

The Standing Committee on Statutory Instruments has the honour  
to present its

#### FIFTH REPORT

Your Committee has examined the Workmen's Compensation Regulations adopted pursuant to the Workmen's Compensation Ordinance and reports as follows:

##### Regulations Made Pursuant to the Workmen's Compensation Ordinance

The authority to make regulations under the Ordinance is primarily contained in Section 81 of the Ordinance which reads as follows:

"81.(1) The Commissioner may make regulations providing for the carrying into effect of the purposes and provisions of this Ordinance and, without limiting the generality of the foregoing, may make regulations

- (a) prescribing anything that by this Ordinance is to be prescribed by regulation;
- (b) prescribing such forms as he deems necessary; and
- (c) with respect to the prevention of accidents and industrial diseases. 1973,c.6,s.81."

The Commissioner is granted further specific powers which are normally implemented by means of "Commissioner's Orders" under subsections 3(2) 4(1) 10(1) 51(1)&(5) 52(2) 57(1) 58 60 61 62(3) 79(1) 80(2) of the Ordinance. Section 76 provides a criminal penalty for failure to comply with any provision of the Ordinance or the Regulations.

Your Committee has reviewed eleven Commissioner's Orders issued under the authority of the Workmen's Compensation Ordinance. Of them, seven Orders involve the exercise of authority granted under sections other than Section 81, and these are reviewed first:

C.O. 1974/23 - is made under the authority of subsection 51(1) of the Ordinance and is within that authority. When Section 12 of Bill 9 (1977 - 2nd) comes into force, this C.O. should be revoked as being redundant.

C.O. 1975/165 - is made under subsection 3(2) of the Ordinance and is within the authority of that section. Your Committee considers that this Order increases the class of persons eligible for compensation and therefore affects the scope and intent of the Ordinance as passed by this House.

C.O. 1976/159 - is made under the authority of Section 51(5) of the Ordinance and is within that authority.

C.O. 1976/170 - is made pursuant to subsections 58(12), 58(13) and 62(3) of the Ordinance and is found to be a correct application of those sections.

C.O. 1976/279 - is issued pursuant to subsection 80(2) of the Ordinance as is required by that section. Your Committee notes the Order was signed over two months before it was required.

C.O. 1977/6 - is issued as is required by Section 79 of the Ordinance and is within the authority of Section 79.

C.O. 1977/223 - is issued pursuant to section 57(1) of the Ordinance and is within the authority of that section. After having

reviewed the Schedule attached to this Order, your Committee recommends that the House request a report from the Workmen's Compensation Administrator on the method used to determine the assessments as set out in the Schedule.

While the general style and wording of a regulation does not affect their inherent validity, your Committee has found the variety of styles confusing and recommends that a general precedent be compiled and that all future Commissioner's Orders under these several sections of the Ordinance be made to conform to the precedent.

For example, C.O. 1975/165 quotes its authority in the first phrase of the Order.

C.O. 1976/159 - cites its authority in the second paragraph.

C.O. 1976/170 - cites its authority at the end of paragraphs 2, 3 and 4.

C.O. 1977/6 - cites its authority in the first paragraph of the Schedule attached to it.

C.O.'s 1974/23, 1976/279 and 1976/281 make no mention of their statutory authority at all.

Your Committee recommends that all Commissioner's Orders of this type be published as part of a set of consolidated Workmen's Compensation Regulations, (discussed later in this report) possibly as a series of Schedules, with the authority and order clearly cited. When an item of such a Schedule is to be amended, the appropriate Schedule would then be repealed and replaced.

Under the present system, it is necessary to read every Order to locate an item such as "Assessment Rates" until the desired information is located. Your Committee recommends that an index be included with a

consolidation of the Regulations.

C.O. 1967/24 - under this Order "the attached regulations respecting Workmen's Compensation are hereby made and established." The attachment states its title in Section 1. "These regulations may be cited as the "Workmen's Compensation Regulations." Six sections of these regulations have been revoked in 1973 and 1976.

The remaining sections, if still felt to be necessary to preserve rights created under the legislation in force prior to the implementation of the present Ordinance should be rewritten to more clearly reflect this fact, since the sections remaining are difficult to understand without studying their history.

C.O. 1963/1 - "Accident Prevention Regulations": Your Committee wishes to point out that although the Commissioner's Order implementing these Regulations is stated as 1963/1, the Order is dated the 3rd day of January, 1962. At the time, these regulations were implemented under the previous Ordinance all regulations had to be approved by Resolution of this House before being implemented.

Sections 4 & 5 of these regulations provide for an Inspector to be appointed by the Commissioner and empower the Inspector to order the installation of safety devices and shut down a work site if necessary.

Section 10 provides a criminal penalty for contravention of these regulations and a fine of between \$25 and \$5,000 for each conviction.

Section 12 empowers the Inspector to vary the standards prescribed by the regulations or to establish temporary regulations to meet conditions not provided for in the regulations. Such temporary regulations must be approved in writing by the Commissioner within 14 days.

Duties of the employer (See Sections 13, 24, 25 & 26) and the employee (See Section 18) are briefly stated. Provision is made for management-labour Accident Prevention Committees where over 20 persons are employed (See Sections 21-23). Sections 27-326 deal with safety requirements applicable to work sites or industries in a general fashion.

Sections 327-486 apply to the Construction Industry in particular.  
Sections 487-543 apply to Woodworking Machinery.  
Sections 544-621 apply to Sawmills and Shingle Mills.  
Sections 622-730 apply to Logging.  
Sections 731-750 apply to Punch Presses.  
Sections 751-774 apply to Foundries.  
Sections 775-783 apply to Storage Batteries.  
Sections 784-801 are called Electrical Regulations.  
Sections 802-812 apply to Laundries.

Your Committee recommends that in view of the impending "pipeline project", sections of the present Accident Prevention Regulations such as pipeline stringing, pipelaying, etc. as stated below and similar sections of the proposed Occupational Health & Safety Regulations should be immediately reviewed by the Administration to ensure that such regulations are complete and adequate.

Sections 813-881 deal with a wide variety of functions as are indicated by their subheadings which include:

- Preparation of Right of Way
- Falling & Bucking
- Safety Hats
- Bulldozer Operations
- Pipeline Stringing
- Ditching Operations
- Pipelaying
- Welding Operations
- Placing Skids
- X-Ray and Gamma Ray Inspection
- Cleaning, Priming, Doping and Wrapping
- Lowering of pipe into a ditch
- Boring and Punching
- Pigging and Testing
- Pipe Bending
- Riding Pipe
- Storage of Pipe
- Double Jointing of Pipe
- Tie-In and Cut-Outs

Numerous sections of these regulations contain either very long and involved sentences or two or more sentences. This style of drafting makes the regulations difficult to comprehend and enforce. Your Committee is in possession of a new draft called the Occupational Health and Safety Regulations which are intended to replace these regulations in the near

future, therefore, a section by section analysis has not been presented. If these regulations were to remain in force for any extended period of time, they should be redrafted to correct the numbering and style deficiencies noted.

Your Committee further recommends that with regulations as long and complex as these they should be divided into parts so that each part deals with a different industry or major subject heading. Your Committee further recommends that a consistent pattern be followed in the letter case used for subject headings. These regulations are particularly deficient in this area in Sections 813-881.

Since the regulation making section of both the previous and present Ordinance authorizes regulations to be made "with respect to the prevention of accidents and industrial diseases", your Committee must report that all the provisions of the present regulations are within their legislative authority.

Your Committee feels it necessary to comment, however, on the fact that the "Inspector" provided for has tremendous powers but that the regulations require no training or qualifications on the part of that inspector.

Further, there is no provision in these regulations for an appeal by either the employer or the employee from the order of the Inspector although he can shut down a work site by using his discretion. These regulations allow neither the employer or the employee a procedure by which the decision of the Inspector can be contested.

Further, there is no provision for input into the standards to be applied from labour, management or the public. This type of input is necessary to help keep the standards set by regulation in tune with the technological developments of the times and current industrial practices. A body of labour, management and public input would ensure that standards being applied are kept up to date.

Your Committee is aware that the quality of the enforcement staff has improved greatly, as has the level of sophistication of Yukon industry

in the fourteen years since these regulations were implemented. Your Committee recommends that a recognition of these changes be included in any new regulations.

C.O. 1964/106 - "Accident Prevention (Aerial Tramway) Regulations"

These regulations are an addition to the Accident Prevention Regulations and are within the authority of the Ordinance.

Your Committee recommends that such additions to existing regulations should be implemented as amendments to existing regulations. In a case such as this, they should be a new "part." The title of the regulations should not be altered. Further, whenever possible, regulations should reflect the title of the Ordinance under which they are implemented.

C.O. 1976/278 - these regulations create a corporation, the members of which are charged with two main responsibilities. The first is carrying out the functions of the referee set out in Section 11 of the Ordinance. This function includes full responsibility for the assessment of claims and benefits to be paid.

By creating a corporation the administration has expanded the perspective of the "referee" by including representatives of business and labour as well as the public. However, since the choice of appointees still rests with the Commissioner, he in fact retains direction over the "referee" who has vast powers and discretions under the provisions of the regulations.

The Board has power to fix its own rules respecting sittings of the Board, conduct of hearing before the Board and for managing its own affairs.

The second responsibility assigned to the Board is advising the Commissioner with respect to all financial matters and practices from investment policies and actuarial reviews to anything the Commissioner requests.

The broad scope of Section 81(1) of the Ordinance permits this

regulation to be implemented. Your Committee must point out that this Commissioner's Order involves the broadest possible use of the power granted and, in fact, deals with a subject so far removed from the terms of the present Ordinance, it could be considered as encroaching on the prerogatives of this House.

Your Committee further points out that under these regulations, in the event of a disaster in Yukon industry, the corporation is going to have difficulty separating its "referee" and "financial advisory" functions. Your Committee is further concerned that this difficulty is particularly serious since the decisions of the corporation in its role as "referee" are unappealable and may not be reviewed in any Court by the terms of Section 11 of the Ordinance.

Your Committee wishes to advise that under Alberta legislation (the model for this Ordinance) the function of the "referee" is handled by a Board which is set up by and its jurisdiction defined in the Act, not the regulations. There is also a Form of Appeal contained in the Alberta Act.

#### Occupational Health & Safety Regulations (proposed)

Your Committee has been informed that these regulations will update and replace the existing Accident Prevention Regulations - C.O. 1963/1. Under the general regulation making power and the power to make regulations respecting the prevention of accidents and industrial diseases Section 81(1) and 81(1)(c) of the Workmen's Compensation Ordinance sufficient authority for these regulations exists.

As mentioned earlier, the source of our present Workmen's Compensation Ordinance is Alberta legislation. As background to the discussion of the Occupational Health & Safety Regulations following, your Committee wishes to advise that Alberta also has an Act called the Occupational Health & Safety Act. Under this Act the obligations of employers and workers are stated, an Occupational Health & Safety Council is created, an inspection force is created and their terms of reference and powers defined, provision is made for an appeal to the industry wide Council, created in the Act,



reporting and investigation procedures are outlined, medical procedures are outlined, exchange of information provided for, safety committees provided for, provisions for dealing with "imminent danger" defined, a thirty section definitive regulation making power included and provision made for enforcement of the Act by Criminal penalty and Stop Orders. The specific standards are left to Regulations and a criminal penalty exists, however, the presence of the Occupational Health and Safety Council means that industry, labour, government and the public have an opportunity for input and if not satisfied have sufficient specific information available to have the matter aired in the House if a serious problem exists.

The Council is to advise the Minister generally on the Act and its regulations which are in fact the safety standards, and on all matters concerning the health and safety of workers, to hear appeals from industry and labour on the decisions of the Inspectors and to perform such other duties as may be assigned to it by the Minister.

It is important to remember that the Minister referred to here is part of a duly appointed Cabinet which has the support of the majority of the House which is sovereign in its own provincial jurisdiction. Saskatchewan also has an Act of the same name with basically the same provisions. While the actual content of the regulations respecting first aid kits, numbers of medical personnel on site, and types of safety devices is important and a suitable topic for regulations, your committee believes that the concept of a Council to supervise the whole area and a clear definition of the powers and duties of inspectors and the availability of appeal procedures, must be clearly set out in legislation approved by this House.

The format and style of the proposed regulations is acceptable. Your Committee recommends that the numbering be improved. There are many sections with over 100 subsections, only one or two of which deal with the same topic. Due to the length of the regulations (some 86 pages) your Committee recommends a proper index be included and the regulations be divided into several "parts" at least on such general subjects as "first-aid", "hazard exposures", "construction", "saw mills", etc. Some

effort along this line has been made by the use of subject headings, however, with no defined parts the subject headings frequently become lost in the general text.

The real concern of this Committee is with the powers and authority of the Accident Prevention Officer contained in the Occupational Health & Safety Regulations. In Section 3, the Accident Prevention Officer has power to exempt an employer or employee from any provisions of these regulations where satisfied that an alternate means of control is equally effective. Since these regulations are supposed to require the minimum acceptable standard of safety and not the maximum, this is a horrendous power to place in the hands of a civil servant. At least in the present regulations, the written approval of the Commissioner is required within 14 days for "special rules". The power granted the Accident Prevention Officer under the proposed regulations is greater than that given to either the Minister, the Safety Council or the Director of Inspections in Alberta. Your Committee is well aware that the size and nature of our Territory means that we must make adaptations to our own circumstances but such adaptations should not allow an industry to completely avoid the regulations and thereby defeat the intent of an Ordinance passed by this House.

Your Committee recommends that in future this House give consideration to defining regulation making powers sufficiently to prevent the implementation of a regulation such as Section 3 of the proposed Occupational Health and Safety Regulations. Even if the following recommendations made, with respect to subsections 5(2) and 5(6.) are accepted and implemented, Section 3 of the Occupational Health and Safety Regulations can be used to totally defeat the intent of this House in passing the Workmen's Compensation Ordinance. Your Committee recommends that Section 3 be deleted from the regulations. If this is not done some controls must be placed on the exercise of this power.

Section 4 - The Accident Prevention Officer may order an employer to provide a management representative and/or person representing the workers to accompany him on an inspection. AND is a conjunction linking things together while OR is a conjunction introducing alternatives. Apart from the fact that the use of such a device is not acceptable even in subordinate legislation, its meaning is ambiguous.

Section 5(1) - The Accident Prevention Officer has power to

- (a) enforce all regulations
- (b) issue orders specified in the regulations (issue orders will be discussed in detail later) and
- (c) generally assist workers and employers to develop safe working practices.

Since this position will be created by regulation, the House will not have the opportunity to enquire into the qualifications and abilities of such persons.

Section 5(2) - The Accident Prevention Officer has complete power to order changes in apparatus, equipment or tools, and working conditions as he considers necessary.

Section 5(3) - The Accident Prevention Officer may at reasonable times enter and inspect worksites and talk to employees alone. This is a reasonable provision if the Accident Prevention Officer is to function effectively. This comment also applies to subsections 5(4) and 5(5).

Section 5(6) empowers an Accident Prevention Officer to shut down a work site if he feels his order has not been complied with. Subsections 5(7) through (9) details methods of communicating the order to an employer.

Your committee recommends that this House instruct the Administration to develop an appeal procedure from orders of the Accident Prevention Officer issued under subsections 5(2) and 5(6).

Section 5(10) provides for an ex parte injunction application to the Supreme Court to enforce compliance. Such an application does not require service of any proceeding on the employer and gives the Court no jurisdiction to examine the merits of the application. This application is not an appeal procedure. It is simply an additional tool for the Accident Prevention Officer to use to enforce his orders.

Section 5(11) - Criminal Penalty for failing to comply with the

order of an Accident Prevention Officer. This penalty section is set out not only for the initial refusal but also provides for an ongoing offence so that each day the refusal continues constitutes a new offence.

Section 5(12) - non-interference with an Accident Prevention Officer. This is reasonable and necessary.

Section 6, subsections (1) to (8) outline employers' responsibilities. Subsections (1) and (4) will be very difficult to enforce since they involve the state of mind of the employer, supervisor, and worker. Section 6, subsections (8) to (10) outline workers' responsibilities. Section 6, subsections (11) to (15) give an employee the right to refuse to work where he considers it unsafe until approved by the Accident Prevention Officer and prohibits dismissal, disciplinary action or wage reductions for such an employee. In Alberta, Sections 27 to 29 inclusive of the Occupational Health & Safety Act provide for the same problem, however, "imminent danger" is defined and under Section 29 the Minister may cause a Board of Inquiry to be set up for a worksite or an industry.

Section 7 - Health & Safety Committee - In Alberta for the formation of such a committee a Ministerial Order is required; however, its powers are much broader including the ability to make recommendations to employers for improvement of working conditions and establish and maintain educational programs. Its functions are also carried out during normal working hours.

In these regulations there are many references to Standards of scientific or research bodies such as the Canada Standards Association Standard, the American Conference of Governmental Industrial Hygienists, etc. Your Committee recommends that all such standards be included in the regulations. If these standards are not to be included in the Regulations, the Accident Prevention Officer should at a minimum be directed by this House to keep all the standards on hand and supply them as required.

Section 38, subsections (2) to (4) enable the Accident Prevention Officer to vary the content and services to be provided and in fact to exempt employers from strict compliance with the first aid regulations.

Your Committee begs to refer to its comments on Section 3 of these regulations respecting exemption powers. Your Committee further recommends that in view of the number of major industrial undertakings in existence at the present time in the territory, the requirements of the first aid regulations be comprehensively reviewed and amended immediately by the Administration. Industrial first aid standards should be included in the amendments.

These sections of the regulations illustrate the need for the House to supervise its subordinate legislation closely.

This review has provided examples of the variety of uses to which regulation making power can be put. These examples illustrate the need for this House to analyse regulation making powers carefully and to monitor regulations as they are implemented.

#### Summary

Your Committee recommends that C.O. 1974/25 be revoked when Bill 9 (1977 2nd) is in force.

Your Committee recommends that careful consideration be given to its comments on C.O. 1976/278.

Your Committee recommends that a complete consolidation of the regulations and orders made under the Workmen's Compensation Ordinance be undertaken to create one set of Workmen's Compensation Regulations, indexed and divided into parts with all "Orders" made under sections of the Ordinance other than the general regulation making section included as separate "parts or schedules" to the regulations and that such drafting and style changes as are necessary be made.

Your Committee recommends that this House study carefully the recommendations and comments of your committee on sections 3, 4, 5, 6 and 38 of the Occupational Health & Safety Regulations with a view to advising the Administration as to whether this House believes

the powers granted to the Accident Prevention Officer by regulation are compatible with the purpose and intent of the Workmen's Compensation Ordinance.

Your Committee has reviewed the Occupational Health & Safety Act and Regulations of Alberta and suggests the House consider together with the powers of the Accident Prevention Officer as set out in the Occupational Health and Safety Regulations, the provisions of the Alberta Occupational Health and Safety Act which provides for:

- 1) an appeal procedure
- 2) an Occupational Health & Safety Council with power to recommend safety standards, review industrial practices, make binding recommendations for safety improvements on job sites in industry and carry out ongoing educational programs.

Your Committee recommends that all technical standards set by scientific bodies be included in the regulations.

Your Committee further recommends the House request a report from the Workmen's Compensation Administrator on:

- 1) standards used to determine the content of the hazard requirements of these regulations - Sections 38(14) - 38(41).
- 2) procedures used to determine assessments.
- 3) the standards used to determine the content of the first aid regulations.
- 4) the state of readiness of the Accident Prevention Regulations or the Occupational Health Regulations to deal with the activity directly related to the building of the Pipeline.

Your Committee further recommends that a copy of the report be transmitted to Mr. Doug Bell, Executive Committee member responsible for the Workmen's Compensation Branch, for his consideration and action.

Respectfully submitted,

  
Bob Fleming  
Chairman

December 7, 1977