commissioner in prescribed form a statement of his actual payroll for the period from the date mentioned in paragraph (a) of subsection (1) to the applicable date mentioned in this paragraph.

Submission of payroll

(3) An employer who is exempted under paragraph (a) of subsection (2) of section 3 shall

Assessment of exempted employers.

(a) on the date that the exemption is granted, pay to the Commissioner or to a person authorized by him as his agent in that behalf an assessment of

(i) such percentage, not exceeding one-half of one per cent of his estimated payroll for the period in respect of which the exemption is granted, as the Commissioner from time to time prescribes, or

(ii) one dollar,

whichever is the greater, and

- (b) within thirty days after the date on which he ceases to be exempt from the application of section 3 or the date on which he ceases to be an employer, whichever first occurs, submit to the Commissioner in prescribed form a statement of his actual payroll for the period during which he was exempt.
- (4) A change in the rate of assessment is effective on the first due date for payment of any assessment following the date on which the new rate is prescribed. Change in rate of assessment.
- (5) Where an assessment paid by an employer is greater than the amount payable on the basis of his actual payroll, the amount of the overpayment shall, if it exceeds one dollar, be refunded to him following receipt by the Commissioner of the statement of the employer's actual payroll. Where assessment greater.
- (6) Where the assessment paid by an employer is less than the amount payable on the basis of his actual payroll, he shall pay the amount of the difference, if it exceeds one dollar, to the Commissioner at the time he submits the statement of his actual payroll. Where assessment less.
- (7) The Commissioner may authorize any person as his agent to collect any assessment payable under this section, and such agent shall have full power to take, and may institute and carry out all necessary legal proceedings in his own name to recover any such assessment for the Commissioner. Agent.
- (7a) All moneys paid to the Commissioner, or to a person authorized by him as his agent, under this section shall be paid into and form part of the Northwest Territories Revenue Account. Payments.
- (8) From and out of the monies issued and advanced out of the Northwest Territories Revenue Account may be paid Idem.
- (a) the fees and expenses of referees,
 - (b) any sum to which an employer is entitled to be refunded under this section,
 - (c) any payments for premiums to insurers in respect of contracts of insurance for the protection of workmen that employers may have failed to enter into and maintain in force as required by section 3 of this Ordinance,
 - (d) costs incidental to the administration of

- this Ordinance and enforcement of the Ordinance and the regulations,
- (e) such part of the moneys collected by assessment in excess of all such fees, expenses, refunds, payments and costs as the Commissioner may determine.

43. Each employer shall furnish to the Commissioner such information regarding his payroll as the Commissioner may from time to time require. Payroll.

44. Where an award of the referee is not paid promptly as it falls due, the amount of such award may be paid from and out of the moneys issued and advanced out of the Northwest Territories Revenue Account, and such amount so paid is a debt due to the Commissioner who may recover the same in any court of competent jurisdiction from the employer. Payment of award and recovery from employer.

45. Every employer shall keep posted in his premises at a place readily accessible to his workmen a poster provided by the Commissioner setting out in concise form the provisions of the Ordinance and the procedure to be followed in reporting accidents and making claims. Particulars of Ordinance to be posted up.

46. Every employer who violates any provisions of this Ordinance or any regulation made hereunder for which no other penalty is provided is guilty of an offence and is liable on summary conviction to a fine not exceeding one thousand dollars. Penalty

LIST OF SUBMISSIONS RECEIVED

Austin Airways
Canadian Construction Association
Canadian Longyear Limited
Canadian National Railways
Canadian Petroleum Industry
Consolidated Mining and Smelting Company of Canada Ltd
International Union of Mine, Mill and Smelter Workers (Canada)
Lanky Exploration and Development Ltd
Harry Larsen (Statutory Declaration)
Northwest Territories Allied Council
Osler, Hammond and Nanton Insurance Ltd
Prudential Assurance Company Ltd.
Teamsters Joint Council No. 36
Territories Mines Accident Prevention Association
United Keno Hill Mines Ltd
Whitahorse Electric Ltd
Yukon Territorial Secretary Brief (H. S. Taylor)

APPENDIX B

LIST OF SELF INSURERS

Canadian National Railways Company

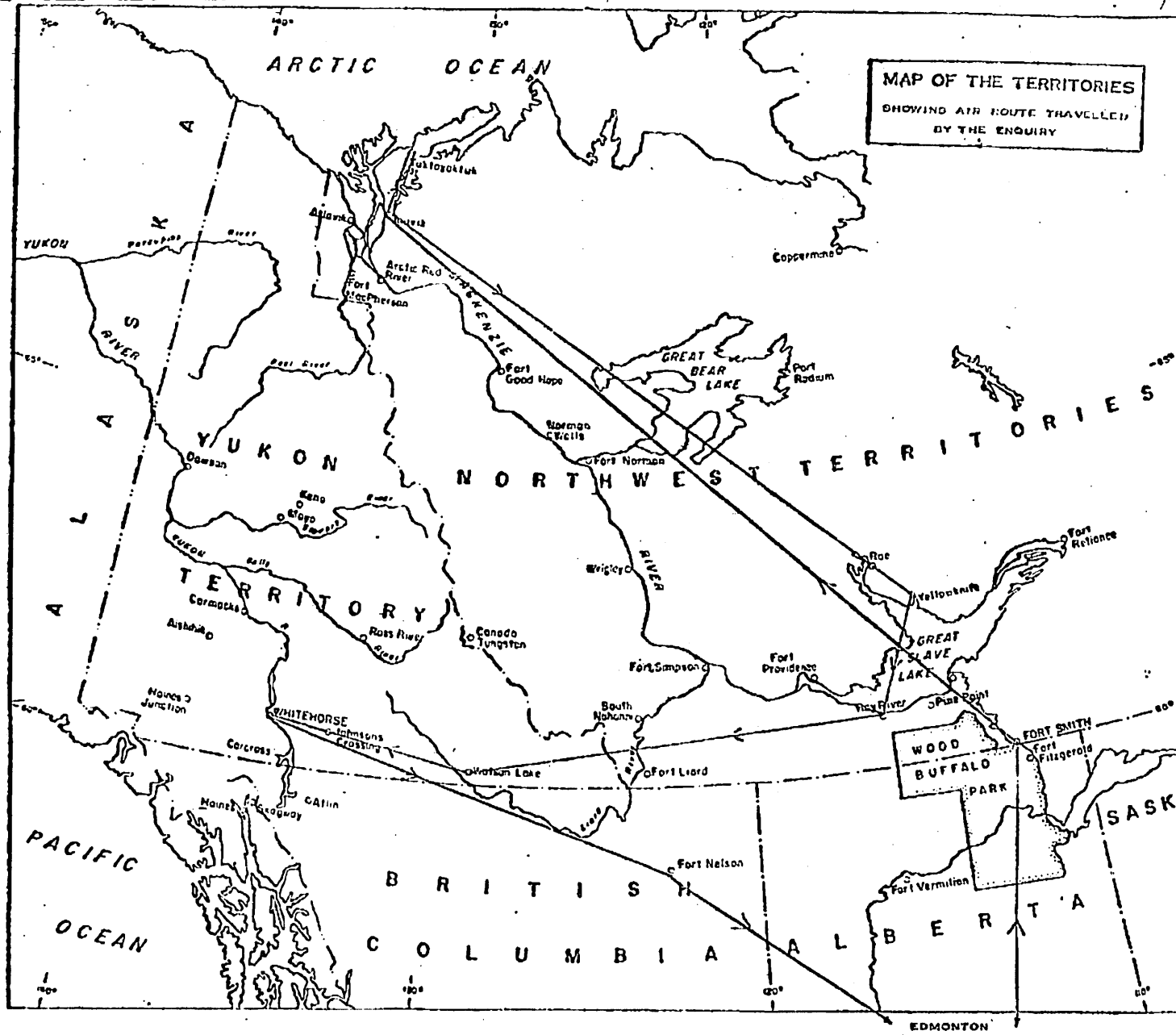
Consolidated Mining and Smelting Co, of Canada Ltd

Kootenay Engineering Co, Ltd

Hudson's Bay Company

Canadian Pacific Airlines

White Pass and Yukon Route



MAP OF THE TERRITORIES
SHOWING AIR ROUTE TRAVELLED
BY THE ENQUIRY

APPENDIX C