

A Practical Introduction to the Workers' Compensation Review and Appeal System for Administrative Lawyers

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The Practical Side of Administrative Agencies, Boards, and Tribunals

Presented by:

Douglas R. Mah QC

Workers' Compensation Board

Edmonton, Alberta

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HISTORICAL BACKGROUND

The man of ‘blood and iron’, Chancellor Otto Von Bismarck, first introduced workers’ compensation in the German empire in 1888 to beat back the glowering spectre of socialism.¹ The German model of collective liability was favoured by Sir William Ralph Meredith who, in his 1913 *Final Report* to the Ontario government, concluded that a system of guaranteed no-fault benefits funded entirely by employers under a mutual accident insurance scheme should replace the tort system for work-related injuries. In exchange for the right to receive these benefits in the event of injury, workers forego the right to sue employers and other workers. Meredith’s recommendation was based on the belief that the law of tort worked harsh inequities against injured workers. This *quid pro quo* is often referred to as the “historic trade-off”.² In *Pasiechnyk v. Saskatchewan (Workers’ Compensation Board)*, [1997] 2 S.C.R. 890, the Supreme Court of Canada reiterated that the scheme is based on four fundamental principles:

- (i) compensation paid to injured workers without regard to fault;
- (ii) injured workers should enjoy security of payment;
- (iii) administration of the compensation scheme and adjudication of claims should be handled by an independent commission; and
- (iv) compensation to injured workers provided quickly without court proceedings.

The first workers’ compensation statute was enacted in Ontario in 1915. The remaining provinces and territories have followed suit. The basic Meredith premise remains the underpinning of all workers’ compensation systems in Canada.

WORKERS’ COMPENSATION IN ALBERTA TODAY

While remaining faithful to its Meredithian roots, the WCB today in Alberta is a big business, albeit not-for-profit. It manages assets exceeding \$7.0 billion, has an administrative budget of approximately \$170.0 million annually, employs about 1,700 employees in Edmonton and Calgary, adjudicates some 200,000 claims each year, pays out more than \$1.0 billion in benefits in the year, and generates roughly \$1.0 billion in annual revenue through premiums and investments.³ There

¹ Among the other social reforms brought forward by Bismarck at or near the same time were a rudimentary form of medicare, unemployment insurance and old age pensions. The pension eligibility age was set at 70 years, as that exceeded normal life expectancy in Germany at the time.

² The historic trade-off is a metaphorical agreement embodied in the 1913 Meredith *Report* and in all Canadian workers’ compensation legislation since 1915. It is not an actual document. That is why the WCB was unable to “produce the agreement so that the signatures can be verified” as requested recently by Occupy Edmonton.

³ All figures quoted from the audited financial statements of the WCB contained in the 2010 Annual Report.

are about 140,000 Alberta employers registered in the system and somewhere in the area of 1.7 million workers who are covered.

The WCB itself is a statutory corporation constituted under the *Workers' Compensation Act*, RSA 2000, c. W-15 (WCA) that is accountable to government but is governed by an independent board of directors whose members are appointed by government. In addition to providing governance and oversight of the system, the board of directors has a policy-making power⁴ that binds decision-makers in the system, including the external Appeals Commission⁵. The WCA and the regulations⁶, along with the body of policies pronounced by the board of directors, constitute the “policy of insurance” applicable to the workers and employers of the province.

TWO SIDES OF THE EQUATION: EMPLOYER AND WORKER

The WCB has two main lines of business. The first concerns workers. It involves the adjudication and payment of injury or disease claims. The second line of business is the financing of the workers' compensation system. This involves assessing and collecting premiums from employers and correctly allocating costs among employers. There is an additional aspect of financing, that is, the investment of funds to generate the interest component of the funding scheme, but that does not concern us here.

The front line decision-making at the WCB is done by WCB staff. On the worker side of the equation, these decisions are made by adjudicators and case managers. On the employer side of the equation, decisions made in respect of premiums and the operation of employer accounts are made by employer services staff. All of these decision-makers are empowered under legislation to make decisions binding upon those affected.⁷ As such, they have a public law duty to act fairly and make decisions based on applicable law and policy and on the evidence.

There are literally hundreds of decisions made every business day by WCB decision-makers that affect the rights, entitlements and obligations of both workers and employers in respect of individual worker claims and individual employer accounts. It is likely that less than 0.1% of the total decisions made are ever challenged through the statutory review and appeal process.

⁴ WCA, section 6.

⁵ WCA, section 13.2(6)(b)

⁶ *Workers' Compensation Regulation*, AR 325/2002 as amended to and including AR 164/2010.

⁷ WCA, section 4. See also *Gill v. British Columbia (Workers' Compensation Board)*, 1983 CarswellBC 755 (BCSC) and *Grondin v. Calgary (City)*, 2002 ABQB 17.