



Workplace Safety &
Insurance Board

Commission de la sécurité
professionnelle et de l'assurance
contre les accidents du travail

Memorandum

BOD Minute #15, December 10, 2003, Page 6569

To: Board of Directors

From: Brock Smith, Chair of Coverage Review

Date: November 17, 2003

Subject: Final Report on Coverage

Issue

To finalize recommendations to the Minister with respect to broadening WSIB coverage and resolving the independent operator issue.

Background

In the spring of 2002 the Board conducted a public review of key coverage issues including lack of coverage for about 35 per cent of the workforce and the treatment of independent operators. In August 2002, the BOD discussed its recommendations and instructed staff to prepare a final report to be approved and forwarded to the Minister of Labour. However, the then Minister indicated that he did not want to receive recommendations until an impact study had been undertaken so final recommendations have yet to be approved. The impact study has now been completed. It analyses the impact on employment in the industries to which coverage would be extended and concludes that the employment impact would be minimal in the long run. In the short run there would be dislocations for small business and community health and social assistance agencies.

Relevant Factors

Implementation of the recommendations will halt coverage erosion, improve long term financial viability, eliminate confusion with respect to who is covered, resolve the independent operator issue, and eliminate the need for financial assurances from Schedule 2 employers. Employers generally support the status quo or say they would support compulsory coverage provided it included the option of private insurance. Construction and trucking employers support resolution of the independent operator issue through some form of compulsory coverage. Schedule 2 employers oppose transfer to Schedule 1. Labour representatives favour compulsory WSIB coverage for all sectors and workers.

The report suggests that where coverage is extended, the unfunded liability charge would apply to an industry where some firms are currently covered, but not apply in the

case where a whole industry is brought into the system. The report does not contain a formal recommendation on this point.

U of T Prof. Doug Hyatt, whose specialty is the impact of workers compensation policies, has completed a study of the impact of coverage extension. His conclusion is that full coverage extension would create a modest, negative impact on employment in the short run. The greatest impact would be on health care and social assistance and small business. However there would be no long run impact on employment. His analysis is that, in the long run, the cost of WSIB coverage is borne by workers in the form of slightly lower wages.

Recommendation

The following reflects the decisions taken by the Board in August 2002. The Board is being asked to reaffirm these decisions.

Exclusionary or Inclusionary? *It is recommended that the Act should be converted to the exclusionary principle whereby all workers and employers are covered except where specifically excluded in the Act, by Order in Council or by the WSIB. The exclusion list, to be placed in regulation, should be composed of three parts, which are "permanent", "provisional" and "special category".*

The "permanent" list would include industries or occupations that are presently excluded and where there is no expectation that they would ever be brought into coverage. Examples would include teams or individuals competing in sports, circus performers, individuals who do stunts and so on. Also, these individuals or their employers would not be provided with the choice of applying for coverage.

The "provisional" list would include industries or occupations where the objective is that they be brought into coverage at some future point, but in the meantime receive a provisional exemption that, for example, would provide time for adequate stakeholder consultation.

The "special category" list would cover industries and occupations where it is appropriate to provide compulsory coverage to some aspects of the industry but not to others. The prime example would be the entertainment industry where actors and performers would be exempt from coverage but most other workers in the industry would not be.

Schedule 1: (Option 1 is "full coverage". Option 2 is full coverage as in option 1, with a limited option to require equivalent coverage through private insurance.)

It is recommended that Option 1 be adopted. It is also recommended that the application of this option to certain designated industries would not take place without further consultation. In the meantime, they would be designated under the proposed "provisional" exemption category.

Schedule 2: (Option 1 is to transfer all non-government organizations in Schedule 2 to Schedule 1. Option 2 is to permit the grandfathering of existing private companies in Schedule 2 conditional on maintaining appropriate financial security arrangements.)

It is recommended that Option 1 be adopted and that consultations take place with Schedule 2 employers with respect to its implementation.

It is recognized that a transfer from Schedule 2 to Schedule 1 involves the issue of "double jeopardy". The WSIB's past practice has been that when a Schedule 2 employer transfers in Schedule 1, it remains liable for its previous accident costs as well as being required to contribute to past Schedule 1 unfunded liabilities. One option would be to continue this practice under a newly integrated system. However, it could be argued by the employers being transferred that the requirement to fully fund their own claims while required to pay a charge for the Schedule 1 unfunded liability is unfair.

An alternative would be to merge the Schedule 2 claim liability with those of Schedule 1, but only at the same funding level. One way to achieve this would be to first require a Schedule 2 employer to gradually buy-out its own Schedule 2 liabilities (say over a three year period) at a level equal to the Schedule 1 funding ratio (currently 70 per cent) and together transfer its Schedule 2 claims into Schedule 1. The effect of this is to ensure that everyone contributes to the unfunded liability at the same funding level, while ensuring that additional liabilities are not added to either Schedule 1 or Schedule 2 employers entering into Schedule 1.

Independent Operators: *The Act should continue to recognize independent operators, both those who own and operate their own equipment and those who have multiple employers whether or no they own their own equipment. Coverage should be compulsory. Where there is a single employer, the principal would be responsible for the premiums which could be billed back. Where there are multiple employers, the independent operators would have the option of maintaining individual accounts. Employers would be able to demand proof of coverage as a condition of entering a worksite. The independent operator questionnaire would be changed to reflect the new policy. Further consultation should occur regarding the most effective method of incorporating experience rating into this model.*

It is also recommended that the executive office category be eliminated so as to close a possible loophole that might be used when compulsory coverage for independent operators is implemented.

It is recommended that staff explore the feasibility of implementing a named insured system in the construction industry and report to the Board.

Volunteers: *It is recommended that compulsory coverage for volunteers essentially remain limited to those currently covered with some minor amendments to ensure that volunteers working for corporation contracted to provide police, fire or ambulance services on behalf of a municipality are covered as well. The Act should be amended to empower the Board to broaden coverage for volunteers on an application basis.*

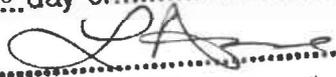
Outworkers: *It is recommended that the outworker category be deleted from the Act.*

Casual Workers: *Reference to casual workers should be deleted from the Act.
Employers would be responsible for providing coverage for all work performed on their
worksites by their workers, regardless of the status*

.....
Brock Smith

APPROVED BY THE BOARD
OF DIRECTORS

this 10 day of December 2003


.....
Secretary