

# Meredith's Principles



“We still have the old law where a man can claim for damages, but now in the complex industries, where there are big machines and the risks are so great, we claim it as a right that the workmen have to protection by legislation, and if not protection by prevention of accidents then for some measure of relief to the dependents of those injured in industries.”

- Fred Bancroft, Vice President, Trades and Labour Congress of Canada, December 29, 1912

## All I want for Christmas

The holiday season is upon us. For many children it is time to make a wish list to mail to Santa Claus at the North Pole. Santa knows who has been naughty and who has been nice. If you want his sleigh to land on your rooftop, it is best to be nice.

By the looks of it, changes to the workers' compensation system are on the lists of Ontario employers. What is it they want to find under their trees? At the top, in bold, is lower benefits for injured workers. Next they want Santa to protect the experience rating programs that have rebated nearly two billions dollars to them over the past decade. They are also hoping for policies and programs that further the privatization of the workers' compensation system. For this they have an ally in one Conservative Member of the Legislature who wants “every worker covered not by the WSIB but by private insurance.”

## Why workers' compensation?

If this is what Ontario employers want, we are in danger of repeating a painful part of our history when workers, injured on the job and no longer able to earn a livable wage, had no option but to ask for assistance from family, friends, and, as a last resort, private institutions who dispensed funds - charity - if you were considered deserving.

For Sir William Meredith preventing injured workers from falling into poverty was his primary motivation for the establishment of a modern workers' compensation system. As head of the Royal Commission (1910-1913) charged with investigating workmen's compensation systems around the world, he stated early and often that he wanted a “fair” system: one that assured injured workers of compensation, that did not unduly burden employers, and that would not “shock the conscience” of the public.

## Principles

Meredith hoped to achieve that goal by fashioning a law that took into account the ideas of the people who made submissions to his Royal Commission. As it turned out, he listened mostly to two men: Fred Bancroft, Vice President of the Trades and Labour Congress, and Franklin W. Wegenast, a lawyer hired by the Canadian Manufacturer's Association (CMA) to present its views.

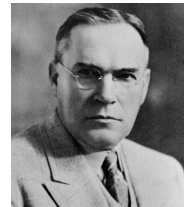


Fred Bancroft

Early on in the Commission it became clear that Sir William would have to make some important decisions. Who would pay for the system? Who and how would workers be covered? Who would administer the system? What kind of benefits would be paid to injured workers? We would not be wrong in calling the decisions he made on these issues principled decisions.

## Who pays?

While accepting that employers would shoulder most of the expense, the CMA wanted workers to contribute. Why should workers contribute, Bancroft demanded to know? Because, Wegenast stated, they would be more careful if they had an economic stake in the system. Workers paid enough with their injuries, Bancroft curtly replied. When Meredith presented his Draft Bill in March 1913 it did not require direct worker contributions. He had been persuaded that workers would pay into the system via the loss of income stemming from their injuries. They would also pay as consumers when manufacturers increased the prices of their goods as a way of passing along the costs of compensation payments.



F.W. Wegenast

## Coverage?

Labour and business representatives both argued for full coverage. Near the outset of the Commission, however, Meredith indicated that it was highly doubtful that agricultural workers and domestics would be included in any new legislation. He was not sure, he stated, that domestics were “real” workers, and he was positive that a Legislature full of farmers would never agree to the inclusion of agricultural workers.

True to his word, the Draft Act did not include agricultural workers and domestics – or retail workers. Coverage was largely restricted to what were known as the “dangerous trades.” In his *Final Report* Meredith wrote: “There is, I admit, no logical reason why, if any, all should not be included, but I greatly doubt whether the state of public opinion is such as to justify such a comprehensive scheme, and it is probable that when the question of bringing these industries within the scope of the act has to be considered, it will be found that provisions somewhat different from those which are applicable to the industries which it is proposed now to bring within it will be necessary.” In short, he saw no inherent obstacles to full coverage.

## Schedules

How workers should be covered was also a topic of intense debate. The railways, for example, did not want to be included at all. Meredith's Draft Act contained two "Schedules": one where employers would be grouped into classes and be collectively liable, and a second where they would be individually liable and pay for accidents and injuries directly.



The CMA and labour were adamantly opposed to a Schedule 2. For Wegenast such an arrangement violated the principle of collective liability. Labour spokesmen, on the other hand, claimed that workers under this plan would be very reluctant to report accidents for fear of losing their jobs. Bancroft also believed that Schedule 2 employers would be more likely to contest claims. "My point is this," he stated, "in a group of manufacturers which pays its assessment into an insurance fund there will be a tendency to say to the injured employee, 'Yes, you will get your compensation; we will pay our tax into the fund for that purpose.' On the other hand the C.P.R. holding its own fund would be more apt to object to paying it out than an insurance commission which has no objection whatsoever."

Meredith stayed with his two Schedules. However, in his *Final Report* he wrote that in his Draft Act "provision is made for industries enumerated in schedule 2 being added to schedule 1 whenever the Board deems it expedient to add them." He did not see Schedule 2 as permanent.

## Administration

Meredith also had to decide on how a new act would be administered. While Bancroft and Wegenast agreed on a state-managed system, some employers – particularly those representing small business – voiced strong objections to any government run

compensation system. The Retail Merchant's Association representative, Mr. E.M. Trowern, for example, termed such plans "socialistic" and fretted mightily about the costs. Private insurance companies also railed against this idea.

While Meredith was concerned about how to safeguard the political autonomy of a new institutional body (for him it depended on the integrity of the appointed Commissioners), he nevertheless came down in favour of a state-managed, public workers' compensation system with compulsory insurance. Why? First, it was better for injured workers. Under the private insurance systems then in place an injured worker would get nothing if the company went bankrupt. And, second, as he reminded readers in his *Final Report*, such a system was also better for small business. "It is in my opinion," he wrote "important that the small employer should not be ruined by having to pay compensation..."

## Benefits

Without question the most contentious issue for the CMA was the scale of benefits. Scale meant both the amount and the duration. Meredith's Draft Act provided that payments be made for as long as the disability of the worker lasted. The CMA wanted benefits to be flat and finite. Everyone would get the same benefit for similar injuries and there would be a limit on how much any worker and/or their dependents, could receive.

Meredith disagreed. "It would not be reasonable," Mr. Wegenast, "to ask the workman to give up the rights they have for what a learned judge called less than a mess of pottage." He then reminded his audience that he understood that "this bill is more than a mere compensation to workmen bill. It is social legislation and it is intended to provide for the workman and save the community from bearing the burden of his impairment."

## Meredith & Santa

Wegenast and the CMA were greatly upset with many of the clauses in Meredith's Draft Act. Sir William had even ignored their suggestion to name the administrative board the Industrial Insurance Board.

The CMA's lawyer would be much happier today. Over the past two decades various provincial governments have made many changes to the Workers' Compensation Act – the most important being the replacement of life-time pensions with arbitrary loss of earnings payments that end at 65 (for those lucky enough to get them), in tandem with the implementation of deeming. Meredith did not believe "you can get a perfect thing" but one can only imagine how he would feel about such a change, not to mention a claims system that too often starts from "No," where WCB doctors regularly over-ride the diagnoses and recommendations of family physicians and specialists, and where education and vocational training have been privatized.



Meredith was a somewhat crusty, highly principled and pragmatic man. He did not see his Draft Act, and the social and political assumptions upon which it was based, to be out of sync with his times. In fact, in his view a workers' compensation system of the kind he formulated – one that served as a bulwark against injured workers' becoming destitute – was long overdue. If he were alive today he may think that the condition of injured workers, if better known, would "shock the conscience" of the public. His letter to Santa might lament that because we have not learned from history, we are doomed to repeat it. It is quite possible that he would write that Ontario employers have not been nice. It is also likely that he would note his great disappointment that the system has been allowed to deteriorate to an adversarial, insurance-minded process he had so ardently hoped to avoid when he crafted his Draft Act.

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