

**SUBMISSION IN RESPONSE TO THE  
WSIB COVERAGE DISCUSSION PAPER**

**Residential Framing Contractors' Association  
Residential Construction Council of Central Ontario  
Residential Siding Contractors' Association  
Independent Plumbing & Heating Contractors' Association  
Interior Systems Contractors' Association of Ontario  
Residential Low Rise Forming Contractors' Association  
Ontario Concrete & Drain Contractors' Association  
Ontario Formwork Association**

March 28, 2002

## **Who We Are**

A group of trade associations engaged in the residential construction industry in the central Ontario region, have united to propose solutions to the WSIB system. The groups' member's employ approximately 17,500 workers and represent more than 350 employers. The members include: Residential Framing Contractors' Association, Residential Construction Council of Central Ontario, Residential Siding Contractors' Association, Independent Plumbing & Heating Contractors' Association, Interior Systems Contractors' Association of Ontario, Residential Low Rise Forming Contractors' Association, Ontario Concrete & Drain Contractors' Association, and the Ontario Formwork Association.

## **Current Environment**

The WSIB discussion paper, *Coverage Under the Ontario Workplace Safety and Insurance Act* identifies some of the major issues that are contributing to the continued erosion of the WSIB's premium base. It is important to put this paper into context, relative to the recent attempts to reform the workers compensation system in Ontario.

During the 1980s and 1990s, the construction sector and the WSIB experienced tumultuous times. The WSIB was not receiving sufficient premiums to cover the claims made by the construction industry. In an

effort to address the issues plaguing the system, in early 2000, the WSIB established the Construction Strategic Planning Committee (CSPC).

The CSPC committee identified five areas of concern and then established five sub-groups to address each concern. It was found that certain elements of the construction industry were structurally incompatible with the WSIB. However, rather than focussing on structural changes that would have required longer-term solutions, the CSPC decided to make short-term changes within a structurally flawed system. Although this exercise was useful in bringing to light many problems with the current system, the end result was less than optimal for the construction industry. The problems faced by the construction industry clearly run far too deep for a band-aid approach.

According to WSIB's Revenue Recovery Team (RRT), an estimated \$374M is lost every year because of fraud and the underground economy. In 2001, the RRT registered close to 700 construction companies who were previously unregistered, in dollars that amounted to \$3.3M. In total over \$7.9M was recovered in 2001 by the RRT. These results were achieved with a staff of 9, with only 2 individuals dedicated specifically to construction. Although these efforts should be commended, the revenue recovered represents less than 3% of the estimated size of revenue lost to fraud and the underground economy.

According to the Ontario Construction Secretariat, approximately 98,000 construction workers are engaged in the underground economy. This includes workers for whom premiums are underreported or who lack

coverage altogether. Also, preliminary research indicates that more than 20,000 construction employers who issued T4 slips for the year 2000 were not registered with the WSIB.

The construction sector is clearly not sufficiently covered under the WSIB system and this has contributed to the overall problems facing the program. In particular, the residential sector's premium base has been eroded by:

- Proliferation of the renovation and repair market, which remains largely a part of the underground economy;
- Under-reporting of payroll and;
- An overall lack of consistency and clarity with respect to who is and who is not covered under the Act.

This coverage base erosion and resulting revenue loss only serves to penalize legitimate employers by raising WSIB premium costs and making it increasingly difficult to compete.

The residential sector is unique in that it has a large number of independent operators (IOs) who work under contract for larger contractors. Also there exists a plethora of small renovation and repair firms. As a result, the opportunity exists for workers to fall through the cracks since IOs are not required by legislation to obtain insurance (they may purchase optional insurance from the WSIB, but many choose not to).

This has led to efforts to revise the Independent Operator Questionnaire. Over the last few years the number of IOs increased substantially. Statistics

Canada has estimated that between the period of 1989 to 1999, self-employment within the construction industry in Ontario increased from 23% to 35% over a ten-year period. This trend is also noted internationally.

Given that IOs have the ability to opt out of WSIB coverage, the WSIB has experienced significant revenue loss from this sector. In addition, many workers without coverage who become injured seek and often receive benefits. In opting out of coverage, IOs also opt out of their share of the unfunded liability. These costs must then be spread across registered employers remitting premiums.

The WSIB CSPC proposed to close this loophole by narrowing the definition of an independent operator, through changes to the IO Questionnaire and by creating a "default to worker status" for independent operators who failed to receive a positive determination from the Board. A simpler solution would have been to eliminate the ability for IO's to opt out of coverage. In any event the changes initially suggested by the WSIB CSPC would have all but eliminated the IO, and the WSIB has subsequently decided to examine broader, systemic changes through this consultation process. We agree that this wider focus is appropriate.

IOs play a very important role in the construction industry driving competition and providing a stabilizing effect on the industry. Piecework is a reality in the residential construction industry. The increase in self-employment is a worldwide phenomenon and evolved in the construction industry as a way to increase production and efficiency. It allows flexibility in the industry by allowing labour resources to move freely to where they

are needed most. It is not a result of some concerted effort by industry to evade paying WSIB premiums. Without the piecework system, inefficiencies in the construction industry would persist and the resultant costs would be passed on to consumers.

The main premise of the consultation paper released by the WSIB is to recommend the introduction of universal coverage. While we agree that this is ideal on a broader level, we are clearly most interested in ensuring that the coverage within the construction industry is seriously reformed.

From our perspective the major issues that must be addressed in this consultation process are:

- Mandatory coverage for independent operators within the construction industry
- Creating an efficient system of ensuring that all construction employers (such as renovation and restoration) are registered with WSIB and that they remit for their entire payroll; and
- Devising a pro-active method of enforcement which ensures every individual performing work on a job site is covered under the WSIB

## **Principles Involved**

The WSIB is proposing a system of Comprehensive Coverage for all industries/activities in Ontario. Regardless of whether the government

proceeds with universal coverage for all workers in all sectors, WSIB coverage should at the very least be mandatory within the construction sector. Although mandatory coverage within the construction sector will assist in solving many of the problems faced by the sector, it is not the panacea for all that ails the workers' compensation system. Without the adoption of certain principles, mandatory coverage will not result in substantive improvements. These principles include:

- Mandatory Verification of WSIB Coverage;
- Adoption of a Named Insured System;
- Require all Independent Operators to purchase WSIB insurance;
- A Fair and Equitable Test to determine the individual's status in the case of a dispute;
- Information and Enforcement;
- Serious Penalties for Non-compliance, and;
- A more Aggressive Experience Rating System

### **Mandatory Verification of WSIB Coverage**

Controlling site access in the construction industry is incredibly difficult, especially in the low-rise residential sector and home renovation market. Typically a low-rise site does not have one entry/exit point; lacks a perimeter fence or barrier to restrict site access to authorized personnel only; and is continually receiving construction materials and supplies. As a result, the WSIB must require that all individuals initially 'check-in' with the Site

Office personnel to verify that they are insured by the WSIB before commencing work. This would be "a one time project-specific requirement", and would enable Constructors to ensure that all workers have proof of WSIB coverage for the period during which they will be working on that site. This is the most efficient means of ensuring that every individual performing work on a job-site is covered under the WSIB.

Within the renovation and restoration sector - which is equal in size to the new home building sector - much of the work is not adequately reported or covered. This enables the sector to "free-ride" on the more visible new home building industry.

### **Named Insured System**

Under reporting is a huge source of revenue loss for the WSIB. The adoption of a Named Insured System would prevent this revenue loss problem. Every worker in the province should be required to carry a WSIB Insurance Card, which would be a unique card, paired with a social insurance or OHIP number. This system should be paired with a smart card technology to ensure compliance. In the interim, a WSIB photo ID card similar to an individual's OHIP or drivers license could be used.

The named insured system could work on the same principles as those used for car insurance, home insurance and life insurance. The benefit of the named insured system is that it allows greater flexibility for classifying individuals according to the nature of their work. This system clearly

identifies who is covered and who is not covered. The construction sector could be used as a pilot project to test the efficiency of a named insured system, which if successful could be expanded to the broader group of workers covered by workers' compensation.

### **Named Insured System: Employer / Employee Case**

Under a named insured system, a firm registered with the Board would be required to carry insurance for each employee by name. When a clearance certificate is issued by the WSIB, a list of employees would accompany the clearance certificate. In the interim, a clearance certificate should at the very least identify the number of individuals covered under that certificate. This clearance certificate would be kept on file with the Constructor and cross-referenced as workers "check-in" to ensure accuracy and compliance. Workers would, at all times, be required to carry a "WSIB Insurance Card", indicating their status as a covered employee.

### **Named Insured System: Independent Operator Case**

If an individual self-identifies as, or is deemed to be an independent operator, the WSIB would register him/her with the Board on a named insured basis and issue a clearance certificate for that individual independent operator. The clearance certificate should name individuals and indicate the date of expiry. This date should correspond with the date the premium payments are scheduled to end. As an IO, your insurance would be good for the period for which premiums are fully paid. IOs would also be required to

carry a WSIB Card at all times while on the worksite and would be required to purchase an annual insurance plan that would cover them from job to job throughout the year. IOs would not be permitted on the worksite without this proof of insurance. Random worksite inspections would assist in compliance.

\* Refer to Appendix – Sources of Revenue Leakage (Construction Industry); Revenue Flow Chart – Named Insured System, and; Named Insured System

## **Executive Officers - Tightening the Definition**

All individuals performing work must be required to have coverage regardless of their status. To prevent independent operators from reclassifying themselves as Executive Officers and establishing "partnerships of convenience", the definition of an executive officer should include a prohibitive clause preventing EO's from performing any work on a job site (other than in a supervisory capacity). With the adoption of a named insured system, the WSIB could also implement a two-tiered system that distinguishes between those individuals working on-site (and therefore at a significantly higher risk of injury) and those working off-site. Rates for officers working off-site would be segregated and would be substantially less reflecting the differences in risk related to their occupations.

Independent Operators are falling through the cracks because they currently have the ability to opt out of WSIB coverage. There are no safeguards in place to ensure that those who do not have coverage are easily identifiable. The temptation to avoid paying premiums is high among independent

operators who often make this choice in order to be cost competitive. By requiring all workers to carry WSIB insurance there is no competitive advantage to be exploited.

## **Fair and Equitable Test for IO's**

A person who declares them self to be an IO, would be required to pay their own premiums. It is absolutely essential that Independent Operators pay for their own WSIB premiums because it forces these individuals to work safely. Independent operators are companies. They operate autonomously from the prime contractor. They determine their own work schedules and are not bound by any contract with the prime contractor. They also own the tools of the trade, have G.S.T. numbers and file business tax returns. It makes perfect sense that these individuals should be responsible for their own health and safety and WSIB premiums.

IOs should be required to carry an insurance card at all times while on the worksite. If an IO employs anyone else (or is assisted on the job by anyone else), they should be classified as an employer, and should be responsible for the WSIB premiums for those additional workers. The use of the tax system would be invaluable in monitoring compliance and status.

This type of system would remove most of the need for an IO test. The only circumstances under which this would come into play would be in the case of a dispute. However, a fair and equitable test would still be required in the determination process.

\*Refer to Appendix – Recommendations for Improving IO Test, and; Problems with the Proposed Changes to the IO Test

## **Renovation and Repair Market**

The renovation and repair market continues to be one of the largest contributors to the WSIB's unfunded liability. To reverse this trend, we recommend the WSIB implement the following:

- Implement recommendation B1 (i) – Consolidating and Rationalizing Regulations of the BRRAG Report. This recommendation requires notification to the Ministry of Labour regarding Building permit applications which involve construction projects as required by the OHSA
- Require that all Building Permit Applications include confirmation of WSIB coverage and/or assurance that WSIB coverage will be in place
- Empower Building Inspectors to check for WSIB numbers
- Require that information on contracts over \$500 reported to CCRA under the Contract Reporting System be forwarded to the WSIIB as well.

Currently, a purchaser of construction services (e.g. homeowners and small businesses) is not protected from civil action if the contractor is not covered under the WSIB. The WSIB must further educate the public about their responsibilities and obligations under the WSIA. All purchasers of construction services must share the same degree of responsibility as a constructor in the residential or ICI sector. It must be the responsibility of the purchaser to ensure that the contractor is insured with the WSIB.

## **Information and Enforcement**

Information is the key to enforcement and is essential to monitoring compliance. CCRA is ideally positioned to be the most effective “collection agency”. The WSIB should establish an information sharing agreement with CCRA and other tax related departments to utilize their information and collection capabilities to prevent further WSIB payment erosion.

Furthermore, the WSIB could require employers to make an “at source contribution” when remitting CPP, EI, federal and provincial contributions. Under a tax agreement the WSIB could utilize CCRA Contract Reporting Payment information to examine the levels of payments and use this to determine whether a person is truly self-employed or whether they are in fact employing others. Through entering into information sharing agreements with federal and provincial tax authorities, the WSIB can plug a massive hole in the system and potentially save millions of dollars.

There are some noteworthy precedents for this kind of co-operation. An example of how information sharing can be successful is the student loan program. The Ministry of Training Colleges and Universities (MTCU) has an agreement with CCRA to verify income. Before a loan is granted, the student must sign a form allowing a third party to verify income. MTCU submits the SIN to CCRA who then forwards to MTCU information relating to income obtained from the student’s income tax return. This information is then used to determine whether an individual qualifies for assistance and to calculate loan repayment terms. MTCU also has agreements with the Ministry of Community and Social Services and the Ministry of

Transportation. These agreements have saved the provincial government millions of dollars. There are clear benefits for the WSIB entering into a similar information sharing agreement with the federal government and other provincial ministries. Using the tax system, avoids creating additional red tape by using information, which currently exists to a better advantage, with little added burden to employers or independent operators.

## **Penalties for Non-Compliance**

The only way mandatory coverage will be successful, is if there are serious penalties for non-compliance. Failure to comply should be considered a serious offence and in order to ensure compliance, adequate monitoring/policing of the system must occur, including random jobsite inspections and information sharing. For those who fail to cover employees and for individuals who fail to pay their premiums, there must be consequences. These consequences should be clearly communicated and enforced. Such consequences should include the following:

- Claims rejection/refusal of benefits
- Significant fines and or penalties

## **Experience Rating System and Rate Group Reclassification**

The WSIB currently provides a rebate for those who's experience record has shown that they have no accident claims against them. However despite

having an exemplary record rebates are limited. This can create a disincentive to improve performance and/or register with the WSIB. With a move towards a system that is more aggressive, there would be a greater incentive to register with the WSIB. Furthermore, by applying an aggressive experience rating system to Individual Operators, the WSIB will force these individual poor performers to improve their safety and not simply pass the costs and responsibilities onto prime contractors and builders. By applying an aggressive experience rating system to IOs, these individuals will have a vested interest in working safely.

In addition to the above, a reduction and reclassification of rate groups would discourage “rate shopping”. Rate shopping contributes significantly to the problem of revenue leakage by allowing companies to “shop” for the best rates even if they do not reflect the type of work and degree of risk actually being performed.

## **Other Issues**

There have been suggestions that the WSIB should permit private sector administration of the program or parts of the program to create greater efficiencies. This would be acceptable providing the following basic principles were adhered to:

1. The principle of Limited Liability must be maintained. There must be no further recourse to the employer by insurers (no-fault insurance).
2. Any private insurance would need to be WSIB approved.
3. All workers and employees would be required to carry a standard insurance card/certificate.
4. A fail safe such as a 'facility' type association should exist for hard to ensure workplaces.

## Summary

Regardless of whether there is universal coverage for all sectors, there must be reform within the construction sector. These reforms must include:

- Mandatory WSIB coverage for IOs (paid for by IOs)
- Adoption of a Named Insured System
- Mandatory Check-In & Verification of Coverage before Commencement of Work
- A Fair and Equitable Test to Determine IO Status in Cases of Dispute
- Notification to the Ministry of Labour of Building permit applications
- Require that all Building Permit Applications include confirmation of WSIB coverage
- Empower Building Inspectors to check for WSIB numbers
- Educate Public about their Responsibilities and Obligations under the WSIA
- Information Sharing with other Government Agencies & Ministries
- Serious Penalties for Non-compliance
- Aggressive Experience Rating System and Rate Group Reclassification
- Narrow Definition of an Executive Officer

We appreciate the opportunity to be consulted on these issues and would hope that there would be further consultation on the final recommendations and the operationalization of any planned changes to the system.

# APPENDIX

## RECOMMENDATIONS FOR IMPROVING IO TEST

### 1. **CONTRACTOR PAYMENT REPORTING SYSTEM**

This is an immediate short-term solution, which the WSIB has the power to implement now. Prime contractors are already generating this information for CCRA. All contractors should be required to send a copy of this information to WSIB. This will enable WSIB to know who is being paid, for what they are being paid, and how much they are being paid. WSIB could then use this information to investigate anyone (or a sample of those) being paid over a certain threshold amount (an indication that they may be employing other workers). This the fastest and most certain way of identifying those who are currently not within the system.

### 2. **INCREASING AWARENESS ABOUT THE CONSEQUENCES OF BEING DEEMED AN IO**

The IO questionnaire should state clearly the ramifications and consequences of being deemed an IO. Also a waiver form should accompany the IO Test, detailing what an IO is and defining their rights, responsibilities, and obligations, as well as requiring the IO to waive any and all future WSIB claims associated with the related work. This will eliminate the “I didn’t know that” excuse. This also entails communicating through as many avenues as possible (through the union, the associations and its members, and media). It has to be clear that if you opt out of WSIB insurance then you have **NO RECOURSE** if you are injured.

### 3. **IO CANCELLATION FORM**

This form should accompany all affirmative IO determinations. The purpose of this form is to place the onus on an IO to inform the Board that his/her status has changed. If an IO is becoming a worker, then the employer’s WSIB registration number should provided. If an IO is becoming an employer, then his firm’s WSIB registration number would have to be provided. The form would terminate the IO designation and establish his new “status”. It’s important to note that the onus should be on the IO to report any new material changes in his status. This will prevent IOs from opting out of WSIB coverage and then collecting WSIB benefits when there is an injury, because they will have been required to make written notice of any status change.

### 4. **LIMITING THE SCOPE OF APPEAL**

The WSIB should limit the ability of an IO to appeal an affirmative determination to the WSIAT in the case of accident. For example, one complaint mentioned by the WSIB occurs when an individual receives an IO decision and does not purchase optional insurance from the Board. An accident occurs and then the IO appeals his previous determination until he receives one stating he is a worker and the responsibility of the prime contractor. Essentially, we recommend that if you

are recognized by the WSIB as an IO, you are not to be permitted to appeal the decision if you have an accident, unless you have submitted a “change of status form” prior to the date of the accident.

**5. ENFORCMENT OF A “NO-HIRE” POLICY**

Exploratory research indicates a substantial number of IO’s hire additional workers on a PT, FT and causal basis. IO’s who hire additional help should be considered Employers under the Act. We believe enforcing a “no hiring” policy would dramatically reduce the number IO designations by forcing them to be treated as employers. Although this may induce some IO’s to establish partnerships of convenience, by cross-referencing the Contractor Payment Reporting Systems data, the WSIB could have the necessary information to “pierce the corporate vale” and determine whether or not a legitimate partnership existed.

## **PROBLEMS WITH THE PROPOSED CHANGES TO THE IO TEST**

### **Are the terms of work relationship stated in a written contract other than a Collective agreement? and What is the method / rate of payment determined by?**

The WSIB asserts that anyone working under the terms and conditions of a collective agreement should be considered a worker because they do not typically determine their own hours of work, their rate of pay. While IOs in our industry do work under a 'collective agreement' they do so under very unique circumstances. The Framework Pieceworker Agreement is more of a commercial contract between two parties and its purpose is to protect the integrity of the other workers' bargaining units; ensure a level playing field; and provide a degree of stability for the industry.

The "Pieceworker Participation Agreement" also recognizes the autonomy of these individuals and their differences with respect to other members covered under the agreement. Just as the Employment Standards Act provides a minimum level with respect to the terms and conditions for workers who are not covered under a union agreement, so to does the Framing Agreement. Nothing in the agreements prevents a pieceworker from being paid more than the posted rate, as is often the case. By using "working under the terms of a collective agreement" as one of the criterion in assessing the status of a pieceworker, the WSIB will be creating an unfair advantage for non-union pieceworkers, and discriminating against union pieceworkers, and by extension the contractors who employ their services. Non -union pieceworkers are exposed to the same level of risk, perform the exact same work, but are not members of a union.

### **Building Materials & Installation Supplies**

This is a completely arbitrary measure. The Materials and Supplies an IO owns is dictated by industry practice rather than an individual agreement between the parties. There exist certain economies of scale that can be achieved by consolidating the purchase of materials, which keeps these costs competitive – builders may buy materials and supplies for several different projects in order to achieve the lowest per unit cost. Often this is not a matter of choice for the IO, but rather a condition of the market. By using supply of building materials as one of the criteria for determining an individual's status, the WSIB is effectively ignoring industry practice. If implemented it could end the use of the IO and result in major cost increases.

### **Equipment & Tools valued at over \$10,000**

The \$10,000 threshold for tools and equipment is an arbitrary number, which penalizes less capital-intensive trades. For example, framing work is such that contractors can enter the business with a relatively small capital expenditure. Although the March 7/01 draft of the IO questionnaire does not have a monetary number attached to tools, this should not be a determining factor in assessing status.

### **The Definition of Long Term Relationship**

WSIB definition of Long Term Relationship means: *a relationship which WSIB in its discretion determines is such that the applicant does not display the mobility among different principles which is characteristic of a majority of independent operators.* The

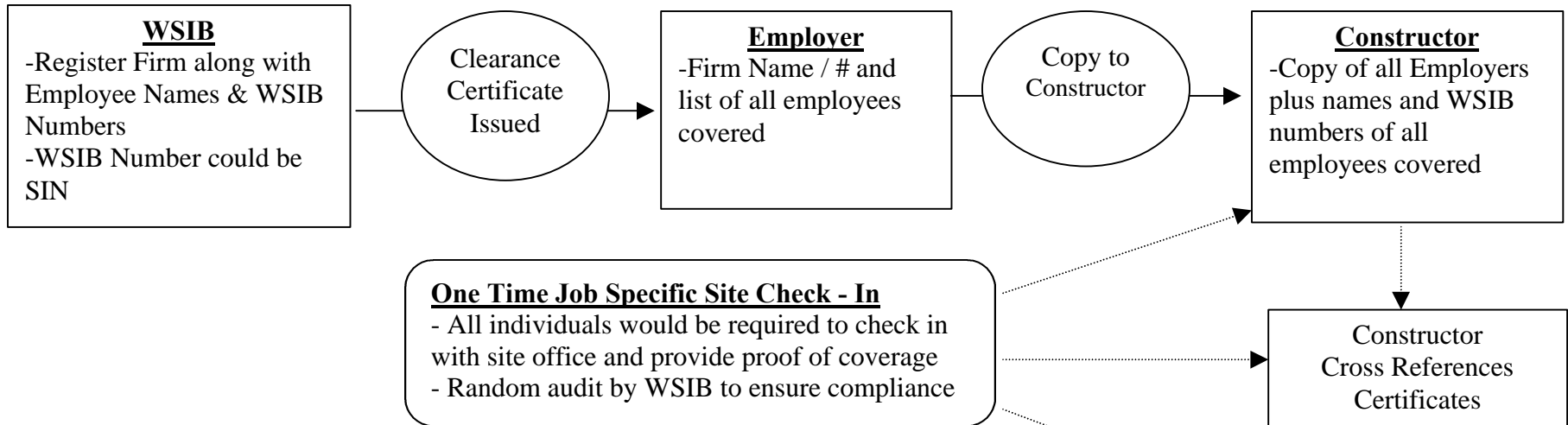
discretionary nature of this definition is problematic for those IO's who have established a strong working relationship with a particular principal. Many builders like to do business with contractors with whom they are familiar and who are familiar with their particular standards. Using this as a determining factor could have the unintended consequence of disrupting valuable working relationships, and distorting the marketplace. A key factor in determining the existence of a long-term relationship should be the **ability** of an IO to end a long-term relationship without financial penalty, following the completion of the work for which he/she is contracted.

#### **Automatic Default to Worker Status**

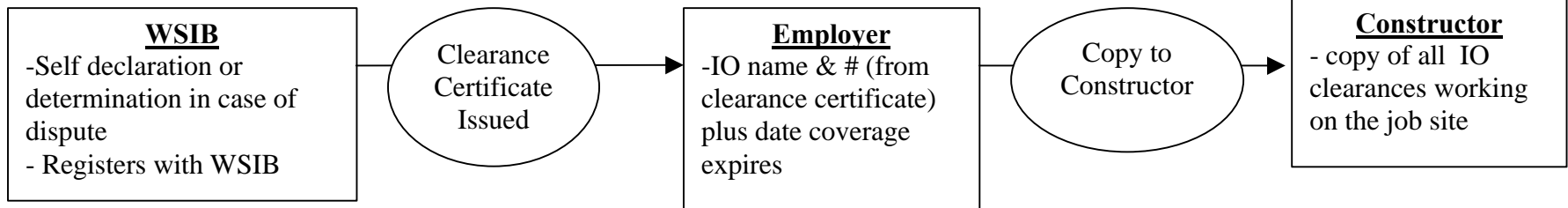
This is by far the most devastating aspect of the proposed questionnaire. The WSIB will be increasing responsibility for safety for these individuals without correspondingly increasing control and accountability over these workers. However, some prime contractors are constrained by a collective agreement, which removes their ability to discipline, sanction, and control pieceworkers. Also both union and non-union contractors are faced with the fact that IO applicants (hence why they are applying for an IO determination) simply do not want to be an employee of the prime contractor.

# NAMED INSURED SYSTEM

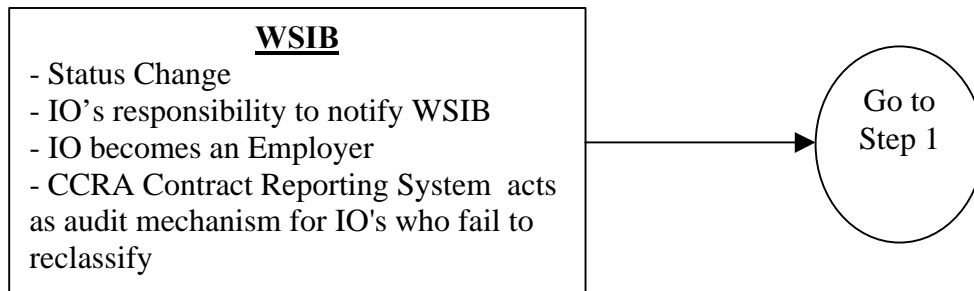
## 1. Employer / Employee Case



## 2. Independent Operator Case



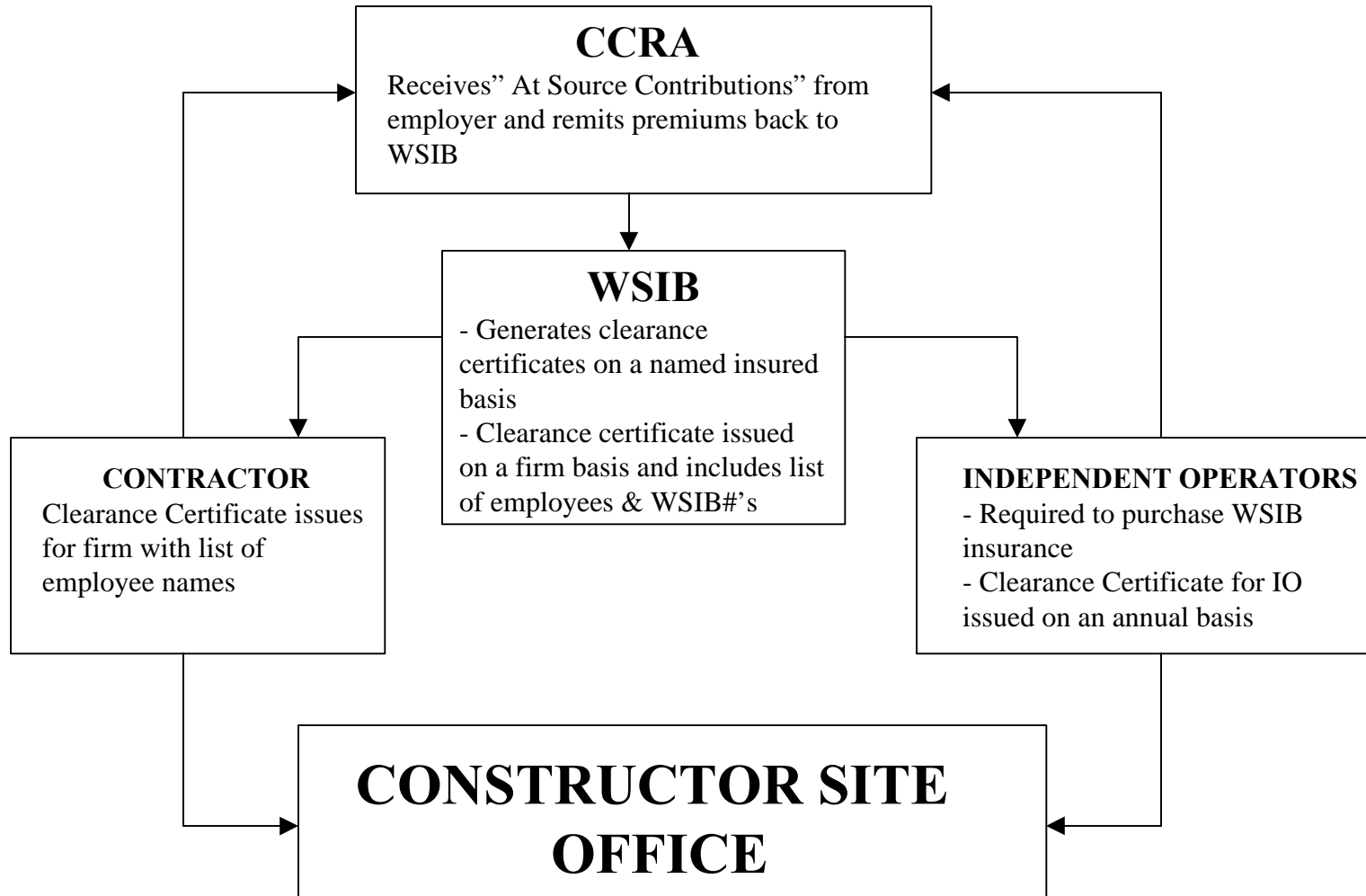
## 3. Independent Operators Hires Workers



### **Notes**

- All employees required to keep a WSIB card at all times when on the job-site
- All IOs required to keep WSIB IO Card at all times which indicates status and proof of coverage issued annually
- Year-end reconciliation with CCRA

# REVENUE FLOW CHART - NAMED INSURED SYSTEM



**Regulation requiring all individuals performing work on site to check in for WSIB verification prior to commencing work**

# SOURCES OF REVENUE LEAKAGE (CONSTRUCTION INDUSTRY)

