SUBMISSION

ON THE

WSIB CONSULTATION ON COVERAGE

BY THE

ONTARIO FEDERATION OF LABOUR

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INTRODUCTION

The Ontario Federation of Labour (OFL) is the central labour organization in the province of Ontario. The OFL has an affiliated union membership of over 600,000 members from all regions of the province with most unions in Ontario affiliated. Our membership includes nearly every job category and occupation.

Acting as the central labour body, the OFL works in conjunction with the affiliated unions to develop and coordinate policies passed at convention and by our Executive Board. One of the key roles of the OFL is to influence public policies that affect all working people, their families and communities.

The Ontario Federation of Labour and its affiliated unions wish to applaud the Board of Directors of the Workplace Safety and Insurance Board (WSIB) for bringing the issues outlined in the consultation document entitled "*Coverage Under The Workplace Safety and Insurance Act"* to the stakeholders.

OVERVIEW

As a result of the re-writing of workers' compensation law in Ontario, the Workplace Safety and Insurance Board was created with a new mandate focusing on prevention. It is difficult to determine how the Board is to meet this broader mandate when 30% of the workplaces in Ontario fall outside the scope of the current *Workplace Safety and Insurance Act* (WSIA). The Board must have the authority to address prevention initiatives in every workplace in the province. This can only be achieved through a comprehensive review on coverage with the ultimate conclusion that WSIB coverage must be mandatory for all employers.

There currently exists in Ontario, a disjointed approach to providing coverage for WSIB benefits to a select group of workers. For the most part, there is no justification, either historically or in the present, for segregating certain workers from coverage for injuries or diseases that arise out of and in the course of employment. Those workers who are not recognized in the legislation, either through exclusion or categorized as independent operators, are left fighting for compensation in the courts. This process is both time consuming and extremely costly.

As stated in the consultation document, most other jurisdictions in Canada have a comprehensive compulsory coverage system. The Canadian Association of Workers' Compensation Boards' *Comparison of Workers' Compensation Legislation in Canada* demonstrates that, as of 1999, eight jurisdictions have compulsory coverage and six of the eight are either fully funded or running a surplus.

Furthermore, when a comparison is made of the national assessment rates, six of the eight compulsorily covered jurisdictions have the lowest average assessment rates in all of Canada. It is time that the Ontario legislation received similar amendments.

As stated in the coverage consultation paper, Sir William Meredith recommended that the system be built with the following principles:

i Security of payment;

ii No fault;

iii. Employer funded collective liability;

iv Administered by an independent agency;

v. Injured workers could not sue their employers.

Employers who are mandated to participate in the system are protected from lawsuits due to the historical compromise when workers gave up the right to sue in turn for the aforementioned principles. Those employers outside the current scope of the *Workplace Safety and Insurance Act* will be given the same protection when they are brought in.

SCHEDULES 1 AND 2

When the workers' compensation legislation was first established, Meredith created two different schemes for assessing employers. Schedule 1 is a collective liability process in which employers are placed in pools (sectors) and assessed on a percentage of payroll. Schedule 2, on the other hand, is a pay-as-you-go assessment with employers paying the costs associated with the claim plus an administrative fee.

It is noteworthy that Meredith did not contemplate that the two schedules would continue to operate forever. As outlined in the consultation paper, it seems that the architect of Ontario's workers' compensation law created the two schedules as an experiment to determine which system would prove preferable. To this end, there is no justification for continuing to administer two separate methods for collecting revenue.

Since 1962 the OFL has recommended the elimination of Schedule 2 and the merger of all employers into Schedule 1. The administering of two separate schedules involves the operation of separate computer systems, trained staff and resources which ultimately subjects the WSIB to unnecessary financial burden. The practice of administering two separate systems is an unnecessary

and costly practice that should be discontinued and therefore provide the necessary resources to ensure better service to injured workers and safer workplaces.

The Workplace Safety and Insurance Board does not hold sufficient funds to cover the costs of ongoing claims associated with the bankruptcy of Schedule 2 employers, as recently witnessed with Canada 3000. This places an unfair financial burden on the system and Schedule 1 employers. This could lead to political pressure to reduce benefits to injured workers.

Furthermore, we are witnessing a dilemma in Ontario where previously covered workers are being excluded due to the shifting by some Schedule 2 employers of sections of their operations into a non-covered sector, thereby leaving those workers with no WSIB coverage. This is occurring in sectors such as day care, home care and other public service sectors. The result of these decisions is that many more workers fall outside the coverage of the *Act* and the costs of the ongoing claims is borne again by the system and Schedule 1 employers. Full mandatory coverage for all employment sectors within Ontario's economy would prevent this from occurring.

Although it is suggested in the consultation paper that some employers, such as the provincial and municipal governments, may continue as part of a revised Schedule 2, we believe that this recommendation should be disregarded. It has long been the practice of some Schedule 2 employers to challenge initial entitlement of all workers' claims. This practice adds financial burden on the system, as well as creating an unnecessary adversarial approach to claims adjudication.

Placing all employers in Schedule 1 would allow the WSIB to move closer to achieving the stated objectives to:

- ensure consistency in decisions so that employers and workers are not unfairly burdened and impacted;
- clarify the coverage provisions for Ontario employers and workers so that they will know for certain whether they are covered or not; and
- promote a level playing field and eliminate uncertainty, while ensuring that the system remains constituted on a financially sound basis.

INDEPENDENT OPERATORS

The issue of who is and who is not a worker is very problematic for injured workers. Many workers are coerced into agreements in which they become independent operators and, therefore, lose coverage under the *Act*. This is occurring more often than not in such industries as transportation, couriers, construction and other sectors.

The WSIB applies the organizational test established by the WSIAT to determine whether the person is a worker or, in fact, an independent operator.

The test has weaknesses due to the coercion by some employers when workers are completing the questionnaire which results in unreliable information and improper designation of that worker.

It is the position of the Ontario Federation of Labour that all workers should be covered for WSIB and that all employers be designated as employers under the

Act. This would eliminate the confusion and manipulation that currently exists with independent operators.

COVERAGE

With the enactment of Ontario's *Workers' Compensation Act,* some sectors of the economy were excluded from the legislation including banks, insurance companies, hairdressers/barbers, funeral directors, shoeshiners, out-workers, volunteers, etc. There is no justification for these exclusions and there should be a legislative amendment in which all workers are afforded coverage under the law.

Provisions currently exist in the *Canada Labour Code* which expressly mandates federally regulated employers to provide their workers with equivalent benefits to those of the workers' compensation legislation in the workers' province of permanent residence. However, it seems a majority of these employers have not met this statutory obligation.

Furthermore, the health care costs associated with the claims for these excluded employers is borne by the provincial health care system, rather than the employer. In light of the current debate around our publicly-funded health care system, it is essential that all employers be mandated to participate in the Ontario workers' compensation system and incur all costs of workplace injuries, illness and disease, including health care.

The Ontario workers' compensation law includes an obligation on employers to reinstate and accommodate workers injured on the job. Workers, employed

in the excluded sectors, do not have this protection and are often left unemployed and either seeking benefits from Employment Insurance, Canada Pension Plan Disability or Social Assistance. Each of these options places responsibility for the costs of the workplace injury on to the public system, further burdening the public purse with costs that should be borne by the employer. This abuse can only be addressed through compulsory coverage for all employers in the province.

In WSIAT Decision No. 534/90, 534/90I and 534/90R, the issue of coverage was considered. The hearing date for this case was in 1990 and involves a worker previously employed in the banking industry who was injured in the course of employment. Due to the current exclusionary provisions contained in the legislation, this injured worker has been forced to take her issue of coverage to the Tribunal. A final decision on this case is still pending. This injustice would not happen to any future workers if full mandatory coverage were provided to this group of workers.

The Board is in a continuous state of flux attempting to re-evaluate which new industries or occupations are entering the economy and those occupations that are being eliminated to determine coverage issues. Some new occupations fall within the exclusionary provisions of the *Act* such as casino workers and other high tech industry. This results in an erosion of the covered sectors/employers and loss of revenue.

The WSIB has demonstrated to some employers that it is a sound financial decision to opt for voluntary coverage for their employees. A perfect example of this is the Air Canada Centre. The WSIB presented evidence to this

employer that proved to them it was financially beneficial for them to sign on for voluntary coverage.

Schedule 1 employers could benefit from experience rating programs that are properly designed and therefore act as a viable safeguard for those employers who demonstrate low accident rates. This safeguard would also be available to the newly covered sectors, as well as the employers who were previously in Schedule 2. The stakeholders must be consulted to develop a template of best practices to ensure proper measures and audits are carried out so that experience rating programs are fulfilling their intended purpose.

The OFL recommends that the WSIB broaden the coverage to include all occupational sectors involved in Ontario's economy.

VOLUNTEERS AND OUT-WORKERS

The issue of providing coverage to volunteer workers not currently referenced in the *Act* could be complicated. Many of the issues relate to the financial ability of the organization to pay for coverage. The WSIB, in consideration of extending coverage to volunteer organizations, may decide to create a separate assessment scheme for these organizations in which a lower assessment rate is charged. Moreover, some other issues pertain to the method for compensating those volunteers in the event of a claim. The Board currently has policies to assist the claims adjudicator in determining the wages of volunteer firefighters, learners, etc. The same method should be extended to other groups of volunteers. The position of the OFL is clear that volunteers should not replace paid labour, but should have compensation protection.

The problems that exists with out-workers is becoming complex and difficult to administer. The previously accepted definition of out-worker has become out-dated and should be amended to include such working arrangements as teleworkers, clerical and bookkeeping occupations. These workers should be fully covered and included in the definition of worker in the *Act*.

A growing trend has developed in Ontario, as well as in other jurisdictions throughout North America, in which the use of casual/temporary workers are being employed. For the most part, the *Act* is silent in this regard. In our view, the WSIB should develop policy that broadens the recognition of casual/temporary workers followed by the appropriate amended definition in the *Act.*

GUIDING PRINCIPLES

The guiding principles outlined in the consultation paper provide some direction for this process, however, it should be stated here that, under no circumstances, should the topic *"insurance adequacy"* be construed to mean the creation of a privately administered system. The current publicly administered system is far more efficient than privately administered systems in the United States and Canada. The coverage offered in Canada by private insurance carriers is not comparable to the comprehensive coverage provided by the publicly administered compensation systems.

There will be concerns raised about the unfunded liability by those employers who are currently excluded from the legislation. It is the position of the Ontario Federation of Labour that the Board must adhere to the aforementioned Guiding Principles when determining this issue. In order to ensure a level

playing field, the Board must apply the same practice currently used when assessing newly covered businesses who are mandated under the legislation. In our view, with the implementation of full coverage, all employers entering the system should incur a fair portion of the unfunded liability thereby creating a level playing field for all employers.

CONCLUSION

To reiterate our position regarding coverage, all workers, regardless of where they work or how they earn a living, should be covered by the *Workplace Safety and Insurance Act*.

It is labour's preference to address the issues raised in the consultation paper by way of legislative amendments. However, we are also aware that some or all of the issues could be implemented through regulatory amendments or policies.

We wish to thank the Workplace Safety and Insurance Board for this opportunity to present our views on the issue of coverage by way of this submission and would encourage the Board to continue this positive practice of consultation with the stakeholders.

Respectfully submitted by,

THE ONTARIO FEDERATION OF LABOUR

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