

# **REPORT OF THE ROYAL COMMISSION ON PERSONAL INJURIES**

## **A Trade Union Viewpoint**

by T. E. Skinner\*

The Report on Compensation for Personal Injury in New Zealand, known as the Woodhouse Report, was discussed in my address to Conference last year, and Conference later directed that further consideration should be given to the Report, which is a lengthy document requiring careful study. This Report represents the findings of a Royal Commission which was instructed in its terms of reference to investigate and report on the law relating to compensation and claims for damages for incapacity or death arising out of accidents (including diseases) suffered by persons in employment, their medical care, re-training and rehabilitation. The Commission went very deeply into these matters. The particular matters which the Commission was required to investigate included the whole field of necessary changes in the law of compensation for injuries sustained in the course of employment; the question of compensation by means of periodic payments; possible schemes of compensation, medical care, re-training and rehabilitation modelled on schemes now operating in other countries; the relationship between workers' compensation and social security; I.L.O. conventions; and the provision of medical services for injured workers.

### **EMPLOYERS' CONTRIBUTION**

The Commission covered all these fields and, as we said last year, produced a good report, based on sound principles. At the first reading there seemed to be some matters which could bear further investigation, and these have been looked into. A point which was made then was that the merging of workers' compensation insurance with a general scheme of insurance to cover all members of the community against any form of injury would seem to put workers in the position of having to insure themselves against injury at work. A strong argument against this would be that the employer would be relieved of his responsibility and would tend to be less concerned about safety measures.

However, the report does not envisage this change. Its proposals for the financing of the whole insurance scheme including the continued payment by employers of their present contribution to workers' compensation insurance, and it is recommended by the Commission that in future employers should pay into the fund an amount equal to 1 per cent of wages paid by them. This would be approximately the same amount as they now pay in insurance premiums.

### **SOURCE OF FUNDS**

The cost of the comprehensive insurance system proposed in the Report would take in the funds now absorbed by workers' compensa-

\* Mr T. E. Skinner is the President of the Federation of Labour and the text is an extract from his Address to the Annual Conference of the Federation held at Wellington in April 1969 which is reproduced with his kind permission.

tion and third-party insurance, and it was proposed that the additional finance needed could be obtained from the following sources:

	\$ million
Insured employers .....	15.00
Self insurers:	
Government .....	3.50
Other .....	0.80
Self-employed .....	3.50
Owners of motor vehicles .....	9.00
Drivers of motor vehicles .....	2.00
Health Department .....	8.00
	41.80

It will be seen that this includes a contribution from drivers of motor vehicles as well as owners of motor vehicles, and the reason given for this addition is:

In the past motor drivers have not been given automatic insurance under the compulsory scheme in regard to their injuries which might arise from their own negligence or mere "accident". Moreover, the new scheme will widely extend the compensation available to all victims of road accidents.

It is equitable that those concerned should provide some additional contribution to the overall funds needed. In our opinion, however, the levy should not be made against the owners of vehicles. It should be provided by those who drive them. Accordingly we recommend that a small annual levy of \$1.50 be charged in respect of all driving licences, and that this sum should be collected on behalf of the compensation fund by local authorities.

This recommendation does not seem to fit the rest of the Report, which laid down as a first principle a need for community responsibility for compensation for injury suffered by any member of the community. The suggested levy on drivers is in contradiction of this principle of collective responsibility and would be regressive in effect, bearing most heavily on those least able to pay, notably on young people with little or no income.

## COMMON LAW ACTIONS

The most contentious issue of all, of course, is the retention or abolition of the right to make a common law claim for compensation when it appears that injury was the result of negligence on the part of an employer. The Commission recommends that this right should be removed, and considers that common law claims are a generally unsatisfactory method of seeking compensation. It further makes the point that if the scale of compensation payments is raised to the levels proposed by the report, there would be little inducement to taking an action which could be unsuccessful and, even if successful, could yield no more than the compensation already available under the new scheme. And the main principle which they put forward is that compensation should always be available when a man has been injured, because he has been injured and not only when it can be proved that someone else was negligent.

The level of benefits envisaged by the Commission is described in the Report:

An automatic award will be made in respect of every injury at a level for total incapacity of 80 per cent of previous tax-paid income, and proportionate awards for partial incapacity. Moreover, it will be possible to provide payments for so long as incapacity lasts, and if necessary for life; and also to lift the maximum weekly payments from the present ceiling of \$23.75 to a new maximum rate of \$120. No longer should artificial barriers be allowed to work injustice in particular cases.

While the Commission's arguments concerning common law actions are logical and are well worth careful study, it does seem that workers should not suddenly and arbitrarily be deprived of a right which has existed for so long and be bound inflexibly to a compensation scale, good as it may be. It should be possible to devise some compromise which would allow them to assess the value of the new compensation before earlier rights are swept away completely.

## PERIODIC OR LUMP SUM PAYMENTS

The other contentious issue concerns periodic payments as against lump sum payments. The Commission has provided for periodic payments on the scale already quoted, and comments:

Because these are periodic payments they can and should be increased if the condition deteriorates following assessment. But the converse would not apply. Periodic payments must not introduce uncertainty or put a brake on personal initiative and an early return to work. On the other hand they should not be adversely affected by inflation. Accordingly we have recommended suitable automatic adjustments to two-yearly intervals to accord with changes in the cost of living.

While the Commission expresses the view that "generally payments should be provided on a periodic basis" it provides for exceptions where these are warranted, in what seems to be a satisfactory manner:

There should be a discretion in other cases to commute all or part of the periodic payments to a present capital sum where the interests or pressing need of the person concerned clearly would warrant this. Such a discretion would, in our opinion, be sufficient to provide for the commutation of periodic payments in all suitable cases.

## GENERAL CONSIDERATIONS

As a general conclusion, the Report sets out a desirable proposal and one which could be accepted in its entirety, subject only to minor revision on the matter of levies on driving licences and some provision which would leave the right of common law action at least for long enough to assess the actual working of the new scheme.

The introduction of a comprehensive scheme of insurance for injury sustained by any member of the community would be a step forward in the provision of social services, and there is no doubt that these have needed review and upgrading for a number of years. We have slipped back a long way from the time when New Zealand led the world in social legislation, and the care of its citizens, however; thinking along these lines leads to the inescapable conclusion that the social security system is badly in need of overhaul if it is to keep in step with the times. The Commission took account of the social security scheme as it stands and rejected for personal injury compensation, the principle of a flat rate of payment for disability, choosing instead the income-related payments which would go some way towards maintaining the injured person's living standards.

## SICKNESS COMPENSATION

We can endorse the statement contained in the Commission's Report which reads:

It may be asked how incapacity arising from sickness and disease can be left aside. In logic there is no answer. A man overcome by ill-health is no more able to work and no less afflicted than his neighbour hit by a car. In the industrial field certain diseases are included already. But logic on this occasion must give way to other considerations. First, it might be thought unwise to attempt one massive leap when two considered steps can be taken. Second, the urgent need is to co-ordinate the unrelated systems at present working in the injury field. Third, there is a virtual absence of the statistical signposting which alone can demonstrate the feasibility of the further move. And, finally, the proposals now put forward for injury leave the way entirely open for sickness to follow whenever the relevant decision is taken.

## FURTHER STUDY

The National Executive has set up a committee to study the Woodhouse Report and its implications, so that firm recommendations can be made concerning it. This committee consists of Messrs W. F. Molineux, L. A. Hadley, N. A. Collins, and D. B. McDonald, and is to report back to the National Executive.

## REPORT OF THE ROYAL COMMISSION ON COMPENSATION FOR PERSONAL INJURY

### An Academic Viewpoint

D. L. Mathieson, B.A., LL.B. (N.Z.), B.C.L. (Oxford)\*

Any assessment of the Woodhouse proposals must be provisional at this stage. The Government's White Paper is not yet available, which means that Sir Leslie Munro's reported assertion that the Royal Commission seriously underestimated the cost of its proposed scheme cannot be evaluated. The Law Society's final views—if the division within the ranks of the profession permits it to reach one—are not yet known. Moreover, a committee of the Federation of Labour is undertaking a further study: what appears in Mr Skinner's address cannot be considered its last word. There is no reason to assume that all relevant arguments have been aired. The Government has inevitably had to adopt a go-slow policy.

I most willingly respond, all the same, to the Editor's kind invitation to make a second contribution to the public discussion of the Woodhouse Report.<sup>1</sup> Is there any social issue of greater significance than the manner in which we ought to tackle the problem of compensating and rehabilitating the victims of accidents? I think not. A torts lawyer, such as myself, who starts thinking about the problems must at once jettison any notions he may have about a distinction between "public law" and "private law". What the Woodhouse Commission recom-

\* Reader in Department of Jurisprudence and Constitutional Law, Victoria University of Wellington.