

Legislative Council

9th April 2008

WORKCOVER

The Hon. A. BRESSINGTON (16:53): I move:

That this council recognises and condemns the intimidation and harassment that is being perpetrated by lawyers representing WorkCover.

Over the past 18 months or more, I have heard reports from many injured workers that they are being placed under undue and questionable surveillance, not for the purpose of detecting suspected fraud but to intimidate and harass. In dealing with claims that cannot be substantiated, it is often best to err on the side of caution; however, I am raising this issue in this place because I personally witnessed two examples of just how injured workers are intimidated and bullied by both lawyers and the corporation.

On 26 March 2008, I was standing on the corner near the casino, speaking with my research officer and a WorkCover claimant. My attention was drawn to a man, known to be a lawyer, crossing the road pointing and smirking at the claimant. The man crossing the road then pulled out his mobile phone and took a photograph of the three of us standing on the corner. He proceeded to the footpath, held up his mobile phone, gave another smirk and waved it around to let us know that he had the picture, and then he went on his way.

I found this, for a split second, intimidating. I question the right of this so-called representative of the courts to take a photo of me blatantly without my permission and without any reason to do so. On many occasions constituents have been told not to talk with my office on other matters such as child protection and family law court issues. In fact, this is considered to be contempt of parliament. One has to question the motivation behind this lawyer's actions. Was it a warning to the WorkCover claimant not to speak with a member of parliament, or was it a warning to me as a member of parliament?

The reasons why he would take a photograph in a public place are quite limited when we think about it. If he dared to be so blatant in his actions with a member of parliament as a witness, we can only imagine what those of his kind do when they are tailing more vulnerable people.

I have taken the time to find a document called 'Guidelines for Workers Compensation Investigation and Surveillance Providers'. The title alone would imply that not just anyone, including lawyers representing the WorkCover Corporation, has the authority to undertake surveillance, and it would be hard to argue that the public photographing of a WorkCover claimant is not surveillance. The introduction of the document states:

These guidelines have been developed in consultation with agency workers, rehabilitation and compensation managers and the providers of surveillance and investigation services to government. It is important to understand that any surveillance program or investigation be approached from an unbiased position. Private investigators who are contracted to provide professional services, in either

investigation or surveillance, do so on the understanding they are subject to the same public scrutiny as government employees.

I can only assume that the lawyer in question, as well as being a lawyer, perhaps has a licence to be a private investigator; if not, he is in breach of WorkCover policy and practice based on its own documents, and I believe he should be referred to a disciplinary committee for his actions on 26 March. That same document further states:

Investigation and surveillance programs are authorised and managed by the contracting government agency. In order to obtain appointment as a provider for factual investigation, enquiry and surveillance purposes, the provider—

who in this case must be the lawyer who represents WorkCover—

shall agree to operate according to the guidelines and conditions set out in this document. Any breach of the standards may result in the termination of services of the Provider.

The document clearly states, among other things, under section 3.6 about customer service that providers shall comply with the provisions of the act, treat customers courteously and with respect, and introduce themselves clearly. Section 3.5(e) of the document states:

Providers (surveillance and investigators) must be aware of and where applicable abide by the requirements contained in the Code of conduct for Public Sector Employees.

Section 3.7 about surveillance guidelines states:

Under section 27(1)(e) of the Privacy Act 1988, the privacy commissioner is entitled to issue guidelines designed to protect the privacy of individuals when optical surveillance equipment is to be used to gather evidence about suspected offence.

This lawyer did none of the above. I doubt he had time to approach the Privacy Commissioner, and he certainly did not take the photograph as evidence of a suspected offence. In fact, his actions intruded into a personal interaction between three people without any reasonable cause.

I have identified who this lawyer is and what firm he works for. I will await direction from the Legislative Council as to whether or not it is appropriate that this council write to this person and request an explanation of his actions and also question his authority to take an impromptu photograph or to seek evidence that he is certified to undertake surveillance activities. In my mind, conducting surveillance is exactly what he was doing.

I am advised by injured workers that support groups have been placed under surveillance—infiltrated, in fact—with this surveillance going so far as to have people pretend to be injured workers and attend these meetings. What country are we living in? One injured worker who reported suspected fraud by a WorkCover officer ended up being promptly referred to the fraud department for surveillance at a cost of over \$8,000 for nine separate days of surveillance, not for any fraud investigation, but for the collection of what could be described only as 'dirt' to pin on the worker. They found nothing.

There is a long history of WorkCover agents following individuals to courts. Most of these, I have been told, are WorkCover lawyers using methods of verbal and physical

intimidation. However, when these issues have been raised by injured workers in the various courts, they have been told that these examples of intimidation and bullying are 'not relevant' to the matter at hand. The courts are 'not interested' in this conduct by WorkCover representatives when they overstep their professional boundaries, as they cannot be called to task under section 122(4) of the legislation.

Surely this was not the original intent of this section of the act. Apart from all of the other issues surrounding WorkCover legislation, these matters must also be addressed as soon as possible.

In 1998 an incident arose at the Workers Compensation Tribunal where Judge McCusker insisted on an undertaking from WorkCover that no surveillance would be carried out while a certain matter was before him. However, despite this, WorkCover then, after giving the undertaking, proceeded to organise, in its own words, 'the largest undercover surveillance operation on a private individual in the Southern Hemisphere' to be conducted against the worker, and it lasted two full years.

Court records have shown the sequence of events that led to this surveillance operation and, at no time, were proper procedures followed. As stated in WorkCover's own policy and procedures manual, such surveillance is required to go through the proper documented channels of written authorisation.

When questioned by the worker on numerous occasions in the courts, these people have denied this and, accordingly, misled the courts that it was surveying the worker against a given undertaking. However, some three years later, WorkCover responded to further such allegations by saying, 'So what? It doesn't matter how we got the evidence as long as we have it.'

It may be said that this particular example was 10 years ago, but this is not a case of 'that was then, this is now', because the complaints continue to roll in, and there were no consequences for WorkCover representatives breaking the undertaking given to Judge McCusker. It is obvious from the actions of this particular lawyer just a couple of weeks ago that this still continues.

Surely, if we abide by the laws of jurisprudence and natural justice, it does matter how evidence is acquired. So, too, it should matter how charges are laid and convictions or acquittals are obtained. Indeed, I reiterate similar concerns I raised during the debate on the Criminal Law Consolidation (Rape and Sexual Assault) Bill last week in this place, questioning the investigative processes used to determine whether a crime has been committed. This is one of the reasons that I am deeply concerned about the manner in which forensic and other forms of legal evidence have been acquired, gathered, documented, presented and/or suppressed.

The practices of the surveillance agents resulted in an injured worker losing over \$1,000 per week in entitlements for maintaining his trade qualifications, which WorkCover had ordered him to do, purportedly as part of a return-to-work program. No fraud charges were ever laid against the injured worker as a result of the surveillance operation but, for some years now, his entitlements have been slashed because he followed a directive and then was deemed fit for work for undertaking instructions—those instructions issued from the WorkCover Corporation.

Information was gathered from the undercover agent who wrote down every car numberplate of people visiting this injured worker, took names and photos of anyone visiting the worker, and further investigated them for associating with the injured worker. This is both entrapment and overstepping the very guidelines set out in the

document referred to earlier. It also poses the question: why bother to have such policies and procedures if no-one else holds anyone accountable for unprofessional and unconscionable behaviour?

In 1998, while members of the Injured Workers Association were giving a submission to the Legislative Review Committee, they reported being followed, photographed, verbally abused and told by representatives of WorkCover (again, some of them lawyers) not to give any evidence to the inquiry. The injured workers did place on the record the fact that these threats and intimidation tactics were used by WorkCover in an attempt to stop them from giving evidence and their submissions, only to have the committee, at that time, wipe it aside with the suggestion that they were merely 'WorkCover bashing'.

This has led to many injured workers fearing for their safety, or making any further submissions or complaints against this corporation, and it has also led to an overwhelming level of scepticism in respect of the parliamentary process. This is not a question of 'that was then, this is now' (as I said earlier) because injured workers are making the same complaints now that were being made in 1998. I have witnessed myself proof positive that anyone, at any time, can take a photo of a WorkCover claimant and fear no retribution at all, not even implied contempt of parliament.

Surveillance pictures and tapes clearly show that injured workers have been followed into supermarkets and so on, as they go about their everyday tasks, thus making it impossible for any worker not to become paranoid about everything they do, because it is either being recorded or filmed, ready to be pounced upon and used in courts against the worker for the most false, misleading, malicious or punitive purposes.

In the words of Dr Darryl Cross (a well-known psychologist in South Australia), 'If you weren't neurotic before entering the WorkCover system, you will be after the fact.' These are serious circumstances that not only require but demand that this government and this council become proactive in curbing the aberrant behaviour of those who should, not only by definition alone, know better.

We have had this situation of unauthorised surveillance of a WorkCover claimant, being accused without any evidence of threatening WorkCover executives, via a blog site in a period of one week, as well as the many other claims made to my office. When will their allegations be investigated, and when will action be taken on behalf of injured workers whose pain and suffering to date seems to have fallen on deaf ears?

In 20 years will we have to have the equivalent of a Mullighan inquiry for abuse of recipients of WorkCover benefits because so many of them have chosen to end their lives rather than endure this abuse of power any longer? One only has to read some of the postings on that blog site to understand the desperation felt by those who are targeted.

There is a culture in this state where making false allegations, intimidation and bullying are a common practice and the rights of average citizens are being thrown aside. One would think that civil libertarians would have a field day with the situations raised but, apparently, these are not quite as dramatic or newsworthy enough for them.

I will leave this topic now for members of the council to think upon. I request that this council takes whatever action within its authority to deal with the immediate matter of a member of parliament and a WorkCover claimant being photographed in a public place by a person not authorised to do so, without permission and with no case

pending. This WorkCover claimant has been intimidated, bullied, placed under surveillance and has had to endure a multitude of invasions of human rights for over 18 years and, apparently, it continues to this day.

This is a WorkCover claimant who was described by a member of the Australian Lawyers Alliance as merely 'a product of the system'. Psychologists and psychiatrists will attest to the fact that the tactics employed by WorkCover representatives cause emotional and psychological damage to claimants. This intimidation and harassment surely cannot be condoned by this parliament. These matters must be considered when we debate the WorkCover legislation that will come to this council. The sorry saga of WorkCover is not just about slashing entitlements; it is also about the tactics used by this corporation and its representatives and agents to make ordinary citizens feel like criminals and to try to unhinge them.

I ask that, when members debate this motion, they keep in mind that I am requesting that perhaps this council can take some proactive action and write to this legal firm and to the particular lawyer (I can provide the details) and ask for an explanation as to why this occurred in the first place.

Debate adjourned on motion of Hon. J. Gazzola.