LAL WSIB Briefing to Mississauga Board of Trade

A Discussion:
Leading WSI Issues of 2024 and 2025

December 13, 2024

Leading WSI Issues of 2024/25

Agenda

- WSIB $2.0 B funding surplus distribution
  - Brief history – WSIB funding 1984 - 2024
  - Distributing surplus funding – the law and policy
  - A policy suggestion for MBOT to consider
- Removing the politics from WSIB policy reform
  - LAL's proposal for a 5 year review
- If time: a) Benefit indexing above inflation: Bill 149 – status; and, b) Working for Workers Six Act (Bill 229)

WSIB $2.0 B funding surplus distribution

- **1984:** Funding Ratio (assets/liabilities) dipped to 49%
- $2.71 billion unfunded liability (UFL) 1984 ($7.18 B in 2024 $)
- The Board responded with the start of the 30 year funding plan (zero UFL by 2014)

The 1984 to 2014 funding plan failed

- In 2010 LAL wrote a paper on why the 30 year funding plan from 1984 to 2014 failed

The Liversidge *e*-Letter

An *Executive Briefing* on Emerging Workplace Safety and Insurance Issues

April 19, 2010 — An *Electronic Letter* for the Clients of L.A. Liversidge, LL.B. — 5 pages

The WSIB 2014 Funding Plan
Why it Failed

A generation later – we appear to be no further ahead

As the WSIB is about to tackle the state of the Board's financial health in earnest, a question that must be addressed front and center is simply this: ***Why is it that after almost 30 years of tackling the unfunded liability ["UFL"] the UFL appears to be as much a problem today as it was in 1984?***

At the Queen's Park **Standing Committee on Public Accounts** on February 24, 2010, the Committee's Chair, long-time serving MPP Norm Sterling (Carleton-Mississippi Mills), put it this way: "*I was in Bill Davis's cabinet in 1984 when we had this 30-year plan to solve it (the UFL) in 2014, and we appear to be no further ahead now.*"

The need for a *Funding Summit*

I have been pushing for what I have termed a "*Funding Summit*" for about a year and a half now. I first raised the suggestion in the November 21, 2008 issue of **The Liversidge *e*-Letter**, "**WSIB Funding Crisis: *Everything Old is New Again***", when I said:

> **The WSIB must organize an urgent Funding Summit**
>
> By no later than mid-January, 2009, the WSIB should facilitate an urgent funding summit with Ontario's business leaders and senior government officials, to develop a new long-term funding strategy - a newly conceived 20 or 30 year plan. The Board should make this announcement right away, propose an agenda, develop alternatives, and commit to a process to be completed no later than the end of the 1st quarter of 2009. ***A new era must start today***.

17 months have passed since that suggestion and while I fully expect that the Board *eventually* will journey down that road (they really have no choice), much valuable time has been lost.

The world-wide financial melt-down is only a contributing factor – things were slipping before

Of late of course, the recent financial crisis has shouldered a disproportionate amount of the blame for the Board's current financial woes. I have been advancing an alternate theory, one that in my view is more realistic and factual – things were slipping long before the Fall of 2008.

The Board's finances were slipping before last year's market melt-down

In the October 18, 2008 issue of **The Liversidge *e*-Letter**, **"*Stay the Course or Change Direction" Tough Times. Tough Choices*"**, I said this:

> **Beginning in 2007 things started to dip**
>
> For 2007, the excess of expenses over revenues increased to $1.13 billion **[WSIB 2007 Annual Report, p. 18]**, with $720 million of that driven by the ***Budget Reforms***. In 2007, while noting that the 2007 funding ratio had declined 6.8 percentage points to 66.4% (mainly due to falling investment returns), "*the WSIB believes that elimination of the unfunded liability by 2014 is still possible, provided improved outcomes consistent with the targets in the WSIB's Five-Year Strategic Plan, 2008-2012*" **[WSIB 2007 Annual Report, p. 21]**.
>
> **LOE benefits up 12.3% 2006 to 2007**
>
> Loss of earnings ["LOE"] benefits were up almost $100 million, an increase of 12.3% (from $807 million in 2006 to $906 million in 2007) **[WSIB 2007 Annual Report, p. 23]** even though injury rates continued a steady decline, in spite of more money being "invested" in labour market re-entry ["LMR"] programs. LMR costs increased 14.1% to $283 million **[WSIB 2007 Annual Report, p. 24]**. Health care costs jumped 6.7% to $527 million. Benefit liabilities increased $702 million due to the net growth in LOE claims inventory **[WSIB 2007 Annual Report, p. 24]**.

In 2006, the Board announced it had "*turned the financial corner*" – I said it was "*playing a long-shot*"

A full year before the melt-down, just after the Board announced it was "*starting to turn the financial corner*" (see the September 19, 2007 issue of **The Liversidge *e*-Letter**), I noted expenses still outpaced revenues, and other than its investment performance, the Board wasn't doing too well at all.

Until last year the Board was bullish on its finances

While the Board was being quite bullish on its state of affairs, I suggested that retiring the UFL by 2014 was a long-shot at best. Two and a half years ago, in the September 24, 2007 issue of **The Liversidge *e*-Letter** - ***Is the Board playing a long-shot?*** I said this:

5650 Yonge St., Suite 1500, Toronto, ON M2M 4G3 Tel: 416-590-7890; Fax: 416-590-9601 E-mail: lal@laliversidge.com ISSN 1710-5757

UFL and premium rates increased

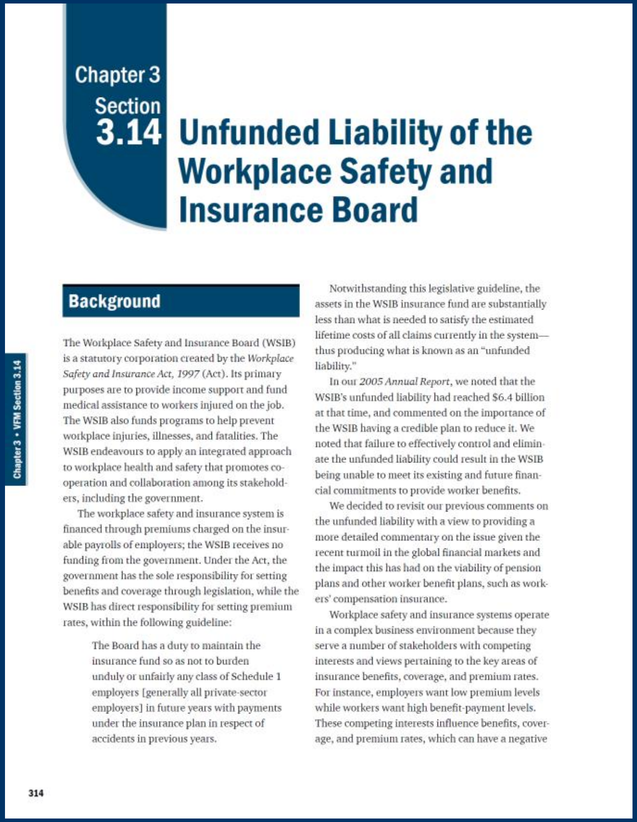
Year	(UFL)/Surplus $ Billion	In 2024 $	Average Premium Rate
1984	(2.7)	(7.2)	$2.17
1989	(8.5)	(18.1)	$3.12
1999	(6.4)	(11.1)	$2.42
2009	(11.8)	(16.6)	$2.26

2009 Auditor General Report: A Game Changer!

- In 2009 Ontario Auditor General declared:

"There is a risk that the WSIB may not be able to meets its obligations"

- This changed everything!



Chapter 3
Section
3.14

Unfunded Liability of the Workplace Safety and Insurance Board

Chapter 3 • VFM Section 3.14

Background

The Workplace Safety and Insurance Board (WSIB) is a statutory corporation created by the *Workplace Safety and Insurance Act, 1997* (Act). Its primary purposes are to provide income support and fund medical assistance to workers injured on the job. The WSIB also funds programs to help prevent workplace injuries, illnesses, and fatalities. The WSIB endeavours to apply an integrated approach to workplace health and safety that promotes co-operation and collaboration among its stakeholders, including the government.

The workplace safety and insurance system is financed through premiums charged on the insurable payrolls of employers; the WSIB receives no funding from the government. Under the Act, the government has the sole responsibility for setting benefits and coverage through legislation, while the WSIB has direct responsibility for setting premium rates, within the following guideline:

> The Board has a duty to maintain the insurance fund so as not to burden unduly or unfairly any class of Schedule 1 employers [generally all private-sector employers] in future years with payments under the insurance plan in respect of accidents in previous years.

Notwithstanding this legislative guideline, the assets in the WSIB insurance fund are substantially less than what is needed to satisfy the estimated lifetime costs of all claims currently in the system—thus producing what is known as an "unfunded liability."

In our *2005 Annual Report*, we noted that the WSIB's unfunded liability had reached $6.4 billion at that time, and commented on the importance of the WSIB having a credible plan to reduce it. We noted that failure to effectively control and eliminate the unfunded liability could result in the WSIB being unable to meet its existing and future financial commitments to provide worker benefits.

We decided to revisit our previous comments on the unfunded liability with a view to providing a more detailed commentary on the issue given the recent turmoil in the global financial markets and the impact this has had on the viability of pension plans and other worker benefit plans, such as workers' compensation insurance.

Workplace safety and insurance systems operate in a complex business environment because they serve a number of stakeholders with competing interests and views pertaining to the key areas of insurance benefits, coverage, and premium rates. For instance, employers want low premium levels while workers want high benefit-payment levels. These competing interests influence benefits, coverage, and premium rates, which can have a negative

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A new revitalized approach to WSIB funding

A three-pronged response:

- **Prong #1:** The government set regulatory funding targets in O. Reg. 141/12:
  - 60% by 2017
  - 80% by 2022
  - 100% by 2027

A new revitalized approach to WSIB funding

Prong #2:

- David Marshall hired as new WSIB CEO (2010 – 2016)
- See the three-part **The Liversidge Letter** series of LAL interview with David Marshall

The Liversidge Letter

An *Executive Briefing* on Emerging Workplace Safety and Insurance Issues

November 14, 2023 | An ongoing policy discussion for the clients of L.A. Liversidge, LL.B. | 6 pages

Interview with former WSIB President & CEO David Marshall

Reflections on an incredible time

I had the great personal and professional pleasure to have a fascinating extended chat with former WSIB President and CEO David Marshall. Three special editions of **The Liversidge Letter** are the result. When David assumed the role of WSIB President in 2010, as very clearly set out in the 2009 Auditor General Report, the Board's future was in doubt. It was David's leadership that saved it. Period. Full stop. I am of the unwavering view that David Marshall is one of the most remarkable public servants this country has produced and, in the context of the history of the Ontario WSIB, in my opinion, he is nothing less than a hero.

It was the remarkable serial leadership of the Hon. Steve Mahoney (WSIB Chair 2006 – 2011), David Marshall (WSIB CEO 2010 – 2016), Elizabeth Witmer (WSIB Chair 2012 – 2022) and Tom Teahen (WSIB CEO 2016 – 2021) that put the Board in the position we see it today – fully funded with a funding surplus. These four remarkable public servants, along with the remarkable and dedicated teams they put in place, navigated the Board through very stormy seas at a time when crashing on the rocks seemed imaginable, perhaps likely. Together they achieved what had eluded prior administrations for almost 40 years.

I interviewed David as I believe it important to revisit those times and create a record of those achievements before they fade too far into the past, to at least mitigate somewhat against that timeless Santayana quotation, "*Those who cannot remember the past are condemned to repeat it*" (we know it; we just don't apply it so well).

The interview, Part 1

LAL: So, how have you been doing?
DM: (Laughing) It has been such a long time.
LAL: It has. One of the great things about this project is that I have spent a lot of time going back over everything during your time. In my mind it all seems like yesterday but, my gosh, it is 13 years ago now.
DM: Right, it's nuts; so much has happened. You know you've raised a family; I've raised a family.
LAL: Yes, my girls now are 15 and 17.
DM: Oh, my goodness, yes, my son is 15 and my daughter is 13.
LAL: So almost the same.
DM: I know.
LAL: I want to get into so much with you. One of the reasons I wanted to do this, as I explained in the first email I sent some months back, I just wanted to record for posterity the remarkable turnaround story from 2010 to 2016. This may offer a bit of a beacon for leadership. I think it is an important part of the history that people may take for granted now that the workers' comp system is fine, that it is working ok.
DM: Right. Nice to see you on video, at least.
LAL: Yes, one of the benefits of this technology is you can do things like this fairly easily and efficiently. We can do this because we have known each other for a long time and we have a relationship. But, if you have not had the chance to build that interpersonal type of connection, the "ZOOM" approach has more drawbacks than positives. In the hundreds of meetings we shared, the meetings were always important, but often that 5-10 minutes before the meeting and the 5-10 minutes after a meeting were also so important in establishing a collegial rapport. It is not just all about the immediate issues on the list; it is about something broader and dynamic. So, I think this type of technology, while very convenient, you lose something. It's ok to maintain relationships, but not so great in developing relationships.
DM: True, I fully, completely agree, Les. We have known each other a very long time.

Introduction and Biographical Qs

LAL: First, let me say just how pleased I am that you are doing this. While doing my preparation for this, I actually had to shake my head twice or more to accept that it has

5000 Yonge St., Suite 1901, Toronto, ON M2N 7E9 Tel: 416-986-0064; Fax: 416-590-9601 E-mail: lal@laliversidge.com ISSN 1710-5757

A new revitalized approach to WSIB funding

Prong #3:

- Professor Harry Arthurs engaged for two years for massive Funding Review consultation
- Commenced 2010; Reported 2012

By 2018 WSIB fully funded

- The results were positive
- By 2018 the WSIB was fully funded and began accumulating a funding surplus
- Premium rates declined

WSIB performance 2014 to 2024

Year	(UFL)/Surplus $ Billion	In 2024 $	Average Premium Rate
2014	(7.9)	(11.1)	$2.48
2019	4.3	5.5	$1.65
2024 (Q2)	7.4	7.4	$1.30
2025			$1.25

A never before asked question:

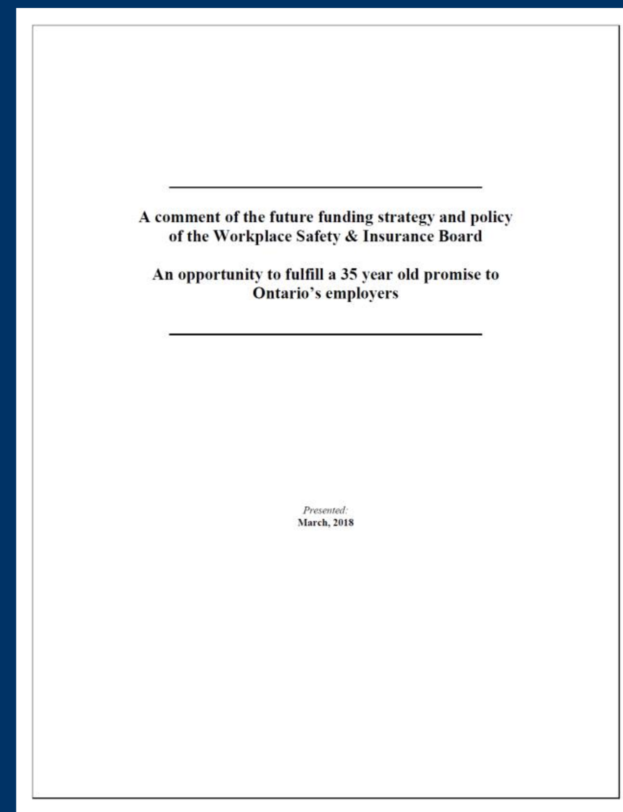
- The question then turned to:

What to do with the surplus?

A new revitalized approach to WSIB funding

- LAL wrote about the principle of intergenerational employer equity in 2018 (at p. 7-9):

  "today's employers should not fund tomorrow's or yesterday's costs"



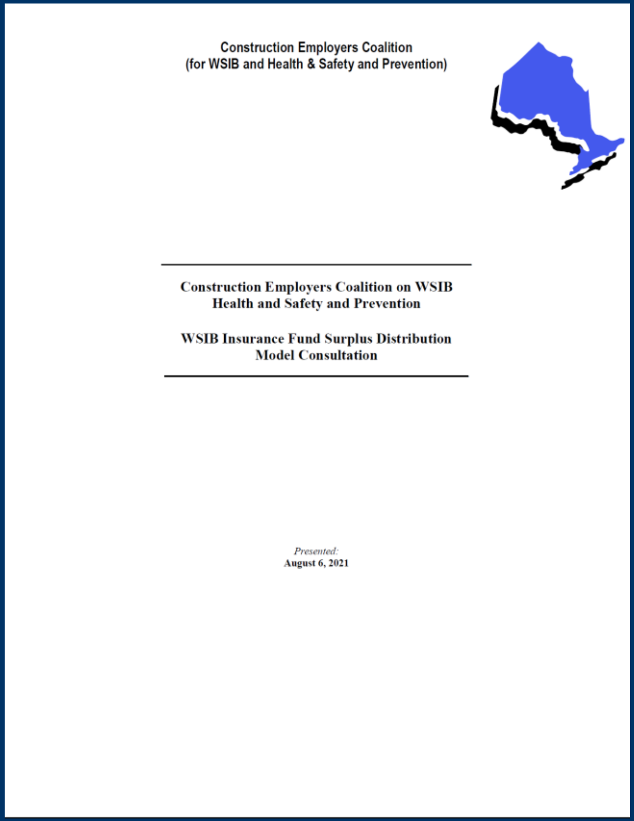
A comment of the future funding strategy and policy of the Workplace Safety & Insurance Board

An opportunity to fulfill a 35 year old promise to Ontario's employers

Presented:
March, 2018

Discussions commenced with government in 2021

- By 2021, discussions commenced with the government: *How to return a surplus to Ontario employers?*
- **Up to that time, there was no legal method available**


Construction Employers Coalition
(for WSIB and Health & Safety and Prevention)

Construction Employers Coalition on WSIB Health and Safety and Prevention

WSIB Insurance Fund Surplus Distribution Model Consultation

Presented:
August 6, 2021

WSIA and O. Reg. 141/12 amended

- **WSIA** was amended
- **O. Reg. 141/12** amended
- In February 2022 WSIB rebated "*up to $1.5 billion to Ontario employers*" (was actually about $1.2 B)

WSIB Ontario

WSIB to rebate up to $1.5 billion in surplus funds to Ontario businesses

Strong management protects support for people with injuries, maintains a responsible reserve, and rebates surplus to safe Ontario businesses

Toronto, February 16, 2022 – The Workplace Safety and Insurance Board (WSIB) announced today a rebate of surplus funds totaling up to $1.5 billion to eligible safe Ontario businesses. The WSIB's strong financial and operational management, along with its positive investment returns have led to a surplus in its insurance fund beyond the needed reserve. Recent legislative amendments by the Government of Ontario have made it possible to rebate surplus funds at a time when businesses are coping with the impacts of the COVID-19 pandemic.

"Ontario businesses are paying the lowest average premium rate in more than 20 years," said Grant Walsh, Chair of the WSIB. "With solid financial management we can give this rebate to businesses at a time when they need it most while protecting coverage for people injured at work."

A rebate credit will be applied to eligible businesses' accounts in April 2022. To recognize the impact of the pandemic on certain businesses, the rebate calculation will be based on each business' premiums paid in 2019 or 2020, whichever is higher.

"Our job is to always be here to help people who need us," said Jeffery Lang, President and CEO of the WSIB. "The best way to do that is to remain fully funded and focus on improving our services. The rebate is surplus money that could sit in our bank account, but it's better used by Ontario businesses to invest in health and safety to make Ontario a safer place to work."

Businesses must meet all the eligibility requirements to receive a rebate of surplus funds in 2022. Details on eligibility requirements along with additional information is available at www.wsib.ca/rebate.

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For further information, please contact:

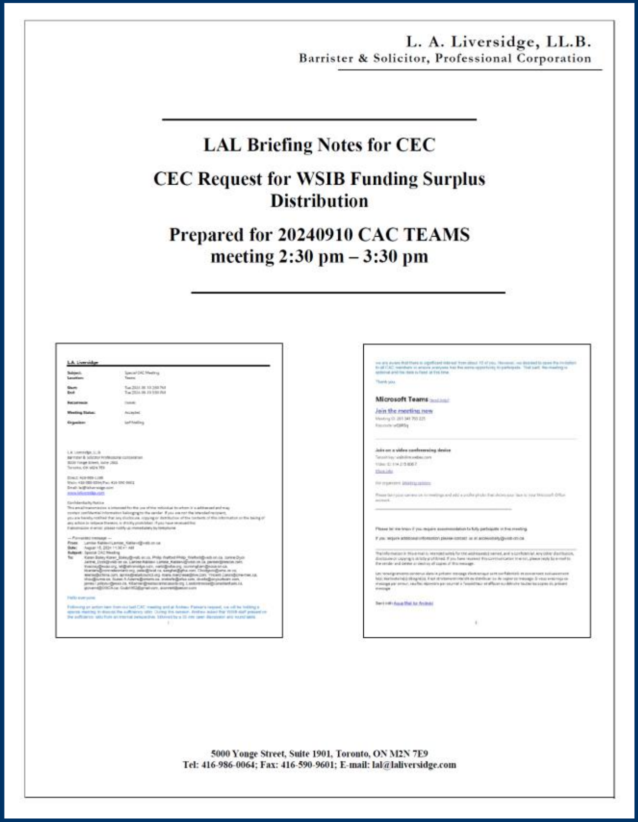
media@wsib.on.ca

A look at the law, regulations and policy

- The apparatus for distributing a funding surplus is complex
- The "instructions" are collectively driven by:
  - WSIA
  - O. Reg. 142/12
  - WSIB funding and pricing policy
- Will quickly look at all three

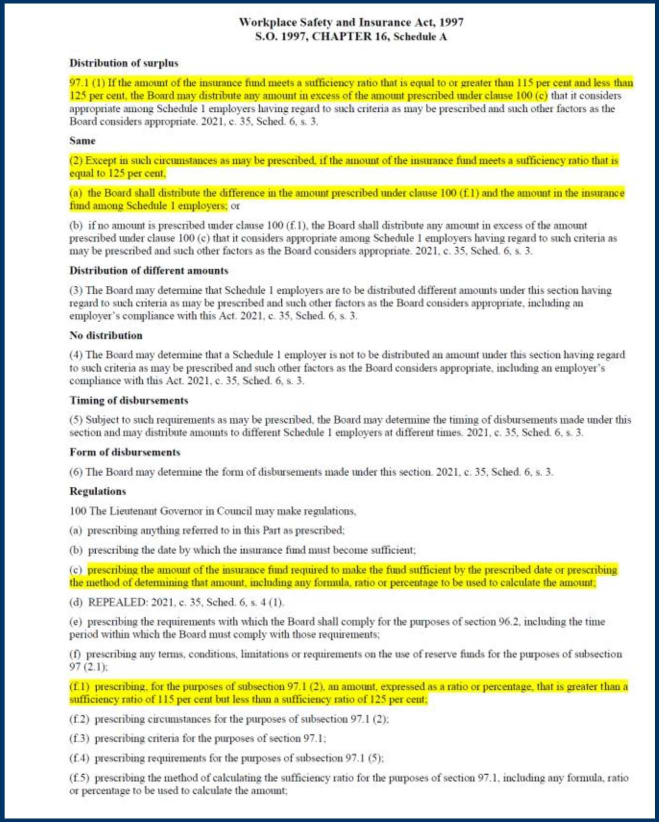
A look at the law, regulations and policy

- See the paper LAL prepared for the Construction Employers Council (CEC) for detailed outline



WSIA

- WSIB has complete discretion to distribute surplus if funding between 115% - 125%
- If funding is 125% or greater, the WSIB <u>must</u> distribute a surplus to reduce funding to 115.1%



Workplace Safety and Insurance Act, 1997
S.O. 1997, CHAPTER 16, Schedule A

Distribution of surplus

97.1 (1) If the amount of the insurance fund meets a sufficiency ratio that is equal to or greater than 115 per cent and less than 125 per cent, the Board may distribute any amount in excess of the amount prescribed under clause 100 (c) that it considers appropriate among Schedule 1 employers having regard to such criteria as may be prescribed and such other factors as the Board considers appropriate. 2021, c. 35, Sched. 6, s. 3.

Same

(2) Except in such circumstances as may be prescribed, if the amount of the insurance fund meets a sufficiency ratio that is equal to 125 per cent,

(a) the Board shall distribute the difference in the amount prescribed under clause 100 (f.1) and the amount in the insurance fund among Schedule 1 employers; or

(b) if no amount is prescribed under clause 100 (f.1), the Board shall distribute any amount in excess of the amount prescribed under clause 100 (c) that it considers appropriate among Schedule 1 employers having regard to such criteria as may be prescribed and such other factors as the Board considers appropriate. 2021, c. 35, Sched. 6, s. 3.

Distribution of different amounts

(3) The Board may determine that Schedule 1 employers are to be distributed different amounts under this section having regard to such criteria as may be prescribed and such other factors as the Board considers appropriate, including an employer's compliance with this Act. 2021, c. 35, Sched. 6, s. 3.

No distribution

(4) The Board may determine that a Schedule 1 employer is not to be distributed an amount under this section having regard to such criteria as may be prescribed and such other factors as the Board considers appropriate, including an employer's compliance with this Act. 2021, c. 35, Sched. 6, s. 3.

Timing of disbursements

(5) Subject to such requirements as may be prescribed, the Board may determine the timing of disbursements made under this section and may distribute amounts to different Schedule 1 employers at different times. 2021, c. 35, Sched. 6, s. 3.

Form of disbursements

(6) The Board may determine the form of disbursements made under this section. 2021, c. 35, Sched. 6, s. 3.

Regulations

100 The Lieutenant Governor in Council may make regulations,

(a) prescribing anything referred to in this Part as prescribed;

(b) prescribing the date by which the insurance fund must become sufficient;

(c) prescribing the amount of the insurance fund required to make the fund sufficient by the prescribed date or prescribing the method of determining that amount, including any formula, ratio or percentage to be used to calculate the amount;

(d) REPEALED: 2021, c. 35, Sched. 6, s. 4 (1).

(e) prescribing the requirements with which the Board shall comply for the purposes of section 96.2, including the time period within which the Board must comply with those requirements;

(f) prescribing any terms, conditions, limitations or requirements on the use of reserve funds for the purposes of subsection 97 (2.1);

(f.1) prescribing, for the purposes of subsection 97.1 (2), an amount, expressed as a ratio or percentage, that is greater than a sufficiency ratio of 115 per cent but less than a sufficiency ratio of 125 per cent;

(f.2) prescribing circumstances for the purposes of subsection 97.1 (2);

(f.3) prescribing criteria for the purposes of section 97.1;

(f.4) prescribing requirements for the purposes of subsection 97.1 (5);

(f.5) prescribing the method of calculating the sufficiency ratio for the purposes of section 97.1, including any formula, ratio or percentage to be used to calculate the amount;

O. Reg. 141/12

- Full funding target is 100%
- Discretionary WSIB disbursements must be made within 90 days
- Mandatory disbursements must be made within 30 days

Workplace Safety and Insurance Act, 1997
ONTARIO REGULATION 141/12
INSURANCE FUND

Sufficiency of insurance fund

1. (1) For the purposes of Part VIII of the Act, the day section 1 of Ontario Regulation 864/21 comes into force is the date prescribed under clause 100 (b) of the Act. O. Reg. 864/21, s. 1.

(2) For the purposes of Part VIII of the Act, a sufficiency ratio of 100 per cent is the amount prescribed under clause 100 (c) of the Act. O. Reg. 864/21, s. 1.

(3) The sufficiency ratio of the insurance fund shall be calculated by dividing the value of the insurance fund assets by the value of the insurance fund liabilities and shall be expressed as a percentage. O. Reg. 864/21, s. 1.

(4) The values of the assets and liabilities shall be determined by the Board in actuarial valuations made using actuarial methods and assumptions that are consistent with accepted actuarial practice for going concern valuations. O. Reg. 864/21, s. 1.

Prescribed amount

2. For the purposes of clause 97.1 (2) (a) of the Act, 115.1 per cent is the amount prescribed under clause 100 (f.1) of the Act. O. Reg. 864/21, s. 1.

Prescribed criteria

3. For the purposes of subsection 97.1 (4) of the Act, the following criteria are prescribed:

1. Whether, during the preceding year, a Schedule 1 employer has been convicted of an offence under the Act in a proceeding commenced under Part III of the Provincial Offences Act.

2. Whether, during the preceding five years, a Schedule 1 employer has been convicted more than once of an offence under the Act in a proceeding commenced under Part III of the Provincial Offences Act.

3. Whether, during the preceding year, a Schedule 1 employer has been convicted of an offence under the Occupational Health and Safety Act in a proceeding commenced under Part III of the Provincial Offences Act.

4. Whether, during the preceding five years, a Schedule 1 employer has been convicted more than once of an offence under the Occupational Health and Safety Act in a proceeding commenced under Part III of the Provincial Offences Act. O. Reg. 864/21, s. 1.

Timing of disbursements

4. For the purposes of subsection 97.1 (5) of the Act, the following requirements are prescribed:

1. Disbursements made under subsection 97.1 (1) of the Act shall be made within 90 days of the Board determining that it will distribute an amount of the insurance fund to Schedule 1 employers.

2. Disbursements made under subsection 97.1 (2) of the Act shall be made within 30 days of the Board determining that the amount of the insurance fund meets a sufficiency ratio that is equal to 125 per cent. O. Reg. 864/21, s. 1.

WSIB Funding and Pricing Policy

- WSIB must maintain funding of 100%
- Target Funding Range:
  - Between 110% to 120%
- Funding must not fall below 100% or reach 125%

WSIB Ontario

Funding and pricing policy

On this page:

Effective Date: June 09, 2023

Overview

The *Workplace Safety and Insurance Act, 1997* ("WSIA") and Regulations require the Workplace Safety and Insurance Board ("WSIB") to maintain the Insurance Fund (the "Fund") so that the amount of the Fund is sufficient to allow the WSIB to meet its obligations under the WSIA.

The WSIA also authorizes the WSIB to establish a special reserve fund to meet losses arising from a disaster or other circumstances, which would, in the opinion of the WSIB, unfairly burden employers in any class.

The WSIB's *Funding and Pricing Policy* reflects the WSIB's risk appetite statement for Insurance Funding Risk in the WSIB's *Corporate Risk Management Policy*.

The administration and management of the Fund, including the asset mix policy, are set out in the Insurance Fund *Statement of Investment Policies and Procedures* ("SIPP"). The SIPP is reviewed by the WSIB Board of Directors ("BOD") at least annually and confirmed or amended as required. In accordance with the SIPP, the WSIB conducts a detailed review of the asset mix policy at least every four years in the context of the WSIB's risk appetite, benefit liabilities, premium rate levels, and capital market assumptions (i.e. an asset liability study), to ensure that the asset mix policy and other provisions of the SIPP remain relevant.

This policy, in conjunction with the rate setting model's operational policies, SIPP, and *Corporate Risk Management Policy*, provides guidance to the WSIB in making Funding Decisions and Pricing Decisions.

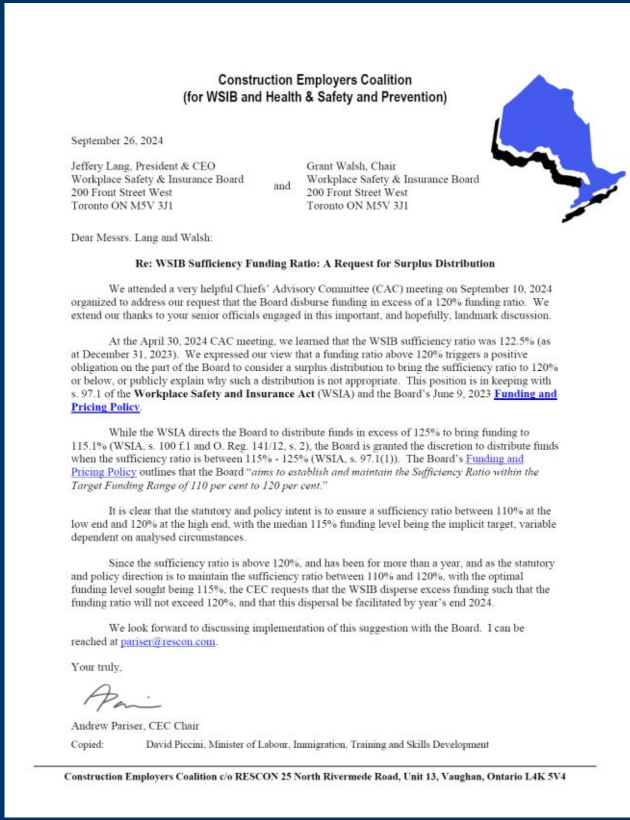
https://www.wsib.ca/en/funding-and-pricing-policy 1/9

What all this means

- Statutory and regulatory instructions are clear:
  - Funding should not reach or exceed 125% EVER or get close
  - Funding should not fall below 100%
  - WSIB enjoys a massive administrative discretion

What led to the recent surplus distribution decision?

- As WSIB funding has been greater than 120% for over a year, CEC asked for surplus distribution in April 2024
- Official written request sent September 2024



Construction Employers Coalition
(for WSIB and Health & Safety and Prevention)

September 26, 2024

Jeffery Lang, President & CEO
Workplace Safety & Insurance Board
200 Front Street West
Toronto ON M5V 3J1

and

Grant Walsh, Chair
Workplace Safety & Insurance Board
200 Front Street West
Toronto ON M5V 3J1

Dear Messrs. Lang and Walsh:

Re: WSIB Sufficiency Funding Ratio: A Request for Surplus Distribution

We attended a very helpful Chiefs' Advisory Committee (CAC) meeting on September 10, 2024 organized to address our request that the Board disburse funding in excess of a 120% funding ratio. We extend our thanks to your senior officials engaged in this important, and hopefully, landmark discussion.

At the April 30, 2024 CAC meeting, we learned that the WSIB sufficiency ratio was 122.5% (as at December 31, 2023). We expressed our view that a funding ratio above 120% triggers a positive obligation on the part of the Board to consider a surplus distribution to bring the sufficiency ratio to 120% or below, or publicly explain why such a distribution is not appropriate. This position is in keeping with s. 97.1 of the **Workplace Safety and Insurance Act** (WSIA) and the Board's June 9, 2023 **Funding and Pricing Policy**.

While the WSIA directs the Board to distribute funds in excess of 125% to bring funding to 115.1% (WSIA, s. 100 f.1 and O. Reg. 141/12, s. 2), the Board is granted the discretion to distribute funds when the sufficiency ratio is between 115% - 125% (WSIA, s. 97.1(1)). The Board's Funding and Pricing Policy outlines that the Board "*aims to establish and maintain the Sufficiency Ratio within the Target Funding Range of 110 per cent to 120 per cent.*"

It is clear that the statutory and policy intent is to ensure a sufficiency ratio between 110% at the low end and 120% at the high end, with the median 115% funding level being the implicit target, variable dependent on analysed circumstances.

Since the sufficiency ratio is above 120%, and has been for more than a year, and as the statutory and policy direction is to maintain the sufficiency ratio between 110% and 120%, with the optimal funding level sought being 115%, the CEC requests that the WSIB disperse excess funding such that the funding ratio will not exceed 120%, and that this dispersal be facilitated by year's end 2024.

We look forward to discussing implementation of this suggestion with the Board. I can be reached at pariser@rescon.com.

Your truly,

Andrew Pariser, CEC Chair

Copied: David Piccini, Minister of Labour, Immigration, Training and Skills Development

Construction Employers Coalition c/o RESCON 25 North Rivermede Road, Unit 13, Vaughan, Ontario L4K 5V4

The problem with WSIB discretion

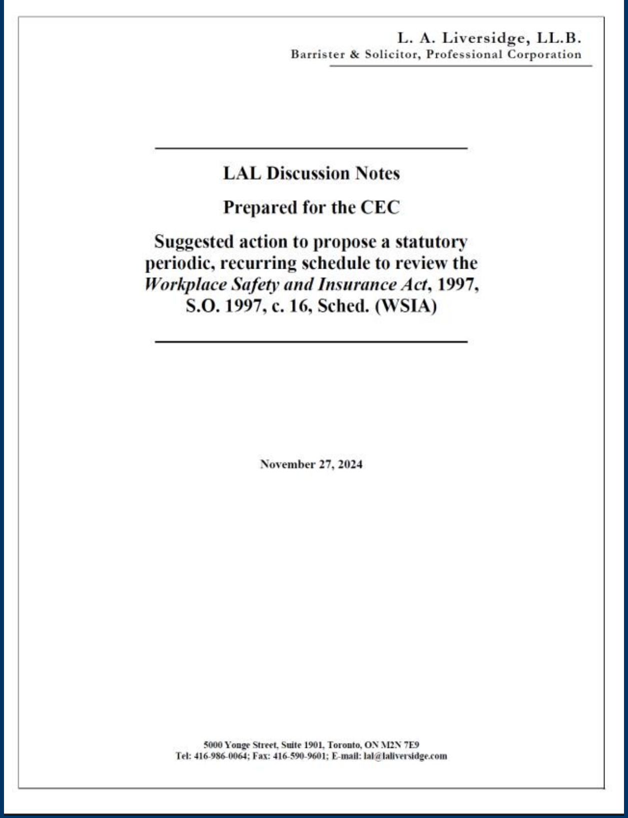
- If funding between 115% - 125%
  - WSIB has sole discretion
- 115% is clearly the median funding sought
- The statutory instructions should be tweaked
  - An over-funded WSIB is as bad as an under-funded WSIB (intergenerational equity)
  - Overfunding will trigger government benefit enhancement (Bill 149)

A suggested fix to restrain WSIB discretion

- Suggested position to advance:
  - When funding hits 117.5% the WSIB <u>must</u> consider whether to distribute a surplus
  - It must "*put its mind to the question*" with the expected default to reduce funding to 115% unless there is sound reason not to
- Decision to be publicly explained

How to take the politics out of WSIB reform

- See LAL paper (opposite and link)
  - LAL longstanding position (see [2007 presentation to Standing Committee]())
  - WSIB reform is feast or famine
  - Suggest formal review every 5 years


L. A. Liversidge, LL.B.
Barrister & Solicitor, Professional Corporation

LAL Discussion Notes

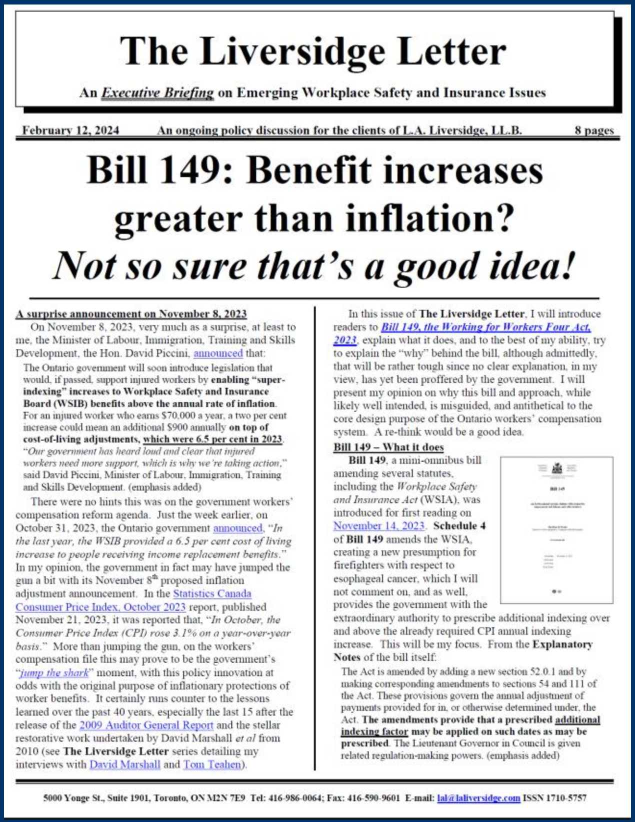
Prepared for the CEC

Suggested action to propose a statutory periodic, recurring schedule to review the *Workplace Safety and Insurance Act*, 1997, S.O. 1997, c. 16, Sched. (WSIA)

November 27, 2024

5000 Yonge Street, Suite 1901, Toronto, ON M2N 7E9
Tel: 416-986-0064; Fax: 416-590-9601; E-mail: lal@laliversidge.com

Bill 149: Benefit indexing *above* inflation



The Liversidge Letter

An ***Executive Briefing*** on Emerging Workplace Safety and Insurance Issues

February 12, 2024 **An ongoing policy discussion for the clients of L.A. Liversidge, LL.B.** **8 pages**

Bill 149: Benefit increases greater than inflation?

Not so sure that's a good idea!

A surprise announcement on November 8, 2023

On November 8, 2023, very much as a surprise, at least to me, the Minister of Labour, Immigration, Training and Skills Development, the Hon. David Piccini, announced that:

> The Ontario government will soon introduce legislation that would, if passed, support injured workers by **enabling "super-indexing" increases to Workplace Safety and Insurance Board (WSIB) benefits above the annual rate of inflation**. For an injured worker who earns $70,000 a year, a two per cent increase could mean an additional $900 annually **on top of cost-of-living adjustments, which were 6.5 per cent in 2023**.
> "*Our government has heard loud and clear that injured workers need more support, which is why we're taking action,*" said David Piccini, Minister of Labour, Immigration, Training and Skills Development. (emphasis added)

There were no hints this was on the government workers' compensation reform agenda. Just the week earlier, on October 31, 2023, the Ontario government announced, "*In the last year, the WSIB provided a 6.5 per cent cost of living increase to people receiving income replacement benefits.*" In my opinion, the government in fact may have jumped the gun a bit with its November 8th proposed inflation adjustment announcement. In the Statistics Canada Consumer Price Index, October 2023 report, published November 21, 2023, it was reported that, "*In October, the Consumer Price Index (CPI) rose 3.1% on a year-over-year basis.*" More than jumping the gun, on the workers' compensation file this may prove to be the government's "*jump the shark*" moment, with this policy innovation at odds with the original purpose of inflationary protections of worker benefits. It certainly runs counter to the lessons learned over the past 40 years, especially the last 15 after the release of the 2009 Auditor General Report and the stellar restorative work undertaken by David Marshall *et al* from 2010 (see **The Liversidge Letter** series detailing my interviews with David Marshall and Tom Teahen).

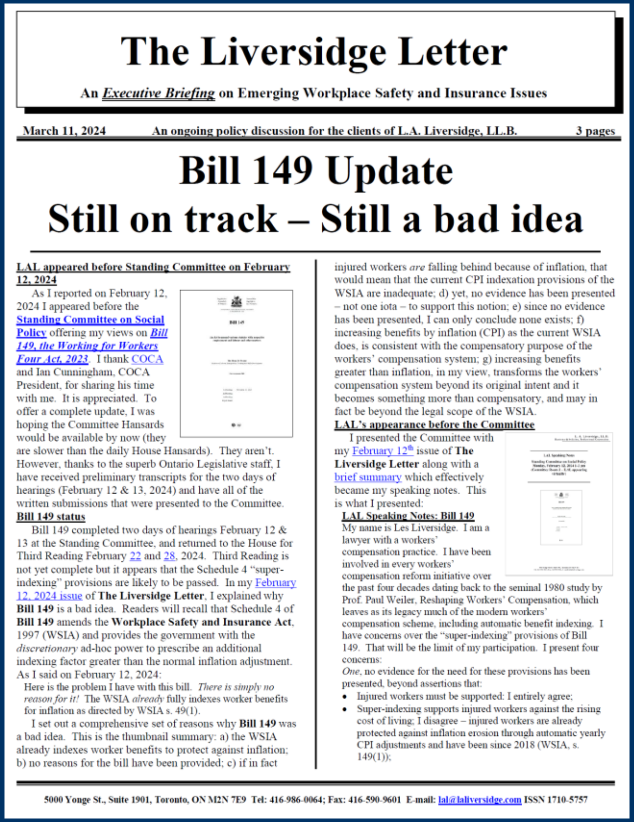
In this issue of **The Liversidge Letter**, I will introduce readers to ***Bill 149, the Working for Workers Four Act, 2023***, explain what it does, and to the best of my ability, try to explain the "why" behind the bill, although admittedly, that will be rather tough since no clear explanation, in my view, has yet been proffered by the government. I will present my opinion on why this bill and approach, while likely well intended, is misguided, and antithetical to the core design purpose of the Ontario workers' compensation system. A re-think would be a good idea.

Bill 149 – What it does

Bill 149, a mini-omnibus bill amending several statutes, including the *Workplace Safety and Insurance Act* (WSIA), was introduced for first reading on November 14, 2023. **Schedule 4** of **Bill 149** amends the WSIA, creating a new presumption for firefighters with respect to esophageal cancer, which I will not comment on, and as well, provides the government with the extraordinary authority to prescribe additional indexing over and above the already required CPI annual indexing increase. This will be my focus. From the **Explanatory Notes** of the bill itself:

> The Act is amended by adding a new section 52.0.1 and by making corresponding amendments to sections 54 and 111 of the Act. These provisions govern the annual adjustment of payments provided for in, or otherwise determined under, the Act. **The amendments provide that a prescribed additional indexing factor may be applied on such dates as may be prescribed**. The Lieutenant Governor in Council is given related regulation-making powers. (emphasis added)

5000 Yonge St., Suite 1901, Toronto, ON M2N 7E9 Tel: 416-986-0064; Fax: 416-590-9601 E-mail: lal@laliversidge.com ISSN 1710-5757



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March 11, 2024 **An ongoing policy discussion for the clients of L.A. Liversidge, LL.B.** **3 pages**

Bill 149 Update

Still on track – Still a bad idea

LAL appeared before Standing Committee on February 12, 2024

As I reported on February 12, 2024 I appeared before the **Standing Committee on Social Policy** offering my views on ***Bill 149, the Working for Workers Four Act, 2023***. I thank COCA and Ian Cunningham, COCA President, for sharing his time with me. It is appreciated. To offer a complete update, I was hoping the Committee Hansards would be available by now (they are slower than the daily House Hansards). They aren't. However, thanks to the superb Ontario Legislative staff, I have received preliminary transcripts for the two days of hearings (February 12 & 13, 2024) and have all of the written submissions that were presented to the Committee.

Bill 149 status

Bill 149 completed two days of hearings February 12 & 13 at the Standing Committee, and returned to the House for Third Reading February 22 and 28, 2024. Third Reading is not yet complete but it appears that the Schedule 4 "super-indexing" provisions are likely to be passed. In my February 12, 2024 issue of **The Liversidge Letter**, I explained why **Bill 149** is a bad idea. Readers will recall that Schedule 4 of **Bill 149** amends the **Workplace Safety and Insurance Act**, 1997 (WSIA) and provides the government with the *discretionary* ad-hoc power to prescribe an additional indexing factor greater than the normal inflation adjustment. As I said on February 12, 2024:

> Here is the problem I have with this bill. *There is simply no reason for it!* The WSIA *already* fully indexes worker benefits for inflation as directed by WSIA s. 49(1).

I set out a comprehensive set of reasons why **Bill 149** was a bad idea. This is the thumbnail summary: a) the WSIA already indexes worker benefits to protect against inflation; b) no reasons for the bill have been provided; c) if in fact injured workers *are* falling behind because of inflation, that would mean that the current CPI indexation provisions of the WSIA are inadequate; d) yet, no evidence has been presented – not one iota – to support this notion; e) since no evidence has been presented, I can only conclude none exists; f) increasing benefits by inflation (CPI) as the current WSIA does, is consistent with the compensatory purpose of the workers' compensation system; g) increasing benefits greater than inflation, in my view, transforms the workers' compensation system beyond its original intent and it becomes something more than compensatory, and may in fact be beyond the legal scope of the WSIA.

LAL's appearance before the Committee

I presented the Committee with my February 12th issue of **The Liversidge Letter** along with a brief summary which effectively became my speaking notes. This is what I presented:

> **LAL Speaking Notes: Bill 149**
> My name is Les Liversidge. I am a lawyer with a workers' compensation practice. I have been involved in every workers' compensation reform initiative over the past four decades dating back to the seminal 1980 study by Prof. Paul Weiler, Reshaping Workers' Compensation, which leaves as its legacy much of the modern workers' compensation scheme, including automatic benefit indexing. I have concerns over the "super-indexing" provisions of Bill 149. That will be the limit of my participation. I present four concerns:
> *One*, no evidence for the need for these provisions has been presented, beyond assertions that:
> - Injured workers must be supported: I entirely agree;
> - Super-indexing supports injured workers against the rising cost of living; I disagree – injured workers are already protected against inflation erosion through automatic yearly CPI adjustments and have been since 2018 (WSIA, s. 149(1));

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Bill 229: Another bad idea

Legislative Assembly of Ontario | Assemblée législative de l'Ontario

1ST SESSION, 43RD LEGISLATURE, ONTARIO
3 CHARLES III, 2024

Bill 229

An Act to enact the Skilled Trades Week Act, 2024 and to amend various statutes with respect to employment and labour and other matters

The Hon. D. Piccini
Minister of Labour, Immigration, Training and Skills Development

Government Bill

1st Reading	November 27, 2024
2nd Reading	
3rd Reading	
Royal Assent	

Distribution of surplus, Schedule 2 municipal employers

97.3 (1) Except in such circumstances as may be prescribed, **if the amount in the insurance fund is greater than the amount prescribed under clause 100 (c), the Board shall pay to a Schedule 2 employer that is a municipality an amount that is equal to the cost of benefits that are required under section 90** to be paid by the employer in respect of a worker or survivor for the period between the day on which the worker or survivor became entitled to benefits and the day on which section 4 of Schedule 6 to the Working for Workers Six Act, 2024 comes into force in respect of an occupational disease,

(a) that was diagnosed on or before the day on which section 4 of Schedule 6 to the Working for Workers Six Act, 2024 comes into force;

(b) to which the presumption set out in subsection 15.1 (4.7) applies; and

(c) that relates to a claim that is filed or refiled under section 15.2 within 12 months from the day that section 4 of Schedule 6 to the Working for Workers Six Act, 2024 comes into force or that is pending before the Board or Appeals Tribunal on the day that section 4 of Schedule 6 to the Working for Workers Six Act, 2024 comes into force.

The saga of WSIB reform over the years

"So it goes"

Billy Pilgrim, as oft repeated in Kurt Vonnegut's "*Slaughterhouse Five*"