

# History of Workers' Compensation in BC

A Report to

**The Royal Commission on Workers' Compensation in BC**

By

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## ABSTRACT

“The dynamic tension between labor and employers is at the heart of almost every problem. Whether it is new workplace regulations, calls for increased pensions, payment scales for injuries or business assessment rates, the two sides are often diametrically opposed. Labor will always be looking for the highest possible benefits; employers don’t want to lose people to accidents but they have to look at costs. It is the cost of doing business.”

Terry Boygo, Director of Planning, Workers’ Compensation Board of British Columbia, 8/15/95.<sup>1</sup>

Occupational safety and health issues have been arguably the most controversial public policy area in British Columbia this century. Throughout its over eighty-year history, the Workers’ Compensation Board of British Columbia has attempted to manage conflict between employees and employers in this field. An unprecedented four Royal Commissions have been held to investigate the Workers’ Compensation Board and Act in the pacific province. It is in large measure due to these Commissions, as well as the strength and passion shown by the labor and employer sectors in the province towards occupational safety and health issues, that British Columbia has always, throughout its history, been a ground-breaking pioneer in Canada and the world in progressive initiatives in this area.

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<sup>1</sup> "Purge just the latest in history of BC WCB troubles". Canadian Press Newswire 1995 Jul 15.

During the first half of the W.C.B.'s existence, emphasis was put on reforming the Act to make it as up-to-date and thorough as possible in regards to assuring compensation and overall well-being to injured workers and their dependents and promoting workplace safety. The focus shifted in the second half of its history to the performance of Board members and its structure. In both cases, there has been no shortage of controversy. Numerous fruitless attempts have been made to establish lasting harmony and stability in workers' compensation and related issues through the Commissions, private consultants, legislative committees, task forces and various studies.

This paper traces the history of the British Columbia Workers' Compensation Board from its antecedents in the late nineteenth century to the recent overhaul in Board structure. Emphasized throughout the paper are the various external attempts to review the Board and Act and evaluation of their impact. As will be seen, the numerous attempts at reform have failed to produce lasting tranquillity in workers' compensation issues due to socioeconomic dynamics, political changes, controversial Board practices, changes in medical technology, modernization of the workplace and a feeling shared by government, labor and employers, that British Columbia ought to be proactive rather reactive in this major area of social regulation.

## Chapter One

### **LIFE IN BRITISH COLUMBIA BEFORE WORKMEN'S COMPENSATION**

#### **Working Conditions in British Columbia Before Workmen's Compensation**

Throughout its history the economy in British Columbia has been characterized as primarily resource extraction-based. This was particularly the case in the nineteenth century. Lumber, fish, and especially mining were the largest industries in B.C. There exist few sources to indicate the nature of working conditions in nineteenth century B.C., but they were undoubtedly harsh, as indicated by what few accounts exist. Mining conditions were particularly dangerous and were the cause of numerous workplace accidents, many resulting in death. The first unions in B.C., created in the 1870's, were, in part, a response to these conditions.

There are considerable accident data available from Vancouver Island coal mines from since the 1880's, perhaps because they were amongst the most productive coal mines in the world at this time. However, the high productivity came at the cost of literally hundreds of miners' lives in the late nineteenth century. Government statistics showed Vancouver Island coal mines to be by far the most dangerous in the world.<sup>2</sup> Several spectacular gas explosions were responsible for most of the casualties. On May 3, 1887 an explosion at a Vancouver Coal and Land Co. operation killed 148 miners.<sup>3</sup> Another 77 miners perished eight months later at a Dunsmuir coal

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<sup>2</sup> British Columbia. Report of Commission on Coal Mines Explosions. Victoria; King's Printer; 1903, J16.

<sup>3</sup> For detailed accounts of Vancouver Island mine explosions see Pethick D. British Columbia Disasters. Langley(BC); Stagecoach Publishing; 1978 and Scott J. Sweat and Struggle. Vancouver; New Star Books; 1974, p. 79-90.

mine explosion.<sup>4</sup> When one considers how small the population base in B.C. was at the time, the impact of these disasters is hard to overestimate.<sup>5</sup>

Inquests into these and other less serious events almost always blamed miners and absolved the owners of direct responsibility.<sup>6</sup> Contributing to the high death tolls was the mine owners' practice of employing many oriental miners who were unable to speak or read much english and had little affection from their white co-workers. Thus, workplace communication, particularly vital during crises, was always difficult<sup>7</sup>. The white miners were quite often inexperienced<sup>8</sup>, as British Columbia's remoteness from Great Britain, whose immigrants supplied most of the experienced miners for Canada, may have discouraged many of the best paid, senior British miner immigrants from venturing all the way to the Pacific coast.

The impact on Vancouver Island society from miners' deaths must have been considerable. There was obviously no systematic monetary relief for the dozens of miners' widows, who seldom had employment income of their own, and their children. The Vancouver Coal & Land Co. gave the widows and children of their deceased workers free housing and food for as long as needed.<sup>9</sup> There appears to have been enough public and private charity to prevent any sort of significant poverty from befalling dead miners' dependents in the rest of Vancouver

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<sup>4</sup> Ibid, p. 89.

<sup>5</sup> The 1890 population in B.C. was 98,173; the population in Nanaimo then was 6,512.

<sup>6</sup> British Columbia. Sessional Papers 1901; 953.

<sup>7</sup> 17 The British Columbia Journals of the Legislative Assembly (hereinafter cited as JLA) 1888 Feb 14:19 and 17 JLA 1888 Apr 5:74.

<sup>8</sup> British Columbia. Report of Commission on Coal Mines Explosions. Victoria; King's Printer; 1903, J15.

<sup>9</sup> Barman J. The West Beyond the West: A History of British Columbia. Toronto; University of Toronto Press; 1996, 121.

Island, which would not necessarily be the case in other jurisdictions under these circumstances.<sup>10</sup> There are indications, but few sources to clearly confirm, that some mines had made arrangements with their workers to pool systematic contributions toward a fund to help injured workers, or their dependents in the case of death<sup>11</sup>. Most accident relief funds were union-run. Some provided the services of a doctor, others only a minimal weekly payment. Unorganized workers usually did not have any type of systematic protection.

The numerous deaths in the coal mines prompted many negotiated and statutory safety-related initiatives. Miner-operated gas inspection committees were formed. Laws were passed that prevented coal mine owners from employing oriental miners underground, though in practice some mines did anyway since they would usually work for less wages and be less likely to complain about working conditions than white miners.<sup>12</sup> Safety amendments were made to the Coal Mines Regulation Act.<sup>13</sup> The impact of these initiatives is difficult to assess, due to lack of sources, but there was a significant decrease in mining accidents, particularly those resulting in multiple fatalities, through the turn of turn of the century.<sup>14</sup>

Workplace accident data on other B.C. industries at this time is virtually non-existent.

The metalliferous mines in the interior of the province do not appear to have had the sort of safety

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<sup>10</sup> There appears to have been enough public charity for the dependents of the Nanaimo mine disasters. See Pethick, p. 88.

<sup>11</sup> The Western Fuel Company of Nanaimo had a company-run fund, into which workers paid one dollar a month and the firm contributed \$1,000 per year. See British Columbia. Royal Commission on Labour. Victoria; King's Printer, 1914, Box 1, Vol. 2, File 1, p. 7, and Industrial Progress and Commercial Record, Apr 1914:8.

<sup>12</sup> Coneybeer IT. The Origins of Workmen's Compensation in British Columbia: State Theory and Law. (dissertation). Burnaby(BC):Simon Fraser University; 1990, 79.

<sup>13</sup> Ibid, 121

<sup>14</sup> British Columbia. Sessional Papers 1900; 837 and British Columbia. Sessional Papers 1909; J235.

problems as the coal mines.<sup>15</sup> There are no indications that B.C.'s other major industry, forestry, produced anything close to the number of accidents as did the coal mines. Large scale manufacturing was non-existent in B.C. before the twentieth century. There are no sources to reveal nineteenth century workplace conditions in two other significant B.C. industries, agriculture and fishing.

### **Legislative Initiatives To Protect Workers Within The Court System**

Injured workers and deceased workers' dependents in B.C. were like others around the industrial world in that their only recourse to compensation was to sue the employer directly. For most workers, this was a difficult, if not impossible financial proposition. Keeping in mind that there were few two-income families at this time and that the birth rate was relatively high, a worker with dependents would have to pay legal expenses as well as normal family expenses while receiving no regular income. Aside from being costly, litigation would often take months, if not years. Many deceased workers were immigrants from far away and it may have been months before their families were even aware of their death, let alone the circumstances surrounding it. Inability to speak english or travel to the remote pacific province meant that there was virtually no chance that these families would sue B.C. employers.<sup>16</sup>

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<sup>15</sup> While the Ministry of Mines would annually publish detailed accident data for Vancouver Island coal mines in the late 1800's, it would not be until the after turn of the century that it would provide similar data for the Interior mines. This may imply that the accident rates for the Interior mines were significantly less than the Island ones. That being said, an explosion in a Crows Nest Pass Coal Company mine near Fernie killed 125 miners in May, 1902. Annual accident statistics from interior metal mines started being published by the Ministry of Mines in the early 1900's.

<sup>16</sup> There are few sources to indicate the nature of employer negligence law suits in nineteenth century B.C., however it does appear as if most of the cases involved single male workers of anglo-saxon decent.

Even if an injured B.C. worker could summon the resources to sue an employer his chances at winning have been estimated at between twenty to thirty percent.<sup>17</sup> Under common law, employers had three defence doctrines they could plead.<sup>18</sup> Under the “contributory negligence” doctrine, if the worker was even slightly responsible for the accident which occurred, the employer would not be found liable. Under the “assumption of risk defence”, the employer could claim that there were certain unavoidable hazardous risks associated with the job and the worker accepted those risks when he entered into the contractual agreement with the employer. Finally, the “fellow-servant” doctrine implied that if the employer could prove that a fellow employee was even slightly responsible for the injured workers’ accident, then the employer would, again, not be liable.

If a B.C. worker was able to convince a jury, which in many cases was composed of workers or those with no sympathy for business, that monetary damages were due, he may have faced another legal obstacle. There is some evidence that jury awarded damages were often scaled back or even completely overturned by presiding judges.<sup>19</sup> Historians who study B.C. society of this time have remarked that the relationship between business, the judiciary and legislators was especially close.<sup>20</sup> Given that defendant employers would warn of worker layoffs or even bankruptcy given a sizable settlement to an injured worker, it would not be difficult for a

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<sup>17</sup> See Specht A. Introduction to Workers’ Compensation Board History Project. Vancouver; Workers’ Compensation Board; 1979, 1. “Negotiate the Silicosis War”. The Vancouver Sun 1960 Nov 10; p. 4., estimates the successful challenges before workmen’s compensation in B.C. at one in five.

<sup>18</sup> For detailed summaries of tort defences see Weinstein J. Big Business and the Origins of Workmen’s Compensation. Labour History 1967; #2:156-174 and Hanes DG. The First Workmen’s Compensation Act, 1897. New Haven(CT); Yale University Press; 1968, 10-11.

<sup>19</sup> British Columbia Reports. Volume 3 1893 - Volume 24 1916;

<sup>20</sup> Ormsby MA. British Columbia: A History. Vancouver; Evergreen Press; 1971, 307., and Mouat J. The Politics of Coal: A Study of the Wellington Miners’ Strike of 1890-91. B.C. Studies 1988; 77(S):3-27.

judge to quash jury awards in the interest of his fellow workers and the employer and at the expense of the individual worker.

Despite the superior political power of employers in nineteenth century B.C., there were legislative attempts to improve the odds of injured workers and their families in the courts. In 1878, the “Workman’s Protection Act” was introduced to the B.C. Legislature. Nothing is known about this bill, which is unfortunate because it was one of the very first attempts anywhere in the world to pass a law to help injured workers. The bill never got beyond the first of the required three readings despite the fact that it was scheduled for a second reading.<sup>21</sup>

The Employers’ Liability Act of 1891 was the first legislation enacted to help B.C. workers and it was also the first in Canada. There is little known about how the legislation came about. The fact that the bill was one of the very first introduced into its Session and passed without any debate would indicate that there was much behind the scenes activity. At the same time there was also a ferocious debate about a mandatory eight-hour workday taking place and this clearly overshadowed the Employers’ Liability Act.<sup>22</sup> The Act was based on the principle that an employer was only liable for workplace accidents that resulted directly from his negligence. It was neither comprehensive nor concise and left the courts with a wide range of interpretation. It did, however, define employers’ negligence concisely and narrowly.

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<sup>21</sup> British Columbia. 7 JLA 1878 Mar 8:37.

<sup>22</sup> See “The Legislature”. Victoria Daily Times 1891 Jan 27; p. 3, and “The Legislature”. Victoria Daily Times 1891 Jan 28; p. 3.

The Act's main feature was to severely limit the scope of the "fellow-servant" defence.<sup>23</sup> It also disallowed employer defences based upon defective works or equipment. Though the Act was ground-breaking in Canada, it proved to have a number of shortcomings for workers. Only railway workers and manual laborers were eligible; workers had to be at least twenty-one years old; cases had to be filed within twelve weeks for injuries--within one year for deaths--(a big problem for deceased immigrant workers' families who were overseas); the case had to be filed in a set form difficult for some whose mother tongue was not english; acts of nature were not provided for; and compensation was limited to three years wages or an amount not to exceed \$2,000.

Despite only modest legislative progress in protecting workers at the turn of the century, the courts evolved towards being more sympathetic to injured workers. By 1900, the "assumption of risk defence" appeared to be ineffective. The contributory negligence defence had been significantly limited. In 1894, a tallyman for the British Columbia Drilling Company, stepped on an exposed roller on a platform he was crossing and was injured. The worker sued the company for workplace injury compensation. The company argued that the worker knew the risks involved in his work and had, therefore, voluntarily assumed those risks. The court disagreed and ruled that "...the plaintiff was cognizant of the danger of using the roller platform, but was not unduly negligent" and sided in the worker's favor.<sup>24</sup> After this landmark case, the "assumption of risk" defence, though still occasionally invoked, does not appear to have

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<sup>23</sup> British Columbia. Statutes of the Province British Columbia. 1891; CH. 10:25-35.

<sup>24</sup> British Columbia Reports; Volume 3 1894; p. 225.

succeeded.<sup>25</sup> In 1896, the case of McMillan v Western Dredging Company set an important precedent in limiting the defence of “contributory negligence”. A worker appeal to the B.C. Supreme Court held that the onus of proving contributing negligence rested with the defendant employer and that “to support the defence of contributory negligence it is necessary that there should be a direct and positive finding of the facts to constitute it.”<sup>26</sup> This case narrowed the “contributory negligence” defence, though it did not completely nullify it.<sup>27</sup>

For the first time in the young pacific province’s history, the tide was turning against business. Buoyed and encouraged by the legal precedents, law suits against employers by injured workers and their families increased steadily through the turn of the century.<sup>28</sup> B.C. labor unions strengthened throughout the 1890’s providing financial resources to injured workers. The economy in B.C. in the 1890’s was often recessionary which put financial pressure on businesses. This made them particularly vulnerable to financial instability as injured workers and their dependents took them to court more often. Even in a successful defence the legal expenses could significantly impact businesses.

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<sup>25</sup> Ibid, Volume 3 1893 - Volume 24 1916; It should be kept in mind that British Columbia Reports at this time were subjective collections of various cases. Thus, it is difficult to make firm conclusions about trends relying only on them as sources.

<sup>26</sup> Ibid, Volume 4 1896; p. 132.

<sup>27</sup> Ibid, Volume 3 1893 - Volume 24 1916.

<sup>28</sup> Ibid, Volume 3 1893 - Volume 24 1916.

The combination of these events moved the issue of workers' protection back to the politicians. In 1902, a socialist M.L.A. from Nanaimo, J.W. Hawthornthwaite, successfully introduced Canada's first Workmen's Compensation Act. Hawthornthwaite and another socialist M.L.A. from Nanaimo happened to hold the balance of power in the B.C. Legislature at this time. As such, for the first time in B.C., workers had some real power in Victoria, though it happened through a quirk of political fate.<sup>29</sup> The new Act was based almost word-for-word on the British Workmen's Compensation Act of 1897.

Unlike the 1891 Employers' Liability Act, there was some controversy over the 1902 Workmen's Compensation Act. Labor unions were openly and publicly supportive of the Act. The largest labor convention in B.C. happened to meet during bill's evolution and it endorsed Hawthornthwaite's bill.<sup>30</sup> Delegations were sent to Victoria to lobby M.L.A.s over the issue. While employers were not as vocal in opposing the bill, the lumber industry was particularly vehement in rejection of it and sent a high level delegation to attempt to kill it. The debate in the Legislature was not particularly contentious but various viewpoints were voiced as the two socialist M.L.A.s were able to garner enough government support to pass it, undoubtedly in exchange for support for other bills.<sup>31</sup>

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<sup>29</sup> There was a great deal of political turmoil at this time in B.C.'s history. There were 3 different governments between 1898 and 1902. In all three, labor MLAs wielded considerable power in regards to promoting workers' issues.

<sup>30</sup> "Provincial Progressive Party". Vancouver Independent 1902 Apr 19, p. 3.

<sup>31</sup> See "Provincial Legislature". Victoria Daily Colonist 1902 Apr 11, p. 8, "Provincial Legislature". Victoria Daily Colonist 1902 May 2, p. 8 and "Two Opinions on Workmen's Bill". Vancouver Daily Province 1902 May 8, p. 2.

This new legislation marked a fundamental departure from preceding employers' liability legislation by providing compensation regardless of fault.<sup>32</sup> This meant that for the first time an injured worker received damages regardless of negligence unless he/she was grossly at fault. In contrast to employers' liability legislation, which only covered accidents that resulted directly from an employer's negligence, workmen's compensation applied to injuries that arose "out of and in the course of employment" regardless of fault.

The new Act was clearly an improvement over the Employers' Liability Act in that it provided a set scale of compensation and system of arbitration, both designed to keep potentially costly and lengthy disputes out of the courts. The Act covered railway, factory, mine, engineering and construction workers. Arbitration could be provided by any committee that represented both an employer and his workers or a single arbitrator agreed upon by both parties. The courts could also be requested to appoint a B.C. Supreme Court judge to arbitrate. A non-judge arbitrator could refer questions of law, opposed to facts, to court judges. The scale of compensation provision meant that the only major issue was fault. An injured worker could expect to receive, from his employer, fifty percent of his/her average weekly earnings during the previous twelve months of employment, with a maximum of ten dollars per week if the worker had not been in employment for the previous twelve months; there would be a waiting period of two week before the worker could receive compensation. The dependents of a deceased worker would receive the equivalent of three years worth of his employment earnings from the employer.

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<sup>32</sup> British Columbia. Statutes. 1902; CH. 74:313-322.

However, although the 1891 Employers' Liability Act was ground-breaking in Canada and moved forward the workers' protection issue, it was ultimately flawed, so would follow the 1902 Workmen's Compensation Act. While more workers were covered, too many were still left out, particularly loggers, certain categories of transportation workers and electrical workers. The scale of compensation method, though novel, had a ceiling of \$1,500 for partial or total disability which was considered too low by many. The arbitration system, though favored by government, was ultimately optional, so many cases still proceeded to the courts. There appear to have been many arbitration cases that had to be referred to the courts for questions of law which delayed the process. There appear to have been a number of cases where appeals of arbitration decisions were filed in the court system on the basis of an arbitrator not seeking the court's opinion of a question of law. The cost for arbitration could be high. Many areas of the Act were not comprehensive nor concise enough and wide areas of interpretation were open to the courts.

From 1900 to 1914 the number of compensation cases involving litigation appears to have increased significantly, particularly after 1907.<sup>33</sup> Statistics are not available to indicate how widely used the new arbitration system was. Nonetheless, it was clear, that the main objective of the 1902 Act, to move cases away from the courts, had not been achieved. Injured workers and their dependents found the collapse of the various employer defences to be tempting enough to take their chances in the courts. A landmark case, finally settled in 1912, that went to Canada's highest court, found that dependents of B.C. workers anywhere in the world were due damages for employer negligence in B.C. This dramatically expanded the pool of potential litigants B.C. employers could have to face. A handful of very large court awards to injured workers and

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<sup>33</sup> BCR; Volume 7 1900 - Volume 24 1916.

deceased workers' dependents sent shockwaves throughout the B.C. private sector.<sup>34</sup> The specter of a single liability case destroying almost any business, no matter what the size, was now a real possibility. Many employers insured against liabilities through private casualty insurance companies, often having to pay high premiums. Others aggressively pursued private settlements with injured workers.<sup>35</sup>

While events were evolving toward the sort of comprehensive workers' compensation act that exists today, there were attempts in the Legislature to amend the 1902 Act. Session after Session, Hawthornthwaite would attempt to introduce bills to update the Act.<sup>36</sup> Whether it was raising the upper limit of arbitrated award to \$2,000, provision for a lump sum payment on demand by an awarded worker or including more types of workers, his initiatives always failed. In some cases, there were legislative house rules that were obstacles preventing Hawthornthwaite, as an individual M.L.A. without major party affiliation, from moving the bill to a vote.<sup>37</sup> In other instances, bills were defeated in Legislative votes, as Hawthornthwaite and his socialist ally no longer held the balance of power and could not engage in political 'horse-trading'.

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<sup>34</sup> Ibid, Volume 7 1900 - Volume 24 1916.

<sup>35</sup> British Columbia. Royal Commission on Labour. Box 2, Vol. 5 File 3, p. 321.

<sup>36</sup> See "Provincial Legislature". Victoria Daily Colonist 1905 May 9, p. 1, "Eight Hour Day for Smelting". Victoria Daily Times 1907 Mar 22, p. 6 and "Better Terms Is Stood Over". Victoria Daily Times 1907 Mar 23, p. 6.

<sup>37</sup> See British Columbia. 36 JLA 1907 Mar 21:29, 36 JLA 1907 Apr 18:98, 38 JLA 1909 Mar 11:25, 39 JLA 1910 Mar 10:106, 40 JLA 1911 Jan 26:18.

By the nineteen teens, several jurisdictions in North America had enacted a compulsory, state-sponsored scheme to deal with injured workers' compensation that completely eliminated the courts from the picture. Dubbed the 'historic compromise' by some at the time, many in B.C. were beginning to openly suggest its adaptability there.

## Chapter Two

### THE “HISTORIC COMPROMISE” REACHES BRITISH COLUMBIA

#### Royal Commission on Labor (1912-1914)

Despite the fact that B.C. workers were more able to sue their employers over workplace accidents and had better odds of gaining compensation after the turn of the century than before, workplace conditions did not necessarily improve dramatically. New industries, new workplace technologies that were more efficient but not necessarily safer, new employers and high turnover of workers all contributed to continued dangerous working conditions and high accident rates. Unions had become much stronger after the turn of the century and much more aggressive in fighting against unsafe workplaces through strike action and even violence.<sup>38</sup>

The logging industry had exploded in growth after the turn of the century and had replaced coal mining as B.C.’s most dangerous occupation.<sup>39</sup> Unlike mining, foresting usually took place in remote environments far from civilization. Government safety inspections were rarer the more remote the foresting site. Emergency health care was unheard of.<sup>40</sup> Loggers’ camps were notoriously unsanitary. To make matters worse, loggers were excluded from the 1902 Workmen’s Compensation Act. To minimize potential large awards to injured workers in

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<sup>38</sup> See Cruickshank D, Kealey G. *Strikes in Canada, 1891-1950. Labour/Le Travail*; 1987; (F):138 and Levant V. *Capital and Labour: Partners? Two Classes - Two Views*. Toronto; Steel Rail Educational Publishing; 1977.

<sup>39</sup>“Address of Parker Williams, M.L.A., On Provincial Issues. “. *The British Columbia Federationist*. 1916 Feb 25, p. 3-4.

<sup>40</sup> Prouty AM. *More Deadly Than War: Pacific Coast Logging 1827-1981*. New York; Garland Publishing; 1985, 88.

the courts, forestry employers would discriminate against family miners by hiring single men, preferably whose relatives were in far away countries.<sup>41</sup>

Although mining disasters were now less frequent and devastating than before the turn of the century, they were still occurring. In 1909, an explosion in a Nanaimo coal mine killed 32 men due to the company utilizing inexpensive, poor quality lamps.<sup>42</sup> This was a rallying event for mining unions which were becoming more militant.<sup>43</sup> Companies refused to sanction gas committees in mines as they thought of it as taking away autonomy from management. Miners who complained about working conditions were usually dismissed and ‘blackballed’ from finding work in other mines.<sup>44</sup> An influx of immigrants enabled mining companies to replace as many workers as needed.<sup>45</sup> Mining companies, confronted with strikes, sometimes responded with armed mercenaries to keep the mines open and intimidate strikers.<sup>46</sup>

The generally chaotic situation for both employers and employees prompted the appointment of the Royal Commission On Labor in 1912. The six commissioners appointed were told to investigate all issues involving labor. Not surprisingly, the Commission took almost two years to carry out its task. A total of 419 witnesses were examined and the Commission visited numerous worksites all over the province.<sup>47</sup> The Commission interviewed many workers in various sectors, most of them unionized. Employers in all industries and regions of the province

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<sup>41</sup> Prouty. p. 88.

<sup>42</sup> Provincial Archives of British Columbia (PABC). Attorney-General Correspondence Files. GR 429; Box 17, File 2, 4758/09.

<sup>43</sup> Mayse S. *The Life and Death of Albert Goodwin*. Madeira Park(CA); Harbour View Publishing; 1989.

<sup>44</sup> Phillips. 57-58.

<sup>45</sup> British Columbia. 36 JLA 1907, p. 100.

<sup>46</sup> “Bowser Declares Martial Law On Vancouver Island”. *The British Columbia Federationist* 1912 Nov 22, p. 1.

<sup>47</sup> British Columbia. *Royal Commission on Labour (RCL)*. Victoria(BC) King’s Printer; 1914.

were also interviewed. As expected, occupational safety and health and workers' compensation were major issues for the Commission (see Table I).

At this time of extreme and explosive polarization between workers and employers, the one issue on which there seemed to be consensus was the desirability of a state-sponsored mandatory scheme where the worker would give up his/her right to sue for monetary compensation due to a workplace accident in exchange for a guaranteed fixed amount, regardless of fault. In return, the employer would be free from any tort liability. A building employer wrote that such a system would be, "a splendid idea. I think that this employers' liability Act is an awful hard thing on a man employing men."<sup>48</sup> The President of the Kelowna Sawmill Company said an injured worker, "should get so much regardless of fault and the employer to be free from liability."<sup>49</sup> Chairman of the British Columbia Federation of Labor, J. H. McVety, wrote that an injured worker, "should receive compensation no matter what way the injury arises...a sure payment, even if smaller, without the necessity of proceedings of law on the part of the injured one would be a more satisfactory arrangement than any legislation we have existing now in British Columbia."<sup>50</sup>

The Commission concurred with these sentiments and in doing so criticized the 1891 Employers' Liability Act and the 1902 Workmen's Compensation Act stating that they were, "ineffective, and providing at the best a cumbersome method of securing compensation for injured

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<sup>48</sup> Ibid, Box 2, Vol. 6, File 1, p. 92.

<sup>49</sup> Ibid, Box 1, Vol. 2, File 4, p. 438.

<sup>50</sup> Ibid, Box 1, Vol. 3, File 3, p. 363.

workmen.”<sup>51</sup> The former was condemned because of the need to prove employer negligence. It was pointed out that the latter was too narrow in scope, restricting the classes of labor able to recover, forcing too many excluded workers to have to resort to flawed common law and employers’ liability legislation. The Commission also voiced its displeasure with the lengthy nature of many cases and the involvement of insurance companies and the resulting excessive overhead costs and litigation fees that were taking money away from injured workers.<sup>52</sup> The Commission did, however, re-affirm the ‘basic principle’ of the 1902, Act that “industry should bear the burden of accidents as part of the cost of production”.<sup>53</sup>

To ameliorate the “limitations and injustices” of the 1902 Act, the Commission recommended modeling a new B.C. compensation act after similar legislation in Washington state, Ontario and Oregon. The Commission stated, “it is unnecessary to make recommendations for the amendment of the (1902) Act. The proper remedy, in our opinion, should not be in amending existing legislation, but in the introduction of a system of compulsory State insurance.”<sup>54</sup> About the only dissenters to this point of view, not surprisingly, were insurance companies who were seeing the most lucrative part of their business about to disappear.

The Report of the Royal Commission On Labor was presented to the B.C. Legislature in March, 1914. Though the duration of the Commission had been criticized by some<sup>55</sup>, the government promised to consider the report in a favorable light. In December 1914, Attorney-

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<sup>51</sup> Ibid, p. M12.

<sup>52</sup> Ibid, p. M12.

<sup>53</sup> Ibid, p. M13.

<sup>54</sup> Ibid, p. M12.

<sup>55</sup> “Labor Commission Brings Down Report”. The British Columbia Federationist. 1914 Mar 6, p. 1.

General W. J. Bowser told a labor forum that insurance companies were largely responsible for producing injured worker claimants who were “depressed and discouraged”, and intimated the government was prepared to draft a compensation bill to ameliorate the condition.<sup>56</sup> He said, however, that there would be a one year delay to solicit more input so that the, “Act, as finally passed, would be nearly perfect as possible”. Bowser created an immediate mood of impatience by this statement, as by now 23 U.S. states and Ontario had passed comprehensive compensation acts, which heightened anticipation for a B.C. act.<sup>57</sup>

In response to this impatience, Bowser introduced a compensation bill just three months after his notification of a one year delay. With the legislative session about to end, Bowser knew that it was impossible for the bill to pass. However, he probably created it as a ‘trial balloon’ to see what sort of response there might be before a final act would be introduced in the next session. The draft bill eliminated the possibility of litigation by annulling an injured worker’s right to sue his employer for damages.<sup>58</sup> It covered a wide range of industries and trades including, lumbering, logging, mining, milling, manufacturing, canning, shipbuilding, bricklaying, painting and structural carpentry. It excluded government employees, fishermen, longshoremen, clerical workers and casuals. The bill set scale of compensation at 55% of a worker’s average earnings with a maximum payment of \$40 per month. Payments would commence only after a 14 day

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<sup>56</sup>”To Solve Problems of Agriculture and Labor“. The Daily Province 1914 Dec 15, p. 3.

<sup>57</sup>“Compensation Law Spoiled By Courts “. The British Columbia Federationist. 1915 Feb 26, p. 5.

<sup>58</sup> British Columbia. 44 JLA 1915, p. 86.

waiting period. The bill also did not provide for medical aid.<sup>59</sup> The new Board would consist of a single commissioner, drawn from the ranks of management.

Hawthornthwaite slammed the government over its lack of consultation with labor over the bill. He also called it inadequate by excluding too many workers and guaranteeing the Workmen's Compensation Board member being from the ranks of management.<sup>60</sup> A blue-ribbon task force was created by B.C. labor unions in the summer of 1914 specifically to deal with the Bowser bill.<sup>61</sup> The task force concluded that, "it is so limited in its scope, that it is to all intents and purposes useless..." This sort of alarmingly harsh condemnation prompted Bowser to promise that labor groups would be given an opportunity to suggest amendments to the bill. That opportunity came in the form of a Select Committee appointed to investigate workmen's compensation laws.

### **Committee of Investigation on Workmen's Compensation Laws (1915-1916)**

Avard B. Pineo, deputy attorney-general, was chosen by the government, after much lobbying by B.C. employers, to chair the Select Committee in September, 1915.<sup>62</sup> McVety was appointed as a labor representative and David Robertson of the timber industry was chosen to represent B.C. employers. The Committee was very mobile, visiting seven American states and two other Canadian provinces including B.C. A total of 72 individuals, mostly workmen's

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<sup>59</sup> In practice many employers charged first aid fees out employees' paychecks to cover immediate medical care. Some unions accused employers of charging exorbitant fees and profiteering from them. In other situations workers were responsible for their own medical fees.

<sup>60</sup> "Attorney-General Explains Measure". Victoria Daily Times 1915 Apr 24, p. 7.

<sup>61</sup> "Big Guns Heard At Socialists Meeting". The British Columbia Federationist. 1915 Jun 4, p. 1

<sup>62</sup> PABC. Attorney-General Correspondence Files. GR 429; Reel 2111, File 4988.

compensation experts and government officials, were interviewed over a three month period.<sup>63</sup>

The Committee also held hearings in Vancouver and heard from labor groups, employer representatives, medical doctors and insurance companies.

The Pineo Committee's objective was to recommend an act that would, "eliminate so far as possible the economic waste attendant on the present system in force in the Province...protecting the employer against personal-injury claims and ensuring the employee an enlarged and better measure of compensation".<sup>64</sup> The Select Committee's report was submitted to the government March, 1916. It recommended a state sponsored scheme resembling acts elsewhere, most particularly in Ontario, with two major differences (see Table II).

The Committee emphasized that the compensation fund had to administered through the state and that individual liability and the private insurance sector should no longer be involved in the system.<sup>65</sup> Most of the witnesses the Select Committee heard from endorsed this including many employers who were vulnerable to fluctuating premiums which created too much financial uncertainty for them. Nevertheless, the issue of excluding private insurers from the system was a very controversial one at the time. Insurers engaged in lobbying to support their interests.<sup>66</sup> Most jurisdictions studied had some sort of hybrid system in place that allowed some resort to private

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<sup>63</sup> British Columbia. Committee of Investigation on Workmen's Compensation Laws. Report of the Committee of Investigation on Workmen's Compensation Laws. Victoria; King's Printer; 1916, p 5.

<sup>64</sup> Ibid, p. 5.

<sup>65</sup> Ibid, p. 12.

<sup>66</sup> All 17 of the casualty insurance companies operating in B.C. were based elsewhere. Thus, the industry as a whole was represented by just two lawyers and did not have numerical presence in the hearings to have a major impact.

insurers. Though almost employers in B.C. were in favor of eliminating individual liability there was one exception, the largest Nanaimo coal mine employer.<sup>67</sup>

In another significant departure from the Ontario Act, the Select Committee recommended that the B.C. Act should provide for full medical aid for injured workers.<sup>68</sup> This would ensure that they would have their doctor and hospital treatment paid for, as well as transportation, medicine, crutches and other supplies necessary for their recovery.<sup>69</sup> This issue was particularly contentious because no other jurisdiction had such provisions in place. Employer witnesses to the Select Committee argued vociferously against the idea warning of skyrocketing of assessments they would have to pay out annually.

During the B.C. portion of the Committee hearings, employers demanded that workers be responsible for a first aid fund, while employers would take care of the disability fund. B.C. hospitals were particularly prominent during this issue as they claimed that injured workers unable to pay medical expenses was putting considerable pressure on their finances.<sup>70</sup> In a rare act of conciliation at this time, a committee of employers, the B.C. Federation of Labor and the Railway Brotherhoods met privately during the hearings and came to agreement on the medical aid issue.<sup>71</sup> The medical aid fund would receive contributions from workers at a fixed rate, one cent a day, with employers covering the difference if there was a shortfall. Thus workers would be

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<sup>67</sup> The Canadian Collieries (Dunsmuir) Ltd. demanded that insurance capital be given opportunity to compete against a state fund.

<sup>68</sup> British Columbia. Committee. p. 16.

<sup>69</sup> Ibid, p. 11.

<sup>70</sup> "Will Ask Protection Hospitals And M.D.'s In Compensation Act ". The Sun 1915 Nov 19, p. 8.

<sup>71</sup> Coneybeer, 180.

guaranteed immediate and full medical assistance and hospitals and doctors could be assured of prompt payment for services.

Among the other recommendations of the Pineo Committee were, a three day waiting period; a compensation rate of fifty-five percent of average earnings up to \$2,000 per year; deceased workers' widows receiving \$20 per month plus \$5 per child; a comprehensive system of government safety inspection with negligent employers liable to prosecutions and penalties, a tripartite board with members "free from political influence" and no right of appeal of a Workmen's Compensation Board decision. The waiting period and safety inspection recommendations were quite progressive in comparison to other jurisdictions. The tripartite board was concluded upon after considerable dissatisfaction was expressed during the out-of-province hearings about one man boards.<sup>72</sup> Most jurisdictions did have an appeal mechanism of some sort.

### **The New Act And Its Growing Pains**

The Pineo Select Committee tabled its report to the government in March, 1916. Three months later the long awaited new Act was introduced to the Legislature and passed without controversy in May, 1916 to come into effect January 1, 1917.<sup>73</sup> The Act adopted every one of

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<sup>72</sup> Critics of single member board felt the individual would be under too much pressure from employers and labor and would eventually lean to one side. "Safety in numbers" would assure all that a board, as a whole, would be independent, and just as importantly, seen to be independent.

<sup>73</sup> British Columbia. Statutes. 1916; CH. 77:343-372.

the Committee's major recommendations. B.C. was the only jurisdiction in North America with full medical aid provision. A comprehensive accident prevention scheme was included. The new three person Board was chaired by Edward Winn, a former lawyer. The headquarters, initially located in Victoria, contained forty-four employees, many of whom were inexperienced, but enthusiastic.

There was an initial 'honeymoon' period for the Act and the Board. This was not to be unexpected. Labor, employers and government had been working for years on this issue and given the polarization in the province such a large initiative involved unprecedented cooperation and negotiation by all sectors. There was a great desire on everyone's part for the new system to work. B.C. had unquestionably the most comprehensive and progressive Workmen's Compensation Act in North America. The Speaker of the Minnesota Legislature headed a committee investigating B.C.'s Act in 1920 and called it "the most efficient, economic and comprehensive in Canada and the United States."<sup>74</sup> Other delegations from as far away as Sri Lanka would model their own legislation based on the B.C. Act.

The 'honeymoon period' lasted about a decade. Although amendments to the Act had been made in the early 1920's that increased benefits to deceased workers' dependents<sup>75</sup>, increased the compensation rate to 62.5% of average earnings, and provided for a \$300 penalty on employers for negligence<sup>76</sup>, labor groups started lobbying for changes by the mid-1920's. In 1927 the Victoria Trades and Labor Council submitted a comprehensive list of desired changes

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<sup>74</sup> "Pay Compliment To B.C. Board". Victoria Daily Colonist 1920 Sep 24, p. 1.

<sup>75</sup> British Columbia. Statutes. 1920; CH. 105:665-666, and British Columbia Statutes. 1925; CH. 64:335-336;

<sup>76</sup> British Columbia. Statutes. 1922; CH. 86:601-605.

including an appeal board, change in average earnings calculation method and expansion of workers covered.<sup>77</sup> The print media began publicizing individual cases where workers claimed the Board had dealt with them unfairly. There were other complaints. Medical doctors outside of the Vancouver area were complaining that too many workers' compensation cases were being referred to their counterparts in the Lower Mainland. Employers complained that the Board was collecting and amassing too much money at their expense. There were general complaints that the board was too autocratic. This was ironic considering the fact that independence from politicians and lobbying groups was one of the cornerstones upon which the Board was founded.

The complaints prompted the government to appoint a legislative committee to look into all aspects of the Workers' Compensation Board and Act in 1927.<sup>78</sup> Over roughly a one-year period, five House members, as well as the three Board members staged public sittings throughout the province.<sup>79</sup> Individual workers, union officials and employers testified. The major issue appears to have been whether or not to establish an appeal mechanism (see Table III). Though some witnesses suggested one, labor and employer organizations were unanimous in opposing the principle. The Select Committee also recommended expanding the number of compensable industrial diseases and that the Board show more "elasticity" in administration of the Act. The government did not legislatively respond to this report.

The Great Depression affected all parts of society including the area of workers' compensation. As many companies, especially small ones, went bankrupt, existing employers

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<sup>77</sup> "Compensation Is Under Fire". Victoria Daily Colonist 1927 Feb 9, p. 1.

<sup>78</sup> "Compensation Act Probe On". Victoria Daily Colonist 1927 Jan 26, p. 4.

<sup>79</sup> British Columbia. 57 JLA 1928 Feb 29:110-111.

were having to cover the assessments of their fallen competitors. This put the existing companies, most of which were under their own financial pressure in the economic downturn, in a precarious situation. In 1932, 17 logging companies sought a B.C. Supreme Court injunction to temporarily stop the W.C.B. from levying their assessments<sup>80</sup>. They claimed that the Board had been negligent and violated the Workmen's Compensation Act by not levying assessments properly going back to 1925. The result of this negligence, they claimed, was an unfair burden on them. The Court issued an injunction against the Board, pending the outcome of the trial. The highly publicized trial, which could have jeopardized entire workers' compensation system, lasted several months with the companies ultimately losing.<sup>81</sup>

Despite the Court upholding the Board's actions, there was a consensus that the insulated body needed some sort of oversight. During the 1932 Board crisis, M.L.A. H.D. Twigg called for a Royal Commission to investigate all aspects of workers' compensation.<sup>82</sup> Powerful railway workers unions representatives would make "annual pilgrimages" to Victoria seeking increases in benefit and other changes to the W.C.A. in the 1930's.<sup>83</sup> It was clear that the 'historic compromise' needed to be reviewed.

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<sup>80</sup> "Open Attack On Workers' Board Levy". Vancouver Daily Province 1932 Jan 22, p. 1.

<sup>81</sup> "Compensation Board Upheld". The Vancouver Sun 1932 Apr 20, p. 12.

<sup>82</sup> "Royal Commission Is Urged to Advise On Compensation". Victoria Daily Colonist 1932 Jan 23, p. 1.

<sup>83</sup> "Compensation Change Sought". Victoria Daily Colonist 1936 Jan 11, p. 6.

## Chapter Three

### THE SLOAN COMMISSIONS

#### **Royal Commission on the Workmen's Compensation Board (1941-1942)**

In 1938, the B.C. government introduced and passed amendments to the Workmen's Compensation Act increasing benefits to injured workers, as well as to widows and dependents of workers killed on the job.<sup>84</sup> One of the consequences of the Great Depression was a strengthened labor presence in the B.C. Legislature through the Cooperative Commonwealth Federation (C.C.F.) and the new party was largely responsible for these amendments. These amendments did not appease the C.C.F. for long as it called for a Special Legislative Committee to perform a complete probe of the Act in 1940.<sup>85</sup> A year later the government created the first in what would turn out to be a series of Royal Commissions on workmen's compensation.

Gordon McGregor Sloan, then Chief Justice of the Court of Appeal of B.C., was appointed to the one person Commission in 1941. The Commission hearings opened in August, 1941 and ended in March, 1942. There were 160 witnesses that testified in 6 locations around the province.<sup>86</sup> The vast majority of witnesses were union representatives, industry representatives and members of the medical profession.

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<sup>84</sup> British Columbia. Statutes. 1938; CH. 67:315-316.

<sup>85</sup> "Winch Seeking Probe of Compensation Act". Vancouver Province 1940 Nov 2, p. 19.

<sup>86</sup> British Columbia. Report of the Royal Commission on the Workmen's Compensation Board. Victoria(BC); King's Printer; 1942, p. DD7-DD10.

There were a number of major issues of note during the Commission hearings (see Table IV). Perhaps the most controversial was ‘blanket coverage’ where all workers in the province would be covered by workers’ compensation, opposed to being classified by occupational categories, and in many cases not part of the system.<sup>87</sup> Labor unions argued for it, claiming too many workers were falling ‘through the cracks’, while industry opposed, warning of skyrocketing assessments.<sup>88</sup> Chief Justice Sloan, citing the fact that no other jurisdiction had ‘blanket coverage’ recommended the status quo.<sup>89</sup> Another major issue emanating from the debate surrounding the original Act was that of a medical appeal board. There was a split in the labor sector over this issue, while industry was united in opposing it fearing too many worker appeals.<sup>90</sup> The recommendation was to continue to function without it. The Commissioner recommended a comprehensive rehabilitation scheme through the Board citing the fact that most jurisdictions had some sort of program in place.<sup>91</sup> It was also recommended that the three day waiting period, a controversial issue since when the Act was created, remain.<sup>92</sup>

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<sup>87</sup> Ibid, p. DD126.

<sup>88</sup> Ibid, p. DD128.

<sup>89</sup> Ibid, p. DD 127-DD135.

<sup>90</sup> British Columbia. Proceedings of the Royal Commission on the Workmen’s Compensation Board. Victoria(BC); King’s Printer, 1942, Vol. 3, p. 741.

<sup>91</sup> British Columbia. Report. p. DD125.

<sup>92</sup> Ibid, p. DD33-DD36.

There were several major issues that were technical or ‘housekeeping’ in nature including: the average earning calculation method; increasing the age of eligible dependent children; the evaluation of incapacity; and, upgrading allowances for dependents of killed workers to account for inflation. As he did for the issues as a whole, Chief Justice Sloan struck a delicate balance in trying to look at each issue individually while keeping a ‘scorecard’ in mind so that both labor and business could embrace his recommendations overall.

In general, industry representatives were more unified in their demands and stances than the labor representatives. Coastal unions, interior mining industries and other labor groups did not effectively organize together and support one another’s causes. Many of the labor officials were only concerned about a single issue affecting their industry, while industry representatives had a broader perspective of workers’ compensation issues. One thing that probably contributed to this was the superior legal knowledge of the employers. All of the major industry witnesses held law degrees, while not a single labor witness had any formal legal background.<sup>93</sup> Many of the labor witnesses, who had probably never been in a court room, had difficulty articulating and engaging in debate in the trial-like atmosphere of the Royal Commission.

Chief Justice Sloan tabled his report in September, 1942. The four hundred page report was considered one of the most exhaustive in B.C. history.<sup>94</sup> Reaction to the report was quite favorable from both labor and business.<sup>95</sup> Only the B.C. Hospital Association was openly critical

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<sup>93</sup> Ibid, p. DD8.

<sup>94</sup> “Administration Found Highly Satisfactory”. The Vancouver Sun 1942 Sep 15, p. 8.

<sup>95</sup> “Labour Pleased By Report--But Cautious”. The Vancouver Sun 1942 Sep 15, p. 8.

citing administrative and cost issues that it felt were not satisfactorily addressed by report.<sup>96</sup> Six months later, a new government (there had been an election in the interim) adopted the vast majority of the Commission's recommendations.<sup>97</sup>

Despite the apparently successful Sloan Commission, it was not long before changes in the Act were again demanded. The contentious issue of 'blanket coverage' from the Commission was brought up again by labor delegations visiting Victoria. Other issues that had been dealt with during the Commission were also raised within just two years of the new government amendments.<sup>98</sup> Only a few years after one of the most exhaustive report in B.C. history on any issue had been delivered, and an apparently successful one at that, it appeared as if yet another Royal Commission, on workers' compensation was imminent. The B.C. Labor Minister predicted, in late 1945, a Royal Commission, "carrying on from the point where the investigation of 1941 finished".<sup>99</sup> He stated, a month later, that his, "personal view is that a periodic review of the W.C.A. by a Commissioner is a practical way of dealing with the problem".<sup>100</sup> As will be seen, this view would be echoed by future generations of British Columbians involved in workers' compensation issues.

The government tried to forestall such a quick re-appointment of a Royal Commission by introducing amendments to the Act in 1946, the most important of which was to eliminate the

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<sup>96</sup> "Sloan Report Disappoints B.C. Hospitals". The Vancouver Sun 1942 Sep 16, p. 15.

<sup>97</sup> British Columbia. Statutes. 1943; CH. 72:255-265.

<sup>98</sup> See "Compensation Act Changes Sought". Victoria Daily Times 1944 Jan 15, p. 9 and "Labour Delegation Asks Legislation". Victoria Daily Times 1944 Jan 28, p. 11.

<sup>99</sup> "Compensation Act Probe Next Year". The Vancouver Sun 1945 Dec 22, p. 9.

<sup>100</sup> "Compensation Probe Favored". The Vancouver Sun 1946 Jan 21, p. 12.

workers' contribution to the Medical Aid Fund.<sup>101</sup> These amendments, mostly minor, did not appease labor or socialists in B.C. In session after session in the Legislature, the C.C.F. would introduce amendments that would alter the Act.<sup>102</sup> Labor gatherings throughout the province would pass resolutions demanding changes as well. The changes demanded usually included 'blanket coverage', elimination of the waiting period and a newly emerging controversial issue-- including provision for treatment visits to chiropractors.<sup>103</sup>

It is clear that in just a few short years, labor and socialist views on workers' compensation issues had changed dramatically. This was reflective of a significant metamorphosis in labor union movement in B.C. during this time. Shortly after Chief Justice Sloan's highly regarded report was acted upon, World War II ended, sending thousands of Canadian workers back home from foreign battlefields. Tens of thousands of these workers came to B.C. swelling the ranks of the province's unions.<sup>104</sup> At the end of World War II, Canada was the second biggest economic power in the world, and unions were never more confident in flexing their muscles.

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<sup>101</sup> British Columbia. Statutes. 1946; CH. 80:317-321.

<sup>102</sup> "Compensation Act Blanket Coverage Sought by CCF". Victoria Daily Times 1948 Apr 28, p. 14.

<sup>103</sup> "Johnson Asks Compensation Changes". Vancouver Province 1947 Mar 7, p. 10.

<sup>104</sup> Robin M. Pillars of Profit: The Company Province 1934-72. Toronto; McClelland and Stewart; 1973, p. 70-71.

Aside from a big increase in membership, B.C. unions also underwent a profound ideological shift. An influx of communists, who were zealous and competent organizers, hardened unions' demands.<sup>105</sup> Aggressive lobbying tactics, through many trips to the Legislature, had an impact on politicians of all stripes, especially when the growing unions would threaten to deliver votes for or against candidates. The post-war unionists views on Chief Justice Sloan's report was that it was held during extraordinary times and that sacrifices had to made, whether on European battlefields or B.C. workplaces. Labor unions, then smaller and less militant, made demands that they thought were reasonable. However, the socioeconomic and political environment changed with the end of World War II.

Battles in unions halls were going on throughout the province as World War II wound down, and as the communists emerged they targeted workers' compensation issues as one of their top priorities. As a prominent B.C. Federation of Labor official said several years later, "when we cited this (1942) report, we had to keep in mind that this was a war time report. It was made at a time when things were in a rather precarious position and we had to bear in mind that the opinions had not been consolidated on anything."<sup>106</sup>

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<sup>105</sup> Phillips P. No Greater Power: A Century of Labour in British Columbia. Vancouver(BC); Boag Foundation; 1967, p.133.

<sup>106</sup> British Columbia. Proceedings of the Commission of Inquiry on the Workmen's Compensation Act. Victoria(BC); Queen's Printer; 1966, Vol. 3, p.324.

## **Royal Commission Relating to The Workmen's Compensation Act and Board (1949-1952)**

A new Royal Commission on Workmen's Compensation was appointed in June, 1949. Chief Justice Sloan was re-appointed as sole Commissioner. The re-appointment would confirm that his work and conclusions in the first Commission was highly regarded. As the C.C.F. leader said during his opening remarks at the new Commission, "The scope, thoroughness and findings of your 1942 inquiry were of such high standard that although the workers did not obtain, and have not yet achieved, all improvements they felt and still feel they are entitled to, nevertheless your re-appointment to again hold a public inquiry is an occasion of considerable satisfaction to all workers in industry."<sup>107</sup>

The new Commission began hearings in November, 1949 and they ended two years later in November, 1951. Testimony was heard from 630 witnesses in four B.C. cities, most of them individual workers and medical doctors. Chief Justice Sloan also inspected several rehabilitation centers in Canada and the U.S.<sup>108</sup> This Commission was clearly a much bigger undertaking than the previous Commission, which in itself was considered the most exhaustive in B.C. history just several years earlier. The Commission was only expected to last several months.<sup>109</sup> The extended length of the second Commission can largely be attributed to the hundreds of individual workers and doctors who felt compelled to step forward testify. Workplace and medical technology had changed considerably since the war and much of the testimony centered on these changes.

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<sup>107</sup> British Columbia. Proceedings of the Royal Commission Relating to the Workmen's Compensation Act and Board. Victoria(BC); Queen's Printer; 1952, Vol. 1, p.18.

<sup>108</sup> British Columbia. Report of the Commissioner Relating to the Workmen's Compensation Act and Board. Victoria(BC); Queen's Printer; 1952, p. 7.

<sup>109</sup> Ibid, p. 7.

Not surprisingly, there was considerable reference during the Commission to Chief Justice Sloan's first report. Industry counsel repeatedly asked their labor counterparts why, after approving the first Commission report, were they back so soon making revised demands? A representative of the B.C. Federation of Labor responded, "I would suggest that is the way have of adding improvements to legislation over a period of time." He added, "...the Commissioner came to his findings here on the basis of an inquiry which was held in 1942. The Commissioner will come to his findings here on the basis of evidence produced in this inquiry. I don't think at this time I am prepared to dispute the Commissioner's findings in 1942."<sup>110</sup> The leader of the C.C.F. said, "Anyone, except someone who has a closed mind, learns something every day. The present Commissioner is seven years older and wiser and may see his way clear to the realizing the mistakes he made."

There were several major issues in second Commission that re-surfaced from the first, including 'blanket coverage' (see Table V). The same arguments were essentially re-made by labor and business. Chief Justice Sloan went into great detail listing all workers who were not currently covered and opined that some of them (i.e. agricultural workers and domestics) should be while others should not (i.e. fishermen).<sup>111</sup> He concluded that 'blanket coverage' was not

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<sup>110</sup> British Columbia. Proceedings. Vol. 1, p. 121.

<sup>111</sup> British Columbia. Report. p. 23-33.

appropriate and that occupations still ought to be considered sector-by-sector. The medical appeal board issue was subject to ambivalence by both labor and business. The dissenters feared mass appeals which would cause general chaos for the Board. Chief Justice Sloan, citing other jurisdictions' success with appeal boards, dismissed the doubters' fears and in recommending a medical appeal board, provided great detail as to how it should operate.<sup>112</sup> Under heavy pressure from union leaders, the Commission raised the compensation rate slightly to seventy percent (from sixty-six and two-thirds percent) of average earnings. As in the first Commission, labor demanded that injured workers unable to resume their former employment, have the wage difference between it and their new occupation covered fully by the Board. The Commissioner elected to maintain the provision that two-thirds of the difference be covered.

On monetary issues, Chief Justice Sloan sided with labor across the board, keeping in mind that there had been considerable wage and price inflation in the post-war years. The feminist movement in B.C. had strengthened during this time and this undoubtedly contributed to the Commissioner accepting labor's demands for higher widows' pensions and dependent children's allowances. Other monetary issues the Commissioner sided with labor on included, maximum and minimum individual payments and injured workers' per diems.

As he was several years earlier, Chief Justice Sloan was again fairly balanced in his recommendations. He tended to side with labor on monetary issues and with business on questions of philosophy, principle and administration. As mentioned, inflationary pressures probably provided a sense of urgency to these issues. Also, as for the first Royal Commission,

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<sup>112</sup> Ibid, p. 143-151.

industry employed considerable legal talent in their preparation and submissions.<sup>113</sup> Many of the issues brought to this Commission were complicated and often labor was unable to effectively participate due to lack of expertise despite the fact that almost all the major union representatives had changed since the first Commission. It is these technical issues that Chief Justice Sloan sided with business. Though workers had no legal advocates, they did get considerable help from members of the medical profession, many of whom voluntarily testified on behalf of workers. In fact, many of the debates were strictly between W.C.B. staff and workers' doctor advocates.

As in the first Royal Commission, the business sector was more united and better coordinated than their labor adversaries. In general, as alluded to, the issues were more complicated and technical in the second Commission. As a consequence, there were fewer direct confrontations between labor and business witnesses, despite the fact that both sides had even harder positions toward each other than in first Commission. The complexity of the issues caused Chief Justice Sloan to attend long sessions and undoubtedly contributed to the hearings extending over two years.

Surprisingly, the final report was delivered to the Legislature just seven weeks after the hearings. The reaction to the report was somewhat mixed. Mild disappointment was expressed by some labor officials while others gave qualified approval.<sup>114</sup> Business officials had little to say about it. The muted reaction may have had something to do with complexity of issues or maybe the long two year wait for the final report.

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<sup>113</sup> Ibid, p. 171.

<sup>114</sup> See "Labor Raps Sloan Compensation Report". The Vancouver Sun 1952 Feb 27, p. 23 and "Labor Approves Sloan's Report". Victoria Daily Times 1952 Feb 21, p. 13.

There was considerable political turmoil during and after the two year Commission. A weak coalition in 1952 government received the report but only felt it had a mandate to adopt ‘caretaker’ amendments. The government thus introduced and passed amendments that raised: widows’ pensions; dependent children’s allowances; minimum/maximum payment levels; and the compensation rate to seventy percent of average earnings as per Chief Justice Sloan’s recommendations.<sup>115</sup> A controversial issue had emerged as to whether the benefit increases should be retroactive to the beginning of the Commission due to rapid wage and price inflation.<sup>116</sup> The government initially balked, but relented after pressure from the C.C.F. As far as the compensation scales were concerned, then, Chief Justice Sloan’s recommendations had been adopted.

It would take two more elections during two more years before more substantial amendments were made to the Workmen’s Compensation Act. In 1954, the new Social Credit government, which claimed to be neither pro-business nor pro-labor introduced and passed amendments that, among others things, established a medical review panel with binding powers, raised the compensation rate to seventy-five percent, provided optional coverage for domestic workers, and allowed chiropractors and non-conventional medical practitioners to be classified as physicians.<sup>117</sup> Chief Justice Sloan’s recommendations had now been fully acted upon. A part of the bill that had not been an issue in either Royal Commission, the abolishment of the twelve-year tenure for Workmen’s Compensation Board members, a significant part of the original Act, was

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<sup>115</sup> British Columbia. Statutes. 1952; CH. 15:73-75.

<sup>116</sup> “Higher WCB benefits may be Retroactive”. Victoria Daily Times 1952 Mar 18, p. 1.

<sup>117</sup> British Columbia. Statutes. 1954; CH. 54:249-260.

criticized by both management and labor, as the idea had been created by the government caucus without outside consultation.<sup>118</sup> This ‘side’ amendment would have an immense impact on the Board for the next forty years.

A year later, in 1955, another set of amendments to the Act was introduced and passed. It provided more detail and structure to the medical appeal board, increased dependent children’s allowances and optional coverage for fishermen.<sup>119</sup> As was the case after the first Sloan Commission, however, lasting consensus on workers’ compensation and related issues would not to be achieved.

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<sup>118</sup> See “Labor Leaders Blast New Law As Victoria Rally Nears”. The Vancouver Sun 1954 Mar 31, p. 1 and “Employers Condemn WCB Bill”. The Vancouver Sun 1954 Mar 31, p. 2.

<sup>119</sup> British Columbia. Statutes. 1955; CH. 91:475-480.

## Chapter Four

### THE TYSOE COMMISSION

#### Workmen's Compensation Board Under Fire

Throughout the history of the Workmen's Compensation Board in B.C., there have been controversial individual cases where workers or their dependents have felt they were unjustly treated. In the face of a large, and at times seemingly impersonal bureaucracy, these individuals have occasionally resorted to the media to publicize their cases. In the earlier years, newspapers would sometimes publish injured workers' letters to the editor. In more recent years, with the emergence of investigative journalism, more detailed and higher profile presentations would be made to the public casting a negative light on the Board.

No individual protest would receive as much publicity, nor have the long term impact than the Beatrice Zucco case. Zucco was the wife of a miner claiming to die of silicosis-related tuberculosis, but who had been denied a silicosis pension by W.C.B. doctors. She staged a one day protest with three of her young children outside the lobby of the Workmen's Compensation Board headquarters in 1956. The protest received front page newspaper coverage throughout B.C.<sup>120</sup> At first, the Labor Minister refused to meet with her but then relented when she moved her protest to the steps of the B.C. Legislature a few days later,<sup>121</sup>

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<sup>120</sup> See "Family Stages Sit-Down At Compensation Office". The Vancouver Sun 1956 Feb 23, p. 1 and "Sit-Down May Re-open Zucco Case". Daily Colonist 1956 Feb 24, p. 1.

<sup>121</sup> "Wicks Hears Plea In Pension Fight". The Vancouver Sun 1956 Feb 27, p. 1.

In an unprecedented move, after meeting the protester, the Labor Minister ordered the W.C.B. to review Jack Zucco's case immediately, stating that the miner had been found to have "minimum qualifications" for compensation.<sup>122</sup> The Board rejected his pension claim again. In response, the Minister consulted federal government officials about possible recourse for Zucco's case.<sup>123</sup> Several months later, the Minister announced an inquiry into the silicosis issue and appointed an Ontario medical specialist to carry out the task.<sup>124</sup> Dissatisfied with the probe, Mrs. Zucco began a second round-the-clock vigil outside the steps of the B.C. Legislature that lasted nine days<sup>125</sup>. Months later, she petitioned the provincial Cabinet to pass a law giving her husband special permission to sue the W.C.B. for a silicosis pension. The request was denied in the face of wide public support for her case.<sup>126</sup>

Though her avenues of protest had now been exhausted, Beatrice Zucco had succeeded in having the Board portrayed as a cruel, insensitive bureaucracy that was out to cheat workers and their families by manipulation of legal and medical technicalities. She would also turn out to be a rallying point for further action by labor groups angry at the W.C.B. for a variety of reasons.

Shortly after the second Zucco protest, a large labor conference expressed general dissatisfaction with the Board. It accused the Board of engaging in "rigid formalism", being too slow in its administrative duties and rejecting too many workers' claims through "legalistic

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<sup>122</sup> "Sit-Down Striker Wins Silicosis Case Review". The Vancouver Sun 1956 Mar 2, p. 25.

<sup>123</sup> "Ottawa May Rule On Zucco". Daily Colonist 1956 Mar 23, p. 3.

<sup>124</sup> "Wicks Announces Silicosis Probe". Daily Colonist 1956 Aug 15, p. 22. This probe does not appear to have taken place.

<sup>125</sup> See "Mrs. Zucco On Steps Nine Days". Daily Colonist 1961 Jun 9, p. 21. This article provides a brief summary of the entire 'Beatrice Zucco Affair'.

<sup>126</sup> "Zucco Denied Right To Sue for Pension". Daily Colonist 1957 Apr 30, p. 26.

arguments”.<sup>127</sup> A delegation representing 100,000 workers met with the B.C. Cabinet and asked for the firing of W.C.B. Chairman Edwin Eades, who had only been on the job for two years, and his entire Board.<sup>128</sup> The B.C. Federation of Labor passed a resolution calling for dismissal of Eades and an overhaul of the new medical appeal board.<sup>129</sup> Administrative suggestions were also made so as to restrict discretion to the Board which had rapidly become to be seen as distrustful. Other labor groups expressed similar sentiments. Eades would be the first of many Chairmen to be personally demonized on behalf of the Board by various interest groups.

By now, politicians from all parties, including government party members, were calling for yet another Royal Commission on workmen’s compensation, just several years after Chief Justice Sloan’s second Commission.<sup>130</sup> Suggestions that a legislative committee be set up to probe workers’ compensation issues were rejected because the area of interest was too politically charged. On the other hand, the B.C. branch of the Canadian Manufacturers Association and fifteen other employers presented a brief to the Labor Minister asking that no changes be made to the Workmen’s Compensation Act and criticized organized labor in not realizing how generous the benefits in B.C. were in comparison to those in other provinces and ignoring “the underlying principles of the act”.<sup>131</sup>

Eades, after two years of heavy criticism from labor groups, finally decided to speak out. He said workers’ complaints against his Board were misdirected and blamed the Act, calling it

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<sup>127</sup> “Unions To List Objections to WCB Administrators”. The Province 1957 Feb 9, p. 21.

<sup>128</sup> “Gov’t Urged to Fire Compensation Body”. The Vancouver Sun 1957 Sep 17, p. 1.

<sup>129</sup> “Fire Eades’ Cry From Federation”. The Vancouver Sun 1958 Oct 22, p.1

<sup>130</sup> “Labor Probe Asked”. Daily Colonist 1957 Oct 27, p. 3.

<sup>131</sup> “Compensation Hike Bucked by Industry”. Daily Colonist 1957 Dec 20, p. 31.

“outmoded” and stated that the Board would welcome an inquiry.<sup>132</sup> With labor blaming the Board, the Board blaming the Act and business favoring the status quo, the Social Credit government tried to legislatively solve the problems and forestall another expensive and exhaustive Royal Commission. An extensive package of amendments was passed in 1959 that significantly raised the compensation and allowance rates retroactive to several years previous, extended coverage to a number of types of industrial workers previously not covered, overhauled the controversial appeal board procedures so that it more closely resembled Chief Justice Sloan’s vision of it and eased statutory restrictions on diagnosis of silicosis (to the extent that Beatrice Zucco could now receive a widow’s pension).<sup>133</sup> These changes were meant to give the Board more statutory latitude to give injured workers the benefit of the doubt.

The reaction from both labor and business to these changes was generally positive, though the latter objected to the retroactive rate hikes.<sup>134</sup> Despite the positive reaction to the amendments, as had frequently happened before, consensus on workers’ compensation issues quickly broke down. The mining industry, alarmed at their rising assessments due to an intended increase in successful silicosis claims lashed out at the Board as being too liberal in its favorable rulings toward workers.<sup>135</sup> Ironically, the largest mining union in B.C. also criticized the Board

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<sup>132</sup> “Compensation Chief Asks Probe”. The Vancouver Sun 1958 Oct 22, p. 27.

<sup>133</sup> British Columbia. Statutes. 1959; CH. 95:343-356.

<sup>134</sup> See “Labor Hails Improvements in Compensation Setup”. Victoria Daily Times 1959 Mar 5, p. 19 and “New WCB Plan Wins Support”. The Province 1959 Mar 6, p. 2.

<sup>135</sup> “Mine-owners Demand Silicosis Investigation”. Vancouver Province 1960 Nov 9, p. 1.

for its handling of silicosis claims and called for a complete probe of the Act.<sup>136</sup> An exasperated government, through a new Labor Minister, started to drop hints of new Royal Commission in 1961.<sup>137</sup>

### **Commission of Inquiry, Workmen's Compensation Act (1962-1965)**

The third B.C. Royal Commission on workers' compensation issues was appointed in 1962 and began hearings in February. The Labor Minister stated that, "virtually every trade union in the province had asked for the probe" and that there was "much room for improvement".<sup>138</sup> As with the previous two Commissions, one man, the Chief Justice of the B.C. Appeal Court, was selected to meet the seemingly endless challenge of probing workers' compensation issues. Alexander Campbell DesBrisay had been one of industry's lead counsellors in the second Royal Commission.

It is clear from the opening submissions, that unlike the previous two Commissions, it was the Board that was the focus of controversy, not the Act, nor the previous Royal Commission. The B.C. Federation of Labor representative claimed that the number of rejected claims had taken a sharp upward turn recently and the new Board under Eades was the main reason for this. He further stated that inadequacies in Chief Justice Sloan's second Commission was not the cause of the latest Commission, but rather a mean-spirited, insensitive Board that would not give detailed explanation of claim rejections.<sup>139</sup> Sloan, who had passed away a couple of years earlier, was also

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<sup>136</sup> "Negotiate in Silicosis War". The Vancouver Sun 1960 Nov 11, p. 4.

<sup>137</sup> "Inquiry planned into WCB". The Province 1961 Mar 10, p. 1.

<sup>138</sup> "DesBrisay Conducts Probe". Victoria Daily Times 1962 Feb 2, p. 12.

<sup>139</sup> Workmen's Compensation Board. Proceedings of the Public Inquiry in the Matter of the Workmen's Compensation Act. Vancouver; Workmen's Compensation Board; 1965, Vol. 2, p. 187-221.

treated kindly by industry representatives. The head of the B.C. branch of the Teamster's Union said that his union had little dispute with the Act but much with Board.<sup>140</sup> The leader of the opposition New Democratic Party stated at the hearings, "...there is a substantial body of opinion in this province that there has been a deterioration in the operations of the W.C.B. in this last five or six years."<sup>141</sup>

The Commission hearings ran for an unprecedented nearly three years ending in November, 1964. There were over 200 witnesses. The length of the hearings was extended to the sudden passing away of Chief Justice DesBrisay in 1963. His replacement, Justice Charles Tysoe of the B.C. Court of Appeal, had to spend some time reviewing his predecessor's work before resuming the hearings. Unlike the Sloan Commissions, staff tried to limit the lengthy hearings by screening potential witnesses. Both the labor and business sectors in B.C. had fragmented since the previous Commission so there were more representatives of both groups who testified. Members of the medical profession were again prominent, though not in as high a number as before.

As with both the previous Commissions, the family of issues involving monetary allowance and benefit rates was major (see Table VI). Justice Tysoe sided completely with labor on almost all of them. The 3 day waiting period, which had been a source of controversy since the original 1917 Act was once again raised by labor and once again upheld by Justice Tysoe fearing too great a financial burden on business. Another long-standing issue, the compensation

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<sup>140</sup> Ibid, Vol. 60, p. 8675.

<sup>141</sup> Ibid, Vol. 35, p. 5046.

rate, was asked by labor to be raised to up to one hundred percent. The Commission recommended no change after comparing other jurisdictions and citing the previous Commission's report.

One of the main reasons for the government's appointment of the Commission was the dissatisfaction with the medical appeal board. Yet, neither business nor labor were able to come up with many substantial suggestions. Justice Tysoe made a number of recommendations to give the medical appeal board more autonomy and capacity to act more efficiently.<sup>142</sup> But he also warned interest groups to expect another trial and error period. The issue of insuring the previous level of wages to injured workers temporarily unable to resume their previous occupation while being able to work, though not necessarily being able to find work, was again raised by labor. Justice Tysoe said with the advent of unemployment insurance, workers were now protected in these situations.

As with the previous Commission there were many legal issues concerning Board administration and powers and medical issues pertaining to developments in medical science, though there were not as many doctors and lawyers present during the hearings and Justice Tysoe often had to interpret technical issues himself. Labor, as per their opening comments, directed stinging criticism toward the Board and its policies. There were a couple trends that were not present in the previous Commissions. Some sectors of labor movement had legal counsel representing them, including Thomas Berger who would later go on to be a Canadian Supreme Court Justice as well as a royal commissioner himself. Labor did get involved in more technical

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<sup>142</sup> Ibid, p. 367-394.

issues and made more detailed submissions and speeches than in the previous Commissions, although employers, again, generally had a better sense of the ‘big picture’ concerning most issues. Though business also retained legal counsel, it did not do so to the extent it had in the past. In fact, Justice Tysoe made mention of the fact that both sides’ participants tended to be “laymen” for the most part.<sup>143</sup> In general, business organizations were indifferent toward the hearings as compared to the past.

As did Chief Justice Sloan, Justice Tysoe appeared to have handled the major issues in a manner that did not clearly favor industry nor labor. The latter seems to have gotten an edge. Aside from the generous compensation benefit recommendations, the Commissioner suggested that future benefits and allowances be tied to the cost of living, a proposal that was unprecedented and would turn out to be groundbreaking worldwide. Rather surprisingly few labor officials pushed for this. Justice Tysoe sympathized with labor’s discontent with the Board.

After the hearings ended it was anticipated that a long wait would ensue before the final report would be released, especially since Commissioner Tysoe had to thoroughly re-evaluate the late Chief Justice DesBrisay’s part of the proceedings. The masses of tangled medical and particularly legal issues largely fell to Justice Tysoe and his staff owing to the lack of lawyers who participated in the Commission. It took a year for the Commission just to release an interim report in November, 1965. The Premier announced that his government would “carry out every recommendation of that report”.<sup>144</sup> The government immediately increased the benefits and

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<sup>143</sup>Ibid, p. 16.

<sup>144</sup>“Bennett Vows Pension Hike For Widows and Children”. The Sun 1965 Oct 26, p. 1.

pensions retroactive to January 1, 1965 as per the recommendations and tied future benefit increases to the consumer price index through an order-in-council.<sup>145</sup>

Justice Tysoe's final report was released to the Legislature in January, 1966. As was to be expected from a report favoring labor, attitudes were split. B.C. Federation of Labor president said that he hoped that, "the new Act would embody most of the terms and suggestions made in the report..." The secretary-treasurer of the B.C.F.L. stated, "...we endorsed in the main the suggestions of Mr. Justice Tysoe. We are hopeful the government will move in this direction."<sup>146</sup> The public reaction of business was focused on the pension and benefits being tied to the consumer price index, especially with the rapidly rising inflation rate in late 1960's. The Chairman of the B.C. wing of the Canadian Manufacturers' Association said, "...because of the serious ramifications these increases will have on B.C. industry the government should accept its responsibility and assume the annual costs of these benefits." A representative of the B.C. Mining Association said, "Very few people realize that the total impact of all these things amount to a tremendous amount of dollars." A representative of the Automotive Transport Association stated, "Everybody is giving concessions to labor and nobody will deny them."<sup>147</sup>

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<sup>145</sup> "\$20 Million Boost for WCB Benefits". Vancouver Province 1965 Nov 11, p. 1.

<sup>146</sup> "Compensation Act Overhaul Long Overdue, Says Labor". The Vancouver Sun 1967 Mar 8, p. 2.

<sup>147</sup> "Government Aid Asked on Cost". The Vancouver Sun 1967 Mar 22, p. 31.

Despite the government's promise to wholly enact Justice Tysoe's recommendations, there would be much controversy before this would happen. After the receiving the report the government announced that amendments to the W.C.A. would be delayed until the following legislative session. With this delay being at least six months, a bitter debate in the Legislature ensued with the opposition N.D.P. orchestrating a filibuster.<sup>148</sup> Organized labor groups, already angry at the Social Credit government over other issues, threatened a general strike to protest the delay. However, the government did not back down.

During the next session in 1966-67, it was widely expected that the government would finally enact the amendments. Yet, surprisingly, this did not happen. Even though legislation was before the Assembly and expected to be passed, the government withdrew it and announced that a completely re-written Act was necessary and a Legislative Committee's study was thus needed which would result in another year's delay. Opposition to this came not only from rival parties in the Legislature but even from government backbenchers.<sup>149</sup>

The Social Credit government finally made good on its promise in March, 1968. After a Legislative Committee had studied the issue for months a completely re-written Act was presented and passed in the Legislature. The new Act adopted virtually all of Justice Tysoe's recommendations as the opposition and organized labor had been demanding for two years.<sup>150</sup> Significant changes included simplifying the terms under which a worker could claim that an injury had taken place from an industrial accident, coverage for volunteer workers, and shifting

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<sup>148</sup> "I'll Fight Next Election On General Strike Issue". The Vancouver Sun 1966 Mar 17, p. 10.

<sup>149</sup> "MLAs Flail Soreads for Work-Injury Bill". The Vancouver Sun 1967 Mar 22, p. 15.

<sup>150</sup> British Columbia. Statutes. 1968; CH. 59:377-433.

the onus on the Board to disprove a worker's claim rather than the reverse. After much criticism against the government, amid suspicion that it would never fully act on Justice Tysoe's report, there was praise. The leader of the opposition Liberals said the year's delay for detailed study by a Legislative Committee was worth it and that this was, "the way parliamentary procedure in a democracy should work."<sup>151</sup>

As was to be the case with the Sloan Commissions there would be a short period of tranquillity in workers' compensation issues in B.C. At the B.C.F.L. convention in 1971, the only major changes that were demanded were, predictably, elimination of the waiting period and upgrading of first aid features.<sup>152</sup> These demands were complied with in 1972 when the government, with an election in the offing, passed a small bill to amend the W.C.A.<sup>153</sup> The bill also raised pension bases and extended the time limit for a worker to file a claim.

The Social Credit government was defeated in 1972 by the N.D.P. For the first time in B.C. history there was a majority government that was openly backed by unions and workers. However, as with the Sloan Commissions, it was not long before the bloom would disappear from the Tysoe Commission and yet another Royal Commission would eventually be sought.

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<sup>151</sup> "Injury Pay Bill Gets Approval". The Vancouver Sun 1968 Feb 29, p. 14.

<sup>152</sup> B.C. Federation of Labor. Submission on Workmen's Compensation in British Columbia to the Minister of Labor. Vancouver; B.C. Federation of Labor; 1971.

<sup>153</sup> British Columbia. Statutes. 1972; CH. 64:291-297.

## **BOARD POLITICIZATION, TURNOVER AND RESTRUCTURING**

### **Politicization of the Workers' Compensation Board**

With the election of the N.D.P. brought many hopes for a new era in labor power and impact in bodies like the Workmen's Compensation Board. The new labor minister was a former miner and union head. The thoroughness of the outgoing Social Credit government's changes to the Act meant that workers' compensation issues were not a high priority for the incoming N.D.P. government. Nonetheless, the new government did act within a year of their election. Wording in the Act was changed so that injury or illness could be more easily attributed to his/her workplace. The most significant change was that external, government-appointed, boards of review would hear appeals to Board decisions.

The N.D.P. also appointed an entirely new Board. The new Chairman Terry Ison, though not a typical patronage hiring, was considered left of center politically by conservative politicians and business. Ison was more proactive in trying to change Board policies than his predecessors. In 1974, the government introduced its second set of amendments to the Act which changed the official name of the statute to the "Workers' Compensation Act", increased pension bases, revised the formula for calculating pensions, mandated employer and union representatives to accompany W.C.B. inspectors on job-site tours and increased penalties and restrictions on employers in relation to work place safety conditions.<sup>154</sup> Another set of amendments was passed in 1975 the most significant of which was that workers would now receive pensions on the basis of specific

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<sup>154</sup> British Columbia. Statutes. 1974; CH. 101:687-710.

functional disability (i.e. loss of a finger) and would take into account their loss of occupational earnings.<sup>155</sup>

In 1975, the government was defeated by the Social Credit which campaigned heavily on free spending and wasteful bureaucracies headed by N.D.P. appointees. The Workers' Compensation Board was a 'poster boy' for this line of thinking. The actuarial deficit in W.C.B. reserve funds had ballooned to \$85.58 million by 1976.<sup>156</sup> Chairman Ison, who had tendered his resignation before the new government took power, was immediately dismissed by the new Attorney-General. Labor leaders voiced protests over the firing.<sup>157</sup>

The new government's next act in regards to the Board was to commission separately both an operational review and actuarial analysis by two Vancouver consulting firms in early 1976. The actuarial report was an indictment of the Board as deficient in forecasting costs and deceitful in presenting its finances. It recommended the maintenance of benefit levels for the most part, some minor technical changes in benefit assessment methodology, but also stated that it was not "necessary or desirable for the B.C. Act to provide benefits equal to or greater than those provided in other provinces in every instance...".<sup>158</sup> The operational review recommended a maintenance in Board structure but also a new Board of Governors to oversee the executive,

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<sup>155</sup> British Columbia. Statutes. 1975; CH. 81:435-439.

<sup>156</sup> Moeti M. The Structural Role of the Workers' Compensation Board in the Individual Economy of British Columbia (dissertation). Vancouver(BC):University of British Columbia; 1988, 58.

<sup>157</sup> "Socredits 'bending' on WCB". The Province 1976 Apr 23, p. 8.

<sup>158</sup> Eckler, Brown, Segal & Company, Report on Actuarial Aspects of Workers' Compensation Board of British Columbia. Vancouver; Eckler, Brown, Segal & Company Ltd; 1976.

particularly the Chairman which it felt had too much power.<sup>159</sup> It also called for improved communication throughout the organization and cost cutting.

The government appointed Adam Little, a medical doctor as Ison's replacement. His appointment did not generate much controversy. In the wake of the Energy Crisis, B.C. business representatives applied pressure on the Social Credit government to find ways to cut W.C.B. assessments. In response, the government cut back staff at the Board as the two reports had recommended. The result was that claims, and particularly, claim appeals, took much longer to process. Media publicity began to be shone on cases where appeals could take up to two years after the original workplace injury.

Criticism against the Board, especially its administrative procedures, mounted especially from workers. These culminated in a series of landmark B.C. Supreme Court cases in the 1980's. In Guadagni v Workers' Compensation Board a worker brought forth a case where his successful appeal was overturned by the Board.<sup>160</sup> The Court ruled that a Workers' Compensation Review Board (W.C.R.B.) decision could not be altered by the Board since the intent of the W.C.A. was to create the W.C.R.B. as an "independent" appeal board. By overturning W.C.R.B. decisions, the court found that the Board had acted beyond its jurisdiction. It ordered that the more than twenty cases dealt with in a similar manner be paid in accordance with the final Review Board decision with full backpayments and interest. In Napoli v Workers' Compensation Board the

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<sup>159</sup> Ross PS. Review of Organization and Administration: Workers' Compensation Board of British Columbia. Vancouver; PS Ross & Partners; 1976.

<sup>160</sup> Guadagni vs. Workers' Compensation Board, 24 B.C.L.R.(2d) (1988); 352-359.

Court ordered all claimant files to be accessible to the worker.<sup>161</sup> Previously, all parties to the appeal process except the worker were allowed access to them. The Court ruled that the exception was a violation of the federal Privacy Act.

In another case, Banks v Workers' v Compensation Board, the long standing practice of suspending payments pending completion of an appeal, which could take years, was challenged.<sup>162</sup> The Act had been silent on this issue. The Court stated, "There is an absolute entitlement under the Act to payment of compensation once a claim has been accepted by an adjudicator. Nothing in the Act authorizes the board to suspend payments..." The judge further stated that even if the worker ultimately lost, whatever benefits had been granted would remain the property of the claimant.

These stinging rebukes from the highest court in the province enforced and encouraged the criticism being leveled at the Board. One of the harshest critics was the independent provincial Ombudsman. Though mandated to field individual complaints against all bureaucracies, a quarter of all problem issues submitted were to do with the Workers' Compensation Board.<sup>163</sup> The Supreme Court cases mentioned and others were often encouraged and assisted by the Ombudsman's office. In every annual report through the 1980's, the

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<sup>161</sup>Napoli vs. Workers' Compensation Board, 29 B.C.L.R. (1981); 371-378.

<sup>162</sup> Banks vs. Workers' Compensation Board, 25 B.C.L.R. (2d) (1988):282-292.

<sup>163</sup> Ombudsman's Office of British Columbia. Workers' Compensation System Study, Public Report No. 7. Ombudsman of British Columbia; Victoria; Queen's Printer; 1987, 7.

Ombudsman would reserve considerable criticism for the Board; specifically the administration and appeal system. The Ombudsman released a special report on the W.C.B. in 1987 supporting the Court rulings and calling for the Board to act swiftly on them. The report also recommended giving Review Board members long tenure, to promote independence, and asked the government to amend the W.C.A. to give the Review Board more power, specifically making their decisions unalterable by the W.C.B., and guidelines to make it more effective.

The appeal system's speed became a lightning rod of criticism against the Board. On average, according to the Ombudsman an appeal process could take over two years to complete. He highlighted a case where it took a worker almost six years before the Board finally agreed to raise his compensation after appeals and re-appeals. The office also blasted the Board for not arranging enough face-to-face meetings between W.C.B. adjudicators and claimants and for basing too many claims decisions on the contents of claims files alone. In 1986 the Ombudsman called the Workers' Compensation Board "B.C.'s worst bureaucracy".<sup>164</sup>

In 1985, the B.C.F.L. conducted a public inquiry, staging hearings in 15 locales around the province, into workers' compensation. Their report called for another Royal Commission and mandatory periodic public reviews of the Board. It also called for the industrial health and safety regulations to be given more enforcement power and to be developed further. Other suggestions included, coverage for all workers, an increase in Board staff especially job-site inspectors,

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<sup>164</sup> "Purge just the latest in BC WCB troubles". Canadian Press Newswire 1995 Jul 15.

enhancement of the independence of the appeal boards by moving their facilities away from W.C.B. headquarters and labor being consulted in future Chairman appointments.<sup>165</sup>

Fueling the criticism of the Board was the apparent and open politicizing of the Board. Whereas Board members, particularly Chairmen, were intended to hold long tenures, be independent and be appointed on the basis of legal and academic background the post-N.D.P. Social Credit governments had abandoned this practice. Three Chairmen had been appointed after Ison's firing up to 1986. Two of them resigned under controversy.<sup>166</sup> At the end of that year, Jim Neilsen, a former Health Minister and long time, though recently defeated Social Credit politician, was appointed to the Chair. This was the first time that a new W.C.B. Chairman was seen as a clear patronage appointee.<sup>167</sup> One of his first acts as Chairman was to rebate approximately \$99 million in assessment surplus to employers.<sup>168</sup> An outraged B.C.F.L. challenged the rebate in B.C. Supreme Court but was defeated.<sup>169</sup> The move confirmed to labor critics what they had been saying about Neilsen--that he was clearly favoring business which in turn was clearly supporting the Social Credit Party. Neilsen and the Board defended the rebate attributing it to a drastic fall in workplace accidents, low inflation and high returns on investments.

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<sup>165</sup> British Columbia Federation of Labour. Report of the B.C. Federation of Labour's Public Inquiry into the B.C. Worker's Compensation System. Vancouver; The Federation; 1985, p. 88-91.

<sup>166</sup> "British Columbia Workers' Compensation Board Chief Quits After Lecture". The Vancouver Sun 1986 Jan 14, p. A1, A2.

<sup>167</sup> "Neilsen Job Decried as Patronage". The Vancouver Sun 1986 Dec 23, p. B1.

<sup>168</sup> "Union lawyers call WCB employer credit an outrage". The Vancouver Sun 1987 Jun 13, p. B7.

<sup>169</sup> "Labor loses money fight with WCB". The Vancouver Sun 1988 Jul 8, p. A1.

The surplus was an indication that while workers and their advocates may not have been satisfied with the Board, from a financial point of view, B.C.'s largest crown corporation had turned the corner. The huge deficits and debt of the 1970's had been erased and surpluses were the norm in the 1980's.<sup>170</sup> While acknowledging the delays in the appeal system, Neilsen, much more outspoken than most of his predecessors, said that the "W.C.B. is often used as the whipping boy for politics in B.C."<sup>171</sup> He further pointed out that Workers' Compensation Boards elsewhere, particularly Ontario and Quebec, had billions of dollars in under-funding. Other Board officials said that highly publicized individual cases were anomalies and that the vast majority of claims were processed without controversy. Neilsen pointed out that international organizations recognized B.C.'s Board with awards in the areas of industrial accidents and excellence amongst compensation insurance bodies.<sup>172</sup>

Despite Neilsen's and the Board's view of itself, the government named an advisory committee to look into problems and complaints associated with the W.C.B. in 1988. The thirteen-member task force, which was to report to the Minister of Labor, consisted of representatives of both labor and business and was chaired by a former Labor Relations Board head.<sup>173</sup> The task force delivered a report that called for a complete overhaul of the Board

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<sup>170</sup> "Compensation Gets Out of Red". The Vancouver Sun 1986 Sep 15, p. A1, A2.

<sup>171</sup> "Slugging it out on the WCB battleground". The Vancouver Sun 1987 Jul 11, p. A1.

<sup>172</sup> Workers' Compensation Board of British Columbia. Annual Report. Workers' Compensation Board; Richmond(BC); p. 2.

<sup>173</sup> "Panel Named to Study WCB". The Vancouver Sun 1988 Apr 16, p. A12.

structure, which the government decided to act upon (see Table VII). The controversial Neilsen resigned during the force's work.<sup>174</sup> A new era in the B.C. Workers' Compensation Board was set to begin.

### **New Structure, New Turmoil**

The government introduced Bill 27 in 1989 and in doing so accepted almost all of the Labor Minister's advisory committee's recommendations. Its purpose was to completely restructure the Workers' Compensation Board with the changes to be effective June, 1991. It replaced the system of Commissioners with a Board of Governors and created a new Appeal Division headed by a Chief Appeal Commissioner. The underlying principle behind this was separation of the policymaking and appellate functions of the old system. Bill 27 also created the new position of President and Chief Executive Officer to administer W.C.B. functions on a day-to-day basis.

There were to be 13 voting members on the Board of Governors of the W.C.B., appointed by the government for terms of four to six years. There would be a voting Chairman, with five Governors designated as "representative of workers", five designated as "representative of employers" and two other voting members "representative of the public interest". All of them would serve their roles on a part-time basis. The President and Chief Appeal Commissioner would be non-voting members. The Board of Governors would be the highest authority of the W.C.B. and would "approve and superintend the policies and direction of the board..." The Chairman would decide when the Board of Governors would sit.

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<sup>174</sup> "Neilsen Quits WCB Post to Take Novel Approach". The Vancouver Sun 1989 Feb 3, p. A3.

One of its tasks was to appoint the Chief Appeals Commissioner as well as number of other Appeal Commissioners. As with the Board of Governors, the Appeal Commissioners would be designated as representatives of labor, employers or the public interest. The Appeal Division was given authority to hear appeals from Review Board decisions, referrals from the President, any previous appeal decisions, occupational safety and health penalty appeals, assessment matters and appeals from cases under the Criminal Injury Compensation Act. As in the past, there would continue to be a separate medical review panel with the government appointing physicians to the Chairmen of the Panels. The dispute would have to regard a medical issue and access to this avenue was made easier than before.

A major impetus to the creation of the Appeal Division was apparently the need to address the incongruency between the W.C.B. and the external Review Board. The W.C.R.B. which reverses W.C.B. decisions about half the time, had maintained that it was not obliged to render decisions that were consistent W.C.B. policy; and in practice, they had not, especially if they had deemed any such policy unlawful.<sup>175</sup> The claims adjudicator was then put in a position of having to implement the W.C.R.B. ruling or refer the case back to the Commissioners, a role they were not intended to play, and in many cases not properly qualified to do so.

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<sup>175</sup> Hunt HA, Barth PS, Leahy MJ. Workers' Compensation in British Columbia; An Administrative Inventory at a Time of Transition. Kalamazoo(MI); W.E. Upjohn Institute for Employment Research; 1991, 49.

The Board operated with an Acting Chairman from Neilsen's resignation until the restructuring was to take place more than two years later. The Social Credit government, stung by criticism over the Neilsen appointment, went a different route this time by hiring Ken Dye, former Auditor-General of the Federal Government in 1991. Dye had been seen as impartial and independent by all federal parties in his position in Ottawa.<sup>176</sup> The first Chairman of the Board of Governors was lawyer and arbitrator Jim Dorsey, also considered to be a neutral appointment.<sup>177</sup>

The N.D.P. defeated the Social Credit government in October, 1991, so once again there was a labor-backed government in B.C. One of the first acts of the new Board of Governors was to hire Connie Munroe as Chief Appeals Commissioner. Munroe, a failed N.D.P. candidate and wife of a prominent labor leader, was immediately branded as a pure patronage appointment by opposition parties and business. The credibility of the new Board of Governors was immediately tarnished. Munroe would turn out to be a controversial figure. She was given a mandate to clear a backlog of over 1,700 appeals in a short period of time. In less than a year, she had done so, primarily by hiring more staff for the Appeal Division.<sup>178</sup> Business criticized the skyrocketing budget of her Division, while labor praised the swiftness of her action.

In 1994, the Liberal opposition, acting on an inside tip, revealed some questionable relocation expenses and car allowances for the Chief Appeal Commissioner.<sup>179</sup> The media and all opposition parties pounced on the story and held Munroe up as the 'poster girl' for overpaid

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<sup>176</sup> "Dye Posted to BC Compensation Board". *Globe & Mail* 1991 Mar 28, p. B2.

<sup>177</sup> "Lawyer, Arbitrator Dorsey Named as WCB Chairman". *The Vancouver Sun* 1990 Nov 20, p. A9.

<sup>178</sup> "Appeals Commissioner Munro Adds Extra Staff to Cut WCB Backlog". *The Vancouver Sun* 1991 Aug 31, p. E1.

<sup>179</sup> "\$88,000 Moving Expense Queried". *The Vancouver Sun* 1994 Dec 16, p. A1.

senior bureaucrats. Dorsey, who had approved of the expenses, was also brought into the political controversy. Though there was nothing illegal about the expenses, opposition parties demanded Munroe's dismissal. Munroe, who had some support from industry because of the way she ran the Appeals Division, resigned in 1996 surrounded by more controversy over her severance package.<sup>180</sup>

In 1993, the N.D.P. government amended the W.C.A. to include domestic servants and farm workers, both of which had been issues for more than 75 years.<sup>181</sup> That same year, more controversy in the Board was about to erupt. President Dye was dismissed by the Board of Governors for allegedly failing a psychological assessment test.<sup>182</sup> Howls of protest were heard from opposition politicians and business who feared that a patronage appointment like Munroe's, was in the offing. The government decided that Dorsey would assume the dual role of President and Chairman indefinitely. Labor which backed Dorsey was comfortable with this arrangement. Business had turned against Dorsey and repeatedly demanded his resignation from both posts.<sup>183</sup> Part of the reason for this was that, as with the previous N.D.P. government, the Board's unfunded liability had surged to over \$150 million by 1993.<sup>184</sup> In late 1993, a new President, Dale Parker was hired.

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<sup>180</sup> "Munro Severance Package Outrages Liberals". Canadian Press Newswire 1996 Apr 4.

<sup>181</sup> British Columbia. Statutes. 1993; CH. 34:263-265.

<sup>182</sup> "Dye Fired As Head of WCB: Review of Performance Ends With Failing Grade". The Vancouver Sun 1993 Aug 4, p. A1.

<sup>183</sup> "WCB Chair Defends Financial Position: Fluctuating Factors Cited As Reason". The Vancouver Sun 1994 Jan 18, p. D2.

<sup>184</sup> "Board Lost At Least \$150 Million Last Year". The Vancouver Sun 1993 Feb 4, p. A3.

In 1994, the Liberal opposition released a report based on public hearings held in six locales around the province.<sup>185</sup> The report criticized deteriorating service levels, “out of control” administrative costs and the growing unfunded liability. It also urged that many of the Governor appointments made in 1991 and coming up for renewal not be re-appointed. Shortly after this report, Dorsey resigned under heavy criticism from employers.<sup>186</sup>

In 1995, the Board reached an agreement with its employees that contained a controversial clause.<sup>187</sup> Parker and the Board of Governors came under intense criticism for this. In August, 1995, Parker who hadn’t been on the job for a year, tendered his resignation citing an inability to work with the Board of Governors which was split on too many issues. He also said that criticism over the employees’ agreement and political interference were factors. By now opposition politicians had been calling for the dismissal of the entire Board. Just days after Parker’s resignation, the government passed legislation allowing the dismissal of the Board of Governors. The Labor Minister followed through and issued the firings. He called the Board, “dysfunctional” in its handling of the controversial employees’ contract.<sup>188</sup>

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<sup>185</sup> B.C. Liberals. *A Crisis In Leadership, The Workers’ Compensation System in British Columbia*. Victoria(BC); Queen’s Printer; 1994.

<sup>186</sup> “WCB’s Chief Resigns Under Strong Pressure by Employers”. *The Vancouver Sun* 1994 Dec 17, p. A1.

<sup>187</sup> The clause allowed 2,400 unionized employees to earn one day off for working an extra 2 minutes a day beginning in Jan, 1997.

<sup>188</sup> “WCB Board Fired After Chief Quits”. *The Vancouver Sun* 1995 Jul 11, p. A1, A2.

Less than a month after the purge, Parker agreed to come back to his post as President.<sup>189</sup>  
The government announced that a “Panel of Administrators” would be temporarily hired to fill the role of the Board of Governors. In 1996, the fourth Royal Commission on workers’ compensation issues was appointed. Judge Gurmail Singh Gill agreed to Chair the Commission.<sup>190</sup>

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<sup>189</sup> “WCB Chief’s Return Wins Divided Reaction” The Vancouver Sun 1995 Aug 5, p. A3.

<sup>190</sup> “Judge Named to Investigation of WCB Problems” The Vancouver Sun 1996 Nov 9, p. A16.

**TABLE I**  
**ROYAL COMMISSION ON LABOUR**  
**RECOMMENDATIONS\* AND LEGISLATIVE RESPONSE 1914-1927**

<b>ISSUE</b>	<b>RECOMMENDATION</b>	<b>LEGISLATION</b>	<b>ADOPTED</b>
Compulsory state administered insurance system	yes	yes	yes
Eliminate employer liability	yes	yes	yes
Create insurance pool from all employers only	yes	yes	yes
Compensation payable to workers in hazardous employments only	yes	no	no
Non-hazardous industries can voluntarily join scheme	yes	yes	yes
WCB to be able to add industries covered	yes	yes	yes
WCB Commissioners to have 10 year tenure	yes	yes	yes
WCB to have complete authority regarding employer Assessments	yes	yes	yes
WCB to have authority regarding procedures and operations	yes	yes	yes
Assessment based on % of accidents and pay-roll	yes	yes	yes
Waiting period	2 weeks	3 days	no
No compensation for injured worker who was wilfully negligent unless death or total disablement	yes	yes	yes
Workers covered regardless of country of origin	yes	yes	yes
Occupational diseases to be covered	yes	yes	yes
Compensation payable weekly	yes	yes	yes
WCB to have power to make lump sum payment	yes	yes	yes
Compensation to be proportional to injured worker's earnings capacity	yes	yes	yes
Dependent widow/invalid widower of killed worker to get fixed monthly pension	yes	yes	yes
Dependent children, under 16, of killed worker to get monthly allowance	yes	yes	yes
No court appeal of WCB decision	yes	yes	yes
WCB to be allowed to receive court's opinion on questions of law	yes	no	no

\*Issues listed refer only to those that related to workmen's compensation and occupational safety and health policy.

**TABLE II**  
**PINEO COMMITTEE OF INVESTIGATION ON WORKMEN'S COMPENSATION LAWS**  
**RECOMMENDATIONS AND LEGISLATIVE RESPONSE 1917-1927**

ISSUE	RECOMMENDATION	LEGISLATION	ADOPTED
Give large/small railway companies different classifications	yes	yes	yes
Separate classifications for large/small companies in other industries	no	no	yes
Provision for full medical aid	yes	yes	yes
Employers and employees both contribute to Medical Aid Fund	yes	yes	yes
Preserve existing medical aid systems in large industries	yes	yes	yes
Waiting period	3 days	3 days	yes
WCB to administer and be responsible for safety orders and accident-prevention rules and have its own inspectors	yes	yes	yes
Joint employer/employee advisory committees to assist in formulation of safety rules	yes	yes	yes
Complete exclusion of private casualty insurance firms	yes	yes	yes
Compulsory state administered insurance fund	yes	yes	yes
Administration costs of state insurance fund be paid by B.C. government	yes	yes	yes
Reduction of widow's pension and dependent children's allowance to 55% of killed worker's wages	eliminate it	eliminated	yes
Widow or invalid widower's pension	\$20/mo	\$20/mo	yes
Dependent children's allowance	\$5/mo	\$5/mo	yes
Minimum payment for totally disabled workers	\$5/wk	\$5/wk	yes
No age limit for invalid children receiving allowance	yes	yes	yes
Burial expenses	up to \$75	up to \$75	yes
Orphan's allowance	\$10/mo	\$10/mo	yes
Dependent parents of killed worker (under 21) allowance	\$20/mo until 21'st birthday	WCB discretion	partially
Other dependents	WCB discretion	WCB discretion	yes
Injured worker must notify employer immediately of accident	yes	yes	yes

**TABLE II (Continued)**  
**PINEO COMMITTEE OF INVESTIGATION ON WORKMEN'S COMPENSATION LAWS**  
**RECOMMENDATIONS AND LEGISLATIVE RESPONSE 1917-1927**

ISSUE	RECOMMENDATION	LEGISLATION	ADOPTED
Injured worker to provide physician's certificate or proof as demanded by WCB with claim application	yes	yes	yes
Attending physician to assist injured worker in paper work without charge	yes	yes	yes
Number of separate (non-railway) classes of industries	9	9	yes
Assessments made monthly or quarterly	yes	yes	yes
WCB allowed to let assessments lapse if fund sufficient	yes	yes	yes
Employers must pay assessments when due without demand	yes	yes	yes
Contractor and contractee equally liable for assessments	yes	yes	yes
Overdue assessments be preferred debts for insolvency cases	yes	yes	yes
Establish merit rating system for individual employers	yes	yes	yes
Establish annual capitalized reserves on proper actuarial Basis for payments accruing in future years toward death And permanent disability	yes	yes	yes
Make system equivalent to insurance at cost through refunds and credits if excess money is collected	yes	yes	yes
Attachment or assignment of compensation payments	no	no	yes
Provision for compensation for worker injured outside B.C.	no	yes	no
Provision for suspension of worker if he is suffering from Industrial disease and provide compensation	yes	yes	yes
B.C. government to appoint politically neutral Board	yes	no	no
Number of Board Commissioners	3	3	yes
Commissioners to have staggered terms	yes	yes	yes
Commissioners to have at least 10 years' tenure	yes	yes	yes
Board headquarters to be at most appropriate locale in terms of the provincial economy and convenience	yes	yes	yes

**TABLE II (Continued)**  
**PINEO COMMITTEE OF INVESTIGATION ON WORKMEN'S COMPENSATION LAWS**  
**RECOMMENDATIONS AND LEGISLATIVE RESPONSE 1917-1927**

<b>ISSUE</b>	<b>RECOMMENDATION</b>	<b>LEGISLATION</b>	<b>ADOPTED</b>
Board given power to appoint/dismiss employees	yes	yes	yes
Board given power to set WCB employee salaries with Approval of B.C. government	yes	yes	yes
Board given authority to make investments of Accident Fund with government guaranteeing its safe-keeping	yes	yes	yes
Board given power to make regulations for administration of W.C.A. without B.C. government approval	yes	yes	yes
Board given power to determine sufficiency of Accident Fund without B.C. government approval	yes	yes	yes
Mandatory audit of WCB's accounts	yes	yes	yes
Board to provide annual report	yes	yes	yes
Right of appeal to Board decisions	no	no	yes
WCB administrative costs to be paid by B.C. government	Substantial portion	Board members only	no
Assign all industries within the classes formed	yes	yes	yes
Give Board wide discretion in determining average earnings	yes	yes	yes
Give Board wide discretion to consider evidence of potential earnings in determining average earnings of minors	yes	yes	yes
All rights of action removed be covered by W.C.A. in respect to any industrial accident	yes	yes	yes
Board to have discretionary power to determine if and when medical examination is to take place	yes	yes	yes
Board to have discretionary power to suspend payments to injured worker who is wilfully negligent while recovering	yes	yes	yes
Provision for aesthetic treatment for facial disfiguration	yes	yes	yes
Penalty limit and nature to be clearly spelled out in W.C.A.	yes	yes	yes
Board be given discretionary power to relieve penalties	yes	yes	yes
Structure W.C.A. into appropriate divisions of subjects	yes	yes	yes
Retain tort doctrines for industries not covered in W.C.A.	yes	yes	yes

**TABLE III**  
**SELECT COMMITTEE re WORKMEN'S COMPENSATION ACT**  
**RECOMMENDATIONS AND LEGISLATIVE RESPONSE 1928-1941**

ISSUE	RECOMMENDATION	LEGISLATION	ADOPTED
Create appeal mechanism from WCB decisions	no	no	yes
Add to industrial disease list	yes	silicosis only	no

**TABLE IV  
SLOAN ROYAL COMMISSION I  
RECOMMENDATIONS AND LEGISLATIVE RESPONSE 1942-1949**

<b>ISSUE</b>	<b>RECOMMENDATION</b>	<b>LEGISLATION</b>	<b>ADOPTED</b>
Compensation rate	no change	no change	yes
Maximum allowance	\$2,000 to \$2,500	\$2,000 to \$2,500	yes
Minimum allowance	\$10/wk to \$12.50/wk	\$10/wk to \$12.50/wk	yes
3 day waiting period	no change	no change	yes
Retroactive period	no change	no change	yes
Cost of living allowance bonus	no change	no change	yes
Increasing age of dependent children eligible for WC if parent dies	16 to 18 if in school	16 to 18 if in school	yes
Allowance for dependent children if parent dies	\$7.5/mo to \$10/mo	\$7.5/mo to \$10/mo	yes
Maximum payment to family if parent dies	\$70/mo to \$80/mo	\$70/mo to \$80/mo	yes
Orphan allowances	\$15/mo to \$20/mo until 18	\$15/mo to \$20/mo until 18	yes
Payment on top of funeral expense	\$100	\$125	yes
Maximum payment if widow remarries	Eliminate it	eliminated	yes
Parents of unmarried killed worker to get WC	if dependents	if dependents	yes
Maximum allowance for dependent parents	\$30/mo to \$40/mo	\$30/mo to \$40/mo	yes
Parents of unmarried killed worker to be able to sue employer	No	no	yes
Monetary increases to be retroactive	No	no	yes
Average earnings method	no change	no change	yes
WCB rates for hospitals	no change	no change	yes
Per diem for medical visits by injured workers	Yes	yes (\$2.50/day)	yes
Allow WCB to revise workers' contribution to medical aid fund	Yes	yes	yes
Allow WCB to evaluate real earnings potential	Yes	yes	yes
Provision for rehabilitation	Yes	yes	yes
Coverage for every worker (Blanket coverage)	No	no	yes
Partial compensation for hernia injuries	Yes	yes	yes
Widen silicosis coverage	Yes	?	?
Silicosis for coal miners, not sand blasters	Yes	yes	yes
Add pneumoconiosis as industrial disease	Yes	yes	yes

**TABLE IV (Continued)**  
**SLOAN ROYAL COMMISSION I**  
**RECOMMENDATIONS AND LEGISLATIVE RESPONSE 1942-1949**

ISSUE	RECOMMENDATION	LEGISLATION	ADOPTED
All silicotics to receive minimum compensation	No	no	yes
Reduce residency period in B.C. for miners to qualify for silicosis compensation	No	yes	no
Eliminate 5 year period of silicotic to file claim	allow exceptions	allow exceptions	yes
Compensation and vocational rehabilitation to non-disabled who are advised to quit mining	yes (66% of earning Differential)	no	no
Immediate notification of X-rays to silicotic	yes	no	no
Stricter mine safety laws to prevent silicosis	no	no	yes
Miners' committee to assist WCB	no	yes	no
Civic employees to get compensation for silicosis	yes	no	no
Change method of average earnings for longshoremen	no	no	yes
Establish industrial hygiene bureau	yes	yes	yes
Loggers Association merit scheme for logging industry	yes	yes	yes
Unify & simplify accident prevention services across BC	yes	no	no
Elected labour representative on WCB	no	no	yes
Labour advocate position in WCB	no	no	yes
Establish medical appeal board	no	no	yes
WCB priority on payments limited to 3 years	yes	yes	yes
Speeding doctors' response to WCB administrative duties	no	yes	no
Send cheques to injured workers twice monthly	no	no	yes
Establish Victoria office	no	no	yes

**Note:** In cases where question marks appear, it was not possible to positively determine whether or not the said recommendations took place. In some cases, the wording of relevant statutes was ambiguous or simply beyond the legal interpretative skills of the author. In others, there was no documented proof that the changes took place or not. Issues are listed in the order that they were presented in the Royal Commission final report.

**TABLE V**  
**SLOAN ROYAL COMMISSION II**  
**RECOMMENDATIONS AND LEGISLATIVE RESPONSE 1952-1962**

ISSUE	RECOMMENDATION	LEGISLATION	ADOPTED
Agricultural workers to be covered	yes	no	no
Domestic servants not to be excluded	yes	yes	yes
Office personnel to be covered	no	no	yes
Coverage for every worker (Blanket coverage)	no	no	yes
Rheumatism, lumbago, sciatica, arthritis to be added as Industrial diseases	None of them	none of them	yes
Industrial deafness added to schedule	yes	yes	yes
Anthracosis added as industrial disease	no	no	yes
Posting of workplace conditions at all times	yes	yes	yes
Educate and protect coal miners from silicosis	yes	no	no
Compulsory aluminum dust therapy coverage	no	no	yes
Statutory silicosis amendments (6 separate proposals)	1 o 6 [8(6) (d)]	1 o 6 [8(6) (d)]	yes
Eliminate waiting period for tuberculosis	no	no	yes
Eliminate time limit for hernia operation & alter the provisio	yes	yes	yes
WCB allowed to blacklist doctors	yes	yes	yes
Allow leeway for number of specialists WCB consults	yes	yes	yes
Allow coverage for visits to chiropradists	yes	yes	yes
Establish medical appeal board (M.A.B.)	yes	yes	yes
M.A.B. composed of chairman & 2 specialists	yes	yes	yes
M.A.B. to have final and binding authority	yes	yes	yes
M.A.B. jurisdiction	Function disability	functional disability & errors & continuance of WC	partially
M.A.B. appeals allowed by employers & employees	yes	yes	yes
M.A.B. conclusions to have retrospective effect	no	no	yes
M.A.B. procedural discretion	Appeal board control	appeal board control	yes
M.A.B. appeal board costs to come from Accident Fund	yes	yes	yes
M.A.B. to have full powers of WCB	yes	yes	yes
Allow WC solely on basis of physical function loss	yes	yes	yes
Compensation rate	66 2/3% to 70%	66 2/3% to 75%	partially

**TABLE V (Continued)**  
**SLOAN ROYAL COMMISSION II**  
**RECOMMENDATIONS AND LEGISLATIVE RESPONSE 1952-1962**

ISSUE	RECOMMENDATION	LEGISLATION	ADOPTED
Maximum allowance	\$2,500 to \$3,600	\$2,500 to \$5,000	yes*
Minimum allowance	\$12.50/wk to \$15/wk	\$12.50/wk to \$25/wk	yes*
Widow's pension	\$50/mo to \$75/wk	\$50/mo to \$90/wk	yes*
Children's allowance if parent killed on the job	\$12.50/mo to \$20/mo	\$12.50/mo to \$35/mo	yes*
Orphan's allowance if parent killed on the job	\$20/mo to \$30/mo	\$20/mo to \$40/mo	yes*
Other dependents' allowance	\$55/mo \$75/mo	\$55/mo \$90/mo	yes*
Funeral allowance	\$150 to \$250	\$150 to \$350	yes*
Subsistence allowance maximum	Eliminate	eliminated	yes
Average earnings method	No change	no change	yes
Waiting period	No change	no change	yes
Classification change for coal companies	no	no	yes
Classification change for automobile sales companies	no	no	yes
Coverage for independent fishermen	no	no	yes
Allow WCB to pay medical costs for workers on non-BC Canadian vessels	yes	yes	yes
Extend coverage to student trainees	yes	yes	yes
Ease WCB lien restrictions on employers who owe money	no	no	yes
Employers' class to pay a sum into Rehabilitation Fund if killed worker left no dependents	no	no	yes
Increase penalty to employer for non-observance of regulations	\$50 to \$500	\$50 to \$500	yes
Allow WCB inspectors to close down factories or plants	yes	no	no
Employers must give WCB statistics on demand	yes	no	no
WCB inspectors to be accompanied on plant tours by a designated labour member	yes	no	no

**TABLE V (Continued)**  
**SLOAN ROYAL COMMISSION II**  
**RECOMMENDATIONS AND LEGISLATIVE RESPONSE 1952-1962**

ISSUE	RECOMMENDATION	LEGISLATION	ADOPTED
Allow other Departments' officials to inspect plants/ factories on behalf of WCB	Yes	yes	yes
Upgrade status & training of first aid attendants	yes	no	no
Mandatory radio contact for work crews	yes	?	?
Institute air ambulance service	no	?	?
Annual provincial grant to Division of Industrial Hygiene	yes	no	no
Eliminate maximum expenditure from Accident Fund for vocational rehabilitation	yes	yes	yes
Expand Councillor's role	yes	?	?
WCB allowed to set production limits on an employer	no	no	yes
Appoint legal advocate	yes	partially	partially
Expand definition of 'physician'	yes	partially	partially
Allow non-residential family members to be covered	yes	yes	yes
Allow WCB to add diseases to schedule	yes	yes	yes
Give more power to WCB in employee vs employer cases	yes	yes	yes
Allow minor working illegally to get WC rather of guardian	yes	yes	yes
WCB pays in cases of defunct medical plans	yes	yes	yes
Fix time limit for claim the same for diseases as accidents	yes	yes	yes
Allow WCB to determine if contractors are employees	yes	yes	yes

\*taking wage price inflation since the beginning of the Commission into account

**Note:** In cases where question marks appear, it was not possible to positively determine whether or not the said recommendations took place. In some cases, the wording of relevant statutes was ambiguous or simply beyond the legal interpretative skills of the author. In others, there was no documented proof that the changes took place or not. Issues are listed in the order that they were presented in the Royal Commission final report.

**TABLE VI**  
**TYSOE ROYAL COMMISSION**  
**RECOMMENDATIONS AND LEGISLATIVE RESPONSE 1965-1974**

ISSUE	RECOMMENDATION	LEGISLATION	ADOPTED
Compensation rate	no change	no change	yes
Change average earnings method	yes	partially	partially
Maximum payment	\$5,000/yr to \$6,500/yr	\$5,000/yr to \$6,600/yr	yes*
Minimum payment	\$25/wk to \$30/wk	\$100/mo to \$150/mo	yes*
Widow's pension	\$90/mo to \$115/mo	\$90/mo to \$124/mo	yes*
Dependent children's allowance if parent killed on the job	\$35/mo to \$40/mo	\$35/mo to \$43/mo	yes*
Dependent children's (16-18) allowance if parent killed on the job and attending school	\$35/mo to \$45/mo	\$35/mo to \$49/mo	yes*
Adult dependent children's (18-21) allowance if parent killed on the job attending school	\$50/mo	\$54/mo	yes*
Orphan's (1-16) and invalid dependent children's allowance if parent killed on the job	\$40/mo to \$45/mo	\$40/mo to \$48/mo	yes*
Orphan's (17-21) allowance if parent killed on the job and in school	\$55/mo	\$60/mo	yes*
Index all compensation and payments to cost of living	yes	yes	yes
Provincial Government to pay half of Accident Fund	yes	yes	yes
Funeral allowance	\$250 to \$350	\$250 to \$350	yes
Optional private insurance	no	no	yes
Coverage for every worker (Blanket coverage)	no	no	yes
Change coverage for independent fisherman	no change	no change	yes
WCB to receive more power to penalize negligent employers	no	?	?
WCB inspectors to be accompanied by labour representative on plant or factory tours	yes	yes	yes
Allow first aid attendants to apply plasma and narcotics	no	?	?
WCB allowed to close down employer if it finds first aid facilities insufficient	yes	yes	yes
Give WCB authority to supervise training of industrial first aid attendants	yes	yes	yes

**TABLE VI (Continued)**  
**TYSOE ROYAL COMMISSION**  
**RECOMMENDATIONS AND LEGISLATIVE RESPONSE 1965-1974**

<b>ISSUE</b>	<b>RECOMMENDATION</b>	<b>LEGISLATION</b>	<b>ADOPTED</b>
Increase WCB medical staff	yes	?	?
Change method of fees in cases where more than one doctor is involved	no	?	?
Guaranteed payment to doctor for first report	yes	?	?
WCB to pay for replacement of hearing aids damaged on the job	yes	yes	yes
Increase specificity of definition of doctors' duties in WC Cases	no	no	yes
Allow WCB to compensate injured sailors on federal vessels	yes	yes	yes
Ease restrictions on WCB for subsistence allowance	no	no	yes
Change definition of 'accident' and the use of it	yes	yes	yes
Shift burden of proof from worker in proving a claim	no	no	yes
Three day waiting period	no change	no change	yes
Set up enhanced disability fund	yes	yes	yes
Limited liability	Specify clause	clause specified	yes
Set up WCB/medical committee to look at limited liability Cases	yes	?	?
Revise disease schedule	yes	yes	yes
Put all industrial diseases on schedule	yes	no	no
Coordinate WCB and legislative additions to disease Schedule	yes	no	no
Ease restrictions in hernia cases	yes	yes	yes
Change definition of silicosis	no	yes	no
Delete residential qualifying time for silicosis	no	no	yes
Compulsory aluminum dust therapy	no	no	yes
Separate clause for radiation cases	yes	yes	yes
Permit WCB to compensate worker before 12 months of Disablement	yes	yes	yes

**TABLE VI (Continued)**  
**TYSOE ROYAL COMMISSION**  
**RECOMMENDATIONS AND LEGISLATIVE RESPONSE 1965-1974**

<b>ISSUE</b>	<b>RECOMMENDATION</b>	<b>LEGISLATION</b>	<b>ADOPTED</b>
Permit WCB to give medical aid to worker not disabled	yes	yes	yes
Make inspectors' dust counts readily available and public	no	no	yes
Compulsory check-up for miners	no	no	yes
Emphysema, bronchitis, lung cancer, heart failure added to the disease schedule	no	no	yes
Curb WCB power to force workers to be medically examined	no	no	yes
Make age a factor in award assessments	yes	?	?
Eliminate loss of function calculation method in temporary partial disability cases	yes	yes	yes
Change formula of compensation for temporary disability Cases	no	no	yes
Change average earnings method	no	no	yes
Change method of compensating for permanent partial Disability	no	no	yes
Mandate disclosure of WCB files to workers	no	no	yes
Appoint compensation "Consultant"	yes	yes	yes
Judicial or independent review of Board decisions	no	no	yes
Restructure Board of Review	yes	partially	partially
Allow WCB to appeal to Medical Review Board Panel	yes	yes	yes
Allow dependent of deceased to appeal to Medical Review Panel	yes	yes	yes
Chairman of Medical Review Panel to receive legal advice	yes	yes	yes
Statement of non-medical facts to be issued to Chairman of Medical Review Panel	yes	yes	yes

**TABLE VI (Continued)**  
**TYSOE ROYAL COMMISSION**  
**RECOMMENDATIONS AND LEGISLATIVE RESPONSE 1965-1974**

<b>ISSUE</b>	<b>RECOMMENDATION</b>	<b>LEGISLATION</b>	<b>ADOPTED</b>
Chiropractors involved in Medical Review Panel	no	no	yes
Time limit for Review application	yes	yes	yes
Change terms of the Panel's certificate criteria	yes	yes	yes
Mandate Panel to send certificate to worker, doctor	yes	yes	yes
Various minor amendments to Medical Review Panel Section	yes	yes	yes
Set up complaints department	yes	yes	yes
Broaden scope of medical aid provisions	yes	yes	yes
Alter 'rights against employers' section	yes	yes	yes
Put more specific requirements on worker to report injury	yes	yes	yes
Make WCB pay if contractors default on payments	no	no	yes
Allow WCB lien to extend to contractors or sub-contractors	yes	yes	yes
Extend WCB lien from three years to five years	yes	yes	yes
Guarantee certain rights for workers returning from injuries	no	no	yes
Cover volunteer ambulance drivers, firemen, etc.	yes	yes	yes
Cover teachers & professors	yes	yes	yes
Allow individuals to purchase compensation coverage	yes	no	no
Cover pneumoconiosis victims who worked in other than the metalliferrous mining industry	yes	no	no
Cease payments to child under 16 if he/she marries	no	no	yes
Eliminate maximum payment for widows who re-marry	no	no	yes
If worker receives compensation for two injuries it does not exceed total disability payment	yes	yes	yes
Provision for re-occurrence of disability	yes	yes	yes
Mandate employer to report fatality immediately	yes	yes	yes
Give more leeway for WCB to punish negligent doctors	yes	yes	yes
Give WCB custody of Silicosis Fund	yes	yes	yes
Give WCB authority to administer agreements with other jurisdictions	yes	yes	yes

**TABLE VII**  
**ADVISORY COMMITTEE ON THE STRUCTURES OF THE**  
**WORKERS' COMPENSATION SYSTEM OF BRITISH COLUMBIA**  
**RECOMMENDATIONS AND LEGISLATIVE RESPONSE 1989-1996**

ISSUE	RECOMMENDATION	LEGISLATION	ADOPTED
New Board of Governors	yes	yes	yes
Workers and employers to dominate Board of Governors	yes	yes	yes
Government representation on Board of Governors	no	no	yes
Professional group representation on Board of Governors	no	no	yes
Public or lay people representation on Board of Governors	yes	yes	yes
Number of Governors	13	13	yes
Number of workers' representatives	5	5	yes
Number of employers' representatives	5	5	yes
Chairman appointed with consultation from workers' and employers' Governors	yes	yes	yes
Number of public interest governors	2	2	yes
All members appointed by Order in Council	yes	yes	yes
Terms of office	4 to 6 years	up 6 years	partially
Appointments to be renewable	yes	yes	yes
Staggering of terms	yes	no	no
Governors be chosen from senior ranks of their organization	yes	no	no
Board of Governors (including Chairman) to be part time	yes	no	no
Chairman to call meetings	yes	yes	yes
Chairman will require his/her own staff	yes	no	no
Establish office of president/chief executive officer	yes	yes	yes
Establish office of chief appeal commissioner	yes	yes	yes
Provision for additional appeal commissioners	yes	yes	yes
Term of office and other aspects of president/CEO to be negotiated with Board of Governors	yes	yes	yes
President/CEO to be appointed by and accountable to Board of Governors	yes	yes	yes
President/CEO to have role in final adjudication of claims' appeals	no	no	yes

**TABLE VII (Continued)**  
**ADVISORY COMMITTEE ON THE STRUCTURES OF THE**  
**WORKERS' COMPENSATION SYSTEM OF BRITISH COLUMBIA**  
**RECOMMENDATIONS AND LEGISLATIVE RESPONSE 1989-1996**

<b>ISSUE</b>	<b>RECOMMENDATION</b>	<b>LEGISLATION</b>	<b>ADOPTED</b>
President/CEO to have power to hire management personnel and shape management structure	yes	yes	yes
President/CEO to be non-voting member of Board of Governors	yes	yes	yes
Chief appeal commissioner to be appointed by and be accountable to Board of Governors	yes	yes	yes
Term of office and other aspects of chief appeal commissioner to be negotiated with Board of Governors	yes	yes	yes
Number of additional appeal commissioners to be chosen by Board of Governors	yes	yes	yes
Additional appeal commissioners to be chosen by Chief Appeal Commissioner	yes	yes	yes
All appeal commissioners to be full time	yes	yes	yes
Board of Governors to have power to authorize appointment of short term/part time appeal commissioners if needed	yes	yes	yes
Chief appeal commissioner to establish panels to adjudicate individual cases	yes	yes	yes
Appeal panels to consist of 1 or 3 appeal commissioners	yes	yes	yes
Presiding appeal commissioner for each panel to be chosen by appeal commissioner	yes	yes	yes
Appeal commissioners to determine practise and procedures	yes	Chief appeal commissioner only	partially
Chief appeal commissioner to be non-voting member of Board of Governors	yes	yes	yes
Chief appeal commissioner not to be held accountable to Board of Governors for individual cases	yes	yes	yes
Chief appeal commissioner to be held accountable to Board of Governors for overall operation of its system	yes	yes	yes

**TABLE VII (Continued)**  
**ADVISORY COMMITTEE ON THE STRUCTURES OF THE**  
**WORKERS' COMPENSATION SYSTEM OF BRITISH COLUMBIA**  
**RECOMMENDATIONS AND LEGISLATIVE RESPONSE 1989-1996**

ISSUE	RECOMMENDATION	LEGISLATION	ADOPTED
Maintain external Review Board	yes	yes	yes
"Own motion" appeals against WCRB findings be restricted to alleged errors of law or published policy	yes	yes	yes
Initiation of "own motion" appeals to come from President/CEO	yes	yes	yes
Special sub-committee of Board of Governors to be appointed to monitor initiation and disposition of "own motion" appeal	yes	no	no
Periodic payments to start upon WCRB finding that a claim was wrongly rejected	yes	yes	yes
Retrospective payments to be made if no appeal of WCRB finding that claim was wrongly rejected is made within 30 days	yes	yes	yes
30 day appeal period to apply to "own motion" appeals	yes	yes	yes
Retrospective payments to be withheld when appeal against finding of WCRB is launched provided appeal is published within 90 days	yes	yes	yes
Chief appeal commissioner to have power to extend 90 day period	yes	yes	yes
Interest to accrue for withheld payments eventually due to claimant	yes	yes	yes
Amounts paid to worker not recoverable unless there is fraud or misrepresentation	yes	no	no
Provision for transitional rules	yes	yes	yes

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