

# The Liversidge Letter

An Executive Briefing on Emerging Workplace Safety and Insurance Issues

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An ongoing policy discussion for the clients of L.A. Liversidge, LL.B.

2 pages

## WSIB Funding Surplus Distribution of \$2.0 Billion!

### Part 1: The government and WSIB announcements

#### On November 21, 2024 government and WSIB announced \$2.0 billion funding surplus distribution to Ontario employers

From my note [distributed on November 22, 2024](#): Yesterday, the Ontario Government announced that the WSIB will **return \$2 Billion to Ontario employers in a surplus rebate** (to be issued in February 2025), and that the [2025 average premium rate](#) will be reduced to \$1.25/\$100 insurable earnings (from the 2024 current average rate of \$1.30/\$100 premium rate). See the Ontario Government's news release [here](#). Here is a link to [Board's WSIB 2025 surplus webpage](#) which outlines the details of the surplus rebate and includes a FAQ section. This 2025 surplus rebate is the second surplus rebate the Board has issued (the first was in 2022).

#### The announcement from the government

From the government announcement released [November 21, 2024](#) (highlighting mine):

TORONTO — **The Ontario government is keeping costs down for workers and businesses by giving back over \$2.5 billion by rebating Workplace Safety and Insurance Board (WSIB) surpluses** to hundreds of thousands of safe employers, reducing business premium rates and investing in keeping workers healthy and safe. These ground-breaking measures will pump billions of dollars back into the economy, helping to rebuild Ontario's economy and support workers.

*"We're laser focused on keeping costs down for workers and businesses in Ontario, putting more money back into people's pockets and helping create better jobs and bigger paycheques," said Premier Doug Ford. "The rebates and support for safe workplaces being announced today will help keep Ontario's economy competitive as we continue to compete for and attract game-changing investments."* Ontario is putting more money back into workers' pockets, keeping costs down for safe businesses and investing in health and safety by:

- Returning \$2 billion in surplus funds to Ontario businesses through the WSIB **thanks to the agency's new approach to strong financial management**. Eligible employers will receive their one-time rebate starting in February 2025 if they are a safe employer, which includes not having been

convicted more than once under the Workplace Safety and Insurance Act or Occupational Health and Safety Act since 2020. For a small construction business with 50 employees, this could mean receiving \$46,000 to reinvest in new jobs, enhanced health and safety programs and bigger paycheques.

- Cutting the average premium rate for Ontario businesses from \$1.30 to \$1.25 per \$100 of insurable payroll through the WSIB starting in 2025, without reducing benefits. This is the lowest rate in half a century and will save Ontario businesses about \$150 million annually starting in 2025 when compared to the 2024 rate. Over the past decade, the WSIB has cut the average premium rate by more than 50 per cent, resulting in cumulative savings for businesses of approximately \$18.6 billion since 2017.
- Unlocking \$400 million to invest in health and safety programs for workers and employers developed by the WSIB, focusing on mental health, preventative and chronic injury care and recovery to ensure workers have the supports they need to return to work safely and quickly. This will include expanding the WSIB's mental health care programming to partner with 11 public hospitals and their networks of community-based service providers across Ontario to ensure workers have the care they need, when and where they need it.
- Removing the \$150 fee for apprentices taking their first Certificate of Qualification exam, making it easier for more people to start their career in the skilled trades. When combined with other fee reductions and removals that the province has implemented since 2019, Ontario is saving each apprentice at least \$330, putting almost \$3.6 million back into the pockets of nearly 11,000 apprentices.
- Launching a new Safe Business Bonus with an additional \$1,000 bonus to eligible employers who create a new workplace health and safety action plan approved through the WSIB's Health and Safety Excellence program, starting in 2025. Over 4,600 businesses are currently enrolled in the WSIB Health and Safety Excellence program. Since the program's launch in 2019, members have received total rebates of over \$68 million, including \$15 million in additional incentives for smaller businesses that participated in 2023-2024.

#### A comment on WSIB independence

The government release, beyond the substance of the announcement, is interesting for unintended reasons.

First, the suggestion that this is all “*due to the new approach to strong financial management,*” unless the “new approach” is referencing WSIB leadership starting in 2010, is ahistorical. A more accurate statement would be this, “*all of this is due to the serial and collective efforts of current and past governments and WSIB administrations commencing in 2010, when the WSIB under the successive leadership of Chairs Mahoney and Witmer and CEOs Marshall and Teahen, changed the financial direction of the WSIB, then teetering on collapse,*” with perhaps a tip-of-the-hat to simple good luck of increasing investment fund valuations. To its credit, the current administration has done nothing to reverse the trends triggered fourteen years ago (other than the accountability elements I have been addressing of late), but the credit for the current surplus goes more to past WSIB administrations than the current. The credit certainly can be shared but the genesis for this surplus distribution is the work commencing in 2010, which resulted in a fully funded WSIB in 2018.

Second, the government seems to be taking much of the credit for the surplus distribution itself, even though the WSIB is an *independent trust agency*. The decision to issue a funding surplus rebate when funding rests between 115% and 125% is within the exclusive legal jurisdiction and sole discretionary power of the WSIB. Technically and legally the government has no say. None. Now, to be clear, I have no problem with the distribution of a funding surplus. In fact, not only am I all for it, I was part of a group that directly advocated for this very move since last Spring. However, the question of WSIB autonomy and government influence, especially when it came to financial matters, attracted much comment from Prof. Arthurs in his report [Funding Fairness](#) (for example, see pp. 50, 54 – 56).

Third, the financial performance of the WSIB seems to be linked to the government’s overall economic strategy. From the government release: “*These ground-breaking measures will pump billions of dollars back into the economy, helping to rebuild Ontario’s economy.*” If only observing and lauding the potential impact of the WSIB’s decision, well, that’s quite OK. If though the government had a role in directing the Board, any role, overtly or otherwise, well, that’s not so OK. That was the broad point Dr. Arthurs made in **Funding Fairness**. The WSIB promotes its proper relationship with government on its [website](#): “*The WSIB is an independent trust agency of the Ontario government operating at “arms-length” from the Ministry.*” In my strongly held view, if the government is attempting to influence or persuade the Board, directly or otherwise, the independence of the Board is compromised and the relationship is no longer “arms-length.” All of this is an analysis that can and will wait for another day. Remember though, the “independence” of the WSIB and the need to be free from government influence attracted a fair amount of comment in the [2009 Auditor General Report](#) (see **Chapter 3, Section 3.14, page 324**). The Auditor General

referenced a 1995 Ontario Financial Review Commission report:

The Ontario Financial Review Commission’s (OFRC’s) 1995 report on the province’s accounting, reporting, and financial-management practices **commented on the government’s apparent influence** over benefits, premiums, and coverage, **which the OFRC believed undermined the WSIB’s ability to govern itself in an accountable fashion**. The OFRC stated that “*while the government has the responsibility for setting the Board’s mandate, the Board must have the sole power to carry it out.*” Our observation is that the OFRC’s comments continue to be relevant.

Frankly, I don’t have a strong position one way or the other as to whether or not the WSIB should be that extolled “*independent trust agency*” or simply another government department. It could work either way actually but an independent agency is likely the better way. I do however strongly hold this view – the “independence” of the WSIB must be more than a slogan. WSIB independence must be real. If it is an “independent” agency it must be free from any attempt of government influence. In my opinion, the government announcement implies too close a connection between the government and the Board in exactly the manner observed in the 1995 OFRC report. At the very least, the government should not be making what should be a WSIB announcement. By making this a first-person government announcement, the government could be seen as assuming some degree of policy ownership, and that, in my view, could be perceived as, if not actually, crossing the line.

#### **The announcement from the WSIB**

On [November 21, 2024](#), the Board released what was actually a more constrained announcement under the headline, “*WSIB pumps over \$2 billion back into the economy in 2025 with average premium rate reduction and surplus rebates for safe businesses.*” The eligibility details are set out in a separate notice on the [Board’s website](#) (excerpted in part below):

#### **Eligibility criteria**

Businesses must meet all the following:

- have an active account as of November 1, 2024
- had premium obligations in 2023
- have not been convicted of a WSIA or an OHSIA offence in a proceeding under Part III of the Provincial Offences Act, in 2024 or in 2025 up to and including the date the WSIB issues a surplus rebate
- have not been convicted in more than one such proceeding under the WSIA, or have not been convicted in more than one such proceeding under the OHSIA, between 2020 and 2025 up to and including the date the WSIB issues a surplus rebate
- have not had a traumatic workplace fatality . . . in 2024 or in 2025 . . .

In the next issue of **The Liversidge Letter** I will outline the legal framework through which a funding surplus is considered and offer a suggestion that will render the surplus distribution labyrinth fairer and more predictable, through a sensible tweaking of the breadth of WSIB discretion, requiring WSIB action when funding is at 115% - 120%.