



Modernization of the *Workers' Compensation Act and Occupational Health and Safety Act*

Acts modernization external advisory group meeting 9 – wrap up and review

Coast High Country Inn, Whitehorse

Thursday, January 16, 2020, 10:00 a.m. to 12:00 p.m.

Introduction

This is a summary of comments made by participants at the external advisory group session on January 16, 2020.

Method

Yukon Workers' Compensation Health and Safety Board (YWCHSB) identified three topics that came up during the Acts modernization public engagement, for discussion with the external advisory group. Participants were divided into groups randomly and were asked to discuss each of the topics. Through group discussions that included YWCHSB staff, participants had their thoughts recorded on poster paper.

The poster paper notes are reflected in this document.





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Examination of Yukon Government records

Background

There is a provision in the *Workers' Compensation Act* that allows the YWCHSB to examine the records of all employers working in Yukon to ensure:

- all earnings are properly reported;
- employers are not under- or over-paying; and
- every employer working in Yukon is registered and reporting payroll for their workers.

The Government of Yukon is currently exempt from this provision.

The external advisory group was asked to comment on whether YWCHSB should be allowed to examine the Government of Yukon records to ensure compliance with the legislation and to confirm that all earnings are properly reported.

Some benefits to this approach include:

- verification that government reporting to YWCHSB correctly; and
- verification that contractors doing work for government are registering and reporting to YWCHSB in accordance with the legislation.

Benefits

- If Yukon government only employer exempt, they are biggest employer and should be role model showing openness and transparency;
- From optics perspective, would be more equitable;
- Consistency between government and non-government;
- Increase in understanding and consistency;
- More consistency in data which can help in research perspectives; increased data sets;
- From payroll perspective, no ability to know if information captured/reported correctly;
- Awareness of health and safety rules -> Yukon government already following health and safety but payroll still remains an unknown;
- Increase in transparency from public sector;
- Fairness, education opportunity and transparency;
- As tax-payers, good to know if inaccuracies addressed;
- If understanding, other employers may be paying more;



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- Issues of accountability if Yukon government puts forth legislation but they are exempt from one part;
- In Yukon there is high number of people working for Yukon Government;
- Yukon government should have to follow their own act as is required by other employers;
- As is now, there is potential that workers working in territory not covered. Tax dollars paying for government so they should be accountable;
- Accuracy and equitable for everyone;
- Opportunity to educate Yukon government so that proper procedures are followed;
- Cost less;
- Accountability;
- Yukon government has resources to provide necessary information;
- Reduces unintentional errors through new staff;
- Yukon government should be a role model;
- Government transparency – checks and balances to ensure procedure is followed;
- Mitigates potential lawsuits if Yukon government not following contractor procedure; and
- Yukon government clarify if something does not look right.

Risks and challenges

- Concern regarding sharing of information, confidentiality;
- Yukon government follows ATIPP Act -> a consideration;
- Perceived costs both financial and training (people – hours);
 - YWCHSB could reduce this risk by only limiting examinations each year; and
 - Develop strategy beforehand that lays out when Yukon government examined.
- If Yukon government under-reporting, assessment rates may increase;
 - If over-reporting, could get money back.
- There are definite unknowns; for example, ATIPP Act, sharing of info, third-party involvement;
- Increase in administrative burden in the short term;
- Reputational risk for Yukon government depending on finding;
- Without knowledge of previous Yukon government exclusion-reasoning, Yukon government may think there is a risk (potential valid reason);
- Could cost taxpayers more money;
- Cost more; and



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- Other employers may pay more if Yukon government records not being properly reported.

Other options to consider

- Only look at Yukon government records in bits and pieces, not all at one time.



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Third party actions

Background

Concerns were raised during public engagement that leaving this provision in the new Act would create hardship on some employers. YWCHSB provided information on the four approaches to third party actions taken by workers' compensation systems across Canada. The external advisory group members were asked to discuss these approaches in the Yukon context.

- Approach A: Status quo in Yukon;
- Approach B: Limiting recovery to the amount of the employer's liability insurance;
- Approach C: Restricting the definition of vehicle to motor vehicles; and
- Approach D: Removing the vehicle exception that permits actions against other employers and workers.



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Which approach is most appealing in a Yukon context?

- Subrogation helps YWCHSB coffers;
- Would like it limited to insurance amount;
- Would like no subrogation;
- Definition of negligence is an issue;
- Don't want to defame worker/employer;
- YWCHSB can view smaller accidents in vehicles as possibility to sue;
- Different rules for different situations;
- Primary concern is putting a company out of business (small businesses especially);
 - Yukon situation different from Newfoundland and Nova Scotia, but legislation is based on those.
- Limit risk to small Yukon businesses, not option A, could go for option B, option D in a perfect world;
- Option D does expose YWCHSB, recoveries not too high;
- Option C only protects aviation industry;
- Want motivation for employers to step their game up, B approach;
- Not sure option C protects small businesses;
 - Are there catastrophic accidents under this provision? Can be very serious, depends on number and severity of injuries.
- Could we change liability for costs in a third-party situation to employer who caused?
 - Would shift entire system.
- Not just about the money, we pay into a fund that can sue Yukon employers;
 - Reputation of worker and employer is at risk.
- If language showed YWCHSB and occupational health and safety (OHS) were aligned on third-party situations, could help;
- Someone somewhere thought we should have this – why?
- YWCHSB can't buy secondary insurance, not certain why but likely due to government relationship;

- Could we look at half and half responsibility for these third-party situations?
- There is an additional inequity -> two workers in same accident (vehicle) could receive vastly different compensation;



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- Not every employee/employer knows they need to have personal insurance while driving;
 - Definitely can cause higher financial risk to uninsured.
- Should be equity for both people in a vehicle (third-party) accident;
- Is it worth it to the Compensation Fund to pursue third-party actions?
 - Is it the potential of a mass injury -> could affect employer premiums significantly.
- YWCHSB supposed to be a no-fault system;
 - OHS looks for fault, any way to align?
- Option B is preferable;
- Important to be able to go after a third party to some extent;
- Very complex issue, could cause bankruptcy;
- Like Northwest Territories/Nunavut model;
- Important that all vehicles are covered;
- Negligence can be very hard to prove;
- Could have all third-party money come directly from the fund if option D;
 - Would employers even need insurance past the minimum?
- Subrogation can mean holding an employer responsible for a lack of safety management;
- Don't see it as YWCHSB's duty to ensure no business ever goes bankrupt;
- Option B seems like a middle ground? and
- Vehicles have to have insurance.



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CPP offset

Background

The current Act and policy reduces a worker's benefits by 50% of their CPP disability benefits if they are receiving both compensation and disability benefits. Concerns were raised during public engagement about this provision and the external advisory group was asked to comment on this issue.

Should we be doing this reduction at all? If we keep doing it, should we consider doing it differently than we are now?

- Should be based off pre-injury earnings (as it was previously done);
- Seems punitive; it's a different system into which a worker has paid;
- Employer pays up to the max -> so that's a fair compensation to the worker, should not be further deducted;



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- Education is important -> people don't know the implications of this;
- Should not be better or worse off;
- Should not deduct CPP – it's a separate benefit;
- Maybe consider applying retroactively;
- With no offset, no incentive to get back to work;
- Should have access to any personal resources i.e. other disability benefits;
- YWCHSB ends up not giving out what their employer has put in due to offset;
- Cautious to impress personal values on the other workers' entitlement;
- CPP offset may result in more money left in the pot -> could go to rebates or education/training;
- 50% should not be reduced. Two different benefits;
- A different benefit into which a worker has paid during working career -> 0% deducted;
- Older workers will be hit harder by scaled back benefits; and
- Could have gradually decreasing percent deduction as worker ages.
 - Accounts for decreasing cost to system.

