

COCA WCB Update #385 December 14, 2007

**Council of Construction Associations**

**#138 - 5751 Cedarbridge Way, Richmond, B.C. V6X 2A8**

**Telephone (604) 241-7667 Fax (604) 241-7678**

**email: grantmcmillan@shaw.ca**

Grant McMillan, President

WorkSafeBC Coverage for Apprentices at Risk!

WorkSafeBC is reviewing the coverage for apprentices while in a training school. In its first decision, WorkSafeBC has determined that coverage will NOT be available for apprentices through the school, unless the Ministry of Advanced Education approves the training program and the school. The current “Ministry of Advanced Education policy, dated April 1, 1996, limits the coverage to students attending public colleges, university colleges and institutes British Columbia.” (WSBC letter, November 8, 2007)

This decision could have far-reaching impact, at a time when the industry and the province of BC desperately needs to encourage new apprentices to help build our province. The original date from WorkSafeBC to discontinue coverage was December 31, 2007.

COCA has been in contact with WorkSafeBC and they have agreed to delay the implementation of the decision until September 30, 2008 so that we all have time to successfully resolve this difficult issue.

The industry position is clear – we want to encourage apprentices and we want those apprentices to have WorkSafeBC coverage.

Please review the letters if your association has an interest in this issue and advise Grant McMillan of COCA if the WorkSafeBC decision impacts on you. Grant will be approaching WorkSafeBC and others on this issue.

Enclosures:

The first decision letters from WorkSafeBC are enclosed. They effect the Sheet Metal Industry Workers Training Centre Society.

Also enclosed is an email from Cindy Dimitrijevic that provides more insight on the status of the issue.

December 12, 2007

Hello Bruce:

Attached please find the two letters received from WorkSafe regarding Worker's Compensation for Apprentices and Journeypersons that attend technical training at the Sheet Metal Workers Training Centre Society.

The Ministry of Economic Development, the reporting Ministry for the Industry Training Authority, has been forwarded the letters via the Industry Training Authority with the intent of resolving this issue as the ITA promotes apprentice technical training at both public and private institutions and they are equally concerned about the contents of the enclosed letters.

Enquiries regarding different types of insurance coverage for students have been made with Intercon Insurance, the Health Benefits Office and EI. Further enquiries are in the works with Manulife Insurance and Mass Benefits Consultants, Inc. an insurance company that offers insurance specifically for apprentices while attending classes and traveling to and from classes.

The first questions that led to this decision were asked in December 2005. It has taken this long to get definitive answers to the specific questions that were asked. The questions were included in the e-mail that was forwarded to you in the summer. Linda Love at WorkSafe did a good job of researching our questions and due to the wording/interpretation of existing policy has responded in the attached letters. Documentation shows that this organization has made repeated enquiries to clarify coverage for apprentices and journeypersons and has been paying remittances which WorkSafe has been accepting all along. I will be sending a letter to WorkSafe asking for an extension of the January 1, 2008 cutoff date, at the very least to allow enough time for alternate sources of insurance/coverage to be investigated.

I would like to request that Grant McMillan assist in this matter and possibly take over the appeal process.

Thank you.

Regards,

Cindy Dimitrijevic  
Training Co-ordinator  
Sheet Metal Industry Training Board  
Sheet Metal Workers Training Centre Society  
4415 Dawson Street  
Burnaby BC V5C 4B8  
604-291-0656 phone  
604-291-0602 fax  
smwtcs.ca

**Assessment and Audit Operations****Mailing Address**

PO Box 5350  
Station Terminal  
Vancouver BC V6B 5L5  
www.worksafebc.com

**Location**

6951 Westminster Highway  
Richmond BC V7C 1C6  
Telephone 604 244 6181  
Toll Free within Canada  
1 888 922 2768

**Linda Love****Assessment Policy**

Direct Telephone 604 241-6745  
Direct Facsimile 604 244-6391  
Toll Free within Canada  
1 888 922 2768, local 6745

November 8, 2007

Sheet Metal Workers Training Centre Society  
Sheet Metal Industry Training Board  
4415 Dawson Street  
Burnaby BC V5C 4B8  
Attention: Cindy Dimitrijevic, Training Co-ordinator

Dear Sheet Metal Workers Training Centre Society,

**Regarding: WorkSafeBC coverage for students  
WorkSafeBC account 149885**

I am writing in response to your email of June 6, 2007 and our subsequent telephone conversation and email correspondence, concerning coverage under the *Workers Compensation Act* (the "Act") for students attending courses sponsored by the Sheet Metal Workers Training Centre Society (the "Society").

You requested clarification on the application of Workers' Compensation Board doing business as WorkSafeBC policy - as cited by Sherri Wilson in her June 25, 2007 email to Kim Buchanan - to the circumstances presented by the business operations of the Society and the Sheet Metal Industry Training Board.

WorkSafeBC has recently undertaken a systemic review of the application of section 3(7) of the *Workers Compensation Act* (the "Act") in extending coverage under the *Act*. As a result of this review, WorkSafeBC will be examining all accounts which have been granted extended coverage under section 3(7) in order to establish whether the "work study program or other program of self improvement involving work" satisfies the criteria established in the *Act* and in WorkSafeBC policy. It is expected that this review, and any consequential action, will ensure consistent application of WorkSafeBC policy.

**AUTHORITY TO DETERMINE**

Pursuant to section 96(1) of the *Act*, WorkSafeBC "has exclusive jurisdiction to inquire into, hear and determine ... the class to which an industry or a part, branch or department of an industry ... should be assigned...and... whether a person is a worker, a subcontractor, a contractor or an employer within the meaning of this Part."; and pursuant to section 86(1) of the *Act*, WorkSafeBC "may appoint the officers and other employees it considers necessary to carry out the business and operations of [WorkSafeBC] and may establish their duties".

As a Research and Evaluation Analyst in the Assessment Department, I am authorized to make a determination in this matter.

### **AUTHORITY TO RECONSIDER**

Although, I recognize that subsection 96(5)(a) of the *Act* directs that

*... the Board may not reconsider a decision or order if*

*(a) more than 75 days have elapsed since that decision or order was made,*

I am of the opinion that a determination of whether the terms and conditions of section 3(7)(a) coverage have or are being met is not a reconsideration under the *Act*. Accordingly, I am satisfied that I have the authority to determine whether the terms and conditions of coverage are being met and to make any consequential decision.

### **ISSUES**

1. Whether the terms and conditions of the section 3(7)(a) coverage extended to the Joint Apprenticeship & Trade Improvement Committee of the Sheet Metal Industry (the "Committee") on October 5, 1984, are being fulfilled.

If not, then:

2. What impact does the failure to satisfy the terms and conditions have on the continuation of coverage?
3. Do the students of the Society qualify for admission under Part 1 of the *Act* through the application of section 3(6) or 3(7)?

### **BACKGROUND**

1. The Committee registered as an employer with WorkSafeBC on February 20, 1970, and was assigned account 149885.
2. On September 26, 1984, the Committee requested coverage for unemployed sheet metal journeymen taking updating courses at a training school located on the premises of Bollman<sup>1</sup> Roofing and Sheet Metal. The application was accepted, and a Board Minute dated October 3, 1984 extended coverage to the Committee under Section 3(7)(a) of the *Act* "for persons participating in upgrading courses which it operates to the extent that they are not already covered under other provisions of the *Act*."

---

<sup>1</sup> The letter requesting coverage indicated Bollman Roofing and Sheet Metal, whereas the letter from the Assessment Department indicated Bowman Roofing and Sheet Metal. I am satisfied that this was a typographical error and that both letters refer to the same location.

3. By letter dated October 5, 1984 the Assessment Department advised the Committee that its application had been approved and outlined the following explicit and implicit conditions for coverage:
  - (a) The Committee would be and remain the employer or program organizer;
  - (b) Coverage would be extended to persons participating in upgrading courses sponsored and operated by the Committee, to the extent that such persons were not already covered under other provisions of the *Act*; and
  - (c) Coverage was limited to trainees participating in upgrading courses located on the premises of Bollman Roofing and Sheet Metal.
4. By letter dated April 29, 1991 the Assessment Department advised the Committee that coverage was extended to apprentices participating in training programs:

*“The apprentices participating in the training programs of the trade school are covered under Section 3(7)(a) of the Workers Compensation Act. Coverage was granted under Section 3(7)(a) effective October 3, 1984.”*
5. A Trust Agreement amendment was made April 21, 1992 amongst the Sheet Metal Workers Local Union No. 280, the Sheet Metal and Air Conditioning Contractors National Association, B.C. Chapter, and eight trustees. The trustees, known as the Sheet Metal Industry Training Board (the “Training Board”), were mandated to function as a Joint Apprenticeship Committee and to operate a private trade school under the name of the Sheet Metal Workers Training Centre.
6. The name on account 149885 was changed to The Sheet Metal Industry Training Board in April 1992.
7. The Society was incorporated on September 25, 2002.
8. In August 2007, all apprentices taking classes at the Society’s premises were indentured to the Training Board. When the apprentices are not attending technical training, they are dispatched to sheet metal industry employers who are signatories to a Collective Agreement between the Sheet Metal Workers International Association Local Union 280 and the BC Sheet Metal Association or the Construction Labour Relations Association.

During their work based training, apprentices are paid wages by the industry employer for whom they are working. While attending technical training apprentices generally sever their relationship with the industry employer and collect benefits under the *Employment Insurance Act*. The apprenticeship and industry training agreements, or indentureship, with the Training Board remains in place. Throughout their four year apprenticeship, each apprentice generally works for multiple industry

employers. While some apprentices return to their pre-training employers, most do not.

## **LAW & POLICY**

Section 1 of the Act states:

**"employer"** includes every person having in their service under a contract of hiring or apprenticeship, written or oral, express or implied, a person engaged in work in or about an industry;

**"worker"** includes

- (a) a person who has entered into or works under a contract of service or apprenticeship, written or oral, express or implied, whether by way of manual labour or otherwise;
- (b) a person who is a learner, although not under a contract of service or apprenticeship, who becomes subject to the hazards of an industry within the scope of Part 1 for the purpose of undergoing training or probationary work specified or stipulated by the employer as a preliminary to employment;

Section 3 of the Act states:

(6) Where the Minister of Education, Skills and Training and the Minister of Labour approve a vocational or training program, and a school or other location as a place of that vocational or training program, the Board may, at the request of either minister, deem any person or class of persons enrolled in the program to be workers of the Crown in right of the Province

(7) Where a person or group of persons is engaged in a work study program or other program of self improvement involving work, whether or not the person or group receives payment for the work, the Board may

- (a) on the application of an employer or a program organizer, and on the terms and conditions the Board directs, by order, admit the person or group as being within the scope of this Part, and, on admission, the person or group is deemed to be a worker or workers to whom this Part applies, and the Board may levy assessments on the employer or program organizer by the formula the Board determines

Assessment Policy AP1-3-1

### **(c) Work study programs (section 3(7)(a) and (b))**

Applications for coverage under section 3(7) will only be considered if:

- there is a period of training in a standard work place environment in the community as opposed to a workplace established specifically for the purpose of the group;
- the coverage is limited to injuries or diseases arising out of and in the course of the employment in that standard workplace; and

- *the applicant accepts the Board's terms and conditions.*

*The employer or program organizer must make a written request for coverage to the Board. If the Board agrees, the employer or program organizer will be offered coverage under certain terms and conditions including an assessment formula.*

## **ANALYSIS**

### **Are the terms and conditions of the section 3(7)(a) coverage extended to the Committee on October 5, 1984 being fulfilled?**

Coverage under section 3(7)(a) of the *Act* has been in place since October 5, 1984, and premiums have been remitted. In an email dated June 6, 2007, a representative of the Society indicated, that "[p]ast claims for nicks and cuts have been accepted and processed by WCB without a problem".

However, as noted above, such coverage was subject to the following terms and conditions:

- (a) The Committee would be and remain the employer or program organizer;
- (b) Coverage would be extended to persons participating in upgrading courses sponsored and operated by the Committee, to the extent that such persons were not already covered under other provisions of the *Act*; and
- (c) Coverage was limited to trainees participating in upgrading courses located on the premises of Bollman Roofing and Sheet Metal.

As the Committee no longer sponsors or operates upgrading courses and the training no longer takes place on the premises indicated, the terms and conditions under which coverage was extended are no longer met.

### **What impact does the failure to satisfy the terms and conditions have on the continuation of coverage?**

The coverage extended to the Committee on September 26, 1984, granting coverage under section 3(7)(a) of the *Act* to unemployed sheet metal journeymen taking updating courses at a training school located on the premises of Bollman Roofing and Sheet Metal is no longer in place. Further and by extension, the coverage extended by letter dated April 29, 1991 to apprentices participating in training programs is also no longer in place.

### **Do the students of the Society qualify for admission under Part 1 of the Act through the application of section 3(6) or 3(7)?**

Although WorkSafeBC has continued to provide coverage (for want of knowledge of the circumstances and in order to ensure coverage while this decision was pending), I must

consider the current circumstances in determining whether coverage should now be extended to the Society. That is, I must determine whether the programs organized by the Training Board and the Society fall within the scope of section 3(7) of the *Act*; and, if so, whether voluntary coverage can be extended for students attending apprenticeship or upgrading programs.

The Society offers classes to several categories of persons, including apprentices, and to journey persons.

- (a) The definition of “worker” in section 1 of the *Act* includes “a person who has entered into or works under a contract of service or apprenticeship, written or oral, express or implied, whether by way of manual labour or otherwise”. Apprentices who leave their place of employment to participate in the technical training component of their apprenticeship are still workers under the *Act*, so long as the apprenticeship contract remains in effect. Coverage under section 3(7)(a) of the *Act*, which involves deeming a person to be a worker, would therefore be redundant.
- (b) Trainees who enroll in apprentice courses and have no sponsoring employer either immediately preceding or following their technical training may be covered under section 3(6) of the *Act*, provided the Ministry of Advanced Education<sup>2</sup> approve the training program and school. Workers admitted under section 3(6) are deemed to be workers of the Crown in right of the Province. Ministry of Advanced Education policy, dated April 1, 1996, provides coverage for students attending public colleges, university colleges and institutes in British Columbia. As WorkSafeBC is without authority to expand the scope of this coverage, the Society, the training center operated by the Training Board, being a private, post-secondary institution, is excluded by Ministry of Advanced Education policy from coverage under section 3(6).
- (c) Employed journey persons attending training at the Society’s premises are workers under section 1 of the *Act*. Coverage under section 3(7)(a) of the *Act*, which involves deeming a person to be a worker, would therefore be redundant.
- (d) Unemployed journey people attending training at the Society’s premises are not workers under section 1 of the *Act* and may be individuals to whom section 3(7)(a) applies.

Assessment Policy AP1-3-1 presents a three part conjunctive test to determine eligibility for coverage under section 3(7):

---

<sup>2</sup> Effective September 9, 2002 responsibility for the Provincial Workers’ Compensation Program for practicum and apprenticeship students was transferred to the Ministry of Advanced Education.



Applications for coverage under section 3(7) will only be considered if:

1. there is a period of training in a standard work place environment in the community as opposed to a workplace established specifically for the purpose of the group;
2. the coverage is limited to injuries or diseases arising out of and in the course of the employment in that standard workplace; and
3. the applicant accepts the Board's terms and conditions.

Journey person upgrading and training is delivered through evening classes at the centre. As there is no period of training in a standard work place environment, the first branch of the conjunctive test is not met and coverage can not be extended under section 3(7).

## **CONCLUSION**

1. The Committee no longer satisfies the terms and conditions of the section 3(7)(a) coverage extended on October 5, 1984.
2. Coverage granted to the Committee under section 3(7)(a) of the *Act* is no longer in place.
3. Students of the Society do not qualify for admission under Part 1 of the *Act* through the application of section 3(6) or 3(7).

As a consequence of these decisions, section 3(7)(a) coverage will be removed from WorkSafeBC account 149885 effective January 1, 2008.

## **APPEAL PROCEDURES AND TIME LIMITS**

If you disagree with this decision, you may request a review from the Review Division within 90 days of the date of this letter.

If you have questions about the decision, you may ask to have it clarified by the Assessment Department. If additional information comes to light, the department may reconsider its decision within 75 days of the date of this letter. Please note that the department cannot reconsider a decision once a request for review has been filed with the Review Division, and that a review request can only be accepted within 90 days of this letter.

A request for appeal does not relieve you from your obligations under the *Workers Compensation Act* or from paying monies in dispute. If your appeal is successful, your account or any payments will be adjusted accordingly.

The Ministry of Labour and Citizens' Services provides impartial advisers on workers' compensation matters. If you require assistance, contact the Employers' Advisers Office at 1-866-870-5492.

Account 149885  
The Sheet Metal Industry Training Board  
November 8, 2007

Sincerely,

A handwritten signature in black ink, appearing to read 'L. Love', written over a horizontal line.

Linda Love  
Research and Evaluation Analyst  
Assessment Department  
WorkSafeBC  
Phone: (604) 214 6745  
Fax: (604) 244 6391

## Assessment and Audit Operations

### Mailing Address

PO Box 5350  
Station Terminal  
Vancouver BC V6B 5L5  
www.worksafebc.com

### Location

6951 Westminster Highway  
Richmond BC V7C 1C6  
Telephone 604 244 6181  
Toll Free within Canada  
1 888 922 2768

### Linda Love

### Assessment Policy

Direct Telephone 604 241-6745  
Direct Facsimile 604 244-6391  
Toll Free within Canada  
1 888 922 2768, local 6745

November 27, 2007

Cindy Dimitrijevic, Training Co-ordinator  
Sheet Metal Workers Training Centre Society  
Sheet Metal Industry Training Board  
4415 Dawson Street  
Burnaby BC V5C 4B8

Dear Cindy,

**Regarding: WorkSafeBC coverage for students  
WorkSafeBC account 149885**

I am writing in response to your email of November 16 and November 20, 2007. My response is intended to answer your questions, to provide information and to help clarify my decision of November 8, 2007. This is not a reconsideration of that decision.

### Disclosure

You requested a copy of the letter dated April 29, 1991, in which the Assessment Department advised the Joint Apprenticeship & Trade Improvement Committee of the Sheet Metal Industry (the "Committee") that coverage was extended to apprentices participating in training programs.

Assessment Manual Item AP1-95-1 addresses the Disclosure of Assessment Information. AP1-95-1(b) requires that copies of the employer's assessment record be sent to the employer or independent operator and any person or organization having their written approval as soon as possible after the Board has received a request.

The letter in question is stored in the Assessment Department's electronic record system, on account 149885. This account was initially established for the Committee, and the name on the account was changed to The Sheet Metal Industry Training Board (the "Training Board") in April 1992. I recognize that the Committee, the Sheet Metal Workers Training Centre Society and the Training Board are different entities, however I am satisfied that the relationship between these entities is such that disclosing the Assessment Records for the Committee to the Sheet Metal Workers Training Centre Society and the Training Board do not violate the spirit or intent of the law.

## Questions

For ease of reference, I have listed your questions, followed by my response.

- 1. If the Sheet Metal Workers Training Centre Society were approved by the Ministry of Advanced Education to deliver apprentice technical training, would the Society then be able to apply for coverage for apprentices under section 3(6)?**

Section 3(6) of the *Workers Compensation Act* (the "Act") states:

*(6) Where the Minister of Education, Skills and Training and the Minister of Labour approve a vocational or training program, and a school or other location as a place of that vocational or training program, the Board may, at the request of either minister, deem any person or class of persons enrolled in the program to be workers of the Crown in right of the Province*

There are two conditions that must be met prior to WorkSafeBC extending coverage under section 3(6):

1. The Minister of Advanced Education, Training and Technology (who have assumed responsibility for the Provincial Workers' Compensation Program for practicum and apprenticeship students) must approve the program, and a location as a place of that program; and
2. The Minister of Advanced Education, Training and Technology must request that the Board deem the person or class of persons enrolled in the program to be workers of the Crown in right of the Province.

If the evidence indicates that both conditions have been met, the Board may deem any person or class of persons enrolled in the program to be workers of the Crown in right of the Province.

- 2. Would upgrading fall within the scope of 3(6) or is it just covered under 3(7)?**

I am unable to answer your query as it requires interpretation of Minister of Advanced Education, Training and Technology policy. However for the sake of convenience, I direct you to Ministry of Advanced Education policy titled "Workers' Compensation Board Coverage for Students Attending Public Colleges, University Colleges and Institutes in British Columbia" and dated April 1, 1996, which states:

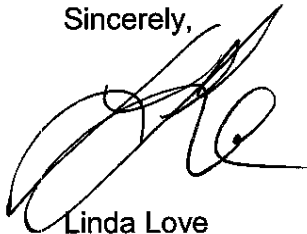
"September 1, 1994, Provincial Workers' Compensation Board coverage only covers student apprentices while attending the classroom/lab/shop instruction for the technical training component of an Apprenticeship Program. This coverage will no longer be in place for non-apprenticeship students in any other programs."

**3. Is coverage under section 3(6) the same coverage that the public schools have for their apprentices?**

As outlined in my letter of November 8, 2007, trainees who enroll in apprentice courses and have no sponsoring employer either immediately preceding or following their technical training may be covered under section 3(6) of the Act, provided the Ministry of Advanced Education approve the training program and school. Workers admitted under section 3(6) are deemed to be workers of the Crown in right of the Province. Ministry of Advanced Education policy, dated April 1, 1996, provides coverage for students attending public colleges, university colleges and institutes in British Columbia.

Please feel free to contact me if there is anything further you require.

Sincerely,



Linda Love  
Research and Evaluation Analyst  
Assessment Department  
WorkSafeBC  
Phone: (604) 214 6745  
Fax: (604) 244 6391

Enclosure: Letter dated April 29, 1991 from the Assessment Department to the Joint Apprenticeship & Trade Improvement Committee of the Sheet Metal Industry

149885

Joint Apprenticeship and  
Trade Improvement Committee  
507 - 5050 Kingsway  
Burnaby, B. C. V5H 4C2

April 29, 1991

Attention: Mr. Don Fearey

Dear Mr. Fearey:

Re: Firm No. 149885-112 (008)

I refer to your telephone call to Mr. B. Biggs of this office on April 23, 1991.

As we understand that the Joint Apprenticeship and Trade Improvement Committee is operating a licensed trade school for apprentices, we have added Class 140600 (Trade School) to the Committee's registration. We have added the classification effective January 1, 1991. The 1991 assessment rate applicable to the additional classification is \$.45 per \$100 of assessable earnings.

I am enclosing a copy of our letter dated October 5, 1984. The apprentices participating in the training programs of the trade school are covered under Section 3 (7) (a) of the Workers' Compensation Act. Coverage was granted under Section 3 (7) (a) effective October 3, 1984.

I trust this action meets with your approval.

Yours truly,

J. Tyler (Mr.)  
Accounts Officer  
Assessment Department  
Tel. No. 276-3102  
Toll Free No. 1-800-972-9972  
Local 3102

JT:dk

Enclosure

cc: Audits