

Ontario Legal Clinics'

WORKERS' COMPENSATION NETWORK

Réseau d'échange des cliniques juridiques
de l'Ontario sur la loi des accidentés du travail

Reply c/o: Rexdale community Legal Clinic, 500 Rexdale Boulevard, Toronto, Ontario M9W 6K5
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January 31, 2012

The Honourable Dalton McGuinty
Premier of Ontario
Legislative Building, Queen's Park
Toronto, Ontario
Canada M7A 1A1

Dear Premier McGuinty:

Re: KPMG VALUE FOR MONEY AUDIT

We are writing to provide our review of the KPMG Report, and again ask that you decline to implement its recommendations. The WSIB should not take its policy directives from private consultants at KPMG. Changes of this magnitude are properly the subject of a Green Paper and legislative public hearings

Our first and most central objection to KPMG's work is that it went well beyond the proper scope of an independent value for money audit by making specific policy recommendations and even suggestions about possible statutory reforms.

Our second objection is closely related: KPMG failed to appreciate basic legal principles about the workers' compensation system and the statutory principles of the *Act*. Since KPMG exceeded its mandate by making substantive recommendations for policy and legal reform, its misunderstandings about the statute and the law are fatal to the credibility of its Report. If the WSIB actually adopted KPMG's suggested policy recommendations, it would likely be violating its constituting statute. The WSIB cannot introduce policies that reduce workers' statutory entitlement to compensation for recurrences and aggravations that arise out of and in the course of employment.

Thirdly, KPMG's analysis in matters arguably within its expertise is poor and should be given little weight. It concluded that a drastic reduction in benefits was proof of improved "quality and consistency" of decision-making. Where KPMG looked to outside sources of information and expertise, such as the guidelines of the controversial American College of Occupational and Environmental Medicine, it did so without considering various other available sources of expertise.

Finally, we note that KPMG's Report - and much of the WSIB's own work in recent months and years - is animated by the idea that workers' compensation should operate like a private insurance scheme, with cost containment through early "closure" and "resolution" of cases as its main objective. This understanding is wrong. It ignores the rights entrenched in the statutory scheme and the historic trade-off where workers sacrifice their right to sue in exchange for fair

compensation. Instead, proponents of the private insurance model focus on factors external to the statute's primary goals, mainly reduction of costs to employers and principles like "insurance equity".

Please find enclosed our submission which sets out some of our concerns in more detail. We would be pleased to meet with your office to discuss our submission.

Thank you for your consideration of this matter.

Yours truly,

Jayne Mallin
Director of Legal Services
Rexdale Community Legal Clinic

On behalf of the Worker's Compensation Network