

Clearance letters

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OBJECTIVE

1. This practice directive provides guidance on the Board’s interpretation and administration of section 51 of the *Workers Compensation Act* and the Board’s “clearance system”, and aids in the interpretation of *Assessment Manual Item: API-51-1*.

DESCRIPTIONS

2. For the purposes of section 51 of the *Act* and *API-51-1*:
 - (a) A “principal” is the “person for whom the work is performed”. That is, the person for whom a contractor undertakes work within the scope of Part 1 of the *Act*.
 - (b) A “contractor” is a person (e.g., proprietor, partner, or an incorporated entity) operating an independent business, who undertakes work or provides a service for a principal, using his or her own means and methods, in exchange for some form of predetermined remuneration.
 - (c) A “subcontractor” is a person operating an independent business, who undertakes work or provides a service for a contractor, in exchange for some form of predetermined remuneration.
 - (d) The “clearance system” is the “system through which [the Board] provides clearance letters”.

INTERPRETATIVE GUIDELINES

I SECTION 51 OF THE ACT

3. Section 51 is an integral part of the *Act*’s regulatory scheme for the collection of the assessments necessary to “continue and maintain the accident fund for payment of the

compensation, outlays and expenses under [Part 1 of the Act] and for payment of expenses incurred in administering Part 3 of [the] Act” [s 36(1)].

4. Section 51 of the Act provides that if a principal employs a contractor to perform work within the scope of Part 1 of the Act, both are liable for the assessment payable in respect of the work. Similarly, if a contractor employs a subcontractor to perform work within the scope of Part 1 of the Act, both are liable for the assessment payable in respect of the work.
5. Section 51(3) provides that if a contractor or subcontractor is not assessed for the work, the Board has discretion to deem the workers of the contractor or subcontractor to be workers of the principal.
6. The effect of section 51 has been considered on many occasions since its introduction; and, in particular, the then section 47 – the predecessor of section 51 – was given thorough and reasoned consideration by Mr. Justice Tysoe in his 1966 report.¹ At pages 426 and 429, Mr. Justice Tysoe noted the following:

... the Board does not select the contractors and subcontractors. It is the principal's action that makes them risks of the Board. Employers who want work done for them on a contract basis instead of by their own workmen can choose their contractors and select only those whom they consider to be good credit risks and honourable and truthful. The Board is not in that favourable position. The employers can protect themselves by a judicious selection of reliable contractors. Why should not the employers be the ones to suffer if they make mistakes in that regard and not the Board (in truth other industry generally)? Moreover, they can, if they wish to do so, protect themselves further by making it a term of their contracts that they should hold back some percentage of the contract price until they have received proof to their satisfaction of payment of all assessments that may be levied or become due in respect of the work to be performed. It is quite true that it might be a matter of some difficulty to accurately determine what the amount of the percentage should be, but that is no reason why the risk should be passed over to the Board and other industry.

II THE CLEARANCE SYSTEM

7. On page 430 Mr. Justice Tysoe recommended that:

... I urge the Board to do its utmost to devise ways and means which will result in it being able to give to principals who have work done under contract

¹ *Commission of Inquiry Workmen's Compensation Act, Report of the Commissioners*, the Honourable Mr. Charles W. Tysoe, (Tysoe Report) 1966, pages 425-430.

absolute and unqualified clearances in respect of assessments upon the contractors and subcontractors in respect of that work at an earlier time than is now the case.

8. The Board acted on that recommendation and established the “clearance system,” which furnishes a “clearance letter” that can be relied upon by,
 - (a) a principal in determining liability for assessments payable for work undertaken by a contractor or a subcontractor, or
 - (b) a contractor in determining liability for assessments payable for work undertaken by a subcontractor.

ADJUDICATIVE GUIDELINES

I SECTION 51 OF THE ACT

9. Section 51 of the *Act* establishes the following:
 - (a) the Board’s authority to transfer liability for the amount of the assessments in regard to work performed under subcontract, such that both the contractor and subcontractor are liable and assessment may be levied on or collected from either of them; and
 - (b) priority for collection of such assessments as between or among a principal, contractor, and a subcontractor.
10. Section 51 applies “to work within the scope of” Part 1 of the *Act* and therefore is not limited to any one industry (e.g., construction, forestry).
11. Section 51 does not restrict the Board’s right of recovery to only the funds payable under the contract for the work undertaken.

II CLEARANCE LETTERS

12. A clearance letter establishes priorities for collection of outstanding debt owed to the Board as amongst a principal, a contractor, and a registered subcontractor. If clearance is granted,
 - (a) the principal to whom the letter is addressed will not be held liable for the amount of any assessment payable for the work undertaken by the contractor or subcontractor to the date specified in the clearance letter, or
 - (b) the contractor to whom the letter is addressed will not be held liable for the amount of any assessment payable for the work undertaken by the subcontractor to the date specified in the clearance letter.

13. A clearance letter is not intended to be and is not an adjudication of status.
Specifically, a clearance letter does not determine, verify, or validate status under the *Act*.