



15th Legislative Assembly of the Northwest Territories

Standing Committee on Governance and Economic Development

Report on the Review of
Bill 6: *Workers' Compensation Act*

Chair: Mrs. Jane Groenewegen

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August 21, 2007

SPEAKER OF THE LEGISLATIVE ASSEMBLY

Mr. Speaker:

Your Standing Committee on Governance and Economic Development is pleased to provide its Report on the Review of Bill 6: *Workers' Compensation Act* and commends it to the House.

Jane Groenewegen, MLA
Chairperson

**STANDING COMMITTEE ON
GOVERNANCE AND ECONOMIC DEVELOPMENT**

**REPORT ON THE REVIEW OF BILL 6:
*WORKERS' COMPENSATION ACT***

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**STANDING COMMITTEE ON
GOVERNANCE AND ECONOMIC DEVELOPMENT**

**REPORT ON THE REVIEW OF BILL 6:
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INTRODUCTION

The Standing Committee on Governance and Economic Development is pleased to report on its review of Bill 6, the *Workers' Compensation Act*.

The Committee conducted public hearings on Bill 6 in Yellowknife on April 18-19, 2007, in Fort Smith on April 23rd, in Fort Resolution on April 24th, and in Hay River on April 25th. The clause-by-clause review of the Bill took place on August 14th. The Committee would like to thank all of the witnesses who made presentations or provided written submissions, and in particular, the Workers' Advisor, Mr. Colin Baile, who undertook a comprehensive analysis of the Bill and provided detailed comments on several provisions. Mr. Baile's comments ultimately led to many of the 37 amendments the Committee brought forward during its clause-by-clause review with the Minister.

Because of the unusually large number of detailed issues raised during the hearings, the Committee felt it necessary to conduct follow-up meetings with the Minister and representatives of the Governance Council, the Workers' Compensation Board (WCB), the Office of the Workers' Advisor, and the Appeals Tribunal to attempt to work out solutions jointly. The Committee chose to do this in a workshop format, as the usual formal Committee hearing process does not lend itself well to exploratory discussions. These meetings took place on June 4th and 5th in Yellowknife. Committee representatives took part in a follow-up meeting on June 19th with the NWT and Nunavut Ministers, the Chair of our counterpart Nunavut Committee, the Chair of the Governance Council, and WCB officials. We are pleased that, through this process, we were able to come to a consensus on several amendments to the Bill that we believe will make substantial improvements to the workers' compensation system.

Although there was insufficient time for a full second round of public hearings on the amendments to the Bill, the Committee did advise employer and employee representatives of the two major changes under consideration that were likely to have a direct impact on their constituents. These changes, which are explained in more detail later in this report, concerned the structure of the Appeals Tribunal, and the standard of causation that must be met for a workers' injury or disease to be compensable. We would like to thank the Union of Northern Workers, the NWT Federation of Labour, the Public Service Alliance of Canada, and the NWT Construction Association for their written submissions in response to our letters.

PURPOSE OF THE ACT

Over the last several years, Members have participated in many discussions with WCB officials, Ministers and, most recently, the Auditor General of Canada about communications and other operational concerns that we believe ultimately originate with the corporate culture of the organization. Although Bill 6 as introduced did include a preamble, the Committee felt strongly that a purpose statement, which is contained in the body of the *Act* itself, was necessary. During the clause-by-clause review of the Bill, the Committee moved, and the Minister concurred with, amendments to delete the preamble and replace it with a reworked statement of purpose. In addition to the principles already contained in the preamble, the new purpose section adds the concepts of openness, fairness, compassion, respect, and accountability, which we believe are critical for the workers' compensation system. While it is impossible to legislate corporate culture, the Committee believes that a strong purpose statement at the outset of the *Act* could go a long way toward guiding the attitudes and actions of all persons involved in the workers' compensation system. We urge all officials and employees to consider this statement carefully and to make every effort to align their work with it.

Also, in considering the purpose of the *Act*, the Committee did not believe that the term "Safety Fund" accurately captured the reason for the Fund's existence. During the clause-by-clause review, the Committee and Minister agreed to amend the Bill to change the name to the "Workers' Protection Fund".

GOVERNANCE

The issue of governance, and in particular the respective roles and responsibilities of the Legislative Assembly, the Minister, the Governance Council, and the WCB administration, has been a source of confusion and frustration for many years. Although the workers' compensation system must be allowed to function at arm's length from Government, it is an important public body and needs to be accountable not only to its stakeholders, but also to the Minister and the Legislative Assembly. While Bill 6 did go some way to better explain the roles of the Governance Council and administration, the Committee did not believe it adequately addressed the need to clarify the role and authority of the Minister. The Minister himself expressed concerns about this during the public hearing process.

During the clause-by-clause review of the Bill, the Committee proposed and the Minister agreed to amendments giving the Minister explicit powers to direct the Governance Council to consider any issue that is or could be the subject of a policy, and to require the Governance Council to report on any matter requested

by the Minister within the time specified. The intent of these new provisions is not to allow the Minister to intervene in individual cases, but to allow the Minister to provide very high-level direction to the Governance Council, and to have access to information needed to meet accountability requirements.

Other governance-related amendments agreed to during the clause-by-clause review of the Bill: Removed the requirement for the Commission's headquarters to be in Yellowknife; reinstated the requirement for the Governance Council to establish a consultation process for its policies; clarified the provision respecting the information the Commission must provide to the Committee on its annual report; and added a requirement for the Minister to table the Workers' Advisors' reports.

CLAIMS AND COMPENSATION

As mentioned earlier in the report, the Committee advised several employer and employee stakeholder groups of its intent to consider a change to the provision that set out the standard of causation that determines which injuries and diseases can be compensated. Subsection 13(3) of Bill 6 as introduced provided that an injury or disease that appears to have more than one cause and that is prevalent in the general population is only compensable if work is the "dominant cause" of the disease. Members were concerned that this would leave some workers without any compensation where work played a significant, but not dominant, role in their condition. The Committee proposed a more inclusive provision based on the approach taken in several other Canadian jurisdictions, including Alberta, Ontario, Quebec, Saskatchewan, and the Yukon.

None of the stakeholders contacted raised objections to this change. The NWT Construction Association, Union of Northern Workers and NWT Federation of Labour all expressed support for it in their written submissions.

During the clause-by-clause review of the Bill, the Committee proposed and the Minister agreed to an amendment that removes the concept of "dominant cause" and provides instead that diseases and injuries will be compensated as long as work contributed in a material way.

The Committee proposed and the Minister agreed to several other amendments to improve the provisions on claims and compensation. Four of these amendments removed the term "invalid" from the Bill, as this word is considered by many to be outdated and offensive. Another amendment reinstated a provision in the existing *Workers' Compensation Act* that establishes a presumption that certain severe injuries, such as the loss of both hands or the loss of sight in both eyes, constitute a permanent and total disability. This

provision had been left out of Bill 6 to avoid perpetuating negative stereotypes of persons with disabilities. While the Committee appreciates the intent of avoiding negative stereotypes, we believe this concern is outweighed by the benefit of making it easier for people with very severe injuries to get compensation.

A further amendment establishes a clearer process for resolving conflicting medical opinions, which have been at the heart of many disputes between claimants and the WCB. The amendment requires that the Governance Council establish a policy that sets out the procedure for seeking third party medical opinions; provides that the selection of the third party physician and questions to be determined by that person are based on written submissions from the medical advisor, the worker's health care provider and the worker; provides that both the medical advisor and worker's health care provider may make submissions to the third party physician; and provides that the worker will be examined by the third party physician when requested by the worker.

The Committee also brought forward amendments to: Strengthen the provision that makes it an offence to obstruct a claim; to require that the Commission provide financial information to claimants who request lump sum payments in the place of a pension, and offer to pay for them to obtain independent financial advice; to change the requirement that workers cooperate with "suitable productive" employment to "suitable meaningful" employment; and to ensure that claimants receive the full amount of any pain and suffering awards ordered by a court before the WCB recovers its own legal costs. The Minister concurred with all of these amendments. At the Minister's request, a further amendment was made to exclude mental stress as a result of labour relations matters from the list of compensable injuries, in keeping with recent case law on this issue.

APPEALS TRIBUNAL

As indicated at the outset of this report, the Committee advised stakeholders in late June that it was considering a change to the structure of the Appeals Tribunal. The Ministers currently make appointments to the Tribunal with the requirement that there be a balance between members recommended by employer representatives and members recommended by employee representatives. The Ministers also appoint public interest representatives. Appeals are heard by panels of three, which must include at least one member from each of these three constituencies.

Over the last several years, Members have heard several complaints about the length of time required for appeals to work their way through the system. The Committee understands that one of the reasons for these delays is the difficulty in scheduling hearings that require the availability of three panel members who

live in different communities and have other employment. A solution proposed by the Workers' Advisor was to shift to a model where only one adjudicator hears each case, similar to what is currently in place under the *Human Rights Act* as well as several workers' compensation appeals tribunals across Canada. In this system, tribunal members would have to be appointed based on professional qualifications, rather than the recommendation of labour or employer groups to avoid perceived or actual bias.

In response to the Committee's letter, the NWT Construction Association expressed support for this change. The NWT Federation of Labour, Union of Northern Workers, and Public Service Alliance of Canada all stated their opposition to the change, and requested that the current system, which they view as more balanced and transparent, remain in place. As alternatives to changing the appeals system, they suggested appointing a full-time Chair, better resourcing the Tribunal with staff support, and appointing more members, possibly including a vice-chair. The Public Service Alliance further suggested that the GNWT should relax restrictions that make it difficult for its employees to participate on tribunals.

The Committee strongly agrees with the need to increase the capacity of the Tribunal both by appointing a full-time Chair and by ensuring adequate staffing and resources, and urges the Minister to take the necessary steps for this to occur.

After carefully weighing the comments of all the stakeholders who provided their views on the structure of the Appeals Tribunal, the Committee decided to pursue the sole adjudicator model. The Committee proposed and the Minister agreed to an amendment that requires the chair of the tribunal to designate one member of the tribunal to hear each appeal, while allowing the chair to convene a panel of three members if the chair considers this more appropriate, for example, if a case is especially complex. The Committee and Minister also agreed to amendments adding transitional provisions for the change from the existing tribunal to the new one, and requiring that the chair and vice-chair of the Tribunal be appointed by the Minister in consultation with the Nunavut Minister rather than on the recommendation of the Tribunal. The Committee intended to make an additional motion to amend the Bill to remove the requirement that the Minister appoint tribunal members representing the respective interests of the public, employers and employees, with a requirement that tribunal members have either five years experience as a member of an administrative tribunal or court, or five years good standing as a member of a law society in Canada. However, as the Minister advised the Committee that he would not concur with this amendment, the Committee did not pursue the motion at that time.

Many of the delays in the appeals process are outside the control of the Tribunal itself and involve, for example, difficulties scheduling the parties or expert advice. One factor that is within the Tribunal's control is the length of time required for decisions to be rendered once all the evidence has been heard. During the clause-by-clause review of the Bill, the Committee moved and the Minister agreed to an amendment which will require the Tribunal to render its decisions within 90 days of a hearing.

Clause 131 of Bill 6 as introduced would have allowed the Governance Council to order the Appeals Tribunal to rehear a matter more than once until the Governance Council was satisfied that the Tribunal had properly or reasonably applied policy and legislation. The Committee was concerned this provision would have compromised the independence of the Tribunal and could have put some appeals into an endless cycle of rehearings with no prospect for a final decision. The Committee and the Minister therefore agreed to an amendment that limits the number of rehearings the Governance Council may direct to one.

Also in keeping with the need to reinforce the independence of the Tribunal, the Committee and Minister agreed to delete a provision that would have allowed the Tribunal to ask the Commission to determine whether a Governance Council policy applied in a given case. This type of determination should be made by the Tribunal itself.

Finally, the Committee also passed two motions to amend the Bill to remove the one-year limitation periods for requesting reviews and appeals of Commission decisions. The Committee was of the view that these limitation periods would cause unnecessary hardship to some claimants. The Minister did not concur with these motions.

OTHER ISSUES

During the public hearing in Hay River, Mayor John Pollard voiced concerns with clause 160 of the Bill, which continues the requirement for municipal governments to notify the WCB of building permits for projects in excess of an amount prescribed by regulation, which is currently set at \$10,000. In his view, this provision places an excessive burden on municipalities. When the Committee raised this issue with the WCB, they replied that they had not received any complaints from municipal governments that the provision is too onerous, but that a potential solution would be an amendment to the regulations to raise the amount that triggers the requirement for the municipalities to notify the Commission of a building permit. The Committee urges the Governance Council to initiate discussions with the NWT Association of Communities to determine what, if any, changes should be made.

Another concern raised at the public hearing in Hay River was the Commission's involvement in safety, both because of the additional cost to employers, and the potential for conflict when the same body that provides safety advice to employers is also investigating compliance and enforcing the *Act*. As safety matters are addressed in other legislation and fall outside the scope of this Bill, the Committee did not investigate the possibility of amendments on this issue, but did research practices in other jurisdictions. We found that WCBs across the country have a mandate for safety education and promotion, and also have an investigation and enforcement role in British Columbia, New Brunswick, Quebec and the Yukon. As this issue is of concern to at least some employers, the Committee encourages the Government to initiate consultations with stakeholders on the appropriateness of continuing to have the safety investigation and enforcement function remain with the Commission.

CONCLUSION

Bill 6 is the culmination of several years of work, which began in the 14th Assembly with the Act Now Report and first set of amendments to the *Act*. The Committee believes that the Bill as amended represents a significant improvement over the existing legislation and will pave the way to addressing many longstanding concerns of employers, workers, and Members, including those highlighted in the 2006 Auditor General's report.

During the clause-by-clause review, the Committee and Minister agreed to four amendments of a minor and technical nature in addition to the amendments already referenced earlier in this report.

Following the clause-by-clause review, a motion was carried to report Bill 6, *Workers' Compensation Act*, as amended, as ready for consideration by Committee of the Whole.

This concludes the Committee's opening comments on Bill 6. Individual Members may have questions and comments as we proceed.

APPENDIX A

**SUBMISSIONS -
STANDING COMMITTEE ON
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