



**RESCON**®  
RESIDENTIAL CONSTRUCTION  
COUNCIL OF ONTARIO

November 21, 2008

**RESCON Submission on Bill 119**

Please find attached our submission to the Standing Committee on Social Policy in consideration of Bill 119 - An Act to Amend the Workplace Safety & Insurance Act, 1997. It is a submission generally supported by many other construction associations and supports the principles of the Bill 119 while providing some clarity on some potential areas for improvement. If you should have any questions regarding this matter, please do not hesitate to contact me at (905) 760-7777, ext 103.

Sincerely,

Jason Ottey

**A submission to the Standing Committee on Social Policy in Consideration of  
Bill 119 – An Act to Amend the Workplace Safety & Insurance Act, 1997**

**on behalf of RESCON  
(Residential Construction Council of Ontario)**

**November 17<sup>th</sup> 2008**

This submission represents the views of the Residential Construction Council of Ontario (RESCON). RESCON is an association exclusively comprised of builders representing the construction interests of high rise and low rise residential constructors in the Central Ontario region. RESCON represents both unionized and non unionized construction firms operating in the Province of Ontario. RESCON represents more than 120 production builders directly employing more than 1500 employees and are responsible for 75% of all new housing stock in the central Ontario region.

RESCON has long been an advocate of mandatory coverage and has participated in several industry consultations on the issue dating back more than a decade. In its simplest form, the purpose of mandatory coverage is to prevent legitimate exemptions from being abused by industry participants to escape their statutory obligations under the Workplace Safety & Insurance Act (WSIA). These loopholes place those employers complying with their statutory obligations at a competitive disadvantage to those whom are willing to “cheat” the system, thereby creating un-level playing field. The problem is not with the exemption, but with its ability to be manipulated as a “loophole” and applied to a class of individuals not originally contemplated.

Principles of mandatory coverage include its ability:

- to minimize revenue leakage and ensure a fully funded WSIB system that is financially sustainable;
- to provide clarity, consistency and certainty about a person’s status;
- to provide a simpler approach for employers, independent operators and the WSIB to determine status and responsibility at the time of engagement;
- provide clarity as to who is responsible to remit premiums; and
- to prevent individuals who would otherwise be covered from escaping coverage or from being coerced to seek an exemption as a condition of employment.

Any mandatory coverage scheme must be evaluated against its ability to achieve the above noted principles. Measured against those principles, we believe that Bill 119 - An Act to Amend the Workplace Safety & Insurance Act, 1997 is certainly a step in the right direction. In addition to providing clarity of coverage and the financial ability to ensure a fully sustainable WSIB system, the Bill also provides the legislative and regulatory tools necessary to devise a system of verifying coverage for the construction industry.

Although Bill 119 achieves many of the principles illustrated above, the Bill must also be examined in its ability to prevent any exemptions from being used as “legislative loopholes” to evade coverage in the future. It is here, that the Bill needs to be further tightened to prevent a key sector of the industry from abusing an exemption to escape coverage.

The Ontario Construction Secretariat estimates that 50% to 70% of the construction employment in the residential renovation and repair industry is underground. This is our key competitor. In comparison, the OCS estimates that between 15% to 20% of the new home sector employment is underground (Ontario Construction Secretariat. *Estimates of Revenue Losses to Governments as a result of Underground Practices in the Construction Industry* pg16. B-7. 2001). Clearly a level playing field does not exist between the two segments, with the new home market at a real competitive disadvantage to the renovation sector, which makes up almost half the size of the residential construction industry.

As drafted, Section 12.2(5) is not narrowly defined enough to prevent its manipulation and abuse in a sector of the industry that has grown well accustomed to avoiding its statutory obligations. One could easily contemplate a scenario where a homeowner pays a contractor's employees directly for the work performed, thereby removing the obligation of that contractor to remit premiums on behalf of his/her employees.

Although Bill 119 does specify that the exemption only applies to an "individual" who performs no construction work other than exempt home renovation work, its potential for abuse is both clear and present. We believe that additional criteria need to be established in order to prevent the exemption from being abused. We would also like to note that the problem is not insurmountable, but one which requires additional time and involvement from all the relevant stakeholders to overcome.

As a potential remedy, we believe that an amendment to the Bill is necessary which requires, subject to the approval of the Lieutenant Governor in Council, the WSIB in consultation with industry stakeholders, to make regulations it deems appropriate that further restricts the ability of the "home renovation exemption" to be abused and applied to classes of individuals not contemplated under the Act.

While Bill 119 appropriately prevents people who would otherwise be covered from escaping coverage by representing themselves as executive officers, we believe the distinction of an "executive officer" be preserved. Although we understand that the "executive officer" is a tragic albeit necessary causality of war, our experience is that company owners with five or fewer workers tend to work on site themselves. With more than five workers, owners tend to be more involved in growing their company, working with suppliers, clients etc. These executives are not workers engaged in construction work.

We believe that impact of this change could be mitigated by ensuring that the legitimate executive officer who does not through the course of their duties perform construction work, be mandatory covered at a premium rate commensurate with the risk they are exposed to. Bill 119 if passed would provide the necessary tools (currently not available) to assist the WSIB to appropriately ascertain who these individuals are and ensure (by either regulation and or policy) that only legitimate executive officers of a corporation be eligible for the risk adjusted premium rate.

In addition, section 9.3 of the *WSIA* with its direct reference to the small company limit of 5 times 175% of the average industrial wage could be used as minimum qualification to be eligible for “executive officer” insurance. Those firms under the threshold would be ineligible to apply, while those above it would qualify for the risk adjusted premium for their “executive officers” as defined in *WSIA* policy. This would preserve the legislative intent of the Bill while mitigating its impact on those legitimate executive officers now captured under a revised system of coverage.

I thank you for you considered attention to our submission.