

12th Assembly

Standing Committee on Legislation

REPORT ON

Tabled Document 145-12(3): Legislative
Action Paper on the Workers' Compensation
Act

Silas Arngna'naaq, M.L.A.
Chairperson



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18 November 1993

THE HONOURABLE MICHAEL A. BALLANTYNE, M.L.A.
SPEAKER OF THE LEGISLATIVE ASSEMBLY

Mr. Speaker,

Your Standing Committee on Legislation has the honour of presenting its Report on Tabled Document 145-12(3): Legislative Action Paper on the Workers' Compensation Act, and commends it to the House.

Silas Arngna'naaq, M.L.A.
Chairperson

Standing Committee on Legislation:

Terms of Reference:

The Standing Committee on Legislation shall:

- a) examine such matters as may be referred to it by the Legislative Assembly;
- b) review all bills and legislative action papers referred to the committee;
- c) examine all orders, regulations or statutory instruments issued by the regulation-making authority;
- d) examine any other matters of a legislative nature as determined necessary by the Standing Committee; and
- e) establish its quorum to be five Members including the Chair

BACKGROUND INFORMATION

When the Standing Committee on Agencies, Boards and Commissions completed its Interim Report on its review of the Workers' Compensation Board in June 1992, it recommended that the Minister Responsible for the Workers' Compensation Board prepare a Legislative Action Paper to provide a comprehensive description of all the areas of the *Workers' Compensation Act* that should be amended. The Final Report of the Standing Committee, tabled June 26, 1992, made additional specific recommendations for amendments to the *Act*.

On February 25, 1993, the Minister tabled the *Review of the Workers' Compensation in the Northwest Territories : Final Report of the Chief Commissioner*. The Commissioner had been requested to conduct an expert and independent review of workers' compensation. He reviewed the Final Report of the Standing Committee on Agencies, Boards and Commission, as well as three previous workers' compensation studies conducted since 1986. The Commissioner made recommendations for reform and identified some areas that may require further development.

The Standing Committee on Legislation held public hearings in Yellowknife from Wednesday, September 29th, 1993 to Friday, October 1, 1993 to review the Legislative Action Paper on Workers' Compensation Act. The Standing Committee extends its appreciation to the individuals and organizations who made oral presentations or submitted written briefs to the Committee. The comments and suggestions were thought provoking and the Committee studied them carefully during our deliberations.

INTRODUCTION

The Standing Committee on Legislation, under the authority given to it by this House, has completed a review of Tabled Document 145-12(3), entitled "*Legislative Action Paper on the Workers' Compensation Act*".

The legislation in the NWT that formed the framework for our current workers' compensation system was titled *An Ordinance Respecting Compensation to be Paid as a Result of Injuries or Death Caused to Workers in the Course of their Employment*. It was granted assent in February 1977.

Since that time there have been ten amendments to the legislation, now called the *Workers' Compensation Act*. A majority of the amendments deal with the Year's Maximum Insurable Remuneration (YMIR). The remaining amendments have included:

- an increase in the monthly compensation for total disability from 75% to 90% of net income (1986);
- the addition of provisions for coverage of traditional hunters and trappers (1987);
- a change in the size of the Board, reducing the membership from eleven to five members, and the establishment of the Minister, rather than the Commissioner, as the authority for making Board appointments, (1989); and
- the addition of an Appeals Tribunal (1990).

The Legislative Action Paper focuses on eight areas of the *Workers' Compensation Act* that may require amendments. These areas were recommended for amendment by the Standing Committee on Agencies, Boards and Commissions in their recent review of the Workers' Compensation Board. The eight areas are:

- Regular (periodic) review of the Workers' Compensation Board;
- Ministerially Appointed Review Committee;
- Full Funding;
- Merit Rebate and Super-Assessments;
- Traditional Harvesters;
- Aboriginal Artists and Carvers;
- Third Party Liability; and
- Commutations/Lump Sum Payments.

The Standing Committee on Agencies, Boards and Commissions made an additional seven recommendations toward legislative amendments that were not discussed in the Action Paper. The Legislative Action Paper does not identify any potential areas for legislative reform in addition to the recommendations of the Standing Committee. The Minister indicated in his introductory statement on the Legislative Action Paper that other areas where the *Act* needs revision may be identified in the presentations received by this Committee during the public review.

Overview of Public Hearings

The Standing Committee on Legislation held public hearings on the *Legislative Action Paper on Workers' Compensation Act* from September 29th through October 1st, 1993. Based on the submissions received during the public hearings and extensive discussions, the Standing Committee on Legislation was of the opinion that amendments to the current *Workers' Compensation Act* should be made an immediate priority of this Government. Amendments to the *Workers' Compensation Act* should be introduced to the Legislative Assembly as soon as possible and if this Bill receives Second Reading, it would again be referred to the Standing Committee on Legislation for a detailed review.

SUMMARY OF MAJOR CONCERNS

The meetings held in Yellowknife on the Legislative Action Paper brought forth many strong concerns and considerations for the development of amendments to the current *Workers' Compensation Act*. The major concerns brought forth during the public hearings were:

A) Office of the Workers' Advisor

The Final Report of the Standing Committee on Agencies, Boards and Commissions recommended that the Office of the Workers' Advisor be formally established in legislation. The Chief Commissioner in his report further recommended that the office be classified as an "out-of-scope" position.

During the public hearings on the Legislative Action Paper, the Standing Committee on Legislation heard strong concerns about this position. It was felt that this position should be established in legislation. However, the position should be funded independently from the WCB and therefore would remain independent from the Workers' Compensation Board. It was suggested that the *Public Service Act* be amended to establish the position in legislation.

RECOMMENDATION #1

The Standing Committee on Legislation recommends:

THAT THE OFFICE OF THE WORKER'S ADVISOR REMAIN INDEPENDENT FROM THE WORKERS' COMPENSATION BOARD. AND FURTHER, THAT THE POSITION BE FUNDED DIRECTLY BY A GOVERNMENT DEPARTMENT.

B) WCB Annual Report

Some presentations spoke about a shroud of secrecy that surrounds the Workers' Compensation Board. It was felt that information about the WCB and access to its services was difficult to obtain. Many would like to see a more detailed annual report developed and tabled in the Legislative Assembly. Suggestions as to what information should be included in the annual report were:

- a) Chair's report: Brief overview of WCB operations over the last year
- b) The Board: Who is on the Board. Who nominated them. Length of their terms. Contact numbers.
- c) Staff: Names, duties and contact numbers
- d) Workers' Advisor: Summary of position description including a contact number. Statistics on travel and cases dealt with.
- e) Review and Appeal Process: Description of the Appeal process. Names of Review Committee and Appeal Tribunal. Statistics on number of review and appeals.
- f) Accident Claims; Number of claims for the year and a breakdown by industry
- g) Details on claims on a "part of body" basis
- h) Assessment revenue collected by Workers' Compensation

- i) Accident Fund: dollar amount
- j) Rehabilitation Services Activity: percentage of clients by province plus costs to administer.
- k) Late reporting: Statistics
- l) Failure to report: Statistics
- m) Administration expenses

RECOMMENDATION #2

The Standing Committee on Legislation recommends:

THAT THE ANNUAL REPORT OF THE WORKERS' COMPENSATION BOARD INCLUDE MORE OPERATIONAL DETAILS AND STATISTICS AS LISTED IN THIS REPORT.

C) Merit Rebates/Super-Assessments

This program would entail matching the assessments charged to employers to fund the workers' compensation system with their safety record within each industry.

The Legislative Action Paper states that the authority for this program already exists within the *Act*, so no amendment would be necessary to design this program.

The Chief Commissioner in his report stated that although there will remain a number of policy issues that need to be addressed, this program could be implemented without amendment to the *Act*.

There was great concern about a Merit Rebate/Super Assessment system expressed during the public hearings. Most labour organizations felt this system would bring forth the issue of failure on the part of an employer to report accidents. It was suggested that there are fines already in place in the Act for failure to report accidents. It was felt that more severe penalties should be applied to those employers who deliberately avoid reporting accidents to make their record look good and keep their assessment rate low. It was suggested that WCB consider a penalty assessment system such as the British Columbia system.

RECOMMENDATION #3

The Standing Committee on Legislation recommends:

THAT THE MERIT REBATE/SUPER ASSESSMENT PROGRAM BE IMPLEMENTED, HOWEVER THE ACT SHOULD BE AMENDED TO INCREASE THE FINES USED AS PENALTIES FOR FAILURE TO REPORT ACCIDENTS.

D) Board Composition

During the public hearings it was expressed that the Board should be representative of the Northwest Territories. That would mean a requirement to include at least one member of aboriginal descent. A larger board would ensure that at least one person from every part of the territories and the diversity of the occupations was represented. It was also felt that nominations to the Board should be scrutinized to ensure appointments were based on qualifications and not patronage. Although the presenters were not suggesting this is the case currently, they felt public scrutiny would prevent nominations from seeming to be based on patronage.

RECOMMENDATION #4

The Standing Committee on Legislation recommends:

THAT THE BOARD MEMBERSHIP BE INCREASED TO INCLUDE AT LEAST ONE MEMBER OF ABORIGINAL DESCENT AND TO ENSURE THAT THE DIVERSITY OF OCCUPATIONS IS REPRESENTED.

E) Traditional Harvester/Aboriginal Artists and Carvers

The Legislative Action Paper makes no specific proposal for dealing with the issue of traditional harvesters. However, in July 1993, the Workers' Compensation Board released a proposal paper drafted jointly by the Board and the Department of Renewable Resources. The following changes to the existing program were proposed:

- an change to the policy criteria used to define "principally engaged". Rather than using a minimum income level of \$10,000, the policy would require that the injured harvester earn at least 25% of his/her yearly income from harvesting. The use of country food by an applicant could be valued to a maximum of \$7,000. However, it is not proposed that this definition be added to the *Act*.
- an amendment to the *Act* to reduce the amount of compensation provided to traditional harvesters, from the YMIR of \$47,500 to \$24,000. The WCB stated that this figure was compiled by the Department of Renewable Resources based on sales records of harvesters for the past several years. Harvesters who earn greater than this amount could apply for optional coverage.

The Legislative Action Paper similarly does not address the issue of Aboriginal Artists and Carvers in detail. It notes that the Workers' Compensation Board has the authority under the *Act* to determine an industry or an independent operator to be within the scope of the *Act*; however, it makes no specific proposal regarding the structure of such a program, or compensation levels or eligibility.

There were many varied opinions on these particular issues. Many felt that the Board and the Department should be commended for their efforts to address the "principally engaged" dilemma. However, a majority of those who made presentations felt that the workers' compensation system was designed to meet the requirements of a wage economy and more specifically workers of employers. It was felt that perhaps workers' compensation was not suited to cover independent operators, and piece workers.

RECOMMENDATION #5

The Standing Committee on Legislation recommends:

THAT THE MINISTER RESPONSIBLE FOR THE WORKERS' COMPENSATION FURTHER INVESTIGATE OTHER PROGRAMS OF GUARANTEED INCOME THAT MAY PROVIDE COVERAGE FOR TRADITIONAL HARVESTERS, ARTISTS, CARVERS AND OTHER OCCUPATIONS WHICH MAY NOT CLEARLY FIT INTO THE WORKERS' COMPENSATION SCHEME.

F) Management of Pension Fund

It was brought up a number of times during the public hearings, that the responsibility of the board of directors with respect to the management of the fund is not clearly stated in the legislation. Many were concerned that the legislation did state that the board shall manage the fund, but that it doesn't say that the board of directors is accountable, has a fiduciary obligation to manage these funds in a responsible and knowledgeable manner. Some people feel that this accountability should be in legislation.

RECOMMENDATION #6

The Standing Committee on Legislation recommends:

THAT THE WORKERS' COMPENSATION ACT BE AMENDED TO CLEARLY STATE THE FIDUCIARY OBLIGATION OF BOARD MEMBERS FOR THE MANAGEMENT OF THE FUND.

G) Commutation/Lump Sum Payments

Currently, the Workers' Compensation Act allows the Board to commute certain permanent disability pensions to lump-sum payments. This is possible in cases where impairment of the worker's earning capacity is not greater than 10% at the discretion of the Board. However, the Board has adopted a policy that uses the percentage of disability rating rather than percentage of earning capacity as the 10% guide. This discrepancy between earning impairment and disability impairment has created much confusion .

The Legislative Action Paper proposes that the 10% limit on eligibility remain, and that the Act be clarified. It also proposes that within the 10% limit, commutation be available to workers as a right upon application, and where no application is made, the Board should have the discretion to commute.

Opinions on commutations varied from strongly opposed to strongly supportive. Most employer groups and organized labour groups did not support a change to the current legislation. Most felt that lump-sum payment provisions do not belong in a workers' compensation scheme and that commutations are contrary to the established purpose of workers' compensation legislation. Individuals or employees supported the lump-sum provision being available upon application. They felt the current legislation was to paternalistic. They believe that the current legislation takes away the right of the individual to decide.

RECOMMENDATION #7

The Standing Committee on Legislation recommends:

THAT THE 10% DISABILITY ON ELIGIBILITY FOR COMMUTATION OF PENSION PAYMENTS REMAIN IN THE LEGISLATION AS CURRENTLY IS, AND THAT THE COMMUTATION BE PROVIDED AS A RIGHT UPON APPLICATION OF THE WORKER AND THAT THE DISCRETION OF THE BOARD TO COMMUTE IN THE ABSENCE OF AN APPLICATION FROM THE WORKER, BE ELIMINATED.

SUMMARY OF OTHER CONCERNS

During the Review of the Legislative Action Paper on *Workers' Compensation Act*, the Standing Committee on Legislation did hear other concerns expressed by one or more presenters. We felt these concerns were worth noting at this time.

A) Full Funding

Most groups and individuals who made presentations during the public hearings on the Legislative Action paper felt a full funding requirement in the legislation was a good idea. However, there was some concern that a legislated full-funding requirement may have a negative effect on the economy. There was concern that full-funding opened the possibility to an increase in assessment rates if the fund should begin to dip out of full-funding status. This increase in assessment rates would raise the cost to do business which in turn would be passed on to the consumer. The presenters felt costs were high enough. For example:

An employer in Building Construction sub class that current rate is \$10.25 per \$100 wages. The same class and sub class in the Yukon and Alberta respectively, the rates are \$5.50 per \$100 wages and \$3.00 per \$100 wages.

The impact to the consumer can be seen when a comparison of a average new house in Fort Smith will cost an additional \$7000 compared to an equal house built just across the border in Alberta.

B) Safety Education

The Standing Committee on Legislation heard from every group the desire to keep safety and safety education with the Department of Safety and Public Services. Most felt it would be poor public policy to have insurance and policing functions within the same agency.

C) Review of the WCB

During the review of the Legislative Action Paper on Workers' Compensation, the Standing Committee became aware that the Legislative Action Paper was not clear whether the section regarding review pertained to the scrutiny of the Act, the operation of the Workers' Compensation Board, or the entire system.

All presenters during the public hearings did express support for a review of the operations. Most agreed that a legislated review every 4-5 years was adequate providing the review is conducted by a committee comprised of equal representation of employers and workers with a neutral chair.

D) Length of Appeal Process

There is a concern about the delay between the time a decision is made that an applicant is eligible for assistance and the time they can appeal the decision. The review process is too long. Many felt that the length of time posed undue financial hardship on behalf of the injured party. It was felt that the process should be streamlined so the amount of hardship is minimal.

E) WCB Medical Practitioner

As with the position of the Workers' Advisor, it was felt this position too should be independent of the Workers' Compensation Board.

SUMMARY OF RECOMMENDATIONS

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The Standing Committee on Legislation recommends:

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RECOMMENDATION #2

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