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A look at the origins of workers' compensation in B.C.

View from the Board | Grant McMillan

Workers' Compensation in British Columbia is a billion dollar industry. The original system has changed dramatically since its beginning, growing both in scope and in responsibility.

This column takes a look into the origins of the complex system of workers' compensation in order to better understand its purpose and intent – and to consider a sustainable way forward.

The workers' compensation system in British Columbia came into existence on Jan. 1, 1917, as a result of the Workers' Compensation Act that was passed by the provincial legislature.

That statute created a basic scheme that was similar to those started in Ontario in 1914; and – before 1900 – in Germany and in England.
The B.C. statute also set in place the Workmen's (now Workers') Compensation Board to administer the act.

The 1917 legislation in our province was put in place to resolve the long-standing legal and social difficulties that resulted from workplace injuries and diseases.

Prior to 1917, the injured worker might choose to go to court to sue the employer for damages.

This involved a good deal of time and expense, especially for the worker.

Employers could seek to have the lawsuit dismissed – usually by using one of these three defenses:

1. Assumption of risk: that is, the worker assumed the risk knowingly by taking the job;

2. Contributory negligence: the worker was at fault or partly at fault for the injury;

3. The "fellow servant" rule: a fellow worker was at fault, not the employer.

These defenses were both broad in scope and difficult to overcome.
Typically, the worker succeeded in winning some kind of award from the courts in only 20 to 30 per cent of the cases.

In sharp contrast, in today's world of workers' compensation in B.C., more than 96 per cent of worker claims are accepted.

The settlements paid to workers under the old court-based system were usually small and time-limited, so that a long-term injury would have disastrous impact upon the worker and his family.

Even the small settlements were eroded by the fees for lawyers representing the injured workers.

Typically, the fees amounted to 30-40 per cent of the award recovered.

An unsuccessful lawsuit, or even a successful one, with a small
settlement, would leave the injured worker and his family destitute.

At the same time, the employer would have to pay legal expenses and take time away from the company.

In those cases where the worker's lawsuit was successful, the employer might face high costs for damages and be put out of business.

Both the worker and employer were forced to spend unproductive days in a courtroom. Some of the lawsuits took three to four years to settle.

This adversarial approach was neither efficient nor humane.

Then the Workmens' Compensation Act (as it was then called) changed everything.

My next column will discuss the "new" system of 1917. This column is the first part of a series that takes a look at the billion-dollar industry that is workers' compensation. Keep reading the Journal of Commerce for the rest of the series.

Grant McMillan is the president of the Council of Construction Associations, which represents the interests of 16 construction associations in B.C. on WorkSafeBC matters. Grant is also a member of the Journal of Commerce Editorial Advisory Board. Send comments or questions to editor@jourmalofcommerce.com.