



MEMO

TO: Workwell Evaluators
FROM: Ken Langer
DATE: March 11, 2011
SUBJECT: Federally Regulated Works and Undertakings

Departing from past practice, the Workwell program has included Federally regulated, Schedule 1 companies in the 2011 annual selection process. It is our belief that recent Court Decisions allow us to do so as detailed below.

In 1999 the Workwell Program selected and audited a bussing company based on its poor health and safety record. The company failed the second audit and was assessed a premium surcharge.

The company appealed the decision, ultimately appearing before the Workplace Safety & Insurance Appeals Tribunal (WSIAT) in 2001.

The bussing company engaged in the for hire transportation of passengers to destinations within Ontario, other Provinces in Canada and the United States of America. The primary argument submitted to WSIAT by the appellant was that they were solely regulated by the Federal Government due to its inter-provincial and international activities and, consequently, the Workwell Program had no authority to audit its operations, rendering the premium surcharge moot due to Federal paramountcy as it was defined at the time.

Referencing the case law and jurisprudence of the day WSIAT agreed with the appellants' argument and directed the Workwell Program to refund the premium surcharge levied as the audit was null and void due to the interjurisdictional immunity enjoyed by the bussing company. (WSIAT Decision 1005/01).

Workwell has not audited Federally regulated firms since the WSIAT Decision was rendered.

The Workwell program believes that a 2007 Supreme Court of Canada Decision in *Canadian Western Bank et al v. Alberta* has evolved the landscape of paramountcy of the Federal Crown and interjurisdictional immunity to the point where the Workwell audit program and process is applicable to Federally regulated firms.

It is also our belief that the differences between the Canada Labour Code Part II and Workwell audits do not impair the operation of a Federally regulated company to the point of an offensive impairment.

It is anticipated that one or more selected firms will file an Application for Judicial Review in the Ontario Superior Court of Justice after notification of selection, challenging the selection on the principles of paramountcy and interjurisdictional immunity. Should this occur the Workwell program will cease and desist from auditing all Federally regulated companies until such time as a Decision is handed down by the Court.

Given the formal Opinion obtained from our in-house Legal Counsel the Workwell Program has every confidence that the Court will rule in its favour based on current jurisprudence.

Please feel free to distribute this memo to selected Federally regulated companies that question the selection or other customers with similar questions.

Regards,

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Workplace Safety & Insurance Board

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