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Canadian Manufacturers & Exporters wishes to thank the Ministry of Labour for the opportunity to provide comments to its consultation document entitled "Uncovering the Underground Economy and Promoting Health and Safety in the Construction Industry": A Consultation Paper On Mandatory Workplace Safety and Insurance Act (WSIA) Coverage in the Construction Industry.

Regards,

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CANADIAN MANUFACTURERS & EXPORTERS

**Response To
The Ministry Of Labour's Consultation Document
Entitled:**

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Health and Safety in the Construction Industry": A
Consultation Paper On Mandatory Workplace Safety and
Insurance Act (WSIA) Coverage in the Construction
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and Insurance Act (WSIA) Coverage in the Construction Industry

INTRODUCTION

Canadian Manufacturers & Exporters (CME) is pleased to reply to the Ministry of Labour’s consultation document entitled **“Uncovering the Underground Economy and Promoting Health and Safety in the Construction Industry: A Consultation Paper on Mandatory Workplace Safety and Insurance Act (WSIA) Coverage in the Construction Industry”** (the Coverage Paper).

CME wishes to emphasize that our comments are directly related to the unique situation, namely the underground economic activities, facing the construction industry and are being made in direct response to the recommendations being proposed by the government to address this specific problem. It is our expectation that any consideration of expanding this initiative outside of the construction industry would be subject to further consultations with affected parties.

BACKGROUND

On March 28, 2006 the Ministry of Labour released its Coverage Paper outlining options for dealing with the underground economy in Ontario’s construction industry. The specific issues identified were the categories of independent operators, sole proprietors, partners in a partnership, and executive officers of corporations, and the current practice of allowing the persons falling into these groups to opt out, or decline to register with the Workplace Safety & Insurance Board (WSIB). At the centre of this issue are these persons’ ability to declare themselves as independent operators and avoid registering and paying WSIB premiums.

The Coverage Paper outlines the government’s intentions for mandatory workplace insurance coverage through the Workplace Safety & Insurance Board for all individuals working in the construction industry.

CME’S POSITION

CME has been a long-standing participant in the debates surrounding workers’ compensation issues in Ontario. Our participation dates back to 1914 when CME participated during the government debates, which led to the creation of Ontario’s workplace compensation system, with submissions made to the architect of Ontario’s system, The Hon. Justice William Meredith.

It is CME's position that the options being put forward in the Coverage Paper are an important first step in dealing with the underground economy and loss of revenue for the WSIB. We believe that steps are necessary to ensure that fairness and equity within the current compensation system be achieved for all employers who fund the system. Current exceptions allow for revenue loss, along with a financial advantage for those employers who are not obligated to register. We believe that changes to the current legislative framework for optional coverage are long overdue. It must also be noted that the manufacturing sector has had 'fund' the shortfall in other sectors, which has resulted in inequity for Ontario Manufacturers.

CME believes that the current process provides opportunities for abuse of the system. Currently, WSIB coverage is based on self-declaration of independent operator status. With this status comes the choice of applying to be registered with the WSIB, and paying premiums, or declining registration thereby avoiding WSIB premium payments.

We maintain that this process continues to offer opportunities for abuse. These opportunities, mostly financial in nature, will most often cost those employers already in the system. Despite the existence of WSIB processes, the current process more often than not will compensate an injured person who may have opted not to take out coverage, but who subsequently becomes injured and applies for WSIB benefits. This burden then becomes borne by the employer who contracted with whom he believed to be an independent operator. As well, the current right of allowing the choice of declining to take out WSIB coverage allows the existence of exemptions, which leave the possibilities of exploiting the situation to serve the need of the moment. In other words, coverage may be deemed to be unnecessary until an injury is sustained, at which time the claimant will apply for benefits as a worker and the likelihood to be granted benefits is known to be quite favourable. The result is the lost premium payments and further expenses for the employer and the system as a whole.

An administrative process exists within the current workers' compensation system to sort out the cases, which may fall within the grey zones of independent versus non-independent operator status. This is done by way of a questionnaire process whereby applications are made to the WSIB to determine whether an applicant is deemed to be an independent operator or not.

CME believes that this process is flawed, and we would recommend the elimination of the independent operator questionnaire process. The process is a bureaucratic burden for employers, particularly those wanting to use independent operators who bid for contract jobs. A common outcome is the WSIB's determination that they are workers, not independent operators, and would be considered employees of the employer. This approach will continue to result in lost job opportunities for the truly independent operators, bidding for contract

positions, as employers will not want to take on new contract employees simply to have them deemed their workers.

CME is a strong supporter of a fair and equitable workplace compensation system where everyone pays his or her fair share. This is not occurring where a loophole exists-the independent operator self-declaration process. We strongly recommend that the WSIB be more diligent in enforcing its statutory powers to ensure that employers who have obligations to pay premiums, but have managed to avoid doing so, be required to pay, dollar for dollar, for their outstanding, cumulative, balances.

CME offers the following in response to the specific questions raised in the Coverage Paper. CME's responses will be limited to those specific questions, which are more general in nature as opposed to those pertaining to a respondent as an individual employer.

Question #11

What are your views on extending mandatory coverage in construction as we outlined in this proposal?

CME supports the extension of mandatory coverage for everyone. We address the issue of Executive Officers later in our response.

Question #12

Do you think that mandatory coverage should be a requirement for all of the following: independent operators; sole proprietors; partners in a partnership and executive officers of corporations?

Yes. CME believes that mandatory coverage should be a requirement for independent operators, sole proprietors and partners in a partnership.

With respect to the issue of Executive Officers, CME believes that special provisions could be implemented for this group of individuals. CME is concerned that if an exemption for Executive Officers is created, there is a potential for establishing yet another loophole within the system to avoid registration. We believe that an exemption, which will not create a loophole and will still allow for mandatory coverage, is feasible for this group. The caveat, however, is that coverage may be sought outside the workplace compensation system. The option would be the mandatory coverage of executive officers with the condition that they have the opportunity to demonstrate that they have insurance coverage outside the workplace compensation system to be exempt from being registered with the WSIB. It would have to be required that the party provides proof that they have taken out coverage which is at the least comparable to the benefits offered within the workplace compensation system. What this will serve to

accomplish is the elimination of the scenario where the individual is simply avoiding paying premiums but then comes back to file a claim from the very system to which he/she has chosen not to pay premiums. It also accomplishes the objective of ensuring mandatory coverage, as everyone would still be required to be covered, with some covered outside the workplace compensation system.

CME also supports the “named insured” registration system. We believe that this approach would be a further safeguard for ensuring that WSIB registration has occurred or that private insurance (in the case of Executive Officers) has been obtained. As outlined in the Coverage Paper, such a registration system would require all persons working in construction to be identified by name to the WSIB, either as a worker on an employer’s payroll, or as an Executive Officer.

Although this question does not request views on the issue of exclusion of “handypersons”, CME does wish to state its views on the position set out by the government. CME believes that the government’s proposal to exclude coverage for “handypersons” will be problematic. As we stated, exceptions create opportunities for non-registration. When an exception is permitted, it easily becomes a loophole to avoid registration/coverage. We believe that an exception for “handypersons” will simply serve to allow the current problems caused by optional coverage to exist as a loophole. CME maintains that coverage should be extended to require mandatory coverage of this group of individuals as well.

Question #13

In your view, will mandatory coverage be an effective tool to combat the underground economic activity and promote health and safety in the construction industry?

CME believes that mandatory coverage in construction is an important first step in beginning to deal with the costly issue of the underground economy. More importantly, it will begin to level the playing field for all employers. We also believe that it will promote health and safety in the construction industry in that it will make health and safety more visible.

Question # 14

In your view, what are the main benefits/disadvantages of extending coverage?

The extension of coverage, in construction, will firstly eliminate the current bureaucracy, which is associated with the independent operator questionnaire process. It will also eliminate the situations where an independent operator chooses to opt out of coverage but claims benefits after an injury occurs. With mandatory coverage, the uncertainty about the coverage issue is eliminated.

The extension of coverage in construction will also create a more equitable starting point for all employers. By eliminating the choice for registration (wherein some are allowed to decline to register whereas coverage is mandatory for others), coverage rules will apply equally to everyone. The mandatory requirement to pay premiums will no longer leave one group of construction employers (those who avoid paying premiums) in a better financial situation relative to those who must pay.

Question # 15

What do you think about the proposal to have the person for whom the construction work is done be liable for contractors and subcontractors' premium and other payment obligations under the WSIA?

CME strongly opposes this proposal. To require the person contracting the work to pay the contractors' or subcontractors' premiums would be an administratively onerous obligations and could possibly result in loss of job opportunities for these groups of individuals. We maintain that the only responsibility which the person contracting the work should have is that of ensuring that the contractor or subcontractor has coverage by way of clearance certificates.

Question #16

What are your views regarding the WSIB clearance certificate requirements?

CME supports the ongoing use of clearance certificates and we believe that they should be maintained. The WSIB must ensure that the appropriate resources are dedicated to the area issuing the certificates to allow for timely issuance once they are requested.

Question #17

What are your views about possible additional offences provisions in the WSIA for failure to comply with payment and WSIB clearance certificate obligations?

CME maintains that the Workplace Safety & Insurance Act already has adequate offences provisions. It is CME's view that the WSIB should focus on enforcing those offences provisions already in place. New offences provisions, however, would be required to deal with changes which CME has recommended regarding Executive Officers and "handypersons".

Question #18

Do you think mandatory coverage will affect the competitiveness of your business?

CME believes that mandatory coverage will have an overall positive effect on the economy. It will allow a more equitable business environment overall, in that the rules will be equally applied to all, without exemptions for some employers which are not available to others.

Question #21

Are there other industries which will be impacted by this proposal?

Other industries will also be impacted by this proposal, such as manufacturing and trucking.

CME strongly believes that any move to implement mandatory coverage in any other industry must be accompanied by specific consultations with the impacted groups to determine the specific issues facing those industries.

Question #24

What impact do you see mandatory coverage having on the promotion of health and safety and the prevention of workplace injuries in the construction industry?

CME believes that mandatory coverage will have the overall impact of improving health and safety awareness in the workplace because companies will now be more visible to those who administer the Act. As well, once they are a part of the system, employers will witness the financial incentives for improved health and safety that will lead to improved health and safety in the workplace.

Question # 25

If a Bill were passed, do you think mandatory coverage in construction should come into effect immediately? Should it be as soon as the legislation receives Royal Assent, a year from that date etc.? Why? Should there be delayed implementation for specific sectors?

CME believes that implementation of the Bill should occur in the next calendar year after Royal Assent is received. Organizations run their operations, for the most part, on a calendar year basis. Enough lead-time must be given to make any operations changes needed. As well, budgets are set late in the year and companies may need to assemble financial resources to comply with the legislative changes.

Closing Remarks

In closing, it is CME's position that the workplace compensation system is in need of updating to make the issue of coverage better understood and rationalized. The ability to choose WSIB coverage, or to choose not to be

registered with the WSIB, results in an uneven playing field for those who do not have the right of choice. For equity to be achieved, the rules must be the same for all of the participants in a particular group.

We maintain that the proposals outlined in the Coverage Paper are an important first step in achieving more balance and equity for all the employers in the Ontario's workplace compensation system.

All of which is respectfully submitted.

June 30, 2006