Rate Framework Consultation October 2015

Stakeholder submissions

OTA Submission

Ontario Trucking Association

Submission to the Workplace Safety & Insurance Board (WSIB)

Rate Framework Modernization Consultation

October 2, 2015

Ontario Trucking Association
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The Ontario Trucking Association (OTA)

The Ontario Trucking Association (OTA) was founded in 1926 and is the responsible voice of trucking in Ontario. Reflecting the size and importance of the Ontario marketplace, OTA is one of the largest trucking associations in North America and is considered by government and the media to be one of the most effective and dedicated trade associations in the province. Our members include everyone from the smallest family-owned company to the largest publically-traded conglomerates, who together are responsible for moving the lion's share of the goods Ontario businesses and consumers rely upon. OTA is the only trucking association in the province to represent all segments of the industry including for-hire, private and intermodal carriers along with couriers and suppliers.

OTA has also been at the forefront of innovative WSI policy reform for more than 30 years. In 1985, OTA was one of the first trade associations to recognize the important prevention and reemployment potential of experience rating. OTA worked with the Board to voluntarily bring the trucking industry under the NEER plan commencing in 1986, and thereafter led the way towards significant NEER design enhancements.

Today, the majority of OTA's members report to the WSIB under the General Trucking Rate Group (RG) 570, which in 2015 saw a premium rate of $6.72. In addition, many members also report under other RGs, including Warehousing (RG 560 – 2015 premium rate $4.43) and Ground Freight Forwarding (RG 958 – 2015 premium rate $0.38).

With annual insurable earnings in excess of $4.3 billion, RG 570 makes up more than 50% of the entire Class E - Transportation payroll and contributes $294 million annually in premiums. This makes RG 570 one of the largest rate groups in the entire workplace safety and insurance (WSI) system. Furthermore, while contributing premiums at one of the highest rates, General Trucking's (RG 570) lost-time injury rate has declined by 30% since 2008, reflecting our industry's commitment to continuous safety improvement.

Introduction

First and foremost, the Ontario Trucking Association (OTA) would like to recognize the achievements the Workplace Safety and Insurance Board (WSIB) has made over the past years, including the progress that has been made to date addressing the WSIB's unfunded liability. OTA also appreciates the considerable amount of effort the WSIB has put forth as part of the Rate Framework Review (RFR), including the industriousness of the Board's staff.

In OTA's submission to the WSIB in 2013, following the release of Douglas Stanley's discussion paper, one of the central themes communicated was that the current employer classification system and rate setting process were not in need of drastic overhaul. Instead, OTA suggested a number of measures that could be undertaken by the WSIB, which do not require or warrant major overhaul, yet nonetheless address weaknesses within the current rate setting framework. By implementing these procedural changes and improving WSIB administration of current policies, OTA maintained that significant improvements could still be made to employer classification, rate setting and experience rating without fundamental change to the system. And while OTA still believes that all of the points made in its 2013 submission remain relevant today, OTA does recognize that many of the core concepts enshrined in the proposed rate framework (RF) share consistencies with OTA positions.

With this in mind, while there is also a cautious optimism that elements of the proposal could promote greater equity within the system, overall OTA and its members still have significant concerns with the rate framework as it stands. As such, at this point in time, OTA cannot fully support or fully oppose the proposed rate framework. OTA does however believe the proposed rate framework warrants continued study and consideration by both the WSIB and the Ontario trucking industry.

Consultations

To date the consultation process has been very much deadline focused which has presented challenges for OTA and no doubt other stakeholders. This is not a comment on the earnestness of the Board's staff engaged in consultations, rather the overall approach. OTA would like to see additional analysis take place, especially at the company level, to help OTA and the Ontario trucking industry better understand the impact of the proposed rate framework. Along these lines, we are reminded of the consultation facilitated by the Board that dealt with the introduction of the NEER plan to the trucking sector. At the time, OTA helped lead the way on the introduction of NEER and at OTA's Annual Convention in 1985, to engage with our members, the Board replicated at the firm level the effect of the NEER plan on individual companies. Every company present was able to see the impacts of the proposed plan. This type of information would also be appropriate in the discussion on the proposed rate framework.

Classification

In the WSIB's initial proposal as presented in WSIB RFR Paper 3, it was suggested that 22 classes would be adopted with the vast majority of OTA's membership falling within Class K – Transportation and Warehousing. However, in August the Consultation

Secretariat posted their Risk Disparity Analysis which examines the proposed classification structure and suggests a possible expansion of the number of industry classes from 22 to 32 which in turn would see Class K split into Class K1 and K2. At this point, OTA is not in a positon to comment on what this change could mean with General trucking moving from Class K with a class rate of $4.64 to Class K-1 with a class rate of $6.74. As a starting point, OTA requires the same information set out in the Rate Framework Modernization presentation on RG 570, General Trucking, page 7, for the new classes K-1 and K-2. Furthermore, while OTA does not see an inherent need for strict adherence to NAICS (and is of the view that the current grid works), at a minimum, further consultations are needed with the ability to propose and assess the impacts of other "what if" suggestions, such as the establishment of another K Group tier for NAICS 4841, General Freight Trucking.

Predominant Business Activity

WSIB RFR Paper 3 sets out that the Board seeks to abandon multiple classifications and instead will classify individual employers based on the predominant business activity. In this, predominant is defined as the business activity "that represents the largest percentage of the employer's annual insurable earnings". As it currently stands, OTA believes the full impact of this is not fully understood by either the Board's administration or the employers it will affect. As just one example, the proposal would eradicate the long-sought and hard-fought separate rate group for ground-freight forwarders (WSIB Policy Freight Brokers/Forwarders (Ground Freight) Amendments/08, Document No. I-958-03). The principal reason OTA aggressively pursued this change was to promote a fairer premium rate commensurate with the insurance risk for freight-forwarders.

OTA requests that the predominant business activity proposition be studied further as OTA is convinced that the Board lacks a full appreciation of the implications of this policy both for the Ontario trucking industry and beyond.

Temporary Employment Agencies (TEAs)

As it currently stands, for *other* than trucking, temporary employment agencies (TEAs) are often classified differently from their client employers because their classification is based on their business activity and not the business activity of their client employers.

For trucking, the "Supply of Drivers and Helpers" (Classification Unit E-570-11) is excluded from the "Supply of Non-clerical Labour", RG 929. OTA supports the proposal that TEAs and their client employers would need to be classified in the same class in order to mitigate premium cost avoidance issues.

Long Latency Occupational Disease (LLOD)

OTA agrees with continuing to assign the costs of Long Latency Occupational Diseases (LLOD) claims as a collective cost at the class level. For a variety of reasons, the trucking industry has historically had a much higher turnover rate when compared to other industries and has among the oldest workforces in the country. As a result, having LLOD costs fall directly to an individual employer may not be practical, or representative of that specific employer's health and safety programs.

Second Injury Enhancement Fund (SIEF)

During the 2010/11 Funding Review consultation exercise, the FR non-aligned experts clearly advocated that the issue of SIEF should be left to the stakeholders. Employers feel comfortable with the current situation while to OTA's knowledge workers are not vocal on the topic. Furthermore, in its July 2015 RFR Update, the WSIB suggests that "some form of cost relief is required". For this, OTA believes that the current form of the SIEF remain in place, unaltered.

Surcharges

WSIB RFR Paper 3 introduces the idea of surcharges over-and-above the normal risk band movement proposals. At this point, OTA finds this discussion to be premature. OTA believes that any discussion on the need for surcharges should be deferred until RFR has been operational for at least five (5) years, at which point a review of this proposal could take place. On the question of the adaption of Workwell to address this, we are opposed. Instead, we suggest in instances where continued poor performance can be demonstrated (which RFR Paper 3 suggests is at most 1,600 firms), the responsible safety association could be informed and used to help remedy the root problem.

Unfunded Liability (UFL)

It is required by legislation that the WSIB meet prescribed sufficiency ratios by certain dates. The first target is 60 per cent on or before December 31, 2017, then 80 per cent on or before December 31, 2022, and, 100 per cent on or before December 31, 2027. Towards these ends, the WSIB has made considerable progress in addressing its UFL, so much so, when reviewing the WSIB's Sufficiency Plan Update publicly released in September 2015, it is evident that the Board is well ahead of schedule. At this point, it is reasonable to conservatively project that the retirement of the UFL could be achieved by 2020 if not earlier. This creates an opportunity to link the retirement of the UFL to RFR transition, and in so doing, many transition pitfalls could be mitigated. For example, as shown in the Rate Framework Modernization presentation on RG 570, with a UFL of zero General Trucking's (RG 570) target rate is $3.66. With this, the transition from an old system to a new system is eased while other concerns present today would be mitigated or resolved. We respectfully appeal to the Board to continue to focusing on Job 1 – the financial integrity of the system. Once the system has reached and maintained 100% funding, attention and resources can more easily be re-focused towards other objectives.

Conclusion

RG 570 makes up more than 50% of the entire Class E - Transportation payroll and contributes $294 million annually in premiums. This makes RG 570 one of the largest rate groups in the workplace safety and insurance (WSI) system. In turn, employer classification, rate setting and experience rating are key components of WSIB's rate setting framework which have significant impacts on Ontario's trucking industry. For this reason, OTA believes that the goal to study how a more equitable system could be designed is a worthy pursuit. With that being said, it is important that this does not come at the cost of considerations for improvements to the current system. Through improved

WSIB administration and management of existing policies and programs, gains can also be achieved in each of the policy areas without system redesign. OTA encourages the WSIB to not lose sight of areas where relatively simple administrative changes could have big impacts on the trucking industry, such as improving the transparency of NEER and overall claims management processes. Thus, while the examination of how a new system could be designed is justified, it should not distract attention and resources from addressing current problems present within the WSIB that impact employers on a daily basis.

Association of Canadian Search, Employment and Staffing Services | Association Nationale des Entreprises en Recrutement et Placement de Personnel

October 2, 2015

Diane Weber
Director
Consultation Secretariat
Workplace Safety and Insurance Board
200 Front St. West, 17th Floor
Toronto, On
M5V 3J1

Dear Ms. Weber

RE: Submissions of the Association of Canadian Search, Employment & Staffing Services on the "WSIB Rate Framework Reform Consultation"

Introduction

The Association of Canadian Search, Employment & Staffing Services (ACSESS) is the only association representing the staffing industry in Canada. ACSESS represents over 1000 staffing service offices across Canada. ACSESS members provide placement and executive search services, and temporary and contract staffing to the public sector and virtually every type of business.

The mission of ACSESS is to promote the advancement and growth of the employment, recruitment and staffing services industry in Canada. It also serves as Canada's only national advocate for ensuring professional ethics and standards in this industry. All member companies pledge annually to uphold the Association's Code of Ethics and Standards which promotes ethical treatment of employees and clients, and adherence to all applicable laws including human rights and occupational health and safety legislation.

ACSESS members have worked closely with OHS and Workers' Compensation boards across the country to improve worker safety and to reduce accidents. More specifically, ACSESS is active in the WSIB safety group program which encourages sharing of best practices amongst employers of all sizes in similar industries. ACSESS had the distinction of receiving the highest achievement score amongst all provincial safety groups in 2014. Further, ACSESS has been actively involved with senior representatives of WSIB in shaping policy which improves the performance of the staffing industry as a whole.

Analysis of Proposal

ACSESS has set out below our comments with respect to the proposed rate framework reform. ACSESS has a number of specific comments on the proposals which directly impact how experience rating operates for staffing agencies. These submissions are a result of a number of consultations with ACSESS members and involved the assistance of experienced legal counsel.

1. ***Multiple Account for Staffing Agencies Proposal***

The proposed preliminary Rate Framework recommends that staffing agencies and their client employers be classified in the same rate class for the stated purpose of trying to ensure that the client employer and the staffing agency pay a similar premium for the work being performed.

To allow staffing agencies and client employers to be classified in the same class, the WSIB is proposing to amend Schedule 1 of O. Reg. 175/98 to indicate that supply of labour to a class (regardless of what activities are performed) is considered a business activity of that class Staffing agencies would have another separate account for their own dedicated staff which are not assigned to client employers. This is an exception to the general approach of eliminating multiple accounts for virtually every other employer.

ACSESS **agrees in principle** with the proposal advanced by the WSIB to assign staffing agencies individual accounts for rate class that they serve and **this change should eliminate any and all concerns about the alleged practice of client employers using staffing agencies to avoid WSIB premiums**. As we will discuss below, ACSESS needs further information in order to comment specifically on the technical aspects of the proposed rate framework.

2. Response to Question Respecting Claim Cost Avoidance

At page 22 of Paper 3, the WSIB asked for feedback with respect to how the issue of claims costs avoidance should be dealt with under a new rate framework. As was stated above, it is the position of ACSESS that the multiple account system should ensure that staffing agencies and client employers are paying similar premium rates **which eliminates any conceivable financial incentive for client employers to attempt to avoid WSIB premiums through the use of staffing agencie**s.

Paper 3 also makes explicit reference to the recent proposal to attribute the costs of staffing agency worker accidents to the WSIB accounts of client employers for experience rating purposes. It is the position of ACSESS that the multiple account proposal eliminates the problem of any premium disparities and thus is a complete answer to any concern about premium avoidance in this context and **thus there is no need to enact any further changes**.

3. Rate Fairness and Lack of Necessary Actuarial Information

ACSESS has reviewed the additional information released by the WSIB this past summer and is generally supportive of expanding the number of rate classes from the original 22 which the WSIB proposed. Unfortunately, the information provided by the WSIB does not reflect the impact of the proposed expansion of the rate classes and thus does not allow ACSESS to assess the impact on the critical issue of rate fairness.

Respected actuary Ted Nixon has reviewed the additional information provided by the WSIB and has pointed out that the WSIB has not provided the information necessary to calculate the target rate and class assignment for most rate groups. Specifically, Mr. Nixon has correctly pointed out that the information released by WSIB does not take into account the additional rate classes which the WSIB has proposed. It is the position of ACSESS **that the goal of rate framework should be the development of a system whereby all employers pay a premium rate that reflects their cost to the system**.

ACSESS and other groups are in no position to comment on whether the proposed changes achieve the goal of rate fairness without an understanding of what the target premium rate would look like for each class under the new system. This issue is particularly important to ACSESS in light of the fact that ACSESS members will be impacted by the rates in each class. It is critical that the WSIB release all of the relevant actuarial information so that all participants in the system are equipped with an understanding of what the actual premium costs would look like.

4. Surcharging Bad Performers

In the July 2015 Rate Framework Reform update, the WSIB reported that a number of parties expressed support for a special surcharge mechanism for employers who are above the premium rate cap on a sustained basis. ACSESS will comment on this issue if and when a specific proposal is made by the WSIB.

5. *Weighting of Cost Years*

The WSIB has proposed that the "window" for reviewing claims be expanded to six years which will result in employers being assessed costs for historic claims which are likely long removed from the current workplace environment. ACSESS has significant concerns about employing a six year window as it imposes costs on employers for historic claims which the employer has no ability to address. ACSESS supports a system which allows the employer to see cost savings resulting from improvements to the company's safety program right away. It is in the interest of all parties in the system that employers be incentivized to make immediate investments in health and safety.

6. Long Term Latency Claims

In the July 2015 consultation update, the WSIB reported that the majority of stakeholders support excluding long term latency claims from the experience rating of individual employers and that some stakeholders have supported sharing the costs of these claims through all of Schedule 1 (as opposed to at the class level).

ACSESS agrees with these stakeholders that all Schedule 1 employers should share the costs of long term latency claims. The reality of the 21st century workforce is that workers will frequently be employed by a number of employers in a disparate group of industries. It is fundamentally unfair and makes little sense from a policy or common sense point of view to assign the costs of the claim to a specific class. The reality is most workers with such claims will have been employed in sectors covered by a number of different classes.

Obviously, it is even more fundamentally unfair to assign the costs of the claim to the worker's most recent employer given the reality that the employer of record likely had nothing to do with the causation of the worker's condition. This issue is of fundamental importance to ACSESS members in light of the nature of the staffing industry workforce where short-term relationships with workers are common. It is the submission of ACSESS that the cost of long term latency claims should be borne by the system as a whole.

7. SIEF

Paper 3 discusses a proposal of the WSIB to eliminate the SIEF program which provides cost relief for employers in cases where a worker with a clearly identifiable pre-existing condition suffers a workplace accident. The level of cost relief is determined by the objective severity of the pre-existing condition.

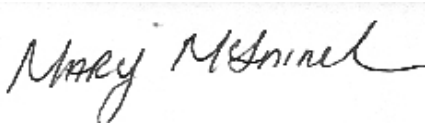
At page 34 of Paper 3, it is pointed out that SIEF is funded through all employers' premiums, yet only some employers are in a position to actually use it. ACSESS agrees that in certain industries (i.e. construction, staffing, hospitality) it is common for workers to be employed by a number of different employers over the course of their career. For gradual on-set claims, the worker's injury is often the result of a lifetime working for a number of employers in multiple industries.

If SIEF were to be eliminated, a single employer would be required to bear the costs of what is in essence a claim caused by a worker's past employment. SIEF levels the playing field to ensure that no single employer has to suffer the unfairness of paying for a claim which was largely caused by work performed at another employer.

Further, although the inherent nature of certain industries might make SIEF more common for certain employers, the issue is relevant for any employer that hires an employee with a pre-existing condition. SIEF offers the same protection for every employer in the system and represents one of the cornerstones of rate fairness. ACSESS recommends that the SIEF program be continued.

I wish to thank you for the opportunity to make these submissions and look forward to receiving the additional actuarial information we have requested.

Yours Very Truly,



Mary McIninch, B.A, LL.B (Membre du Barreau du Québec)
Director of Government Relations/Directrice des Affaires Publiques
Association of Canadian Search, Employment and Staffing Services
Association Nationale des Entreprises en Recrutement et Placement de Personnel

BCOHS
BUSINESS COUNCIL ON OCCUPATIONAL HEALTH AND SAFETY

October 3, 2015

Sent Via E-Mail: consultation_secretariat@wsib.ca

Re : WSIB Rate Framework Modernization Consultation

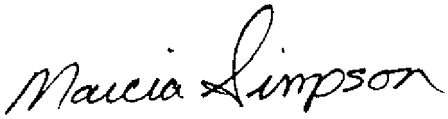
On behalf of the Business Council on Occupational Health & Safety (BCOHS), we submit our support of the Ontario Business Coalition's (of which we are a member) submission which is attached.

BCOHS is an organization of employers concerned with occupational health and safety in the workplace. BCOHS is member-funded and we are committed to promoting a fair, equitable and sustainable workplace safety and insurance system. We currently represent employers from the manufacturing, energy, chemical, mining, packaging, primary metals, and consumer products sectors.

BCOHS appreciates the very structured approach which the WSIB has implemented in carrying out this consultation, which has allowed stakeholders many opportunities for meeting with staff and collecting additional data which is critical for providing a more thorough response. We agree that the complexity of the issue warrants a more engaged and lengthy consultation.

We look forward to providing further input in the next phase of this consultation.

Yours sincerely,



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The Business Council on

Occupational Health and Safety in Ontario

Bruce Power™

September 30, 2015

Workplace Safety & Insurance Board
Consultation Secretariat
200 Front Street West, 17th floor
Toronto, Ontario M5V 3J1
Attention: consultation_secretariat@wsib.on.ca

Re: WSIB Preliminary Rate Framework Consultation

Thank you for the opportunity to provide input into the Rate Framework discussions. This extremely consultative process is very much appreciated.

Bruce Power is Canada's first private nuclear generator. Bruce Power's 2,300-acre site on the shores of Lake Huron houses the Bruce A and B generating stations, which each hold four CANDU reactors. Over the past decade, Bruce Power has refurbished all four units at its Bruce A station, returning 3,000 megawatts of low-cost, reliable electricity to Ontario consumers. Combined with its Bruce B units, Bruce Power generates 6,300 megawatts, providing power to over one in four hospitals, homes, schools, and businesses in Ontario.

The following employers have been meeting and discussing the consultation materials, updates, and analysis communicated by the WSIB Consultation group:
- Bruce Power
- Enbridge Gas Distribution
- Hydro One Networks Inc.
- Ontario Power Generation
- Union Gas.

Please find attached our submission.

Bruce Power very much appreciates the collaborative approach that the WSIB is taking and I am available now and in the future, both as an individual employer or with the group of employers listed above, to participate in more discussions on the WSIB Rate Framework.

Regards,

Mike Murray,
Manager, Human Resources
Employee Wellness
mjmurray@brucepower.com
519-361-2948

ctober

Workplace Safety & Insurance Board
Consultation Secretariat
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Attention: consultation_secretariat@wsib.on.ca

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Please receive the following collaborative submission in regards to the WSIB proposed Preliminary Rate Framework. The following employers have been meeting and discussing the consultation materials, updates, and analysis communicated by the WSIB Consultation group:

- Bruce Power
- Enbridge Gas Distribution
- Hydro One Networks Inc.
- Ontario Power Generation
- Union Gas

Since the release of the WSIB consultation materials in March 2015, the above mentioned group of employers ("*The Group"*) have continued to review and participate in WSIB-led Technical Sessions, as well as Working Group Sessions held in July, August, and September with J.S. Bidal, WSIB Executive Director and Earl Glyn-Williams, WSIB Lead. The Group appreciates the opportunity to continue in this consultation and we look forward to reviewing the outcomes following stakeholder input.

Introduction

The Group as a whole represents large employers with significant experience managing claims within the current NEER Experience Rating program under Schedule 1. Currently, The Group is represented in various Rate Groups (833, 835, and 838) under Class H: Government & Related Industries. Based on the current proposed changes, it would appear that the majority of the group will transition to the new "Class B: Utilities". The Group's familiarity with the current system, similar claims experience and similar industry trends led to discussions and shared interests with respect to the Rate Framework Consultation.

For the purposes of this submission The Group has focused primarily on Paper 3, but has also addressed questions raised in Paper 4 and 5. As a whole, The Group has taken into account the breadth of information provided by the information sessions, as well as the July Consultation Update, and the August Rate Group Analyses and

Risk Disparity Analyses documents. For clarity and continuity, the submission will focus on addressing the "Questions for Consideration", in the order they were posed within Papers 3, 4, and 5. Additional items/interests not addressed by the Papers will be included separately at the end of the submission.

PAPER 3: THE PROPOSED PRELIMINARY RATE FRAMEWORK

Step 1: Employer Classification

Employer Classification

Is the proposed structure adapted from NAICS an appropriate grouping of employers?

Yes, The Group supports the proposed adoption of the NAICS system, and believes it will provide a more appropriate grouping of employers. In contrast to the current SIC system, NAICS will provide an updated grouping of employers noting changes in industry, technology, and today's business climate.

Although the updated NAICS system is a move forward, the WSIB should endeavor to develop a Policy which specifically outlines a process for regular review of classifications similar to the NAICS review of every 5 years, in order to adapt to ongoing and future changes in business, industry, technology, etc. The prior SIC system was not reviewed regularly and eventually resulted in Employers applying in and out of rate groups in an effort to re-align themselves, as outlined by Mr. Douglas Stanley. Additionally, the policy and any periodic reviews should not only address changes in classifications, but undertake review and adjustment of classes based on the new make-up of classes to ensure self-sufficiency and credibility of classes based on risk profiles, claims costs, and insurable earnings.

Caution should also be undertaken noting that at the time the SIC system was implemented in 1993, a plan for review was also anticipated but was not followed. In the event the overseeing statistical agencies managing the NAICS structure disbands, or is modified, a plan for change/adaptation would have to be built into the governing Policy.

Do the proposed 22 classes appropriately reflect the industry categories in Ontario's economy today?

Yes, The Group support the change to the increased number of classes as outlined in the consultation materials. The Group understands the WSIB is reviewing a further expansion to 32 classes, as outlined in the July consultation update. Understandably, any expansion to additional classes will have to ensure that these additional classes can support the appropriate levels of risk, experience, and predictability for rate setting and liability. As mentioned above, if the WSIB establishes "classes" that differ from the true NAICS grouping, this

further emphasizes a need for a Board policy which outlines how the board will manage the classification system on a go-forward basis; including thresholds for when classes may be expanded and/or contracted further.

The WSIB is proposing to classify employers according to their predominant class, where the predominant class would generally be defined based on the class representing the largest share of an employer's annual insurable earnings.

- *Should the WSIB consider factors other than just insurable earnings?*
- *Should the WSIB also consider the risk involved in the business activity when determining the appropriate classification?*
- *Or a mix of both insurable earnings and risk?*

The Group supports the WSIBs plan for basing the rate and classification on the predominant class/business activity. The WSIB should endeavor to communicate the specific new Class that employer's will be assigned to well in advance of the 'go-live' date. Clear and early communication of anticipated class assignment, will provide employers the ability to review and evaluate the determination, and if concerned, employers will be afforded the opportunity to clarify/correct their assignment prior to "go-live". This process will limit confusion, further adjustments/movement, and reduce the possible financial impact that could result from an incorrect classification/rating.

Is a three year window for determining an existing employer's predominant class appropriate?

- *Is a longer window (e.g. four years) more appropriate or is a single year enough?*

Yes, 3 years should be sufficient for most employers and will limit the effect of changes in business activities.

<u>Temporary Employment Agencies (TEA)</u>

Should TEAs be treated differently from other employers under a new Rate Framework to address the premium cost avoidance issue (e.g. be allowed to have multiple premium rates)?

Within The Group providing this submission, these employers either do not utilize TEAs regularly, or where they are used, the temporary employees are hired for low risk labour (i.e. Clerical and Administrative workers). As a result, The Group does not have a definitive position on the issue, noting our limited experience.

How should the claims cost avoidance issue be addressed under a new Rate Framework?

The Group does support the proposed direction of incorporating increased "rates" by the TEAs allocated/billed to their "clients", whereby TEAs would have varying

rates dependent on the nature of the labour they are supplying, which they would bill/allocate to the "client employer". If a "Client Employer" knows they will be billed by the TEA for premium costs and risk associated with their temporary employees, this does have the potential of limiting the ability of employers to use TEAs to avoid high rates and premiums.

The Group does question how the WSIB is going to govern and monitor how TEAs allocate/assign costs to their 'clients', and whether the WSIB has the authority to monitor and audit the proposed changes. Will TEAs be required to provide Client Employers with a breakdown of the associated "rate" related to premium costs?

Step 2: Class Level Premium Rate Setting

New Claims Costs & Administration Cost:

Should the WSIB use the current RG approach of fixed per claim limit of 2.5 times the annual insurable earnings at the employer level, or should the WSIB use the graduated per claim limit approach outlined?

The Group's current understanding is that the size and experience of each employer participating in this submission would indicate we will be considered 90-100% predictable with respect to the predictability scale. Therefore, either approach is appropriate and would have limited impact even if the WSIB was to adopt a new Graduated Per Claim Limit approach.

Should the WSIB consider using a different graduated per claim limit than the one proposed? If so, what features should it have?

See above. Either approach would have minimal impact on employers who are 90-100% predictable under the over-arching proposed framework.

Should the WSIB continue with its current allocation of administration costs?

The Group supports the position to continue with the current allocation of administration costs and legislative obligations.

Long Latency Occupational Disease (LLOD)

Should LLOD (long-latency occupational disease) claim costs be shared equally by all employers as a collective cost or should these costs be charged directly to the individual employer?

The Group agrees that the LLOD claims should be shared equally by all employer's across Schedule 1. Today's employment climate has changed where workers' movement from occupation to occupation spans across multiple classes

and workers do not reside in one class/industry for the entirety of their working life.

Understandably, through years of claims experience and data collection, the WSIB has significant data on the number of LLOD claims, costs, pensions, etc. and the type of LLOD (NIHL, Silica, Asbestosis, etc.). It would be beneficial for this information to be shared and referenced in relation to further plans and direction related to the allocation of costs.

Additionally, as consideration is given for how the WSIB will issue "Claims Reports" (i.e. similar to the current Quarterly NEER Reports), it would be beneficial for the WSIB to include information related to LLODs to the appropriate 'exposure employers'. Including information related to the employer's Costs, awards, their percentage of accountability/responsibility, as well as the over-all cost to the system, would assist in driving prevention and improvement of safe work practices for employers. Knowledge of the 'true cost' to the collective system would assist employers in understanding the effect these claims have on their rates within the new framework, even if it is not impacting their own individual Employer Actual Premium Rate.

The Group recommends the WSIB endeavor to review and explore the Final Report of the Chair of the Occupational Disease Advisory Panel, issued in February 2005. The Group does recognize that the broader topic of Occupational Disease adjudication, and operational policy, is not within scope of the Rate Framework consultation, but has included some additional thoughts related to this topic, in the "Additional Comments" section below.

The WSIB should consider applying a threshold for entitlement to a NEL award for Noise Induced Hearing Loss claims, as done in other jurisdictions. By identifying a threshold for when a NEL is awarded, the board would reduce costs associated with administering and issuing the minimal-NEL benefits, where the cost outweighs the actual benefit itself. The entitlement to hearing aids and HC benefits would still apply, but a limit to the NEL award would ease the burden on the system.

SIEF

Given the design elements of the proposed preliminary Rate Framework that promote greater stability in premium rates, as well as the current legal landscape on disability issues, is the SIEF policy as it currently designed still relevant?

It has been expressed to The Group that the WSIBs implemented changes and improved adjudication related to the SIEF program has resulted in the New Claims Costs associated with SIEF being reduced from 30% of NCC to 5% of NCC over the last 5 years.

The Group believes that SIEF is still a relevant aspect of the WSIB process related to pre-existing conditions and their effect on claims and benefits. However, noting the strides made by the WSIB in recent years, and the recent Operational Policy changes related to pre-existing conditions, it may be warranted to continue to use SIEF, in a new/redesigned SIEF Policy, change in scope, and updated definition, and its applicability.

Discussion was also undertaken in regards to whether the WSIB would allow employers the option to opt out of SIEF Coverage, and what effect it would have on the Employer Premium Rate, and perhaps the Class Target Premium Rate.

Self-Sufficiency of Classes:

How should the WSIB handle catastrophic new claim costs situations that occur in a particular class?

a) *Include claim costs in the year that they occur, which may result in a higher premium rate being charged to employers?*
   OR
b) *Reduce the premium rate increase and add the remainder as an amount for future premium rate consideration?*

c) *How should catastrophic situations be defined? Should the WSIB consider pooling these costs at the class level or Schedule 1 level?*

The Group's understanding is that "catastrophic new claims costs" can be defined as either:

- A pandemic/wide-spread type illnesses that affect a specific group of employer's (i.e. Health Care industry affected by SARS, H1N1, etc.) burdening a specific class, or classes, which significant increased claims costs in a specific period, OR

- An unexpected event (i.e. plant explosion, mining disaster, plane crash, multiple homicides in the workplace) resulting in significant injuries/costs to a large number of employees for a particular employer, OR

- An unexpected change in a particular class (i.e. a number of employers suddenly leaving the marketplace) resulting in the class having to compensate for the disparity of future claims costs, no longer gathered through premiums.

Understandably, unique situations such as those described above (and perhaps other scenarios not yet identified) could arise and the employers, class, or classes, would be burdened with significantly high and unexpected costs that would not be considered through review of risk profiles and past claims experience. For situations where "catastrophic claims" occur and there is limited-

to-no control at the employer level, it would be The Group's position that the WSIB should consider some form of pooling for these costs. However, what level they are pooled could differ depending on the nature of the "catastrophe". Following a catastrophic event that affects one employer (i.e. plant explosion), or a limited number of employers, consideration should be given to pooling the costs at the class level, where a collective of similar employers can support the affected employer(s). Alternatively, a catastrophe that affects multiple, or the majority, of employers in a particular class (i.e. pandemic, or significant reduction in class insurable earnings), the costs could be pooled at the Schedule 1 level, noting that pooling at the class level would not be sufficient and would result in significant impacts to a multitude of employers.

The Group supports that in catastrophic scenarios, some level of pooling should occur in an effort to limit significant volatility in scenarios where employers have limited control and the event is significantly unpredictable. In order to better prepare and educate all employers of when this would apply, a clearly defined definition (or definitions) of "catastrophic claims" should be developed as part of an overarching Operational Policy. The policy would provide clarity of what will occur, how it will be applied, and how it will be communicated to employers, in the event these situations were to arise. Furthermore, consideration could be given to identifying an 'arms-length' entity to oversee these types of matters in an effort to eliminate political-based decisions, and ensure decisions are based on an objective review of the catastrophe itself and the effect it would have of employer, class, and Schedule 1 rates.

Step 3: Employer Level Premium Rate Adjustments

Actuarial Predictability

In setting employer level premium rates, what are the factors that the WSIB should consider in assessing the level of protection an employer needs from large rate fluctuations?

a) *Should the WSIB include in the assessment of actuarial predictability, insurable earnings, claim costs, number of claims, lost time injuries or some other factor?*
b) *Should the WSIB use different mixes of insurable earnings, number of claims?*
c) *Are the percentages of assignment between individual and collective experience appropriate?*
d) *Should a new employer be treated the same as an existing employer?*

The Group supports the proposed Framework's structure and the proposed process, and associated factors, for setting employer level premium rates, resulting in individualized Employer Premium Rates based on their own experience and predictability. Based on the data provided in Paper 3 (page 45), it would appear that the WSIB attempted numerous variations of weighted factors.

The resulting actuarial predictability appears appropriate based on the information provided.

Similarly, the Predictability Scale outlined (Paper 3, page 47) appears to provide a sufficient balance between individual experience and collective experience.

The proposed Framework offers challenges for new employers entering the system with no prior individual experience. Consideration could be given to introducing new employers to either; 1) the Class Target Premium Rate, or 2) the Class 'Average Premium Rate" initially. Thereafter, a formula could be established to apply a graduated/weighted "Employer Target Premium Rate" based on experience and total claims, year-over-year until sufficient experience is obtained to better establish a truer 'Employer Actual Premium Rate'. Consideration should be given to still allowing minor movement within the risk band, noting the Risk Band Limitations (discussed below) would afford protection from volatility, even to 'new' employers.

Does the introduction of experience adjusted premium rates for small employers, currently excluded from WSIB experience rating programs, introduce too much premium rate sensitivity?

No, the use of the predictability scale and collective liability will limit volatility in premium rate changes year over year. Small employers will be afforded the appropriate level of protection from large fluctuations, but also allow for an appropriate level of employer accountability.

Risk Banding:

Is using the average of the last 3 years net premium rate for experience rated employers or the premium rate of the RG for those employers who are not experience rated, a reasonable starting point for employers to transition to a new Rate Framework?

Yes, The Group supports the use of the last 3 years net premium rate. It would be beneficial for all Employers if the WSIB would provide (in written form) a breakdown of how the "net premium rate" is calculated. Understandably, the WSIB is reluctant to share the calculations/rates used in assessing the proposed framework, as the 'net rate' may change before final implementation. However, providing employers with a clear breakdown of the formula (and examples from mock NEER/CAD-7 statements) would allow employers to evaluate their own individual status as part of ongoing preparation.

Are the risk bands that are set at 5% increments to provide great sensitivity, and avoid large premium rate swings for employer with small changes in risk appropriate? Should the percentage increments be larger?

5% increments is appropriate and allows for adjustments based on experience, while also protecting against volatility.

Should the proposed preliminary Rate Framework use the most recent six prior years for determining employer level premium rates? Or three or four years?

The Group supports the use of six years for establishing Employer's Total Claims Costs. Six years would be more appropriate to support a truer picture of the actual costs of the claim. This would also increase predictability and make employers more accountable for their own costs.

The July Consultation Update outlines that some stakeholders are requesting/ recommending the use of a weighting scale, putting greater emphasis on recent data versus older data. The Group holds the position that the use of 6-years of unweighted costs is likely sufficient data to determine premium rates and question the level of benefit 'weighting' different years will provide.

Noting the WSIB has reviewed 'alternatives' and other models as part of the development of Paper 3, an updated Paper as part of the consultation process could include an alternative model **it ario s t es of ei tin** to outline the effect the weighting would have (if any), and offer discussion on the pros and cons of this proposition.

Does a three risk band limitation, relative to the experience of the class, provide suitable stability? Consider that this limitation itself leads to greater collective liability, should the limitation be higher? Should it be lower?

The Group supports the proposed limit on Risk Band movement of +/- 3 risk bands. However, the WSIB should provide clear analysis/reports annually (quarterly?) to employers allowing them to gauge where they are trending, and outline the Employer Target Rate to provide transparency to employers.

As discussed further below, improved online real-time information and accessibility to information would be strongly recommended as part of any proposed framework. The WSIB has made strides in improving eservices, but further improvement would offer increase service to stakeholders.

Should we consider forgiving employers who increase/decrease one or two risk bands? If so, would there be a need to increase the risk band limitation to four or five risk bands to appropriately balance premium rate stability and responsiveness?

The Group doesn't support the notion of forgiveness of 1 or 2 bands as it would result in confusion for employers. Additionally, forgiveness could potentially result in annual appeals by employers, and unnecessary administration and costs to the system. The simplicity within the +/- 3 band movement will benefit all employers and make it easier to understand. Movement of 4 to 5 bands would result in increased volatility and decrease stability for employers, which goes against the intent of the new framework.

Do risk bands generally provide a positive support and a level of stability in setting rates for employers, or would individualize rates for each employer capped at a specific %, plus or minus, relative to the experience of the class be preferred?

The Group supports the risk band approach, and the +/- 3 band movement. To a certain degree, the proposed framework already incorporates "individualized rates" for each employer, as well as a cap of "15%" movement from year to year. Additionally, the approach of having a broad range/number of "Risk Bands" dependent on the Class (and their risk/experience), allows for appropriate movement.

Furthermore, Paper 3 discusses that the maximum premium rate would be approx. three times the Class Target Premium Rate, and through the working group sessions, The Group understands that when/if needed maximum premium rate (i.e. highest risk bands) could potentially fluctuate from year to year as the class's collective liability changes. Similar to the recommendation to develop of policy on "Classification", the WSIB may consider outlining a specific policy on when, why, and how changes in Risk Band Ranges may change.

Overall, The Group believes the proposed framework appears to find a strong balance between collective accountability and individual employer accountability.

<u>New Employers:</u>

Should the WSIB charge new employers with less than 12 months of experience the Class Target Premium Rate? Or should they be risk banded?

The Group agrees that new employers should start at the Class Target Premium Rate, and as they gain experience/predictability over years in the system, they will move accordingly towards an individualized Employer Target Rate. A graduated approach based on year-by-year experience could be developed, similar to the predictability scale, but designed for new employers being as the employer begins to gain experience and

Similar to other topics outlined in this submission, a clear policy clarifying how new employer's will be treated should be established.

Surcharging Employers:

What factors should the WSIB consider when determining if an employer should be surcharged?

The Group supports the need for some type of surcharge mechanism for employers who fail to improve overall claims performance. Factors that should be evaluated would include; claims costs and rate increases (+3 risk bands) over a number of years, and/or employers continually residing in the maximum risk band for the class for a pre-determined number of years. Although collective/class liability is part of the new Framework for greater protection to rate volatility, the Framework does also incorporate increase employer accountability. In instances where employers are meeting the 'threshold' for penalties, mechanisms to hold employers accountable should be built into the new framework. The Group supports a graduated/tiered approach to reaching a surcharge threshold, whereby Employers are provided with escalating notifications in the event they are trending towards a surcharge scenario.

Additionally, the surcharge mechanism should be linked to overall claims/cost/experience performance over time (to-be defined), and should not be linked to individual claim types (i.e. fatality claims).

It would seem obvious to The Group that a well-defined policy would be required to outline processes, thresholds, level of accountability, maximum surcharges, support resources, etc. that would be required within the framework.

Should the WSIB not surcharge employers at all and include all the claim costs above a certain level as a collective cost in setting the Class Target Premium Rate?

As noted above, The Group supports that a surcharge approach should be included as part of the Framework. However, an integrated approach of surcharging continually 'poor' performing employers along with providing "collective accountability" within the class should be undertaken as well.

Noting the fact that the Maximum Risk Band is not a fixed amount and can increase over time, in relation to the class target rate, there is also the potential that employers at the maximum risk band may not be 'protected' by the collective group over the passage of time. Continually poor performance could lead to an increased maximum, resulting in increased rates for the 'poor' employer as well.

Paper 4: The Unfunded Liability

Should the WSIB use the NCC method or consider Method 2 of apportioning the UFL as described earlier in this paper?

The Group supports the ongoing use of the NCC method to assist in paying down the UFL. The WSIB should consider a graduated diminishment of the UFL portion of the 'rate' as we approach the full re-payment of the UFL. By gradually moving towards the "$0 UFL Rate" there may be some built in protection for employers and the board alike, and it would remove the 'perception' from other external parties/groups of an unwarranted sudden reduction in rates.

Paper 5: A Path Forward

Are there any other key considerations that could be considered in the development of a transition plan from the current system to a new Rate Framework?

The Group believes that a significant amount of communication to all employers, regardless of size and current experience rating program, will be required. The communication should be rolled out in multiple forums, including but not limited to:

- Direct Employer communications
- Communication to Employer Groups
- WSIB website & Social Media

With respect to employer-specific information, the WSIB should ensure significant advance notification (1 – 1.5 years notice) of each employer's anticipated *Class Target Rate*, *Employer Target*, and *Employer Actual Rates*.

Proper training and education on the new framework and any applicable electronic portals should be provided in advance in an effort to make the transition as seamless as possible for employers.

Where necessary, it would be appropriate to provide additional resources to employer groups (such as the Office of the Employer Advisor, OEA) in an effort to provide increased information to small employers who may not be equipped with internal resources to review and interpret information as it is conveyed. These enhanced resources should remain in place both during and after the transition, as it can be expected that many smaller employers won't react to the change until it has already taken place.

Additional Comments from The Group:

Operational Policies & Legislative Changes:

Throughout The Group's submission, we've outlined instances where we believe policies should be drafted and considered. The Group proposes that the WSIB

should draft an all-inclusive list of new policies and current policies that will require revisions/updates. Presumably, the Rate Framework Consultation itself will include drafts of these policies requesting employer/stakeholder feedback as part of the overall process.

Similarly, proposed changes in legislation and legislative language should also be shared with stakeholders for consideration and feedback.

Occupational Disease Advisory Panel (ODAP):

Noting the relation to questions on Long Latency Occupational Diseases and the way those claims fit into the Framework, the WSIB should also explore the previous recommendations made in the 2005 ODAP report. Given the overall intent of the new Framework is tied to the recommendations to provide Funding Fairness, it is The Group's position that there is opportunity within the scope of the framework to review how LLODs are reviewed and managed, and that there could be increased fairness obtained by having an arms-length panel to review how Occupational Diseases (new and historical) are assessed with regards to entitlement. A separate body that could evaluate objective occupational, epidemiological, and scientific evidence, in determining presumptive legislation and/or entitlement, would result in a more transparent and objective assessment and implementation of conditions, processes, entitlement, etc.

Fatalities

In the current experience rating programs for NEER and CAD-7, Operational Policy 14-02-17 Fatal Claim Premium Adjustment outlines when and how the WSIB applies a one-time premium increase in the year an employer incurs a traumatic fatality claim. It is The Group's position that the upon the transition to a new Rate Framework this policy will be become void and no longer be applicable, as NEER and CAD-7 will no longer exist. In addition, it is The Group's position that the new Framework would not revise/implement a new or similar version of the policy to penalize employers in a similar manner.

Currently, through discussions within working group sessions with the WSIB, The Group is aware of three possible considerations for how Fatality Claims could be addressed. In the event of a fatality, three possibilities include;

- Employers pay for the actual associated costs based on entitlements, related to funeral expenses and dependents, based on the worker's circumstances. These costs would be subject to a graduated per claim limit based on an employer's insurable earnings and the new Framework, whereby if the actual costs were greater than the maximum claim limit for that employer, the employers experience would be affected only by the maximum. Or,
- The employer is charged with the "average cost" of a fatality, and the amount would NOT be subject to the graduate per claim limit. The WSIB

would determine (and continually evaluate) the "average" cost that a 'fatality' costs the system based on claims data over a period of time (i.e. 6-years prior).

- The employer would be charged with the maximum graduated per claim limit outlined in the proposed Rate Framework. Whereby, the employer pays the per claim limit regardless of the worker's circumstances at the time of the fatality (i.e. funeral expenses, dependents, etc.).

The Group has undertaken various conversations surrounding how fatalities may be treated within the new Rate Framework, and prior to offering a position on the matter The Group feels more information, data, and modelling is required. The WSIB possess the necessary data related to costs and should endeavor to provide additional information to various scenarios.

The Group acknowledges the seriousness of any fatality claim, and the fact that it is likely the most significant claim any employer could experience, and as such additional information pertaining to the costs to employers and the system would be beneficial to all stakeholders evaluating how costs associated with fatalities should be administered.

Customer Service, Reporting, and Access to Information

The Group would be remiss not to express the need for ongoing improvements in services and availability of information to employers. Currently, for employers in the NEER Program, cost related information is issued on a quarterly basis but is typically not communicated to employers until 6 – 8 weeks after the closing of the "quarter". Improved electronic-based systems and portals providing real-time claims information, costs, decisions, etc. would benefit both Employers and WSIB Operations staff. Additionally, over time, improved systems and availability of information should reduce administrative costs.

Through working sessions related to the Framework, it has been shared that the WSIB is looking at the WorkSafeBC model and their online "Employer Safety Planning Tool Kit". The Tool Kit reportedly offers employers not only real-time claim information (costs, benefit types, decisions), but real time experience and premium rate information in the form of forecasting and other information which would benefit employers in reviewing what claim trends, risk profile projections, and premium rate projections are occurring, and where safety measures could be implemented to improve performance. Employers would benefit from additional presentations/slides/ screenshots related to the BC Tool Kit, or a mock Tool Kit, providing more specific examples of what would be provided to employers.

Additionally, employers continue to struggle with the limited electronic services provided by the WSIB with respect to claims management, and it is The Group's position that WSIB costs as well as indirect costs at the employer-level could be

reduced by expanding the e-services offered by the board, including but not limited to:

- Decision Letters
- Submission of Objection Letters
- Submission of Forms (WREO7E, Form 9s, etc.)
- WSIB Requests for Forms (i.e. Employer Progress Reports)
- Confirmation of Claim Numbers
- Appeals – Access to Claim Files
- Communication
    - WSIB could set minimum security/system requirements for email correspondence)

Movement to a more employer-centric model should include efforts to provide more timely information in an easy and accessible manner to all employers.

Self-Insurance

The Group understands that the notion of Self-Insurance and changing legislation is not within scope of the proposed Rate Framework Consultation. However, in an effort to review future opportunities and other avenues for improved funding fairness, The Group requests that the WSIB obtain and provide cost and claim data related to specific time-period data for claims. Specifically;

- Can the WSIB provide data to employers in relation to how many claims are closed within specific thresholds (5-days, 7-days, and/or 10-days of onset), along with associated claims costs and benefits paid?
- Can the WSIB review and analyze the data and determine the administrative and man-power costs associated with these "thresholds" to determine model what benefit (or detriment) a Self-Insurance model may provide to employers and the WSIB?

WSIB Autonomy

The Group believes that the WSIB's current policy and legislative approach which clearly outlines the WSIB's accountability and jurisdiction to oversee and apply funding and rate setting should continue. The efforts in recent years to ensure the UFL can be paid within the designated time frame, as well as the assurance afforded to employers that the premium dollars gathered are adequate to cover future benefits should remain in place.

Conclusion

Overall, based on the information included to-date The Group is of the position that the proposed Rate Framework will drive employer accountability and proper claims management which should drive decreased claims costs, reduced rates, proactive Health & Safety measures in the workplace and better prepare employers to visit true trends in costs, claim frequency, severity, etc.

Going forward, The Group would suggest that the WSIB should consider offer training/Web-Ex sessions to employers to become familiar with the new Rate Framework. This would assist in reaching as many employers (large and small) as possible and limit confusion and increase the knowledge base moving towards any new Framework.

We appreciate the opportunity to provide comments on this very important WSIB Rate Framework Consultation. We look forward to the next phase of the process and reviewing the report and submissions provided by all the stakeholders.

Yours Sincerely,

Bruce Power ***Enbridge Gas Distribution*** ***Hydro One***

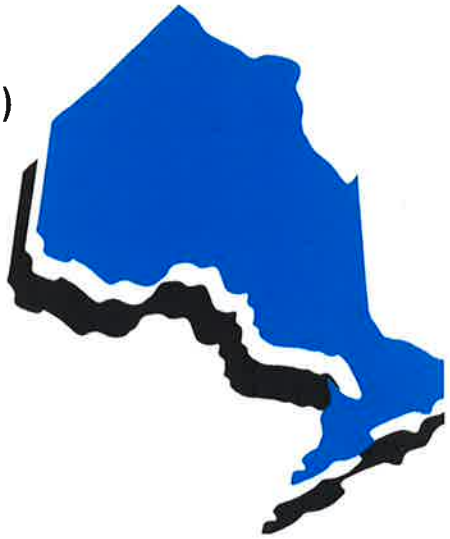
Union Gas ***Ontario Power Generation***

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

CEC Submission to the WSIB Consultation on its Initial Rate Framework Reform Proposal

October 2, 2015

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



October 2, 2015

Submitted via e-mail: (consultation_secretariat@wsib.on.ca)

Consultation Secretariat
Workplace Safety & Insurance Board
200 Front Street West
Toronto ON M5V 3J1

Re: WSIB Consultation on its Initial Rate Framework Reform Proposal

On behalf of our members, the Construction Employers Coalition for WSIB and Health and Safety and Prevention (CEC) would like to provide the following submission in response to the initial Rate Framework Reform (RFR) proposal, posted by the WSIB in March of 2015, with a subsequent update provided to stakeholders on this process in July of 2015.

About the CEC

The Construction Employers Coalition for WSIB and Health & Safety and Prevention (CEC) represents more than 2,000 firms employing approximately 80,000 workers in province. The CEC was formed in 2011 for the purpose of studying and responding to "big-picture" issues related to occupational health and safety (OH&S), accident prevention, and WSIB that affect the construction industry in Ontario.

Members of the coalition include:

- Ontario Sewer and Watermain Construction Association (OSWCA);
- Mechanical Contractors Association of Ontario (MCAO);
- Ontario General Contractors Association (OGCA);
- Ontario Road Builders' Association (ORBA);
- Heavy Construction Association of Toronto (HCAT);
- Residential Construction Council of Ontario (RESCON);
- Ontario Concrete and Drain Contractors Association (OCDCA);
- Ontario Formwork Association (OFA);
- Construction Formwork Association of Ontario (CFAO);
- Residential Tile Contractors Association (RTCA);
- Residential Framing Contractors Association (RFCA);
- Kingston Construction Association;

- Niagara Construction Association;
- Ottawa Construction Association; and,
- Sarnia Construction Association.

Preliminary Comment

Before making any specific comments on the RFR proposal, we believe that it is necessary to once again reiterate a long-held CEC position that a complete redesign of the rate classification system and experience rating program is unnecessary. While we agree that the current rate-setting system has some minor flaws, we believe that these can be remedied with minor tweaks and a much more stringent administration of existing WSIB programs. No comprehensive case has, thus far, been made for any change to the existing system, let alone a complete redesign. Before this process moves forward, the WSIB should simply look to make small adjustments to the existing rate framework to see if an overhaul can be avoided, as this should be considered a last resort.

Furthermore, this proposal to significantly reorganize the rate framework model should be put on hold at least until the WSIB accomplishes its primary organizational goal of eliminating its unfunded liability (UFL). Redesigning and implementing a new rate framework system at the same time as paying off the UFL is overly ambitious and will strain WSIB resources, making it difficult to adequately accomplish either goal. With this being said, the CEC would like to make a number of general comments and recommendations on the initial RFR proposal and consultation process thus far.

General Comments on the RFR Proposal

Recommendation #1 – Delink the RFR proposal from the WSIB messaging on lower premium rates

Following on the footsteps of the 2009 Auditor General's report which first drew attention to the WSIB's massive unfunded liability (UFL), the WSIB instituted a new premium rate setting policy in 2010 whereby premium rates would not be adjusted downwards no matter if it was earned through improved performance. And rate declines in the construction industry should have been forthcoming, given that lost-time injury rates have declined by 42% since 2005. Instead, premium rates have actually increased over the same time period by 14%.

The CEC has supported the WSIB in its endeavors to pay-down the UFL, which has required employer over-taxation for a number of years. As a result of this partnership, the UFL has been reduced from over $14 billion in 2011 down to under $7 billion in 2015. This reduction is remarkable, but is clearly a result of employer over taxation. It does not have anything to do with the current rate group make-up and could easily be remedied, by simply reducing rate group premium rates based on performance.

Although paying down the UFL and the new rate framework design process are both significant exercises that are occurring at the same time, they are mutually exclusive processes and should be identified as such.

Recommendation #2 – Take an appropriate amount of time to carefully design and fully consult on a new Rate Framework

Foremost among our recommendations is that there should be no urgency attached to this program redesign, particularly given that the more crucial and immediate task for the WSIB remains the elimination of the UFL. With the current WSIB framework working ably to pay-down the UFL in a much more expeditious manner than could have been predicted only three years ago, we believe that it is necessary for the WSIB to eliminate the UFL completely before risking a complete system change.

Taking this approach will also allow for a much more fulsome consultation and consideration of a new program design. It will allow the WSIB and its stakeholders to delve into the intricacies of this new system in much greater detail to ensure that a new system design is as close to perfect as possible before it is launched. This should include working groups and ongoing conversations with stakeholders on how to best capture and address the WSIB's ultimately goals in this exercise. A more fluid approach which sees constant discussions, rather than deadline focussed, hard-copy submissions, is necessary to ensure that this process gets the design elements of a new rate framework right. The current experience rating (ER) model took close to a decade to fully develop and implement, and the same degree of care and caution must be taken during the development and implementation of any model set to replace the existing system.

Recommendation #3 – Provide stakeholders with the necessary statistical data to inform them of the company-specific impacts before moving any further along in the current design process

In our view, the RFR process is *very* early in its initial design stages. In this submission we provide comments on some of the "big-picture" program items that have been identified in the RFR technical papers, but there needs to be a much more involved stakeholder engagement in the design of specific program elements related to industry class design and make-up once the WSIB gets to that point. In order to get this right, we, as the stakeholder community, need to see a much more robust statistical demonstration of the impact that any new system will have on our individual sectors of the labour market and on the companies within these sectors.

The CEC has previously made the request for company specific impact data for each of the different sectors that we represent. This information is critically important for us to understand precisely how the RFR will impact the operating costs for each of the companies within our individual memberships, and how these costs will change over time. Until we see this information, it is very difficult to provide detailed comments on the

system design and make-up as we cannot truly understand the benefits and disadvantages that will be created across our respective sectors of the construction industry. This statistical information will allow for a more open and transparent conversation between stakeholders and the WSIB on how the system needs to be tweaked and adjusted before it is implemented. It will also help to ensure that the WSIB's projections for revenue neutrality and class average target rates are appropriately set, ensuring that the proper amount is being collected to address the system needs.

Specific Comments & Recommendations on the RFR Proposal

Recommendation #4 – Preserve the Second Injury Enhancement Fund as presently constituted under the new Rate Framework

The CEC strongly disagrees with the WSIB proposal to eliminate (or even reform) the Second Injury Enhancement Fund (SIEF).The SIEF is an essential insurance element that understands and addresses juncture between controllable costs and the "thin-skull" legal paradigm governing entitlements. Preservation of the SIEF has long been a central pillar of our advocacy around the Rate Framework Reform process. The CEC has made a principled point of detailing the merits of this program since the consultations around the WSIB Funding Fairness Review in 2011 and throughout the Pricing Fairness review in 2013.

Construction is a unique industry, where workers often move in between companies on a per-project basis. This is a point that has been argued from *both* the labour and management sides of the industry, and one which we both firmly agree upon. This program needs to stay intact, as presently constituted, in whatever rate system the WSIB utilizes moving forward.

As we have contended in previous submissions to the WSIB, construction is a labor-intensive industry and as such it is full of pre-existing conditions which seem to only proliferate as workers age. This is a commonly accepted fact, as physical capacities diminish with age. The SIEF is a collective cost-relief program for employers that does not add any additional cost to the WSIB system. Where a prior disability has caused or contributed to a compensable accident or where that pre-existing condition has prolonged or enhanced the period resulting from an injury, the WSIB may award cost relief of 25-100% of the cost of the injury.

In its July update on the RFR Consultation process, the WSIB noted that it had heard a number of perspectives on their initial recommendation to discontinue the SIEF program and that there is a "...clear consensus that some form of cost relief is required." The CEC disagrees with this statement because there is no need to construct a new cost relief program when the existing program is well suited to simply slot into the newly proposed rate class structure. The existing program is widely supported by both employer and labour organizations, as it is an integral component to our hiring practices

and how we operate in the construction industry and it should be left as is. We strongly recommend that the SIEF remain in place, unaltered.

Recommendation #5 – Abandon the proposal to assess a company a single rate based on their "predominant business activity"

The WSIB proposal to rate a business in a single rate class based on its "predominant business activity" is very problematic as it unnecessarily inserts unfairness into the employer insurance program. The proposal cites administrative ease as the principal reason for pushing forward with this process, but it creates unfairness by artificially inflating/deflating the premium rates of companies that are currently multi-rated.

As the MCAO submission to the RFR Consultation points out (page 27.5) "there is no sound policy reasons for incongruent business risks to be assessed at the same premium rate. O.Reg 175/98 represents a thoughtful and well considered method to fairly and effectively assess distinct business activities operating within the same enterprise. [This] proposal creates an artificial premium rate that… skew[s] otherwise competitive markets and present[s] advantages and disadvantages where currently none exist."

The CEC opposes this scheme and would like to highlight two scenarios which are common in the construction industry that will be significantly disrupted as a result of this policy proposal:

1. *Rate Group 755 – Non-Exempt Partners and Executive Officers in Construction* was established in 2013 under Class G – Construction as a way of appropriating a more reasonable amount of risk to the executive officers of a construction company who do not actually work "on the tools." This move has reduced the premium rate for executive officers in construction from the same price as an individual working in the field (in 2015 anywhere between $3.69 and $18.31 per $100 of salary depending on the corresponding rate group) down to $0.21 per $100. In a much more appropriate allocation of risk, executive officers in construction are now appropriately assessed at the same risk level as someone in the financial services industry. The savings for medium- to large-sized companies are quite significant.

   The RFR proposal to assess companies based on their "predominant business activity" will eliminate this special rate for executive officers.

2. *Companies that are presently multi-assessed who maintain business activities outside of the construction industry* are likely to see significant swings in their premium rates under this proposal. In Ontario, there are construction companies whose premium rate class will fall outside of construction as a result of this proposal. As an example, there is an extremely large ICI and heavy civil construction company that also operates in the health care field, by staffing certain hospitals in Ontario with all non-medical personnel (a result of the Public-

Private Partnership construction procurement model). Based on their company make-up, their "predominant business activity" would fall in the healthcare field rather than in construction, as they employ more workers in the former. This would mean that the construction arm of their company would be grouped into a Class P: Hospital rate, rather than a G1: Building Construction or G2: Infrastructure Construction rate class. Based on this assessment, this company would be grouped into a rate class at approximately ¼ the rate of their direct competitors in the construction industry (based on the initially proposed Calls Target Premium Rates outlined in Technical Paper #3).

The level of concern in the construction industry around this specific proposal is significant, as it has the potential to create significant competitive advantages/disadvantages for companies operating in more than one sector or industry. A much more thorough review and consideration by the WSIB on this issue specifically is necessary. A more in depth consultation on the specific impact of this proposal on the construction industry needs to be undertaken before it moves forward as an across-the-board policy for a new rate framework.

Recommendation #6 – Start all employers at their new Class Target Premium Rate to smooth the transition towards company-specific rates

It is absolutely critical that the transition to a new rate framework be as smooth as possible for employers. A major component of this is related to the premium rate level. We would like to see a gradual move towards individualized rates so that companies are able to adjust over time to the new system. Presently, the rate group system is easy for companies to understand, as they pay the same amount up-front for insurance that every competitor in their marketplace pays. When the WSIB moves towards charging individualized rates, there will be a system shock that needs to be minimized to the greatest degree possible. The most clear-cut way to minimize a system shock – as noted above in Recommendation #2 – is to wait on implementing a new system until the UFL is eliminated. However, there are two complementary actions that can be taken in addition to waiting for zero UFL, to cushion against this shock:

1. *Begin migrating all companies towards their class target rate beginning in 2017.* While the existing system is still in place, rates should be gradually declining to their class target rates as a means of smoothing the transition to the new system. By migrating towards these rates over a matter of years in the lead up to a new system implementation, it will motivate companies to re-invest their saved capital into OH&S in order to prepare for the system change. It will also demonstrate to companies that it is not the system switchover, but rather the elimination of the UFL that is lowering their premium rates.

2. *Everyone operating in the same Rate Class should be started at the same rate: the Class Target Premium Rate.* Beginning in Year 1, every employer would start at this rate, similar to how the existing rate structure works now, and then would be allowed to migrate to their individualized rate beginning in year two. Rather

than starting at different rates for every employer, this will allow each employer to understand how important their individual performance is, as each year the good performers migrate lower while the poor performers migrate higher. We believe this would be a very good motivational tool for companies to enhance their health and safety programming and investment in order to keep pace with other employers in their rate class.

Starting everyone at the same rate will smooth the transition to the new system, will still allow companies to migrate to their individual rate quickly, but will give everyone the opportunity to start fresh. It will also serve to test the WSIB target rates and allow for a "stress test" on the system in its infancy to ensure that it can appropriately adjust the individualized rates year-over-year to account for the necessary level of capital to fund the system.

Recommendation #7 – Expand the number of rate classes; consider maintaining existing rate groups under new model

The WSIB's devotion to utilizing the North American Industry Classification System (NAICS) in its current RFR proposal is flawed. As the Ontario General Contractors Association has rightfully pointed out in a letter to the RFR consultation group on August 25, 2015, "the [NAICS] was developed as an industrial classification system, not as a method of allocating insurance risk." As such, there is no real necessity to limit the number of rate classes modelled in the system design phase. As the MCAO submission identifies (page 22.6 – 23.13), there are a number of existing rate groups that achieve the WSIB's stated "actuarial predictability" test of $2 billion in annual payroll, and other provinces that utilize similar framework designs based on NAICS (New Brunswick) are able to maintain seven construction rate groups at much lower predictability thresholds.

The CEC recommends that the WSIB consider a number of other potential rate class combinations for the construction industry, beyond the three proposed in the RFR technical papers of March 2015 and the five proposed in the WSIB industry-specific updates occurring since May (split of the G3 class into G3-1, G3-2, and G3-3). We believe that a host of different options should be modelled and tested for efficiency, including a model that reviews and compares each of the 13 existing construction rate groups versus other models. Stakeholder groups should be brought in to discuss this process to help identify where synergies may exist between current rate groups and how the classification process may be improved.

In terms of maintaining a degree of consistency in this transition process, modelling and understanding how the existing rate groups compare to some of the other proposed groupings is necessary to allow employers to understand the intricacies and impacts of the proposed changes to the rate group structure.

Recommendation #8 – Base per claim limits on a set percentage of insurable earnings, rather than on a graduated scale based on predictability

While the CEC agrees that there should be a graduated per-claim limit at the employer level based on the size of a company, we believe that the WSIB needs to modify its proposed approach. Rather than developing only four clearly demarcated categories of predictability with accompanying claim multipliers, we suggest that the WSIB move employers up the accountability grid in the same manner as current employer Experience Rating factors are calculated. This would mean that per claim limits would be based upon a percentage of the reported insurable earnings for a given company. Adopting a more equitable and transparent process like this would ensure that minor upward movement of assessable earnings does not push a company into a higher per claim limit category. The movement upwards will always be gradual.

Recommendation #9 – Review and adjust the technical limits for rate calculations as appropriate over the first five years

It remains difficult for the CEC to assess the validity of the current proposal to base company specific rates on their previous five years of claims history (combined with the class rate depending on the size of the company), without having the requested company-specific impact data that the CEC has requested a number of times since March. This information will help us better understand how individual companies within our collective memberships will fair within the new NAICS-based rate classes and how their premium rates will be affected by this model.

We also believe that is necessary for the WSIB to allow this time-period for claims history to be fluid and open to adjustment. We do not disagree with the technical limits that have been initially proposed, but with the understanding that they are likely to require adjustment as more information becomes available. As part of the design process for the RFR, we would like to see a firm commitment from the WSIB to review their rate setting standards after five years to ensure that what is being used is the most appropriate use of technical limits. This should include consideration of different technical limits for each different rate class depending on what is deemed the most appropriate snap-shot of a rate history for each industry.

We expect that the RFR will not undermine the WSIB's role in enhancing workplace OH&S and prevention. As part of the reform process we would like to see a dynamic feedback protocol developed and delivered through the WSIB Chair's Advisory Groups and ensure that this element receives comprehensive and ongoing attention. The OH&S and prevention statistics should be considered as part of the above suggested review, no later than five years following the initial implementation of the RFR to understand how these statistics have shifted (if at all) under the new system.

Recommendation #10 – Pilot the RFR model on a control group and perform a sunset review after five years to determine whether it is reasonable to expand across all rate classes and predictability levels

Our final recommendation is for the WSIB to consider piloting its new rate framework on a control group for a three to five year period to "work out the kinks" and ensure that this system meets the WSIB's funding requirements and responsiveness to changes at the rate class level. We would recommend identifying one or two existing Rate Groups comprised of employers who are primarily above the 70% predictability threshold, as companies within this range will more ably adjust to changes in administrative practices and more easily absorb a changing financial burden. This control group could be analyzed under this new system over an identified control period to consider the benefits of expanding out this program to lower predictability levels within the WSIB system.

During the pilot process, the system design should be considered fluid and open to adjustment. This will allow the WSIB to perfect the model in a real world scenario, while maintaining it within a controlled group. If after a defined period of time the new framework is ultimately deemed beneficial and ready for expansion to other predictability levels, it will be freer of flaws that are likely to be experienced in the first few years of the new system after implementation.

While this system design is being piloted, it can also be compared in a side-by-side scenario with the existing rate structure under the same external scenarios. It will also allow the WSIB to make a sound decision on which system is more responsive to the changing employment scenarios in the province over time.

Concluding Comments

Overall, we believe that continuing to aggressively press forward with this initiative and implementing hard timelines on stakeholder consultations and future implementation is a mistake. The WSIB needs to approach a redesign of the current rate framework with a significant degree of caution and with full participation of stakeholder groups to ensure that all of the intricacies of the different provincial labour markets and sectors are appropriately addressed in this process. Moreover, we believe that the WSIB needs to remain primarily focussed and invested in eliminating the UFL before it presses forward with a rate framework reform.

Eliminating the UFL will be an achievement that no other WSIB administration has been able to achieve over the previous three decades. It is a legacy piece that will have a much more profound impact on the provincial workplace insurance scheme, and labour market more broadly, than a new rate framework will have. Considerable progress has been made towards accomplishing this goal, but there is still a lot of work to be done to reach the final objective. Engaging in the RFR design and implementation process will take much needed resources and attention away from the WSIB's primary goal of

eliminating the UFL. As such, we continue to reiterate the CEC position that the RFR needs to be paused until the UFL has been completely eradicated.

By adopting this approach, the WSIB can extend the new rate framework design timeline and eliminate the urgency from this process. This would signal to stakeholders that their concerns with the RFR are being heard and that the WSIB is willing to work with stakeholders groups to address all of the concerns that they are hearing with this current consultation process.

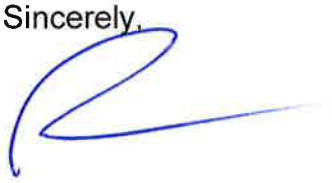
As this phase of the consultation comes to a close, we expect that the WSIB will consider all of the comments and recommendations received and revise the initial draft proposal. We also expect that our requests for more detailed statistical information related to company-specific impacts will be provided in advance of RFR version 2.0 being issued to stakeholders to allow us to better understand and communicate with our own memberships what the true impacts of this reform process may look like.

As always, we appreciate the ongoing dialogue between the CEC and WSIB on this issue and wish to continue with the discussion as the process moves forward.

We appreciate having the opportunity to make the above noted comments and are willing to discuss any questions that the WSIB may have with the information included in this submission.

Please feel free to contact me (patrick.mcmanus@oswca.org or 905-629-7766 ext. 222) at any time if you have any questions related to the CEC submission or its membership.

Sincerely,



Patrick McManus
Chair

Council of Environmental Health & Safety Officers

To: Consultation Secretariat
Workplace Safety & Insurance Board

From: Leigh Harold, Brock University
Chair, Council of Environmental Health and Safety Officers (CEHSO)

Date: October 1, 2015

Re: WSIB Rate Framework Reform Consultation

The Council of Environmental Health & Safety Officers would like to thank the WSIB for the opportunity to submit comments on behalf of Ontario Universities on the proposed rate framework reform. The following comments highlight the concerns of Ontario Universities and areas of agreement with the proposed changes.

Proposed Classes

With respect to the proposed NAICS-based structure, we agree that the structure is appropriate, now being expanded beyond the initial 22 classes. We also support a five-year review of the WSIB classification structure with respect to grouping and number of NAICS classes. The industry classifications and associated risk, particularly in construction vary tremendously and there should continue to be discussion about expanding the classes in this and potentially other areas.

We agree that employers should be classified according to predominant class. Main business activity should always be the predominant determinant to ensure stability and predictability.

Self-sufficiency of Classes

In general, we support a framework in which classes are self-sufficient and responsible for their own costs to collectively reduce claims costs and improve health and safety for workers in their sectors.

Per Claim Limit and Threshold

Universities agree that there should be a threshold for a claim cost limit at the employer level, above which costs are allocated to the class. This continues to protect individual employers from extremely high-cost or catastrophic claims, yet preserves costs over the threshold in a class with similar risks.

With respect to per claim limit options presented, the opinion of Universities is that the proposed range of 0.5 to 7 times annual insurable earnings is too broad and is weighted quite heavily on large employers. The concept that a large employer is 6.5 times more responsible for the cost of a claim, at a magnitude of over $500,000 per claim minimizes the responsibility that should reasonably and fairly be attributed to even small employers. The impact on large employers would be even greater if cost-relief tools such as SIEF remain as a

consideration for elimination. As such, maintaining the current fixed per claim limit of 2.5 times annual IE, or adopting a tighter range in a graduated model is strongly urged.

Long Latency Occupational Disease (LLOD)

Given their nature of chronic exposure and latency, the origin of LLOD's is both difficult to pinpoint and rarely attributable to a single employer. Further, certain industries experience a transitory nature of employment and employers, leaving subsequent employers to inherit workers who have been exposed to LLOD hazards. Universities and educational facilities in general are long-term institutions, represent a class of employers where LLOD hazards are low and who protect their workers from those hazards where they exist. This increases the likelihood that this employer group will experience the negative impact of LLOD claims should they be attributed at the employer level vs. class level. Given the size and predictability of the proposed classes and to reinforce the need for industry sectors to control specific LLOD hazards, Universities agree that assignment at the class level is appropriate rather than across Schedule 1.

Second Injury Enhancement Fund (SIEF)

Although the proposed framework is designed to promote greater stability in premium rates, for large employers with high predictability (90-100%), the protective factor of collective liability is lessened and even with risk band movement and per-claim limits, these employers could still see premium rate changes in the hundreds of thousands of dollars on an annual basis with a single significant claim. If the underlying reason for a high-cost claim is due to pre-existing injury that, in the current model, would have been mitigated by SIEF, these employers would be stripped of an effective cost-limiting tool. While there are certainly arguments for reform of SIEF, its complete elimination would impact large employers who are expected to be responsible for their own claims costs and long-term re-employment of injured workers. Elimination of SIEF could also have a discriminatory effect on our aging population in securing employment as employers may not be as willing to take on an increased risk of injuries. As for the statement that SIEF is used by only some employers, this seems to be an educational component that could be addressed by the WSIB, and is not in our opinion grounds for its elimination. We urge the WSIB to investigate and outline a reasonable alternative to address the issue of pre-existing injury that is fair to employers and continues to support return to work efforts, whether through adjudication (initial/ongoing entitlement) and/or return to work assistance.

Catastrophic Claims

Universities agree that costs associated with catastrophic situations should be limited in the accident year, with the remainder added to future years' premium rate. It would be reasonable for the WSIB to consider pooling these costs at the class level. With respect to definition of catastrophic claim, we would consider a situation where multiple serious or fatal injuries associated with one critical incident, impacting one employer or a number of employers within the class a suitable definition.

Claims Experience and Premium Rate Setting

In principle, Universities agree that a model of premium rate setting that relies on and provides predictability, with protection for small employers yet the ability to influence premium rate based on performance for all employers is a step forward from the current model. However, we would need further examples of modelling and the proposed mix of factors to effectively comment on those used to calculate premium rate and the percentage of assignment between individual and collective liability. We also agree that new employers

should pay premiums set at the class target, although this is an area of limited applicability to Ontario Universities.

In determining the number of years included in setting initial and annual premium rates, we agree with previous stakeholder comments as published by the WSIB that the proposed six-year window may result in an imbalance and that more weight should be given to more recent (3) years and less weight placed on historic (4^{th} -6^{th}) years.

We would question the rationale behind forgiving employers who increase/decrease one or two risk bands, especially if doing so would result in a need to increase the risk band limitations. We would not support risk band movement limits of greater than three. It is also agreed that risk bands provide stability in rate setting for employers within a class versus establishing individualized rates.

With respect to surcharges, Universities are of the general opinion that if rebates for exceptional performance are no longer used, then neither should surcharges. However, where there is gross negligence and repeated poor performance of an employer, the possibility of a surcharge should be considered to avoid significant increases in premium rates or burden on the class. If surcharges were to be applied, looking at percentage of or repeated increases in premium greater than the three risk band limit might be an effective method of reinforcing the importance of prevention and return to work. For classes with many small employers and high collective liability, poor performers have a greater impact on the class, and this should be mitigated as needed.

In conclusion, on behalf of CEHSO and Ontario Universities, WSIB rate reform is certainly necessary and long overdue to ensure a fair premium distribution amongst employers based on their claims experience and certainty that benefits will remain for injured workers into the future, while maintaining fairness within the system. We remain invested in the consultation process and invite further discussion as the WSIB progresses in its development of the model and transitional process.

CANADIAN FOUNDRY ASSOCIATION
ASSOCIATION DES FONDERIES CANADIENNES

October 2, 2015

Ms. Diane Weber
Director, Consultation Secretariat
Workplace Safety and Insurance Board
200 Front Street
Toronto, ON M5V 3J1

RE: Rate Framework Reform

Dear Ms. Weber:

Please find attached the Canadian Foundry Association's Submission to the Workplace Safety and Insurance Board Rate Framework Reform.

Thank you for your assistance.

Yours very truly,

Judith Arbour
Executive Director

CANADIAN FOUNDRY ASSOCIATION
ASSOCIATION DES FONDERIES CANADIENNES

SUBMISSION TO

THE WSIB RATE FRAMEWORK CONSULTATION

OCTOBER 2, 2015

Introductory Comments

The Canadian Foundry Association appreciates the opportunity to have participated in several direct consultations with the WSIB, and to provide input and address the issues and concerns of the foundry industry, regarding the WSIB Rate Framework Modernization.

By way of background, the CFA is the national voice for the foundry industry in Canada. Incorporated in 1975, it is a proactive, issues driven association that draws on the industry's collective resources to solve common problems.

There are approximately 150 foundries in Canada as well as supplier facilities, machine shops and assembly plants. The foundry industry directly contributes approximately $2 billion in annual sales and provides direct employment for approximately 10,000 people. There is also the multiplier effect of jobs whereby foundries supply machine shops and machine shops supply assembly plants. Additionally, industry suppliers provide jobs.

The foundry industry is the original recycling industry, and raw material is typically recycled metal, thereby conserving precious natural resources and energy. Foundries are vital to the Canadian economy since metal castings are a strategic component of the manufacturing base. They are the first step in the value-added manufacturing chain and are utilized in the manufacture of most durable goods. It is fair to say that wherever people are, there is a casting within 10 metres.

Markets and industries that have a critical reliance on the foundry industry include: automotive; construction; agricultural; forestry; mining; pulp and paper and other heavy industrial machinery and equipment; aircraft and aerospace; plumbing; soil and pipe and municipal road castings; defence; railway; petroleum and petrochemical; electrical distribution; and a variety of specialty markets.

Casting markets are extremely competitive on a global basis and, as a result, the cost structure and competitive position of Ontario foundries are significantly affected by legislation and regulation and other related costs.

Rate Framework Modernization, Comments and Concerns

Following a review of the WSIB updated information on the rate framework modernization, CFA's comments and suggestions are as follows:

As expressed before, the classification for foundries should be determined. Manufacturing would be split between three proposed classes: Food, Textile and Related Manufacturing, Class D (13.9%), Resource and Related Manufacturing, Class E (21.8%), and Machinery and Other Manufacturing, Class F (56.8%).

The foundry classification is a key issue since the CFA and the industry wish to prevent overpayment of premiums due to incorrect classification and ensure fair premium rates for foundries, i.e. Class F rate $3.20, F1 rate $4.10, F2 rate $2.29, Class D $3.08.

Risk Disparity - Expanding the number of industry classes from 22 to 32

Under proposed 22 classes:

Class D Rate: $3.08
Class E Rate: $3.30
Class F Rate: $3.20

Under risk disparity 32 classes:

Class D Rate: $3.08
Class E1 Rate: $4.45
Class E2 Rate: $1.88
Class F1 Rate: $4.10
Class F2 Rate: $2.29

Rates F1, F2 – where does foundry industry fit – predominant work activity?

SIEF

WSIB has expressed that there is a clear consensus that some form of cost relief is required - we need to know more about this.

The CFA strongly recommends maintaining SIEF – refunds and premium reductions.

Long Latency Occupational Diseases (LLOD)

Stakeholders' suggestions:

. Claims should be allocated under the proposed preliminary rate framework

. LLOD should be excluded from individual employer experience

. Some percentage of LLOD cost should be shared across the whole schedule 1 rather than simply one industry class.

Weighting Experience Window (6 years)

There is a perceived imbalance towards greater rate stability; to counter imbalance more weight should be given to claims and insurable earnings experience of more recent years (years 2-3) and less weight on historic years (years 4-6).

Concept

Payroll and number of claims registered with the WSIB over 6 years which is a calculation on individual employer basis – what does predictability look like i.e. 6 years totalling $260,000 is an average of $40,000.

What will the weight distribution be between recent years (years 2-3) and historic years (years 4-6)?

Graduated Risk Band Limits

Stakeholders suggested that risk band limitations vary based on predictability of employers. Most predictable employers could see an increase of +/- 5 risk bands, and smaller less predictable employers could see a risk band limitation of +/- 1 or 2 risk bands.

How is the WSIB going to fit the different foundries/suppliers in this section and will it be based on payroll and number of claims?

Surcharging Mechanism

There is support for a special surcharge mechanism for employers above the premium rate cap and consideration should be given to using the workwell program.

Rate Group Analysis

Review of the rate group analysis and the proposed rate framework for each rate group / firm, i.e. a review of the rate analysis for group 361 indicates that the analysis has been done as though it had been implemented in 2014 using data from 2007 to 2012 and using the proposed 22 classes.

Group 361 classified under class F - Machinery and Related Manufacturing - Class target rate $3.20

The analysis shows 79 risk bands for the employer target rate and a rate range from $1.82 to $9.82 and employer actual rate range with 82 risk bands and rate range from $2.33 to $5.74

Risk bands for group 361 shows a low rate of $2.33, an average rate of $3.88 and a high rate of $5.74.

To determine the right classification is important. The rate group analysis above would be different if class F1 (under the 32 risk disparity classes) is used.

This allows very few claims or a workplace that has very high claims. The rate group is an unknown to many stakeholders/CFA. This is of concern and what is the justification?

The CFA asks that the WSIB provide more clarity and justification on the issues that are problematical for the industry and why.

Injury Outside the Workplace

The potential for fraudulent claims for injuries outside the workplace and the impact on premiums continues to be a concern for foundries, although this concern may be out of the scope of the rate framework modernization. It is suggested that the WSIB enhance fraud reduction practices and mechanisms to determine pre-existing conditions.

Timing

The CFA requests that substantive modernization should take place no sooner than January 2018.

Following the various sector submissions of October 2, 2015, the CFA looks forward to the WSIB's provision of a new working model and further consultation sessions in late November.

October 2, 2015

CANADIAN FEDERATION OF INDEPENDENT BUSINESS.
4141 Yonge Street, Suite 401
Toronto, Ontario M2P 2A6

September 29, 2015

Consultation Secretariat
Workplace Safety and Insurance Board
200 Front Street West
Toronto, Ontario M5V 3J1

Dear Sir or Madam,

On behalf of our 42,000 small and medium-sized member businesses in Ontario, the Canadian Federation of Independent Business (CFIB) welcomes the opportunity to comment on the proposed preliminary rate framework. We agree with the objectives of the review, including ensuring that everyone pays their fair share for workplace coverage and that there is a reasonable balance between premium rate stability and responsiveness. We hope that the reforms will be able to achieve these objectives.

Workers' compensation premiums have a considerable impact on small businesses. If premium rates are high, they constrain business owners' ability to grow their business, increase their employee wages, create job opportunities, and invest in new and safer processes and equipment. The WSIB has frozen premium rates for the last three years, which is a positive step and a clear indication that the agency is looking to ease the impact on the province's job creators.

The accurate classification of a business is crucial for determining the amount that a business will pay as a result of an assessment. Since WSIB premiums are a significant business expense and system costs are almost exclusively borne by employers, it is important that business owners not pay more than their fair share of the costs. As such, business owners expect that the new Integrated Rate Framework will not cross-subsidize rate groups and that premiums will reflect the risk and experience of that employer.

Given that the classification system is extremely complex, there is confusion about the process and the accuracy of such classifications. In undertaking system reforms, small business owners expect that the WSIB will create a simpler and clearer system, which makes it easier to draw conclusions about why an employer in a specific industry pays more or less than another. Furthermore, to ensure that assessments are as accurate and responsive as possible, the WSIB should also establish a mechanism to review classification decisions.

Another important element of workers' compensation systems are experience rating and practice-based incentive programs since they recognize individual employer performance as well as act as an incentive to reduce loss-time injury claims. Small employers are generally satisfied with the effectiveness of such programs, and consequently, they hope that the prospective premium rate setting approach will provide the same incentives as existing experience rating programs. We also

hope that a greater proportion of small employers will be able to access employer level premium rate adjustments based on good performance under the new system.

We are encouraged by the key considerations identified under transition planning and we agree that any changes should be gradual and should coincide with the elimination of the unfunded liability. Also, any changes in rates from year to year must also be gradual and predictable so that small firms can budget and manage their cash flow accordingly.

We offer the following recommendations as considerations to be factored into the new framework:

- As its core, the framework should be based on fairness, transparency and predictability;
- The system should minimize the cross-subsidization of rate groups;
- The framework must provide experience-based adjustments which recognize an employer's performance;
- The framework must also account for smaller firms with limited claims experience; and
- It should ensure that all classification and premium information is communicated to employers in plain language.

Once again, we appreciate the opportunity to comment on the proposed preliminary rate framework. We very much hope that these reforms will result in premium rates which better reflect an employer's industry, experience and associated level of risk. We also hope that these reforms do not result in the increased premiums for employers across the board since despite recent rate freezes, premium rates continue to be among the highest in the country. In closing, CFIB remains committed to working with the WSIB to ensure that workers' compensation policies are responsive to the needs of small business.

Thank you again for the opportunity to address you on this important matter.

Sincerely,

Original signed by:

Plamen Petkov
Vice President, Ontario

Nicole Troster
Director, Provincial Affairs, Ontario

WSIB Rate Framework Review Consultation

Cement Finishing Labour Relations Association

Submission

Presented to:
Workplace Safety & Insurance Board RFR Review

October 2, 2015

ement inis in abo r elations ssociation RPO DUNDAS NEYAGAWA, PO Box 30051, Oakville, ON, L6H 7L8 •
Tel: (289) 837-1627 • Fax: (416) 981-3913 • E-mail: gkinney@cflra.ca

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WSIB Rate Framework Review Consultation

Cement Finishing Labour Relations Association

PART I: Introduction

1. Who We are

The **Cement Finishing Labour Relations Association** (CFLRA) is an Ontario Minister of Labour designated association of trade contractor employers of cement/concrete finishers bound to the **LIUNA** or **OPCMIA 598** ICI provincial collective agreements. The **CFLRA** is a constituent member of both the Labourer's (PEBAL) and Cement Masons (CMEBA) Employer Bargaining Agencies.

Our employers have long respected the need to provide fair wages, benefits and a pension to our safe, skilled & knowledgeable concrete finishers. In addition to promoting standardized wages and benefits, the CFLRA also promotes workplace safety, apprenticeship training and journeyman knowledge for our cement/concrete finishing trade work as well.

CFLRA is pleased to respond to the **Workplace Safety & Insurance Board** ["WSIB" or the "Board"] **Rate Framework Review** ["RFR"]. While we have some concerns with the process and the reasons offered for reform, we set them out quite clearly and they are easily remedied. CFLRA is eager to work with the Board to improve the WSIB classification and premium setting model. While we don't subscribe to the theory that the current classification scheme is wholly deficient and obsolete, neither is it flawless. We are approaching the RFR project from the perspective of an opportunity for improvement.

> **E cellent firms don t belie e in e cellence - onl in constant im ro ement and constant c an e**
>
> Tom Peters

CFLRA members are assessed under WSIB **Rate Group** ["RG"] **751 (Siding and Outside Finishing)** within **Class G**, **Construction** with a 2015 premium rate of $10.25. The projected 2015 payroll (projected by the WSIB) for **RG 751** is just over $1 billion, which will generate a premium for **RG 751 of** $102.5 million, which is about 8% of the total **Class G** projected premium of $1.3 billion.[1]

We are looking forwarding to our continuing dialogue as RFR enters the next stage in this long-term consultation process.

[1] All figures are direct or derived from the **WSIB 2015 Premium Rates Manual**.

PART II: A comment on the WSIB "Case for Change"

A. What is the problem?

1. **RFR Paper 2, "*Current State Analysis*"** presents the Board's reasons for change.

2. It is important to note that this is not the first time that the WSIB has turned its mind to one or more aspects of the classification, rate setting and experience rating systems. The **Revenue Strategy** project of 1988 – 1993, which gave rise to the current regime, addressed the identical territory to that of the RFR.

3. Design-wise we are of the view that the current regime is not particularly deficient. The (1988 – 1993) **Revenue Strategy** classification design holds up. It likely is no better and no worse than any potential replacement design. In fact, there are many current system attributes, such as retrospective experience rating ["ER"], that we prefer.

4. With that noted, as expressed earlier, we are encouraged that the **RFR** project creates an opportunity pursue improvement.

5. As was recognized by **Special RFR Advisor Doug Stanley**, the Board simply did not adequately maintain the current scheme post-implementation. Unsurprisingly, problems mushroomed.

6. We can confirm this first-hand from the vista of our position within **RG 751**. Many of our current concerns with our classification very likely would have been addressed if a robust dialogue had been routine, propelled by "real-time" performance feedback and information exchange.

7. While we do not embrace administrative neglect as a compelling reason for reform, the real lesson is the need for a commitment to continuous improvement. We see the **RFR** project as an opening to demonstrate that commitment, from within both the Board and the stakeholder community.

8. We need tangible assurances that the Board will put in place annual "class reviews" (for want of a better descriptor), giving us the essential feedback we have been seeking. Unfortunately, in the context of stakeholder outreach, for several years now, the Board has stopped providing even the cursory performance data coincident with yearly premium rate announcements. Simply put, for CFLRA to maintain active engagement with our members to drive continuous improvement, we require ongoing access to WSIB performance data. We have not been receiving it. We need it. We implore the Board to commit to provide it.

9. Another reason offered for the-need-for-change is that "*inadequate experience rating programs that exclude many employers, lead to premium rate instability*" (see **Paper 2, Case for Change**, p. 7). Yet, the argument itself is internally inconsistent. If many employers are excluded from ER, then for those employers, premiums are not subject to "premium rate instability". The premiums remain perfectly stable. Moreover, employers that are excluded from ER are excluded for sound policy and design reasons. They are simply too small. **Paper 2** implies (as did past RFR papers) that this is a hardship and an inequity for those employers.

10. Yet, in **Paper 1, Executive Summary – An Overview of the Proposed Preliminary Rate Framework**, at page 10 **Figure 4**, we learn that a small employer will have a negligible variation in its premium.

Figure 4: Proposed Actuarial Predictability Scale

Predictability Scale (%)	<= 2.5	2.5 - 5.0	5.0 - 10	10 - 20	20 - 30	30 - 40	40 - 50	50 - 60	60 - 70	70 - 80	80 - 90	90 +
Individual Experience for Premium Rate Setting (%)	2.5	5.0	10.0	20.0	30.0	40.0	50.0	60.0	70.0	80.0	90.0	100.0
Collective Experience for Premium Rate Setting (%)	97.5	95.0	90.0	80.0	70.0	60.0	50.0	40.0	30.0	20.0	10.0	0.0

11. We maintain that any retrospective rebate represents a greater incentive for the small employer than a miniscule reduction in go-forward premiums. We ask the Board to reconsider this element of the RFR, at least as it applies to the Cement Finisher trade.

12. The overall suggestion that the proposed RFR regime is "simpler" is perhaps open to interpretation. We ask though, is this summary explanation, taken from **Paper 1**, p. 8, any simpler for an employer than the current scheme?:

> - **Step 2: Class Level Premium Rate Setting** would create an average premium rate for each individual class ("Class Target Premium Rate") based on the valuation of collective liabilities of new claim costs for employers within their respective classes, their allocation of administrative costs and the apportionment of the past claim costs for a particular class; and
> - **Step 3: Employer Level Premium Rate Adjustment** would adjust the Class Target Premium Rate for individual employers based on their risk, represented by their own claims experience and insurable earnings relative to their Class Target Premium Rate, to arrive at their individual risk band position and corresponding Employer Actual and Target Premium Rates.

13. Similarly, the Board suggests that the current ER schemes are simply too complex (**Paper 2, Previous Review of Experience Rating**, page 9), making it "*difficult for most average employers to understand*". Yet, the **Risk Banding** (see **Paper 1**, pp. 10-11) is if anything <u>more</u> complex. The Board suggests that problems with current ER design persist "*despite numerous program reviews*" (**Paper 2**, page 10, 2nd last para.) as if the Board is somehow exculpable from failing to fix problems as they come up, and this failure is a reason for re-design.

14. We wish to make our "simplicity" comments clear. We are not criticizing the Board for not making rate classification and premium setting simpler. We merely are of the view that a quest for simplicity, chimeral or not, is misplaced. The current system is not simple. The proposed RFR is not simple. Few insurance regimes, and no workers' compensation regimes with which we are familiar, are simple. Workers' compensation is complex by necessity, not design. The reason is clear. The true quest is premium fairness. Fairness is not effortlessly achieved.

15. The Board argues that change is needed because 137,000 employers are "*paying too much*" while 77,000 employers are "*paying too little*" (see **Paper 2, Figure 2**, page 12). However, the overpaying or underpaying as the case may be has nothing whatsoever to do with the

classification scheme and has everything to do with WSIB premium policy in place since 2010. The Board did not float the premium to the risk. Respectfully, this is not a reason for reform.

16. At the end of the day, we are concerned that the Board will simply end up trading one set of design imperfections with a new but different set of design imperfections. When these imperfections come to light, a future WSIB administrative regime will look back to this RFR exercise, shake its metaphorical head, and commence to re-design what are, at the moment, RFR bedrock principles. We though are optimistic that, if done correctly, this risk can be successfully mitigated.

17. We are struck by the stark similarities, and matching inherent risks, between the WSIB RFR initiative and the late-1990s Ontario property tax reform, the so-called "market-value-reassessment" ["MVR"] project. Similar to the RFR project, MVR enjoyed a protracted period of study and consultation,[2] followed by implementation,[3] at which point the proverbial "*stuff hit the fan*", sparking tax-payer and municipality revolt, all of which triggered another decade or more of post-implementation "reforms."[4] As likely will be the case with RFR, MVA became a political lightening-rod, with one expert noting that no matter how "*desirable the long-run outcome of any policy may be, its transitional effects may be sufficiently undesirable in political terms to kill it.*"[5] The RFR project is hindered with another glaring risk – the effect of the ubiquitous unfunded liability.

18. *There is a better way*. We respectfully appeal to the Board to continue to focus on ***Job 1*** – the financial integrity of the system. Once the system has reached and maintained 100% funding, attention can then be re-focused towards a number of other objectives, including RFR. The permanent elimination of the UFL is intrinsically linked to the successful design, transition and full implementation of RFR. There is an opportunity to *get it right.* We offer several suggestions in the submission to help.

[2] In the case of MVR, literally over a period of decades, starting with the 1967 Ontario *Committee on Taxation*, which led to provincial control over property assessment (1970), followed by the *Blair Commission on the Reform of Property Taxation in Ontario*, leading to the development of "*the alternative system*" in 1978, the *Provincial-Local Government Committee* of 1978, the 1985 report *Taxing Matters: An Assessment of the Practice of Property Taxation in Ontario*, the 1993 *Ontario Fair Tax Commission*, the 1996 *GTA Task Force*, the 1996 "*Who Does What Panel*," all leading to a new assessment system commencing in 1998. **Reference:** Dr. Enid Slack, "*Property Tax Reform in Ontario: What Have We Learned?*", (2002) Canadian Tax Journal, Vol. 50, No. 2, 576 - 585, and, Slack, *Presentation to Seminar on Property Rates*, Community Law Centre, University of Western Cape, January 26, 2009.

[3] In 1998

[4] In 1999, 2000, 2001, 2004, 2005, 2006, 2007 and 2008, Slack, *supra.*, note 3.

[5] Slack, *supra.* note 3, at. p. 584.

B. A comment on the Consultation Process

1. Refer to the **Rate Framework Modernization presentation on RG 751, Siding and Outside Finishing**, page 7, which is replicated below:

How Could RG 751 Employers be Risk Banded?

- The chart below outlines possible risk bands for employers in RG 751 who will be moving to Class **G3 - Specialty Trades Construction**, by showing the number and percentage of employers and their actual risk band premium rate. This risk band distribution is subject to change if there are amendments, such as splitting up the classes.

G3 - Specialty Trades Construction - RG 751: 2014 Employer Actual Rate – Subject to Transition Plan*

	Lowest Band	Risk Bands									Highest Band	
Risk Band Movement from Class Premium Rate (Risk Band 0)	-20	<-3	-3	-2	-1	Average 0	1	2	3	>3	23	Total
Risk Band Rate	$1.34	-	$3.20	$3.37	$3.55	$3.74	$3.92	$4.12	$4.33	-	$11.48	
# of Employers	1	12	4	11	14	6	7	2	15	3,756	2	3,827
% of Employers		0.31%	0.10%	0.29%	0.37%	0.16%	0.18%	0.05%	0.39%	98.14%		100.0%
		1.07%					98.77%					

Overview of Analysis:

- A small percentage (1.07%) of employers will see a lower premium rate when compared to the average risk band rate.
- A small percentage (0.16%) of employers will pay the average risk band rate.
- About 98.77% of employers will see a higher premium rate when compared to the average risk band rate. The majority of these employers will gradually see their premium rate decrease over time, if cost experience is demonstrated to be in line with the class average experience.

* While the above charts outline the impact to employers considering a +/- 3 risk band limitation that incorporates their Starting Point, these results may be different once a final transition plan (that has received stakeholder input) has been developed to transition employers from the current approach to setting and classifying rates under the proposed preliminary Rate Framework scheme.

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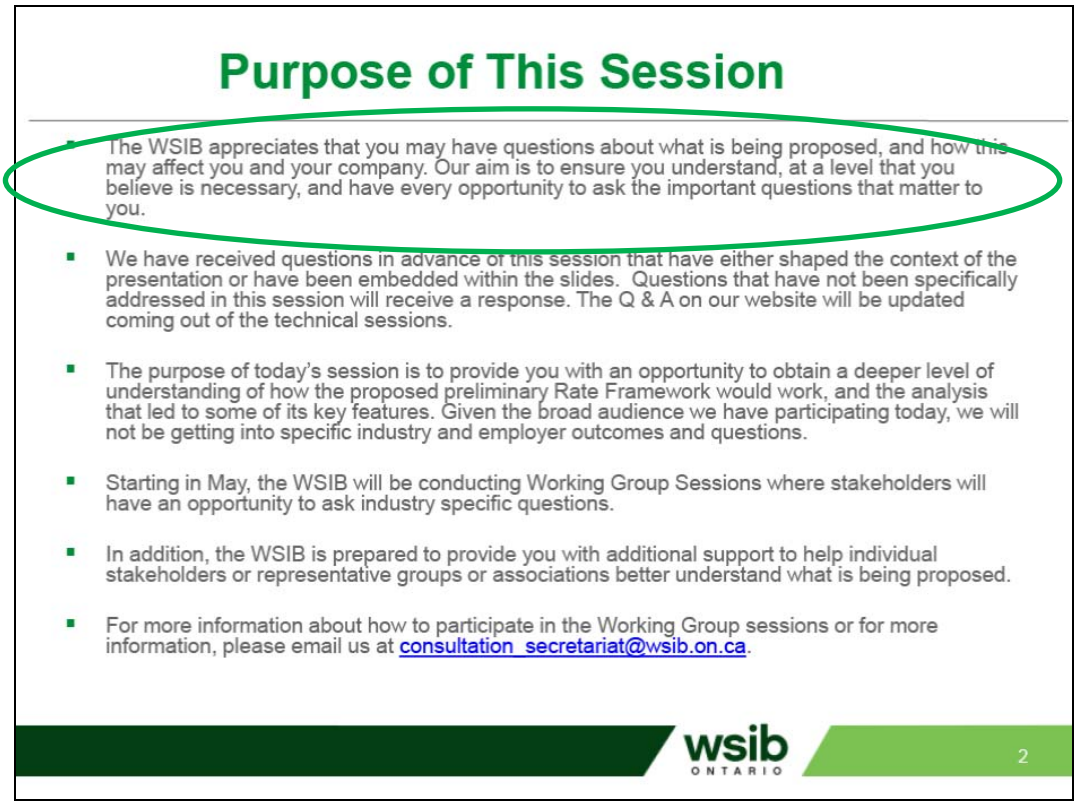
2. That is good, solid essential information. However, it is not nearly enough.

3. With the data organized at the RG level, which of course is essential, most associations would benefit from identical information presented for their membership base. CFLRA is no exception. ***Without impact information at the company level, an informed comment is simply impossible***. (We return to this slide later in this submission).

4. CFLRA requires the same type of information set out in **Slide 7** for our member firms.

5. We are struck by the openness suggested in the very first slide of all of the Board's presentations (replicated on next page).

6. While we are worried that the commitment to ensure "*understanding at the level you believe is necessary*", inadvertently or not, is being applied as "*the level the Board deems necessary*" we remain optimistic that the Board seeks to correct this and provide us with the required information. Otherwise, informed comment is simply not possible.



Purpose of This Session

- The WSIB appreciates that you may have questions about what is being proposed, and how this may affect you and your company. Our aim is to ensure you understand, at a level that you believe is necessary, and have every opportunity to ask the important questions that matter to you.
- We have received questions in advance of this session that have either shaped the context of the presentation or have been embedded within the slides. Questions that have not been specifically addressed in this session will receive a response. The Q & A on our website will be updated coming out of the technical sessions.
- The purpose of today's session is to provide you with an opportunity to obtain a deeper level of understanding of how the proposed preliminary Rate Framework would work, and the analysis that led to some of its key features. Given the broad audience we have participating today, we will not be getting into specific industry and employer outcomes and questions.
- Starting in May, the WSIB will be conducting Working Group Sessions where stakeholders will have an opportunity to ask industry specific questions.
- In addition, the WSIB is prepared to provide you with additional support to help individual stakeholders or representative groups or associations better understand what is being proposed.
- For more information about how to participate in the Working Group sessions or for more information, please email us at consultation_secretariat@wsib.on.ca.

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7. CFLRA is uncertain as to the "next steps" in the consultation process - the so-called "*what we've heard*" and "*what we're thinking*" phase.

8. However, we are participating on the expectation that the consultation phase is not over with the October 2, 2015 submission deadline, and that this simply represents the end of one phase and the commencement of the next.

9. We also expect that our information requests will be honoured well in advance of the next phase of consultation. We are certain that the Board seeks as engaged a consultation as we do.

PART III: Target Rates – a bridge to a reasonable transition

A. WSIB RFR Paper 5: A Path Forward

1. WSIB **RFR Paper 5: A Path Forward** introduces the discussion on the transition protocol from the current to the new system. At page 5, **Paper 5** puts the considerations this way:

> The following considerations would form the basis for adopting an approach to transitioning employers to their Employer Target Premium Rate:
>
> - Gradual, incremental movement towards Class Target Premium Rates;
> - Utilizing the decreasing/eliminated UFL to support movement towards Employer Target Premium Rates;
> - Balance between degree of premium rate increases and decreases;
> - Gradual, incremental movement towards Employer Target Premium Rates; and
> - Consideration for economic circumstances and potential legislative amendments.

2. CFLRA has a much simpler proposition. Like the Board, we are concerned with the inflating influence of the UFL on premium rates. Our thoughtful suggestion is comprised of three distinct phases:

   a. ***Phase 1:*** Under the current system, commence a transition to target rates for all rate groups;

   b. ***Phase 2:*** Once all current RGs are at target *and* the UFL is zero *and* sustained, the new RFR is triggered;

   c. ***Phase 3:*** All employers transitioning from the current to the new system, commence at new system target levels.

B. The need to "get to target"; the UFL challenge; Transition

1. In **WSIB RFR Paper 2, Current State Analysis**, at page 13, the Board presents a reason behind the RFR project:

> With some employers paying too much and other employers paying too little, changes to the existing scheme are necessary in order for the WSIB to charge a fair premium to employers that reflects their claims experience.

2. Earlier, at page 12, **Paper 2** notes that "*the premium rate that the classes should be paying based on their new claim costs may be quite different from what the classes are currently paying*". This point is then illustrated in **Figure 2**:

Figure 2: Assessment of Employer Premium Rates

Category	Number of Organizations	Percentage of Organizations	Balance in Premiums ($M)
Employers paying the same rate*	30,000	13	-0.27
Employer paying too little	77,000	31	363
Employer paying too much	137,000	56	-369
Total	**244,000**	**100**	**-6**

**Paying a premium rate within a +/- 2% of the 2013 Net premium rate.*

3. Yet, the reason behind this disparity is glossed over. The reason has nothing whatsoever to do with any inadequacies, deficiencies or design faults with the current system.

4. Since 2010, the WSIB itself initiated and continued a premium rate policy that assured the very result the Board now ponders.

5. At the inaugural stage of what later became the RFR project, the **2010/11 Harry Arthurs' Funding Review**, the Board's financial future was very much in doubt. As a direct result of financial sustainability concerns identified in the **2009 Annual Report of the Ontario Auditor General**, since 2010 - a period of six (6) years - *WSIB premium rate setting policy prohibited declines in premium rates for any sector even when earned through improving performance.*

6. In 2010, the prevailing view was that the WSI system was in crisis and at the "tipping point". All actions and policies, including government initiatives, were focused on that single concern.

7. Initially, CFLRA, as well as most other employer associations, enthusiastically supported this approach, adopting a general position that financial sustainability and UFL reduction was "**Job 1**".

8. The government introduced and implemented **O. Reg. 141/12** which set strict regulatory "sufficiency targets". The Board was instructed to ". . . *maintain the insurance fund in order to achieve partial sufficiency and sufficiency*" and meet prescribed sufficiency ratios by certain dates:

> 60 per cent on or before December 31, 2017.
> 80 per cent on or before December 31, 2022.
> 100 per cent on or before December 31, 2027. **[O. Reg. 141/12, s. 1 (2).]**

9. WSIB premium rate policy was one element of a comprehensive strategy establishing UFL reduction as the core objective of the WSIB and the government. In addition, the WSIB adjusted its administrative practices to reduce "time on claim" and enhance return to work ["RTW"] initiatives, with success.

10. During the 2011 **Funding Review** consultation, the "non-aligned experts" addressed the issue of rate group subsidization:

> Limits to rate increase/decrease. Cross-subsidization of rate-groups resulting from the non-application of rate decreases has started in the 2010 rate setting. Two questions for consideration are as follows: To what extent can this approach be maintained without harming the credibility of the rate setting process and/or negatively influence the employers' behaviour? Is there a need to develop a strategy about the return to a more traditional approach? **(Experts Report, p. 5)**

11. The state of the system several years later should come as no surprise to the WSIB. *The WSIB knowingly and deliberately caused this problem*. While initially supported by employers, the need for this has ended.

12. The retirement of the UFL is well ahead of schedule.

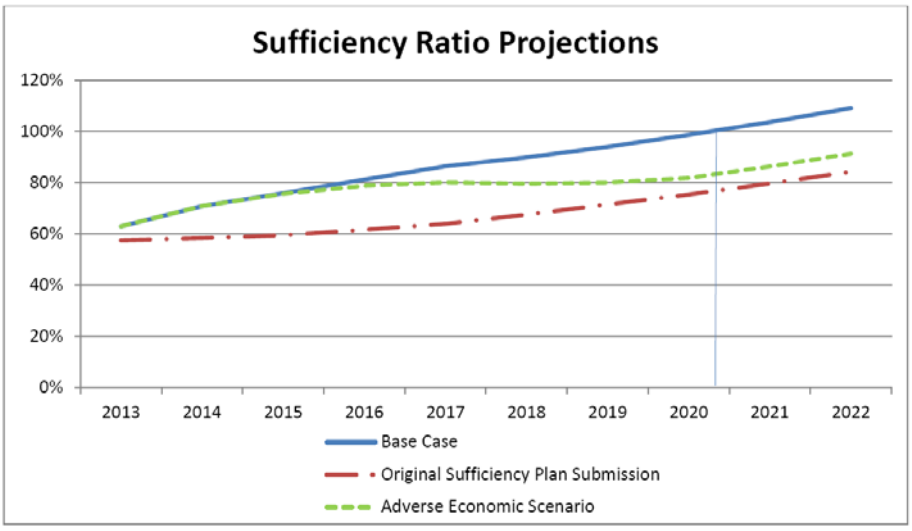
13. *One reason for this is clear:* the WSIB is over-taxing Ontario employers. This point is supported by this thumbnail review of the recent WSI history of **RG 751** from 2005 to 2015:

> **RG 751** premium rates went up 26% (from $8.12 to $10.25) even though the rate of lost-time injuries (LTIs) declined 55% (from 3.65% to 1.65%) and the cost per claim (in 2015 $) declined 48% (from $51,154 to $26,553).[6]

[6] Data from **WSIB 2015 Premium Rate Manual**. Inflation impacts calculated as per **Bank of Canada**.

14. On the question of reducing the UFL, WSIB stewardship has been exemplary. In the ***WSIB Sufficiency Plan Update*** publicly released in September, 2015, it is evident that the Board is well ahead of schedule. The extract (page 8 of the report) speaks volumes:

Workplace Safety and Insurance Board



Based on the assumptions outlined above, the WSIB projects the following Sufficiency Ratios as at December 31 of the respective year, showing the difference between our current base case (using actuals for December 31, 2013 and 2014) and the original Sufficiency Plan submission:

Year	Original Sufficiency Plan Submission (A)	Base Case (B)	Adverse Scenario (C)	Variance to Base Case (B – A)	Variance to Adverse Scenario (B – C)
2013	57.6%	63.0%*	63.0%*	5.4%	0.0%*
2014	58.4%	70.9%*	70.9%*	12.5%	0.0%*
2015	59.5%	76.0%	75.7%	16.5%	0.3%
2016	61.7%	81.3%	78.9%	19.6%	2.4%
2017	**64.0%**	**86.5%**	**80.2%**	**22.5%**	**6.3%**
2018	67.6%	90.0%	79.7%	22.4%	10.3%
2019	71.5%	94.1%	80.1%	22.6%	14.0%
2020	75.5%	98.7%	81.9%	23.2%	16.8%
2021	79.8%	103.7%	86.4%	23.9%	17.3%
2022	**84.3%**	**109.2%**	**91.4%**	**24.9%**	**17.8%**

* 2013 and 2014 Sufficiency Ratios are the actual results. Remaining Sufficiency Ratios are projections only.

C. Linking UFL success with RFR transition – solving a dilemma

1. For the first time in over 30 years, one can reasonably predict that the long UFL saga will conclude with the proverbial happy ending. The early retirement of the UFL can, and must, be integrally linked to RFR transition. In so doing, a serious potential pitfall is remedied.

2. The significance of the problem becomes clear with the following charts (from **RG 751 RFR Presentation**, pages 20 & 21):

Current State Analysis: Class and Rate Group Level Target Premium Rates

- The WSIB has developed the related class-level and rate group level target premium rates under the Current State, based on the 2014 premium rates and using the underlying assumptions identified in Appendix A.
- Other possible considerations or approaches could be considered and could result in very different class-level target rates. In considering this information, it is important to recognize that the composition of the current Rate Groups differs from the modernized NAICS-based classification structure, making for a difficult comparison.

Industry Class	2014 Net Rate	2014 Class Target Rate ($10B UFL)	2014 Class Target Rate ($0 UFL)
A – Forest Products	4.93	5.79	3.60
B – Mining and Related	6.28	4.90	3.13
C – Other Primary Industries	4.04	4.70	2.95
D – Manufacturing	2.49	2.99	1.88
E – Transportation and Storage	4.83	4.53	2.79
F – Retail and Wholesale Trades	1.75	1.65	1.08
G – Construction	6.36	5.52	3.41
H – Government and Related	1.33	1.43	0.93
I – Other Services	1.27	1.25	0.81
Schedule 1	**2.46**	**2.46**	**1.56**

Rate Group	2014 Rate Group Net & Target Rate: Net Rate ($10B UFL)	Target Rate ($10B UFL)	Target Rate ($0 UFL)
704	3.57	3.67	2.31
707	3.96	3.97	2.49
711	5.12	4.72	2.94
719	7.19	5.63	3.48
723	4.36	4.60	2.86
728	13.99	11.63	7.07
732	7.10	6.14	3.79
737	6.59	5.97	3.68
741	12.36	11.43	6.95
748	18.07	11.72	7.13
751	9.88	7.72	4.73
755	0.21	N/A*	N/A*
764	8.68	6.51	4.01

Net Rate represents the premium for respective industries, considering:
- RG rate freeze from 2013 published rates
- 2014 ER adjustments

Target Rate represents the target premium for respective industries, considering:
- adjusted NCC to reflect actual experience
- balance to Schedule 1 rates of $2.46 and $1.56

* A target rate cannot be reliably determined given the limited experience.

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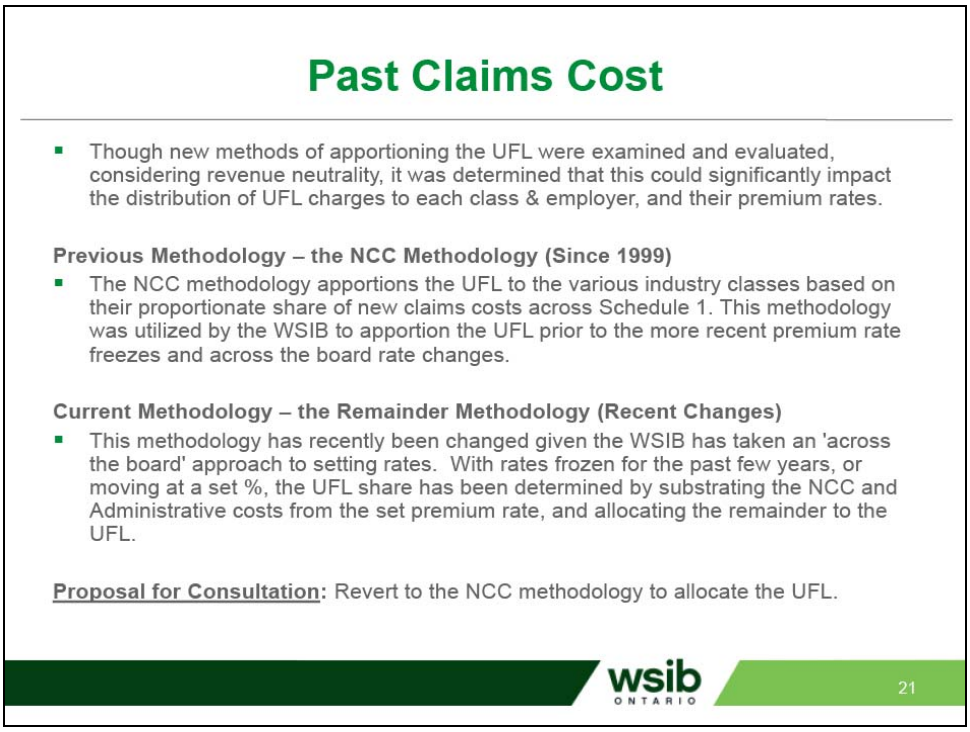
Class Letter	Class Description	Class Premium Rates with $10 UFL: Class Target Premium Rate ($)	Employer Target Premium Rate: Risk Band Range ($): Minimum Band	Highest Band	# of Risk Bands	Class Premium Rates with $0 UFL: Class Target Premium Rate ($)	Employer Target Premium Rate: Risk Band Range ($): Minimum Band	Highest Band	# of Risk Bands
A	Primary Resource Industries	4.68	0.24	14.94	83	2.93	0.15	9.27	83
B	Utilities	1.06	0.20	3.44	58	0.73	0.15	2.37	56
C	Public Administration	3.86	0.20	12.05	80	2.40	0.15	7.50	79
D	Food, Textile, & Related Manuf.	3.08	0.20	10.13	79	1.93	0.15	6.33	75
E	Resource & Related Manufacturing	3.30	0.20	10.98	81	2.06	0.15	6.82	77
F	Machinery & Related Manuf.	3.20	0.20	9.82	79	2.00	0.15	6.13	75
G1	Building Construction	5.22	0.26	16.64	83	3.21	0.16	10.22	83
G2	Infrastructure Construction	4.87	0.24	15.50	83	3.00	0.15	9.55	83
G3	Specialty Trades Construction	4.57	0.23	14.35	83	2.82	0.15	8.83	82
H	Wholesale Trade	1.73	0.20	5.49	67	1.13	0.15	3.59	64
I	General Retail	1.66	0.20	4.91	65	1.09	0.15	3.23	62
J	Specialized Retail & Dept. Stores	1.46	0.20	4.34	63	0.97	0.15	2.88	60
K	Transportation and Warehousing	4.26	0.22	13.98	83	2.64	0.15	8.59	81
L	Information and Culture	0.61	0.20	2.09	48	0.42	0.15	1.44	46
M	Finance	1.37	0.20	4.50	63	0.91	0.15	2.97	60
N	Professional, Scientific & Technical	0.55	0.20	2.06	48	0.38	0.15	1.42	46
O	Admin. Waste & Remediation	2.59	0.20	8.39	75	1.64	0.15	5.27	72
P	Hospitals	1.13	0.20	3.67	59	0.77	0.15	2.50	57
Q	Health and Social Services	2.28	0.20	6.86	72	1.46	0.15	4.41	68
R	Leisure and Hospitality	1.90	0.20	5.75	68	1.23	0.15	3.73	65
S	Other Services	2.43	0.20	7.71	74	1.54	0.15	4.88	70
T	Education	0.43	0.20	1.37	40	0.30	0.15	0.96	38
	Schedule 1	**2.46**	**2.46**		**1,534**	**1.56**	**1.56**		**1,482**

3. **WSIB RFR Paper 4** focuses on the UFL issue and discusses UFL allocation concerns (see **Slide 21** of the generic (April, 2015) **WSIB RFR Presentation**, replicated below):



Past Claims Cost

- Though new methods of apportioning the UFL were examined and evaluated, considering revenue neutrality, it was determined that this could significantly impact the distribution of UFL charges to each class & employer, and their premium rates.

Previous Methodology – the NCC Methodology (Since 1999)

- The NCC methodology apportions the UFL to the various industry classes based on their proportionate share of new claims costs across Schedule 1. This methodology was utilized by the WSIB to apportion the UFL prior to the more recent premium rate freezes and across the board rate changes.

Current Methodology – the Remainder Methodology (Recent Changes)

- This methodology has recently been changed given the WSIB has taken an 'across the board' approach to setting rates. With rates frozen for the past few years, or moving at a set %, the UFL share has been determined by substrating the NCC and Administrative costs from the set premium rate, and allocating the remainder to the UFL.

Proposal for Consultation: Revert to the NCC methodology to allocate the UFL.

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4. Yet, this overall problem is resolved with a simple, pragmatic, and prudent implementation and transition protocol, one that is easier to implement with each passing day – ***implement the new RFR scheme after the UFL has been wrestled to zero***.

D. Transitioning from the current system with zero UFL and all rate groups at target

1. All RFR entrants, be it new companies or long-standing firms, should enter the newly designed RFR grid at the firm's respective **Class Target Premium**.

2. This is a simple, clear approach, consistent with RFR design integrity expectations.

3. This ensures that all participants start on a level playing field, and are able to address emerging trends in real time.

4. Since the UFL will be zero, and all RGs will be at their respective target rate, significant transitional rate fluctuations should be minimized.

PART IV: The application of the North American Industry Classification System (NAICS)

A. The purpose of NAICS

1. The introductory section to the **North American Industry Classification System** ["NAICS"] by Statistics Canada offers some important and telling caution with respect to the utilization of the NAICS for other than "*statistical purposes*".

2. Statistics Canada makes the intended purpose of NAICS clear. Under the heading "**Purpose of NAICS**" the following is noted:

> NAICS is designed for the compilation of production statistics and, therefore, for the classification of data relating to establishments. It takes into account the specialization of activities generally found at the level of the producing units of businesses. The criteria used to group establishments into industries in NAICS are similarity of input structures, labour skills and production processes.
>
> NAICS can also be used for classifying companies and enterprises. *However, when NAICS is used in this way, the following caveat applies: NAICS has not been specially designed to take account of the wide range of vertically- or horizontally-integrated activities of large and complex, multi-establishment companies and enterprises.* Hence, there will be a few large and complex companies and enterprises whose activities may be spread over the different sectors of NAICS, in such a way that classifying them to one sector will misrepresent the range of their activities.
>
> NAICS has been designed for statistical purposes. *Government departments and agencies and other users that use it for administrative, legislative and other non-statistical purposes are responsible for interpreting the classification for the purpose or purposes for which they use it.* (Statistics Canada – catalogue no. 12-501-X, page 9).

3. The WSIB has rigidly applied NAICS to the RFR model, with the only variation being whether the application is at the NAICS 2nd, 3rd or 4th digit level.

4. There is no sound policy reason for this if other means of grouping employers satisfactorily meets the test for "actuarial predictability", which the WSIB has set at a $2 billion annual payroll. In construction, we question whether a $2 billion threshold is required. Typically, claim incidence and claim cost is higher thus allowing a lower premium threshold while maintaining statistical credibility. A "*one size fits all*" approach is needlessly limiting.

5. When applying the $2 billion threshold against the *current* **Class G** classification grid, one discovers that of the 12 construction RGs, five (5) RGs clearly exceed the threshold. **RG 751** has a $1 billion assessable payroll.

6. Of the remaining six (6) RGs, they collectively have an assessable earnings base of $4.1 billion.

Class G Assessable Payroll by Rate Group
(From WSIB 2015 Premium Rate Manual)

Rate Group	Assessable Payroll ($ billion)
704 Electrical	$2.7
707 Mechanical	$3.1
711 Roadbuilding	$2.2
723 ICI Construction	$2.1
728 Roofing	$0.5
723 Heavy Civil	$0.9
737 Millwrighting	$0.7
741 Masonry	$0.5
748 Form Work	$0.5
751 Outside Finishing	**$1.0**
764 Homebuilding	$2.5

7. CFLRA sees no reason for strict adherence to NAICS as the default organizing tool.

8. We note that it is interesting that **New Brunswick**, also organized under NAICS (and coincidently, once headed by **WSIB RFR Special Advisor Doug Stanley** – the primary initial proponent of NAICS), and which has nowhere near the payroll of the Ontario system (the total New Brunswick system assessable payroll is $8.5 billion[7], whereas the Ontario construction sector alone has an annual assessable payroll of $19 billion), is able to manage seven (7) construction rate groups, those being:

RG 235 Highway, Street and Bridge Construction
RG 236 Construction of Buildings
RG 237 Heavy and Civil Engineering Construction
RG 238 Foundation, Structure and Building Exterior Construction
RG 239 Building Equipment Contractors
RG 240 Building Finishing Contractors
RG 241 Other Specialty Trade Contractors

[7] WorkSafe New Brunswick, 2015 Premium Rates, p. 4

B. The question of rate groups, employer classification and experience rating

1. The establishment of rate groups is a core and integral element of any WSI scheme. Rate classification is a valued requirement as: i) it is a prerequisite to experience rating; ii) it may be justifiable with respect to resource allocation in the long run and has an influence on prevention, and; iii) it is justifiable on the basis of employer equity.[8]

2. Experience rating as a premium modifier is most effective as the size of the assessed payroll base increases. It is not possible for small or even medium sized employers to benefit in any material manner from experience rating (and this is the case be it under NEER, CAD-7, MAP or the proposed prospective RFR scheme).

3. The non-aligned experts[9] involved in the antedating 2011/12 **Funding Review Technical Sessions** affirmed that fair employer classification is an essential ingredient, although clearly expressed caution to proceed with a classification review while system funding remains the primary focus. We concur.

> Classification of employers in rate groups for rate setting purposes has been put on the table in the funding consultation process in order to examine any potential improvement that could lead to cost decrease and improvement in the funding position. ***It has no direct link with the funding situation***. **(Experts' Report, p. 6)**
>
> ***It would be reasonable to postpone a Rate Group structure review because the expected impact of this kind of review would have on the funding status is low.*** **(Experts' Report, p. 6)**

4. ER was born out of a cooperative process in the early 1980s – in effect, a powerful WSIB/employer partnership. It took a decade to design, perfect and introduce ER on a broad scale (from 1982 to 1992). ER received wide-spread employer support as a means to establish a higher degree of employer accountability.[10]

5. The underlying economic theory under-pinning experience rating is straight forward – higher costs internalized by employers for injuries should translate into workplace safety expenditures to the point where "*the marginal cost of reducing injuries equals the expected marginal benefits*."[11]

6. Employers have generally supported the following principles: a) The primary principle of ER is insurance equity; b) ER must be cost based; c) Sector specific options and design variations should be permissible. We continue to support those principles.

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[8] P.S. Atiyah, "Accident Prevention and Variable Premium Rates for Work-Connected Accident" Parts I & II (1974) 3 Ind. L.J. 1 & 89 at 1.

[9] The report from the non-aligned experts is hereinafter referenced as "**The Experts' Report**"

[10] For a more detailed history, see "***Chronology and History of WSIB's Incentive Programs***", January 2011, posted on the WSIB website at http://www.wsib.on.ca/files/Content/FundingReviewFRChronologyHistory/ExperienceRatingChronologyHistory.pdf

[11] Barry T. Hirsch, David A. Macpherson, J. Michael Dumond, "Workers' Compensation Recipiency in Union and Nonunion Workplaces", (1997) 50 Indus. & Lab. Rel. Rev. 213 at p.6 of 73 (Westlaw).

7. Whatever the design arithmetic for an ER program, smaller employers must receive appropriate and special consideration. The "*problem of small employers*" is aptly addressed in a May 1998 report to the **British Columbia Royal Commission on Workers' Compensation**:[12]

> **Problem of Small Employers**
>
> It is generally acknowledged that the employer's ability to control the frequency or severity of workplace accidents is limited, so that a particular accident may or may not reflect the underlying risks of injury in the workplace. If the employer's workforce is large, then rate-makers can rely on the statistical "law of large numbers" to ensure that the accident rate accurately reflects underlying risks. ***However, if the firm is small, then the accident rate may or may not accurately represent workplace safety***. Consider a firm with a single employee who experiences an accident unrelated to "controllable" workplace risks. For example, while making a delivery, the firm's only worker is killed by a drunk driver. This accident would identify the employer as a high-risk employer when, in fact, underlying workplace risks may be considerably less than average for the rate group. A practical consequence of this problem is that such an accident, in the context of an experience-rating program that charges firms for all incurred accident costs, could easily bankrupt the small employer.
>
> **In addition, it is questionable whether extending experience rating to small employers is, in fact, equitable. *Equity is not synonymous with equality*. While equity implies that similarly situated firms should be treated similarly, it also implies that firms that are different may be treated differently**. Experience rating is designed to adjust a firm's compensation costs so that they reflect the underlying risks inherent in the individual workplace. However, as noted, the individual firm's accident experience is not a good measure of underlying risks for small employers, so that, an experience rating program that is optimal for large firms is likely to be less effective for small ones and vice-versa. It is questionable whether a rate adjustment that is largely based on random events outside the employer's control offers small employers any real incentive to increase workplace safety. (emphasis added)

8. In Ontario, a significant number of employers are quite small. 98,000 employers fall under the "**Merit Adjusted Premium**" ["MAP"] plan, compared to 16,500 under the **NEER** plan and 6,000 under **CAD-7**.[13] The **MAP** plan appears to be a compromise ER program, ensuring some level of simple ER participation with smaller employers (up to $25,000 in premiums), and is relatively uncontroversial. As an alternative to the proposed RFR, serious consideration should be given to increasing the ceiling for MAP, which presently applies to $560 million in premiums (approx. 18% of the total Schedule 1 premium).

9. A fundamental ER design choice is whether the program is retrospective or prospective. Some industries may prefer one *over* the other or some elective approach (by the assessed employer) for one *or* the other. ***CFLRA strongly endorses a retrospective plan, regardless of the (eventual) design arithmetic***. With that said, we are not at all opposed to other industries adopting a different program. These are our reasons:

   a. *First*, the principal advantage of retrospective rating is a more direct and immediate link between claims experience and compensation costs.[14]

   b. *Second*, a retrospective scheme assists in middle management empowerment, proved to be a strong link between positive managerial action and senior management support and engagement through the promise of rebates.

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[12] May 1998, Evidence on the Efficacy of Experience Rating in British Columbia, A Report to The Royal Commission on Workers' Compensation in BC, Hyatt & Thomason, found at http://www.wsibfundingreview.ca/resources.php and http://www.iwh.on.ca/wsib/resource-documents-on-experience-rating [hereinafter "Hyatt"] (last accessed April 8, 2011), at pp. 5-6. Professor Hyatt was a non-aligned technical expert participant at the Funding Review January 25/26, 2011 Technical Sessions.

[13] Funding Review, WSIB January 2011 "Employer Incentives" Deck, Slide 6.

[14] Hyatt, at p. 11-12.

C. Does NAICS provide a good fit for CFLRA members?

1. Initially under RFR, **RG 751** was to have been reassigned to **RFR Class G3**, as per the aforementioned **Slide 7** of the **RG 751 RFR** presentation (replicated again below).

How Could RG 751 Employers be Risk Banded?

- The chart below outlines possible risk bands for employers in RG 751 who will be moving to Class **G3 - Specialty Trades Construction**, by showing the number and percentage of employers and their actual risk band premium rate. This risk band distribution is subject to change if there are amendments, such as splitting up the classes.

G3 - Specialty Trades Construction - RG 751: 2014 Employer Actual Rate – Subject to Transition Plan*

	Lowest Band	Risk Bands									Highest Band	
Risk Band Movement from Class Premium Rate (Risk Band 0)	-20	<-3	-3	-2	-1	Average 0	1	2	3	>3	23	Total
Risk Band Rate	$1.34	-	$3.20	$3.37	$3.55	$3.74	$3.92	$4.12	$4.33	-	$11.48	
# of Employers	1	12	4	11	14	6	7	2	15	3,756	2	3,827
% of Employers		0.31%	0.10%	0.29%	0.37%	0.16%	0.18%	0.05%	0.39%	98.14%		100.0%
		1.07%					98.77%					

Overview of Analysis:

- A small percentage (1.07%) of employers will see a lower premium rate when compared to the average risk band rate.
- A small percentage (0.16%) of employers will pay the average risk band rate.
- About 98.77% of employers will see a higher premium rate when compared to the average risk band rate. The majority of these employers will gradually see their premium rate decrease over time, if cost experience is demonstrated to be in line with the class average experience.

* While the above charts outline the impact to employers considering a +/- 3 risk band limitation that incorporates their Starting Point, these results may be different once a final transition plan (that has received stakeholder input) has been developed to transition employers from the current approach to setting and classifying rates under the proposed preliminary Rate Framework scheme.

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2. We find that 98.77% of **RG 751** participants are assessed at a rate higher than the **Class G3** average, with 98.14% assessed at more than three (3) risk bands higher than the average.

3. After direct inquires on our part, we learned that the vast majority of current **RG 751** employers will fall between 11 to 14 risk bands higher than the average rate.

4. Yet, we have no way of knowing where CFLRA members fall within this distribution. Are our members below average, at average, slightly above average or are we congregated at the higher risk bands? *We don't know*. Yet, this is essential information. While **Slide 7** is interesting, it is not particularly informative.

5. We later learned that the WSIB had undertaken several "**Risk Disparity Analyses**", with the first such analysis undertaken for the construction sector.

6. **Slide 19** from the **RG 751 RFR** presentation is replicated below:

Risk Disparity Analysis - G3 Specialty Trades Construction

- Class **G3 Specialty Trades Construction** (NAICS # 238) is based on the experience of:
  - G31: Foundation Structure and Building Exterior Contractors (NAICS # 2381)
  - G32: Building Equipment Contractors (NAICS # 2382)
  - G33: Building Finishing Contractors (NAICS # 2383)
  - Other Specialty Trade Contractors (NAICS # 2389)
- A concern has been raised with respect to combining Foundation, Structure and Building Exterior with Building Equipment Contractors and Finishing and Specialty Trades business activities, given the belief that there is a significant discrepancy in their risk. This is derived from the existing rate group rate for **RG 748 – Form Work and Demolition** at $18.31 and **RG 704 – Electrical and Incidental Construction Services** at $3.69.

Class	Class Description	NCC	Admin	PCC	Class Target Premium Rate
G3	Specialty Trades Construction	2.131	0.689	1.747	4.57

Class	Class Description	NCC	Admin	PCC	Class Target Premium Rate
G31	Foundation, Structure & Building Exterior	3.836	1.053	3.145	8.03
G32	Building Equipment Contractors	1.448	0.542	1.188	3.18
G33	Building Finishing and Specialty Trades	2.000	0.660	1.640	4.30

- There appears to be level of variability in the risk profile that would translate to a different premium rate. When examining the insurable earnings and claims experience separately, sufficient predictability exists for each of these potential classes G31, G32, and G33. As such, consideration for expanding Class G3 should take place.

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7. The Board later expanded the groups subject to a "**Risk Disparity Analysis**", with the results summarized at **Slide 5** of the August, 2015 presentation (replicated below):

Results - Risk Disparity Analysis

- The charts below demonstrate the potential expansion of industry classes, utilizing the risk disparity methodology previously outlined in this presentation.

Proposed 22 Industry Classes

Class Letter	Class Description	2014 Class Rate
A	Primary Resource Industries	$4.68
B	Utilities	$1.06
C	Public Administration	$3.86
D	Food, Textile, and Related Manufacturing	$3.08
E	Resource and Related Manufacturing	$3.30
F	Machinery and Related Manufacturing	$3.20
G1	Building Construction	$5.22
G2	Infrastructure Construction	$4.87
G3	Specialty Trades Construction	$4.57
H	Wholesale Trade	$1.73
I	General Retail	$1.66
J	Specialized Retail and Department Stores	$1.46
K	Transportation and Warehousing	$4.26
L	Information and Culture	$0.61
M	Finance	$1.37
N	Professional, Scientific and Technical	$0.55
O	Administrative, Waste and Remediation	$2.59
P	Hospitals	$1.13
Q	Health and Social Services	$2.28
R	Leisure and Hospitality	$1.90
S	Other Services	$2.43
T	Education	$0.43
	Schedule 1	**$2.46**

Results of Risk Disparity Analysis (32 Industry Classes)

Class Letter	Class Description	2014 Class Rate
A	Primary Resource Industries	$4.68
B	Utilities	$1.06
C	Public Administration	$3.86
D	Food/Textile & Related Manufacturing	$3.08
E1	Non-Metallic/Mineral Manufacturing	$4.45
E2	Printing, Petroleum/Chemical Manufacturing	$1.88
F1	Metal/Transportation/Furniture Manufacturing	$4.10
F2	Machinery/Electrical/Other Manufacturing	$2.59
F3	Computer/Electronics Manufacturing	$0.41
G1	Building Construction	$5.22
G2	Infrastructure Construction	$4.87
G31	Foundation/Structure/Building Exterior Contractors	$8.27
G32	Building Equipment Contractors	$3.17
G33	Specialty Trade Contractors	$4.45
H1	Petroleum/Food/Vehicle/Other Wholesale	$2.99
H2	Personal/Building Materials/Machinery Wholesale	$1.24
I1	Vehicle/Building Material/Food & Beverage Retail	$2.23
I2	Furniture/Home/Clothing Retail	$1.44
I3	Electronics/Appliances/Personal Care Retail	$0.49
J	Specialized Retail & Department Stores	$1.46
K1	Rail/Water/Truck & Postal Service Transportation	$6.74
K2	Air/Ground/Pipeline/Courier Transportation & Warehousing	$2.60
L	Information & Culture	$0.61
M	Finance	$1.37
N	Professional, Scientific & Technical	$0.55
O	Administrative, Waste & Remediation	$2.59
P	Hospitals	$1.13
Q1	Nursing & Residential Care Facilities	$3.32
Q2	Ambulatory Health Care & Social Assistance	$1.61
R	Leisure & Hospitality	$1.90
S	Other Services	$2.43
T	Education	$0.43
	Schedule 1	**$2.46**

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8. **RG 751** companies are now to be classed under a new class, **Class G31, Foundation, Structure & Building Exterior**, with an predicted **Class Target Premium Rate of $8.03**, almost double the earlier **Class G3 Target**.

9. Yet, now not only do we not have the company specific information we need, we have not even been provided with the "**Slide 7**" type breakout for the new **Class G31**. This is less than satisfactory. We did not understand where we stood before. Now we are completely in the dark. We repeat our request for information.

10. **Class G31** applies 4th digit **NAICS Group 2381 Foundation, structure, and building exterior contractors**.

G1	Building Construction	236
G2	Infrastructure Construction	237
G31	Foundation/Structure/Building Exterior Contractors	2381
G32	Building Equipment Contractors	2382
G33	Specialty Trade Contractors	2383 - 2389

11. **NAICS 2381** is itself a large and diverse group, and includes:

NAICS 2381 Foundation, structure, and building exterior contractors	
23811	Poured concrete foundation and structure contractors
23812	Structural steel and precast concrete contractors
23813	Framing contractors
23814	Masonry contractors
23815	Glass and glazing contractors
23816	Roofing contractors
23817	Siding contractors
23819	Other foundation, structure and building exterior contractors

12. Yet, this does not represent a "good fit" for CFLRA members. The NAICS classification system as applied by RFR seems very limited. We remind of the opening caution from **Statistics Canada** for applying NAICS for other than "statistical purposes". That limitation is certainly evident here. We were of the view that we were misclassified under **RG 751**. These concerns are heightened with the **RFR** application of NAICS.

13. While the vast majority of our union work is performed within the **NAICS 23621 Industrial Building and Structure Construction** and **NAICS 23622 Commercial and Institutional Building Construction**, many concrete floor contractors also install residential basement floors and pavements and perform work on municipals streets as well (saw-cutting etc.).

14. CFLRA members are not high rise forming contractors. We construct "slab on grade" and "slab on deck" concrete floors and exterior pavements. Only some of our firms finish the surfaces of high rises suspended concrete floors (not all CFLRA firms do this but all forming firms do).

15. **NAICS 238110** is for "foundation" or "structure" contractors with the exception of "pouring concrete." CFLRA members perform none of the illustrative examples. To lump us in with forming contractors is not the same risk as our trade work (slabs on grade and slabs on metal deck).

16. CFLRA firms all perform "concrete coating, glazing or sealing" as part of building our floors (**NAICS 238390**). Some of our firms install terrazzo work (**NAICS 238340**). Our firms are involved with road and street construction (**NAICS 237310**). We build indoor ice rinks and nuclear waste disposal site floors (**NAICS 237990**).

17. We have a suggestion for the Board. Provide us with the information and analysis we have been seeking and re-group with CFLRA to continue our dialogue. With the data as presented, the Board is in no position to categorize CFLRA members in the manner suggested. NAICS cannot inspire such a "hard and fast" black-letter application. **Statistics Canada** cautions against it. We fully understand why.

D. Multiple business activities – a word of caution

1. **WSIB RFR Paper 3** at pp. 14 – 20 sets out the proposed approach. The Board seeks to abandon multiple classifications and will classify individual employers based on the "predominant business activity". Predominant is defined (**at Paper 3, p. 15**) as the business activity "*that represents the largest percentage of the employer's annual insurable earnings*".

2. CFLRA opposes the planned move to assess on the basis of predominant business activity.

3. There is no sound policy reason for incongruent business risks to be assessed at the same premium rate. **O. Reg. 175/98** represents a thoughtful and well considered method to fairly and effectively assess distinct business activities operating within the same enterprise. The Board's proposal creates an artificial premium rate that, except for the largest of employers, will not be mitigated through experience. This will skew otherwise competitive markets and present advantages and disadvantages where currently none exist.

4. The proposal will eradicate the long-sought and hard-fought separate rate group for construction executive officers, now subject to compulsory coverage (even if not exposed to any construction risk). With the implementation of ***Bill 119***, the construction sector aggressively pursued a fair premium rate commensurate with the insurance risk. Those efforts were successful. Construction executive officers not exposed to a construction risk are assessed under **RG 755**, **Non-Exempt Partners and Executive Officers in Construction**, at the fair rate of $0.21. We caution that any retrenchment of this policy will ignite a fire-storm of discontent in our sector.

5. We encourage the Board to more carefully assess this element of the RFR project, to set this aside at least at this stage, and re-assess the necessity post-implementation.

E. Temporary employment agencies

1. **WSIB RFR Paper 3**, at pp. 21 – 22, proposes an adjustment to the premium rate setting protocol for some temporary employment agencies.

> The proposed preliminary Rate Framework recommends that TEAs and their client employers would need to be classified in the same class in order to mitigate the premium cost avoidance issue. If this occurs, their premium rates would be similar in many cases.

2. CFLRA supports this recommendation. All temporary labour should be assessed based on the risk of the client employer, ensuring principled premium assessment.

3. Currently, there are two separate classification RGs and premium rates for the supply of labour. The "**Supply of Non-clerical Labour**" is assessed under **RG 929**, with a premium of $5.05/$100

of payroll (more than two times the average premium rate). The "**Supply of Clerical Labour**" is assessed under **RG 956** with a premium of $0.21/$100 of payroll.

4. With respect to the classification and assessment of the supply of non-clerical labour, business activities include the operations of employment and temporary help agencies which supply non-clerical workers to non-associated employers on a temporary or long-term basis. **(WSIB Document No. I-929-01: Supply of Non-clerical Labour Operations, Amendment/07, January 05, 2009)**.

5. However, there is a long list of exemptions. The list of non-clerical workers excluded from **RG 929** includes **WSIB Classification Unit G-764-07, Supply of Labour, Construction.**

6. The exemptions are clearly designed as an attempt to promote "apples-to-apples" premium assessment. They are however, cumbersome, confusing and may not always address the policy concern.

7. If an employer contracts with another person to have that person provide labour on a temporary basis to the employer, the premium rate(s) applied to that labour would be the same as if the employer hired the labour directly.

F. Graduated claim limits

1. **WSIB RFR Paper 3** (at pp. 29 – 30) introduces a question of graduated claim limits. The Board distinguishes the RFR proposal from current methodologies:

> In order to determine what the appropriate per claim limit should be at the employer level, the WSIB tested the current RG per claim limit (2.5 times the maximum insurable earnings ceiling (i.e. $84,100 for 2014 (2.5 x 84,100 = $210,250))). The WSIB found that applying the current RG per claim limit would be overly burdensome for small employers.

2. The Board proposes a graduated claim limit, with the following results:

Figure 9: Proposed Graduated Per Claim Limit Approach

Predictability Scale	2.5%	5%	10%	20%	30%	40%	50%	60%	70%	80%	90%	100%
Current RG method	2.5 times the maximum insurable earnings ($84,100) or $210,250											
Proposed Graduated Per Claim Limit Approach	0.5 times maximum IE ($84,100) or $42,050		2.5 times maximum IE ($84,100) or $210,250				5 times maximum IE ($84,100) or $420,500				7 times maximum IE ($84,100) or $588,700	

3. CFLRA supports the concept of graduated claim limits, and sees no reason to discard the overall approach suggested by the Board.

4. However, we advance a suggestion to enhance the policy objective being sought – to increase individual employer accountability as insurable earnings increase.

5. The problem with the Board's proposal is simple. The graduated ranges "move in jerks" with clear and significant demarcation lines.

6. There is a better way. Instead of moving with clear and jarring demarcation lines, move employers up the accountability grid in the same manner as current employer ER rating factors are calculated.

7. This simple enhancement ensures that a minor upward movement of assessable earnings does not drive a jarring move into a higher per claim limit. The movement is always gradual. Accountability is calibrated smoothly and fairly for all employers, while delivering the same objective.

G. Graduated risk band limits

1. **WSIB RFR Paper 3** presents an extensive presentation of risk bands (**at pp. 60 – 68**).
2. The concept of, and application of, "risk bands" will prove to be the most difficult for individual employers to understand.
3. As we have addressed the question of transition elsewhere, our risk band comments apply to "post-RFR-transition." In other words, the trauma of moving from current to proposed has been completed.
4. As we have criticized earlier, we have not been presented with the most valuable background information – the presentation of the actual impacts for our individual members. Without that, informed comment is not possible.
5. In **Paper 3** (at p. 65), the risk band movement approach is summarized:

Analysis: Risk Band Movement and Stability

To ensure premium rate stability, year over year, employers would move from their Employer Actual Premium Rate towards their Employer Target Premium Rate. The WSIB tested in a fully developed model environment, the three risk band limitation for employers to move up or down, (while ensuring that for comparative purposes the organizations were active in both model years) to determine the amount of premium rate stability an employer would have over a number of years.

Figure 25: Risk Band Movement

	Risk Band Movement by Percentage (%)										
Model year	**<=-4**	**-3**	**-2**	**-1**	**0**	**+1**	**+2**	**+3**	**>=+4**	**Total**	**-3 to +3**
2007 to 2008	1.3	0.5	1.0	5.0	84.8	3.7	1.3	0.8	1.6	100.0	97.1
2008 to 2009	1.3	0.4	1.0	4.7	85.0	3.8	1.3	0.8	1.6	100.0	97.1
2009 to 2010	1.3	0.4	0.9	4.4	85.9	3.5	1.3	0.8	1.5	100.0	97.3
2010 to 2011	1.2	0.4	0.8	4.0	86.5	3.8	1.3	0.8	1.3	100.0	97.4
2011 to 2012	1.2	0.4	0.7	3.8	86.2	4.3	1.3	0.7	1.4	100.0	97.4
2012 to 2013	1.2	0.4	0.7	3.6	86.2	4.5	1.4	0.7	1.3	100.0	97.5

This chart shows the percentage of employers who would see an Employer Target Premium Rate change year over year, relative to the Class Target Premium Rate, as though the proposed preliminary Rate Framework had been in place, focusing specifically at years 2007 to 2013.

6. In its July update, the Board comments on an alternative approach:

> **Graduated Risk Band Limits**
>
> Similarly, certain stakeholders have suggested that the WSIB explore linking the current three risk band limitation that limits year over year rate changes to provide greater rate stability, to the steps in the predictability scale (in a manner similar to the graduated per claim limit). This would see the current proposed risk band limitation of three risk bands (where each risk band represents a 5% increase in premium rate) vary based the predictability of employers. For example, this would suggest that the largest, most predictable employers could see an increased risk band limitation of +/- 5 risk bands, and smaller, less predictable employers could see a reduced risk band limitation of +/- 1 or 2 risk bands.

7. We cannot comment. While the Board is quite correct to respond to stakeholder suggestions, it must do so with the same depth and vigour as shown in its original blueprint. Yet, even with that, our capacity to respond is limited by the absence of integral data – the impacts on our members.

8. Our advice is clear and simple. Give us the data upon which to respond. Let us see the impacts of the original proposals and potential adjustments to that proposal.

9. We understand this will take time. This is where the time should be spent. Variable "what-if" scenarios are the precise way to get to the best design.

H. The question of surcharges

1. **WSIB RFR Paper 3** introduces the idea of surcharges over-and-above the normal risk band movement proposals (at p. 74). We find the Board's discussion, at best premature. Any discussion on the need for surcharges should be deferred until RFR has been operational for at least five (5) years.

> The proposed preliminary Rate Framework seeks to consider the application of a surcharge mechanism that would be applied against the Risk Adjusted Premium Rate Setting process. Alternatively, the WSIB would consider having employers within each class collectively subsidizing the sustained poor claims experience of these employers. The WSIB would like to receive stakeholder input on the merits of surcharging and the proposed approach that should be considered.

2. However, the need to surcharge employers should not be viewed as some "super enhancement" (albeit it a negative one) but rather as a potential failure of RFR to deliver on its objectives.

3. We have noted the comment in the July, 2015 **RFR Update**.

> **Surcharging Mechanism**
>
> A number of stakeholders have expressed their support for a special surcharge mechanism for employers who are above the premium rate cap on a sustained basis, which would result in greater employer responsibility for those claims costs, rather than have the industry as a whole bear that responsibility. Similar to the approach in Alberta, some have suggested that the WSIB consider using the Workwell program to work with these employers to identify and address these circumstances, towards a progressive surcharge if no improvement is seen after a number of years of effort.

4. It must be recognized that the very idea of surcharges is an approach incongruous to premium rate "stability". The quest for stability is a clear foundational consideration of the entire RFR exercise.[15] The argument for premium rate stability is at the forefront of the reasons for change, with this theme running throughout the Board's RFR presentations and papers.

5. For the moment, CFLRA opposes the imposition of surcharges but agrees to a review of this element no sooner than five (5) years after **RFR** implementation. On the question of the adaption of **Workwell** to address this, we are opposed. Instead, we suggest that in instances where continued poor performance is noticed (and **WSIB RFR Paper 3**, at p. 68, suggests this is at most 1,600 firms), inform the responsible safety association to take the appropriate action.

I. Weighting experience window

1. In the July 2015 RFR Update, the Board advises:

> **Weighting Experience Window**
>
> Some stakeholders have suggested that the proposed approach may provide an imbalance towards greater rate stability, with not enough focus rate responsiveness. To counter this perceived imbalance, some have brought forward the consideration of amending the proposed six year window by adding more weight to the claims and insurable earnings experience on the more recent years (e.g. most recent 2-3 years) and less weight on the historic years (e.g. years 4-6).

2. We do not support this proposition. Our comments in the section above can apply to this element as well.

3. Our lack of support for the alternative suggestion, is not to be interpreted as support for the Board's original proposal. We simply don't know and repeat our demand for firm specific information.

J. Catastrophic claims costs

1. **WSIB RFR Paper 3** (at p. 37) asks, almost as an aside, "*How should the WSIB handle catastrophic new claim costs situations (sic) that occur in a particular injury?*"

> **QUESTIONS FOR CONSIDERATION**
>
> 1. *How should the WSIB handle catastrophic new claim costs situations that occur in a particular class?*
>   - *a) Should the WSIB include these claim costs in the year that they occur, which may result in a higher premium rate being charged to employers?*
>   - *b) Or, should the WSIB reduce the premium rate increase and add the remainder as an amount for future premium rate consideration?*
>   - *c) How should catastrophic situations be defined? Should the WSIB consider pooling these costs at the class level or Schedule 1 level?*

2. While a solid question, it has not been contextually introduced. It must be explained. What is the data behind the question? What is a "catastrophic situation"? What is the Board's history with these circumstances? Present us with an informed outline of the perceived problem and we will most certainly present you with an informed suggestion to address this.

[15] See for example, **RFR Paper 2** at pp. 9 and 10; **RFR Paper 3** at pp. 34, 60, 64, 65, 69, and 75.

PART V: Collectivizing certain WSI costs

A. Second Injury and Enhancement Fund

1. The WSIB Second Injury and Enhancement Fund ["SIEF"] is an essential insurance element that respects the competing intersection between *controllable* costs and the "thin-skull" legal paradigm governing entitlements.

2. Yet, **WSIB RFR Paper 3** (at page 33) makes it clear that the Board will completely eradicate this essential insurance feature from the Ontario workers' compensation system.

> ***Proposed Preliminary Rate Framework***
>
> The proposed preliminary Rate Framework seeks to discontinue the SIEF program as part of a prospective premium rate setting approach.

3. CFLRA categorically opposes this position.

4. An in-depth SIEF policy discussion is set out at **Appendix A**.

5. For the reasons carefully set out, we are of the view that SIEF remains a valid and necessary program.

6. During the **Funding Review** consultation exercise, the **FR non-aligned experts** clearly advocated that the issue of SIEF should be left to the stakeholders.

> Employers feel comfortable with the current situation while workers are not vocal on the topic. This is a policy issue that should be discussed with stakeholders. **(Experts' Report, p. 8)**

7. SIEF must continue. The current design of SIEF is fair. SIEF is purely redistributive and does not add to system costs.

8. In its **July 2015 RFR Update**, the WSIB advised:

> **Second Injury and Enhancement Fund (SIEF)**
>
> The WSIB has heard many perspectives on the recommended approach to discontinue the Second Injury and Enhancement Fund (SIEF) program. This includes the concerns raised with the recommended approach and a clear consensus that some form of cost relief is required. Some stakeholders have also highlighted potential unintended consequences with the proposal to discontinue SIEF, while others have provided specific examples to support their view. These perspectives are important to us and will assist us in making the most appropriate decision on this point.

9. While the WSIB suggests some movement on its earlier position, and a clear consensus has emerged that "*some form of cost relief is required*", CFLRA wishes to be clear – we are asking that the *current* form of the SIEF remain in place, unaltered.

B. Long Latency Occupational Disease

1. Similarly, **WSIB RFR Paper 3** (at page 31) addresses the current exclusion of long latency occupational diseases ["LLOD"] from an employer's cost-record, but takes a contrary view:

> ***Proposed Preliminary Rate Framework***
>
> The proposed preliminary Rate Framework is continuing with the current assignment of LLOD claims as a collective cost that is pooled at the class level. As these costs are excluded from being considered under the current three experience rating programs, likewise, they would continue to be excluded from being considered under the Risk Adjusted Premium Rate Setting process.

2. We agree with this approach.

3. No employer, no matter of size, is held to account for all WSI costs.

4. Cost accountability seeks an inherent policy objective – one of continual performance improvement.

5. By the time the LLOD is diagnosed, often years if not many decades after exposure, the workplace bears little resemblance to the workplace at the time of exposure. More often than not, the exposure has long been remedied.

6. Holding an employer accountable in these circumstances, does not advance any credible WSI policy goal.

7. This position is long-standing WSIB policy, approved at the WSIB Board of Directors. This issue was exhaustively addressed in the **Board's Discussion Paper dated December 22, 1986** which addressed whether LLOD costs should be excluded from costs for experience rating purposes. In part, the paper states:

> Ideally, given its principal objective of directly influencing workplace health and safety performance through adoption of preventative measures, an experience rating plan should focus on identifying and targeting for possible rebate or surcharge all risks which are reasonably avoidable by employer preventative actions, while spreading all remaining risks through collective liability principles.
>
> In practice, of course, it is not always easy to segregate risks in this fashion. **However, on this basis, it seems clear that certain types of industrial disease claims, characterized by long latency periods (e.g. cancer, hearing loss) are not really amenable to direct influence by way of experience rating**.
>
> The reasons for this conclusion include the usually unappreciated connection between a disease and a work process at the time of exposure, the very long time lag between preventative actions and the impact on worker health, and the difficulty of apportioning causation (and subsequent charges) between what may have been a number of employers over a long period of time.
>
> The conclusion that the long latency industrial disease should properly be excluded from the ambit of experience rating does not, of course, imply that they are somehow less worthy of attention; it simply means that experience rating is not an appropriate or suitable method for seeking to influence their incidence. The same considerations do not apply, however to short latency industrial diseases such as dermatitis: there remains no reason why these should not be covered under the terms of an experience rating plan.

8. The (then named) WCB Board of Directors approved the exclusion of LLOD costs from an employer's record in **Board Minute #4, January 2, 1987, page 5147**, concluding that, "*Long latency industrial diseases should be excluded from experience rating*".

9. There is no sufficient reason to return to this question.

Concluding comments:

We conclude with our earlier words of caution. While progress has been made, **Job 1** of the WSIB continues to be the long term financial viability of the Ontario WSI system. **RFR** design efforts certainly should continue, but there is no linkage between **Job 1** and the **RFR** project, other than in this way – the retirement of the UFL is integrally linked to successful **RFR** development and implementation. By all accounts, we are looking to success this decade, not at the end of the next, a remarkable achievement.

We repeat our caution to the Board on the similarities of the **RFR** project and the late 1990s market value property tax reforms (market-value-reassessment). History may well repeat. Eliminating the UFL, in large measure, will reduce if not eliminate this risk.

We continue to be concerned with the consultation process. We have advanced reasonable requests for information. While they have not as yet been honoured, we expect that as this phase of consultation comes to a close, the Board will re-group, develop the data we require, and allow us to commence the next consultation phase with the essential information.

All of which is respectfully submitted

Appendix A: Second Injury and Enhancement Fund

SIEF Plays a Vital Role

1. We see the existence of the **Second Injury and Enhancement Fund** ["SIEF"] as a vital and *increasingly* important component of today's evolving workplace safety and insurance ["WSI"] system SIEF is based predominantly on general principles of equity. Any attempts to abolish or significantly alter the present approach taken to SIEF would result in very significant, *avoidable* inequities.
2. In this discussion we wish to explore the function, purpose and usefulness of the SIEF. We have asked and answered three questions:
   a. *What are the policy objectives of a second injury and enhancement fund?*
   b. *Does the current policy fit with these objectives?*
   c. *What is the best model for a second injury and enhancement fund in the Province of Ontario?*

Primary Interest Must Be One of Equity

1. The Board's primary interest, and ours, must be the same - equity. As the funders, one of our paramount objectives is to promote *equitable* employer accountability.
2. It must be clearly understood that the SIEF adds no additional costs to the system. The SIEF is simply a mechanism to pool liability, and allocate financial accountability. SIEF "expenditures" are not additional expenditures.
3. The primary policy objective of the SIEF is to promote equity.
4. The SIEF is not viewed as a cost cutting measure by employers. Employers continue to view state of the art accident prevention programs as the key ingredient to cost reductions, with reinstatement and rehabilitation actions being second. ***SIEF is about equity - not cost reduction***.
5. SIEF is very complimentary to experience rating. *In fact, in the absence of SIEF, experience rating actually becomes quite unfair*.
6. In 1988, twenty-one percent (21%) of lost time injury ["LTI"] claims were incurred by individuals older than 45 years of age, whereas by 2007, those older than age 45 represented forty percent (40%) of the total LTI claims mix.[16] This represents a doubling of the claims mix represented by older workers which intuitively, would lead to a greater involvement of pre-existing or underlying conditions, the very triggers for the application of the SIEF.
7. Moreover, from 1998 to 2007, "sprains and strains" grew from approximately forty percent (40%) of total LTIs to forty-nine percent (49%), an increase of over twenty-two percent (22%) with the most dramatic increase occurring since 2003.[17]
8. This very admittedly cursory review nonetheless supports the proposition that the noted increase in the utilization of the SIEF is not only expected and consistent with the core policy objectives of the SIEF, but is a reflection of a change in the mix of claims trends over the past two decades, a proposition which attracted no attention from the consultant.

[16] **Source:** Workplace Safety & Insurance Board ["WSIB" or "Board"] Annual Report Statistical Summary, 1997, Table 4 (p.7); 2007 WSIB Annual Report Statistical Summary, Table 5 (p.11).
[17] **Source:** 2007 WSIB Annual Report Statistical Summary, Table 8, Lost Time Claims by Nature of Injury or Disease (1998-2007), p. 13

Our overall position on the Second Injury and Enhancement Fund is:

1. The SIEF remains valid - it promotes employer equity and ensures fair employer accountability.
2. The SIEF is an essential insurance component to the WSI system.
3. We strongly support the continuation of the SIEF.

Focus of Our Submission - The Policy Objectives of SIEF a Second Injury and Enhancement Fund

1. Originally the use of a "Second Fund" in Ontario appears to be premised only on the desire to encourage employers to hire disabled workers. By Board order dated December 27, 1945, the "Second Injury Fund" was formally constituted. That Board order read in part:

   > **The Board orders that a Second Injury Fund be established. Where a workman has a second or subsequent injury which combined with a previous injury or disability causes costs in addition to the normal cost of such subsequent injury, the additional costs, on order of the Board, shall be charged to the Second Injury Fund.**

2. The obvious fear or impetus to the policy was that without the establishment of a Second Injury Fund, removing a portion of the assessed costs from an individual employer's cost record, employers would be loath to hire or rehire workers with a recognized permanent disability.

Expanded Basis of SIEF - Equity

1. By the late 1960s and early 1970s the basis of the policy had implicitly expanded to include equity or fairness considerations. *It is our opinion that the theme of equity has remained as the chief policy behind SIEF since that time*.
2. In comments made by the Honourable Mr. Justice McGillivray, in his report of **The Royal Commission In The Matter of the Workmen's Compensation Act**, dated September 15, 1967, and as evidenced by a Board Order dated March 25, 1970, it was recognized that a prior condition, which had not been disabling, could precipitate a disability which was compensable, and that in this type of situation Second Injury Fund relief should be granted.
3. The Honourable Mr. Justice McGillivray stated in his report:

   > **I recommend that in all cases where compensation may involve activation or aggravation of a pre-existing condition a portion of the compensation awarded be paid from the Second Injury Fund. (emphasis added)**

4. While the genesis of this shift in approach was the policy issue of employment for the disabled, the argument and recommended solution actually was one of employer equity.

Board Recognizes Equity as Basis for SIEF Relief

1. While the general theme of employer equity for SIEF was introduced in the late 1960s and early 1970s, the foundation of this theme was revisited, confirmed and expanded in the late 1970s.
2. The equity basis for relief under the "Second Injury and Enhancement Fund" (renamed from the Second Injury Fund) was recognized by Dr. William J. McCracken, Executive Director, Medical Services Division, and Mr. William Kerr, Executive Director, Claims Services Division, in their joint Inter-divisional Communication to the Board dated June 1, 1978. That document recommended that the Board Order of March 25, 1970 be rescinded and that a new policy on the application SIEF be approved.

3. In reference to the proposed policy Dr. McCracken and Mr. Kerr stated:

> The basis on which financial relief is given to the employer is clear and provides for equitable transfers to the SIEF.
>
> The Board followed their recommendation and approved the new policy on November 3, 1978.
>
> This policy, as opposed to its predecessor clearly indicated not only that the pre-existing condition need not be disabling, but that it need not be symptomatic.

Page six of the new policy read in part:

> The medical significance of a condition is to be assessed in terms of the extent that it makes the employee liable to develop disability of greater severity than a normal person. There need not be associated pre-existing disability...
>
> Examples:
>
> Asymptomatic spondylolysis demonstrated on x-ray....

4. This change clearly reflected a focus on the equity basis for SIEF relief. The primary interest of the SIEF emerged as one of equity versus employment for the disabled.

5. ***Conclusion*** - Clearly then, the policy objective of the SIEF is one of equity. This has been and continues to be the core focus of the SIEF. While it is our view that there are subsidiary benefits, these are not the principal reasons for the maintenance of the program. The principal reason is employer equity.

The Need for Employer Equity

1. The need for employer equity in a no fault workers' compensation scheme is self-evident.

2. No fault ensures entitlement regardless of blame. "No fault" does not mean direct employer accountability for all WSI costs. The principle of collective liability certainly speaks against this.

WSI Based on Collective Liability

1. WSI is fundamentally based on the principle of collective liability. Essentially, it is an accident insurance system for both employees and employers.

2. Theoretically, there are two main criteria to be considered when setting insurance rates:

   the risk factor or circumstances out of the insured's control; and,
   costs of claims made against the insurance fund.

But, Ontario System Not Purely Collective Liability

1. However, if the Ontario WSI system was based on a pure model of collective liability, then all employers would be assessed the exact same rate of premium notwithstanding the nature of their industry or their individual accident experience record. Under such a model, there would be no need for SIEF since no individual case would influence the employer's record.

2. While such a model would be true to the principle of collective liability, it greatly offends any notion of employer equity. To satisfy the objective of equity while maintaining the principles of collective liability, the competing interests of employer accountability and appreciation of individual risk must be balanced.

Need For Balance of Collective Liability and Individual Risk

1. The Ontario WSI system sets an individual employer's premium through an integration of the risk of the industry in which he is engaged (the premium rate), and the risk of the specific company (experience rating).
2. Overall, this is a sensible approach to balance the requirement for a collective liability with another competing policy theme - that of employer accountability.

Employer Accountability Instils Motivation to Prevent Injuries

1. It is generally accepted that if an employer is accountable for WSI costs, then there is created a motivation to keep those costs to a minimum.
2. This motivation transcends into positive behaviour through more effective accident prevention programs and thus, lowering the claims demands on the system. The result - fewer claims and lower costs. Experience rating serves this objective.
3. But - there must be a mechanism to balance competing interests.
4. If industry is separated into various classifications to reflect risk, and premium rates are determined by performance, then there must be some type of safety valve operating to ensure a safeguard against aberrant factors.
5. Second injury funds provide a check in the system to ensure that employers who have workers with pre-existing conditions are not unfairly burdened by costs over which they have no control.
6. ***Conclusion*** **-** Equitable employer accountability is an essential component to the WSI system. Our elaborate classification system coupled with experience rating serves this objective well. However, accountability must as well be equitable. SIEF assists in achieving this.

SIEF is compatible with and complimentary to Experience Rating

1. The safety valve provided by SIEF is most important when an employer is part of an experience rating program.
2. It is accepted that a primary objective of experience rating is to improve equity in the distribution of WSI costs.
3. While the SIEF and experience rating both promote equity among employers, the policies are inherently different. SIEF is designed to limit the effect of circumstances over which the employer has no control, while the intent of experience rating has been to motivate the employer to improve management over safety and reinstatement practices - areas where the employer is undeniably capable of more effective control in the workplace.
4. The foundation of experience rating is employer accountability, with premiums being more closely linked to employer performance. The objective is twofold - to ensure equity (those that cost more pay more), and to motivate (no accidents - no costs).
5. Inherently implied is the concept of prevention - an employer should be held accountable for the preventable injury.
6. If it is a principle of the WSIA that cost accountability promotes positive safety performance by influencing corporate behaviour, and that an employer's accident record is reflective of that employer's accident performance (positively or negatively), then it makes no policy sense to hold an employer directly accountable for costs of a claim over which the employer had no control

(and alternatively, not hold the employer accountable for the costs for which the employer was responsible).

Weiler Supportive of Concept

1. In Professor Weiler's 1980 report to the Ontario Ministry of Labour, there is no mention of any incompatibility between the SIEF and experience rating. In fact, in his discussion of experience rating, Professor Weiler made the following point:

   > Distributing the random cost of industrial accidents from the individual firm to the industrial group - sacrifices nothing of real value in the preventive function of experience rating.

2. This statement indicates that it highly unlikely that Professor Weiler would agree with a sweeping generalization that the SIEF would somehow undermine the purpose of experience rating.

3. As the precision and power of the experience rating system increases (as in the case of the NEER and CAD-7 models), the requirement for the safety valve is enhanced.

4. It is not only false that experience rating and SIEF are not compatible; the truth is that they are inseparable.

The Appeals Tribunal has long recognized the equity basis for SIEF relief

1. In ***Decision 182*** the Panel recognized that fairness or equity is the basis for the current application of SIEF. It is:

   > A fund for the purpose of relieving employers in a particular class from the "unfair burden" of assessment related to disabilities, the severity of which or the duration of which has been increased by the existence of a pre-existing condition. It calls this special fund the "Second Injury and Enhancement Fund" and it charges to that fund the proportion of the costs of compensation benefits or medical assistance which it believes to be fairly attributable not to the compensable industrial injury itself but to a pre-existing condition.

2. The Panel in ***Decision 431/89*** had the following comments concerning the principles behind SIEF.

   > It is clear...that <u>the policy is driven primarily by equity</u> and employment considerations (i.e. to relieve employers from a financial burden where a pre-existing condition enhances a compensable disability and to encourage employers to employ disabled workers).
   >
   > .....
   >
   > The equity considerations relate primarily to situations where the worker's recovery period is unusually long and probably attributable to some complicating factor other than the compensable accident.

3. In the absence of SIEF, any experience rating model becomes unfair, a position aptly demonstrated in the few decisions which follow:

   > An employer was provided with 100% relief under the SIEF when a worker, who was a transport driver, "*got dizzy and blacked out*" while approaching a stop sign sustaining serious injury upon rear-ending another truck. The underlying dizziness was caused by a non-occupational disability and which led directly to the accident thus qualifying the employer for 100% SIEF. ***But for the SIEF, that particular employer would have been unfairly held to account for (in 2009) up to $375,500 cash*** **[WSIB Decision]**.
   >
   > In another case involving a transport driver, the driver went over a minor bump in the road but as a result of a serious and significant underlying condition sustained a catastrophic injury resulting in permanent total disability. The injury was deemed to have arisen out of and occurring in the course of

the employment and thus was compensable. In the absence of the SIEF the employer would be held to account for costs up to $375,500 cash. The employer was relieved of 100% of the cost of the injury, a fair and just result [**W.S.I.A.T. *Decision No. 138/98***, (September 21, 1998)].

A blind worker working in a retail outlet sustained serious injury while attempting to carry product upstairs. As the blindness was the cause of the injury, notwithstanding that the injury arose out of and occurred in the course of the employment, the employer was appropriately relieved of 100% costs of the claim [**W.S.I.A.T. *Decision No. 376/98*** (August 18, 1998)].

A worker with serious underlying pre-existing knee disabilities sustained a significant permanent aggravation through a minor employment-related event when he "stepped on an air hose at work". The employer was relieved of 95% of the costs under the SIEF. [**W.S.I.A.T. *Decision No. 526/08*** (April 1, 2008)].

4. Hundreds of similar examples could be elicited, however, the point demonstrated is clear and simple – in the absence of the SIEF, employers would be unfairly held to account for significant costs arising out of minor workplace events.

5. Notwithstanding that the worker would be duly entitled to full loss of earnings benefits attributable to an aggravation of an underlying condition, it would be callously inequitable to hold an employer to account for costs over which the employer did not, in any material way, contribute.

6. ***Conclusion*** **-** experience rating not only is compatible with SIEF, it is actually flawed without it.

The Current Model of SIEF is Essentially Fair

1. The current Second Injury and Enhancement Fund is simply an actuarial mechanism by which a share of costs assigned to individual employers, rather than to a class generally, are equitably spread among all rate groups in Schedule 1.

2. The current model of SIEF satisfies two basic requirements dictated by equity, as discussed earlier.

3. First, it recognizes that a pre-existing *condition*, as opposed to a pre-existing *disability*, can influence, i.e. prolong or enhance a period of disability resulting from an "accident".

4. Second, it attempts to quantify the degree to which the pre-existing condition influenced that disability, and transfers from the individual accident employer to the fund that portion of the assessed costs that are adjudged to be attributable to the pre-existing condition.

5. The policy proposed by Dr. McCracken and Mr. Kerr referred to earlier, and approved by the Board on November 3, 1978, introduced a matrix to try to simplify and clarify the calculation of the appropriate cost transfer from the individual employer to the SIEF.

6. The matrix sacrifices little in the proper and equitable application of SIEF while providing an efficient administrative tool.

7. ***Conclusion*** -- The current model of SIEF is fair.

SIEF Compatible with "Thin Skull" Doctrine

1. The expansion of the basis of SIEF to include equity considerations was mirrored by the introduction and development of the concept of "thin skull" in the WSI system. This introduction can also be seen to be driven by considerations of equity.

2. The Honourable Mr. Justice W.D. Roach in his **Report on the Workmen's Compensation Act** dated May 31, 1950 clearly identified the thin skull doctrine and recommended a change in Board Policy to protect the worker with a "thin skull".

3. The Board eventually responded to Mr. Justice W.D. Roach's concerns. Until 1964, where there were pre-existing conditions, it was the practice of the Board to make awards upon the basis of 50 per cent of the established disability. A Board order of December 2, 1964 ensured that workers with pre-existing disability would receive a full award with a portion allocated to the Second Injury Fund, clearly addressing two inequities in the system. The first, the previous policy of cutting benefits in half for a worker with a "thin skull" had been unfair. The second was to allocate a portion of the entitlement to the SIEF.

4. The introduction of the "thin skull" principle to the WSI system and the resulting application of SIEF is an example of how that system attempts to balance the interests of workers and employers.

5. As stated by the Panel in **W.C.A.T. *Decision 431/89***:

> It must be remembered that the compensation system in the Province of Ontario is a no fault system, fully funded by employers, with the objective of delivering equitable benefits to the worker within an equitable financial framework for the employer.
>
> ***As shown in the "thin skull" situation, SIEF is an indispensable balancing mechanism***. This balancing mechanism should today apply in every type of case where a pre-existing condition prolongs or enhances a disability, even where, such as in psychological condition of chronic pain cases that pre-existing condition can be more specifically described as a pre-disposition to develop a certain type of disability. (emphasis added)

Equity or Fairness Considerations Linked to Degree of Control

1. Both the WSIB and Appeals Tribunal, in recognizing the need for equitable relief to employers where a pre-existing condition has enhanced or prolonged a compensable disability, have implicitly recognized that an employer has no control over a pre-existing condition.

2. An employer, in contrast does have some control or potential control over whether a compensable injury occurs. Employers dictate what work is to be done, and have a very strong influence on how that work is eventually performed. Employers clearly have control over the safety of the work environment and workplace.

3. A pre-existing condition which enhances or prolongs a compensable disability is an aberrant factor which an employer cannot influence. SIEF is a safety valve which ensures that this aberrant factor does not bias an employer's compensation record.

4. ***Conclusion*** -- SIEF is clearly compatible with the thin skull doctrine.

Additional Considerations

1. In his evaluation of second injury funds (***Workers' Compensation Benefits: Adequacy, Equity and Efficiency*; L.W. Larson and John F. Burton**) Larson explained:

> The second-injury fund principle recognizes that the full cost of disability sustained by the previously handicapped person should be borne by the workers' compensation program, but attempts to distribute equitably the burden by spreading the extra costs incurred as a result of the prior impairment rather than let them fall on the last employer.

2. Larson also made the following recommendations:

   - all jurisdictions should have second injury funds;
   - the funds should provide broad coverage;
   - a threshold level of severity for the previous impairment should be established;
   - funds should be fully publicized in order to gain optimum effect;

The Recommended Approach

1. We restate our support for the principles behind the SIEF. It is our view that the SIEF is valid, and represents an essential feature of the WSI system. We are fully supportive of employer accountability and endorse the theoretical models for rate classification and experience rating. Accountability and equity are not mutually exclusive concepts - in fact - they are clearly linked.

2. SIEF promotes employer equity. We recommend the following:

    a. That the SIEF continue to be supported.
    b. SIEF should be applied where:
    c. there exists a pre-existing condition the pre-existing condition has contributed to the causation or duration of an impairment

3. The present matrix for determining degree of accountability is continued.

4. That the SIEF be codified in ***Workplace Safety and Insurance Act*** with appropriate regulations.

5. That the Board automatically review every claim for potential relief under the SIEF at regular intervals. We strongly recommend that the Board take a more pro-active and interventionist role in the identification of cases requiring SIEF.

Canadian Manufacturers & Exporters

CANADIAN MANUFACTURERS & EXPORTERS

SUBMISSION TO:

THE WORKPLACE SAFETY & INSURANCE BOARD'S

RATE FRAMEWORK MODERNIZATION CONSULTATION

October 2, 2015

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CANADIAN MANUFACTURERS & EXPORTERS SUBMISSION TO THE WORKPLACE SAFETY & INSURANCE BOARD'S RATE FRAMEWORK MODERNIZATION CONSULTATION OCTOBER 2, 2015

INTRODUCTORY COMMENTS

Canadian Manufacturers & Exporters (CME) appreciates the opportunity to provide input into the Workplace Safety & Insurance Board's (WSIB) Rate Framework Modernization Consultation.

By way of background information regarding CME, it is Canada's leading trade and industry association and the voice of manufacturing and global business in Canada. The Association directly represents more than 10,000 leading companies nationwide. More than 85% of CME's members are small and medium-sized enterprises. As Canada's leading business network, CME, through various initiatives including the establishment of the Canadian Manufacturing Coalition, touches more than 100,000 companies from coast to coast, engaged in manufacturing, global business and service-related industries. CME is also engaged in developing a manufacturing strategy for Ontario.

Given the manufacturing sector's contributions to the economy of the province, this strategy is important in order to help us retain and grow this important sector. CME's membership network accounts for an estimated 82% of Canada's total manufacturing output and 90% of our manufacturing exports. It is also important to note that for every dollar invested in manufacturing, it generates $3.25 in total economic activity. With the largest economic multiplier of any sector, manufacturing and exporting is on the cutting edge of innovation with approximately 75% of all private sector research and development taking place in the sector.

About Canadian Manufacturers & Exporters:
• 10,000+ members (approximately half are in Ontario)
• Businesses in all sectors of manufacturing and exporting across Canada as well as supporting services
• 75% of Canada's industrial output & 90% of exports
• 92% of members are small/mid-sized companies
• Chair of the Canadian Manufacturing Coalition • 47 industry associations across Canada/US manufacturing
• National office in Ottawa and divisions in every province

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About the importance of manufacturing:

- Direct economic impact • A $270 billion business
- 13% of GDP
- Directly employs approximately 800,000 Ontarians (1.5 million indirect)
- A critical anchor for real wealth creation and innovation • Every $1 in
- manufacturing output generates an average $3.25 in total economic activity
- 65% of merchandise exports

Background To The Consultation

On March 31, 2015, the WSIB embarked on the next phase of its review of its classification and premium rate setting review which began in 2011, and have included reports from Professor Arthurs and Mr. Douglas Stanley.

In his final report, entitled “Pricing Fairness (2014)’, Mr. Douglas Stanley called for the creation of a new “Integrated Rate Framework” which would change the manner in which employers are classified and how their premium rates would be set.

As the next steps in the consultation process, the WSIB tabled a proposed preliminary Rate Framework for discussion with stakeholders in March of 2015. The WSIB’s objective is to create a premium rate framework which would ensure that: everyone paid their fair share for workplace injury costs, rate classification and premium setting was understandable for employers, and better predictability of rates is achieved.

In previous submissions on this issue, CME has stated that the:

- Consultation should firstly focus on the establishment of a rate framework, with the inclusion of the critical functions of employer classification and rate group structure, premium rate setting, and experience rating programs. Once this framework is developed, the details within each function can then be addressed.
- We agreed that the:
    - current Standard Industrial Classification system is outdated and an alternative approach is needed.
    - The North American Industry Classification System should be reviewed to determine its appropriateness within the Ontario system, and some modeling of this alternative should be undertaken as part of this review.
    - The existing premium rate structure should be maintained. This structure is consistent throughout Canada, and consists of: cost of new claims; other administration and overhead expenses; and amortization of the unfunded liability and other gains and losses.

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- It is critical that Experience Rating be maintained and its purpose should remain as enhancing the pricing equity regardless of whether it has an impact on accident prevention or return to work.
- There should be a movement towards Prospective Experience Rating. This move would provide for a rate more reflective of an employer's rate based on its past claims cost experience relative to the claims cost experience of the rate group.

CME Position

First, CME would like to thank the WSIB for the very thorough consultation process which it has created for discussions for the modernization of the rate framework. Their consultation process, and specifically the access it has provided to stakeholders for obtaining additional data, has been critical to our understanding of how the proposed approach would impact various segments of the employer population. The undertaking of the creation of a new rate classification and premium rate setting process cannot be rushed.

As a guiding principle, CME continues to believe that, from a governance perspective, successful financial operation of the Ontario workers' compensation system first requires improved adherence to principles of sound governance. This means that interference by government for political purposes must cease. Governments must cease their use of the workplace compensation system for political gain by the enhancements of benefits, retroactively and without any evidence of inadequacy of entitlements.

CME supports the position as articulated by the Ontario Business Coalition (OBC), attached for your reference. We continue to review all the data and rate framework details with the assistance of our actuarial consultant, through our participation on the Ontario Business Coalition.

As OBC's submission deals with many of the actuarial issues raised in the proposed new framework, CME submits the following additional comments to the issues identified by the WSIB in their July 2015 "Rate Framework Modernization Update" (the "Update"). This Update focuses on providing an update on 7 key recurring themes which have arisen during the consultations which have taken place: Risk Disparity/Expanding # of Industry Classes; Second Injury Enhancement Fund (SIEF); Long Latency Occupational Disease (LLOD); Weighting Experience Window; Graduated Risk Bank Limits; Surcharging Mechanism, and Rate Group Analysis. As well, we will also comment on the issue of Catastrophic Claims Costs.

Rate Disparity/Expanding the Number Of Industry Classes

The proposed Rate Framework seeks to replace the current classification system class structure, consisting of 155 Rate Groups and 840 Classification Units, with a structure adapted

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from the 2012 North American Industry Classification System ("NAICS"). Under the proposed preliminary Rate Framework the WSIB has proposed the creation of 22 industry classes to account for what may be very different risk or claims experience within the proposed 22 industry classes. It has committed to an examination of the proposed classification structure from 22 industry classes to identify where risk disparity may exist, while balancing the need for a large enough industry classes to ensure the resulting premium rate does not bring premium rate volatility from one year to the next. CME believes that the OBC analysis reveals that there is potential risk disparity which may require additional study although we recognize that in some cases the risk disparity will be addressed at an employer level. Additional work on this issue is certainly needed.

CME supports the use of the proposed use of "NAICS" as the new structure for classifying employers. However, we are of the view the view that 22 industry classes being proposed are too few. We are pleased that your Risk Disparity Analysis has led to an increased number of classes from the originally proposed 22 to 32. However we believe that 32 may still be too small a number of industry classes and further analysis is needed to land on the correct number needed.

Additionally, the WSIB review determined that $2 billion in insurable earnings per year for each sector provided a level of predictability "that can be relied upon to predict future outcomes and therefore fairly and accurately set premium rates" (Page 7, Rate Framework Reform, Paper 1). The WSIB has since announced that the level would be reduced to $1 billion. The CME is concerned that the $1 billion level continues to be too high. It is our understanding that most Boards are currently using levels in the millions, and none are at the billion dollar levels. We believe that this issue requires much more review and discussion.

On the issue of multiple business activities, the WSIB's proposal to group employers with multiple business activities in a singles class according to their predominant business activity, which the WSIB defines as the class that represents the largest percentage of the employer's annual insurable earnings. Although CME believes this is the correct approach for determining "predominant class", the issue has been raised that the approach may force certain businesses to incorporate where in a fact they operate very distinct businesses. We urge the WSIB to revisit this issue.

We support using a rolling three years of insurable earnings information to determine which class an employer would belong to when transition existing employers with one or more WSIB accounts to the new classification scheme.

Experience Rating

The WSIB is proposing the replacement of the current retrospective approach to experience rating with a prospective approach. With a retrospective approach, all employers pay the same premium rate and receive either a rebate or surcharge depending on whether their actual costs for a given injury year exceeds their expected claim costs. In a prospective plan, past experience is reviewed and the upcoming year's premium rates are adjusted accordingly. A

further issue relating to Experience Rating is the window used for determining claims costs. Currently, the WSIB uses a 4 year window.

The proposed new window would be increased to 6 year's worth of costs. The final issue of consideration is that of the weighting of claims costs by adding more weight to the claims and insurable earnings experience on the more recent years (years 1-3) and less weight on the historic years (years 4-6).

CME has, and continues to support the inclusion of an Experience Rating programs for employers. We also strongly support, and have advocated for, the move to a prospective approach to experience rating. We agree that our preference is to have the premium rate at its proper level versus waiting yearly to receive a rebate or be subject to a surcharge. Alongside the implementation of prospective Experience Rating is WSIB's implementation of a certificate program which would continue to provide employers with the details of their actual cost savings from their participation in a Prospective Experience Rating System in order that they continue to monitor their progress on a yearly basis.

CME also agrees with increasing the window to 6 years as this would coincide with the benefit structure, and specifically the 72 –Month Lock-In (Loss of Earnings) provisions in the Workplace Safety & Insurance Act (the "Act"). It is critical that employers pay their fair share of costs and anything less than a window which coincides with the most costly of entitlements, such as LOE benefits, would result in all employers paying for those costs unrelated to their workplace injuries.

An issue we urge the WSIB to review is the timeliness of the cost statements / reports which employers are provided. The information is not at all timely. We recommend the WSIB implement an online process where employers can log into their accounts and call up the information for themselves.

Regarding the issue of the weighting of experience, we support giving more weight to the most current years. One approach could be weightings as follows: 30% for year 1, 20% for years 2 and 3 and 10% for years 4-6. Different combinations are possible and should be pursued. For CME, however, the practice of weighting the most current three years more heavily than the last three years is the critical piece.

Second Injury Enhancement Fund

The WSIB is proposing the elimination of the Second Injury Enhancement Fun ("SIEF").

CME is of the view that some form of cost relief if required under the new Rate Framework. The current statements provided to employers do a poor job in outlining the various components of claims costs. There is a perception that there exists a separate fund where SEIF relief is charged when in fact employers are actually paying that cost themselves. The lack of detailed billing details does little to give employers a better understanding of the actual components of their claims costs. Enhanced billing details are necessary when the new system rolls out.

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An additional issue which factors into the continuation of SIEF is the implementation of the WSIB's new pre-existing conditions policy, which should provide more clarity as to true costs relating to the work injury versus pre-existing conditions not related to a workplace injury, thereby reducing the reliance on such a mechanism for cost relief.

Regarding the issue of the continuation of a SIEF, CME recommends that some form of SIEF relief continue to be available for employers, and that classes be provided with the opportunity to opt in and out of coverage.

Long Latency Occupational Disease

The WSIB assigns long latency occupational disease ("LLOD") claims to the accident employer based on the date of accident or the date of diagnosis. The WSIB also excludes claims costs or claim frequency associated with LLOD for all experience rating calculations. The WSIB is proposing to continue with the current assignment of LLOD claims as collective cost that is pooled at the class level. CME supports the WSIB's recommendation and the allocation of costs at the class level and not at the industry level, and the continued exclusion of costs or frequency for experience rating calculation purposes.

CME also recommends that the next phase of the Rate Framework consultations include a discussion of apportionment of costs. This approach is currently available in other Canadian jurisdictions and should be given consideration for application in Ontario.

What was meant by the recommendation that CME also recommends that the WSIB consider using a 10% threshold for Noise Induced Hearing Loss Claims with any amount lower than 10% being charged to the employer.

Graduated Risk Bands

Under the WSIB's proposed program, employers would see the Class Target Premium Rate adjusted based on the risk that the employer brings to the system. This adjustment would result in an Employer Target Rate for the upcoming calendar year that is no longer subjected to surcharge or a rebate later in the following year. An employer would be placed in a risk band relative to the Class Target Premium Rate based on their risk profile, and grouped with other employers from their class that share a similar risk profile.

CME supports the WSIB's recommendation regarding Graduated Risk Bands. We also believe that larger employers should have the ability to move more than three risk bands. However, we believe more examination of the risk band implications is required in the next phase of the consultation.

Surcharging Mechanism

An issue raised by stakeholders during the consultations is that of a special surcharge mechanism for employers with consistently poor performance. CME supports this implementation of this approach as it would place greater employer responsibility for those

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claims costs on the individual employer rather than have the industry as a whole bear those costs. However, CME does not support the use of the Workwell Program as the appropriate program for assisting these employers to improve their performance. We support an added adjustment of up to three times the Class Target Premium Rate. This limit would protect the employer from unexpected catastrophic claim costs in a specific year.

Per Claim Limit

The WSIB uses per claim limits as a mechanism to ensure that premium rate adjustments do not overly charge employers for having a single extremely high cost claim. It provides premium rate stability for employers especially in cases where a catastrophic claim occurs. The WSIB is proposing a graduated per claim limit approach.

CME believes that more discussion and analysis is needed before we can comment on this issue.

Fatality Policy

CME continues to object to the use of the Fatality Policy which assigns immediate fault to employers whose company experiences a fatality. We have always maintained that this policy goes contrary to the original "No Fault" premise on which the workers' compensation was established. We do not believe that these types of claims should be treated any differently than the other claims in the system. CME strongly recommends that this policy be repealed.

CME recommends the WSIB use the average claims cost of a fatality for those employers who experience a fatality.

Construction Executive Officers' Premium Rate

Since Construction executive officers must now be covered mandatorily as employees for workers' compensation purposes, it seems unusual to have a special rate within an entity for these employees. It certainly will encourage more employer groups to request special rate concessions for employees who apparently are not in the "hands on" business activities. From a fairness perspective, we believe that the whole premise of premium rates is that the same rate applies to all employees.

Additional Comments

Government intervention, by way of legislative changes applied retroactively to claims without any regard for the system's ability to absorb such additional costs, has been the main contributor to the increasing unfunded liability in this province which reached over $14 billion. Although current management at the WSIB has brought in many changes to ensure costs are contained, and entitlement is extended for work related injuries only.

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As an insurance company, we would also recommend that the WSIB consider approaching the government for legislative amendments allowing for a deductible, waiting periods and apportionment.

As previously advocated, we also maintain that the WSIB should be transferred out of the control of the Ministry of Labour and under the control of the Ministry of Finance. Also, an arm's length agency should be created to consider any future needs for expanded entitlements.

All of which is respectfully submitted.

October 2015

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CMPA
Canadian Media Production Association
Screen-based entrepreneurs

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Response to the Workplace Safety and Insurance Board's Proposed Preliminary Rate Framework
Submission to the WSIB Consultation Secretariat
October 2, 2015

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1. Executive Summary

The Canadian Media Production Association (the "**CMPA**") is grateful for the opportunity to respond to the WSIB's Proposed Preliminary Rate Framework Consultation. Our response is intended to provide the WSIB with a better understanding of the unique aspects of the Canadian film and television production industry and to provide insight on how to improve the Proposed Preliminary Rate Framework (the "**Proposed Framework**") so that it creates an effective workers' compensation system for the employers and workers who operate in this exciting segment of the economy.

We are generally supportive of the Proposed Framework as, in our view, it seeks to implement a clear and consistent classification structure that ensures a fair premium for workplace coverage. If implemented, we anticipate that the Proposed Framework will establish greater stability and predictability for all employers, including those in the production industry.

That said, the CMPA submits that the Proposed Framework must recognize each individual production company as a separate corporate entity when determining its applicable premium rate, irrespective of whether it shares the same corporate parent with another production company.

We look forward to working with the WSIB as it continues with this consultative process and would be pleased to speak with the WSIB about any aspect of our submission.

2. The CMPA

The CMPA represents more than 350 companies engaged in the production and distribution of English-language feature films and television programs. We work on behalf of our members to promote and stimulate the Canadian production industry, which represents a major driver of the Canadian economy. For example, in 2013-2014, Canada's production industry generated 125,400 full time equivalent jobs, $7.48 billion in GDP, and $2.45 billion in exports. Moreover, during the last 10 years, Canada's production industry has partnered in over 700 international co-productions worth almost $5 billion.

The Canadian film and television industry is made up of companies of varying sizes that produce a combination of their own proprietary productions and co-productions, service productions and co-venture productions in partnership with or on behalf of international entities, including the major Hollywood Studios.

As a part of its role, the CMPA on behalf of its members negotiates and administers the collective and independent production agreements with the industry's unions and guilds representing talent and technicians. We also appear before parliamentary committees to give insight into the development of policy, regulation and legislation. Further, the CMPA plays an active and strategic role in presenting the priorities of the independent production sector to the many levels of Government and related organizations concerning matters including labour, broadcasting, funding programs, copyright, taxation and trade. It is on this basis that we respond to the WSIB's invitation for consultation on the Proposed Framework.

3. The Proposed Framework

The Proposed Framework consists of the following three steps:

- Step 1 – Employer Classification

- Step 2 – Class Level Premium Rate Setting
- Step 3 – Employer Level Premium Rate Adjustment

(a) Step 1 – Employer Classification

The CMPA supports the proposed implementation of the NAICS system of classification.

(i) The North American Industry Classification System

The Proposed Framework seeks to replace the WSIB's current employer classification system with a 22 class structure adapted from the 2012 North American Industry Classification System ("**NAICS**") (this is the most recent version of the NAICS, which is updated every five years). The Proposed Framework seeks to have only 22 industry classes based on a NAICS code mapped onto a lettering system of 22 letters.

Under NAICS, production companies would fall under a single classification: "NAICS class code 51 – Class L: Information and Culture". CMPA supports NAICS as a classification system and the proposed class code for production companies.

(ii) Multiple Business Activities

The current scheme groups businesses that perform the same type of work into Classification Units ("**CUs**"). CUs are then placed into Rate Groups based on similar expected risks and rates of injury and illness. Employers can be classified into one or more CUs and may have multiple premium rates.

Under the Proposed Framework, an employer will be categorized into one classification code even if it engages in multiple businesses. The classification will be based on the employer's "predominant business activity" or "predominant class". By implementing the NAICS, an overwhelming majority of employers will have business activities that fall into one singular industry class, despite having multiple Rate Groups in the current system.

The CMPA supports the classification of employers based on their "predominant business activity". The new classification based on a singular industry class will not likely affect the production industry as ninety-nine percent of production companies currently fall under one Rate Group.

(b) Step 2 – Class Level Premium Rate Setting

The CMPA recommends that all production companies benefit from the proposed Class Target Premium Rate, regardless of how long they have been in operation.

The Proposed Framework will create an average premium rate for each of the 22 proposed classes (the "**Class Target Premium Rate**"). The Class Target Premium Rate will be based on the valuation of the following factors: the allocation of new claim costs, the apportionment of the past claim costs, and the allocation of administrative costs for employers in the respective class.

The CMPA supports the implementation of the Class Target Premium Rate as it will result in a significantly lower premium rate for our members. The current premium rate for production companies is $1.09 for every $100.00 of their workers' insurable earnings. Under the Proposed Framework, the Class

Target Premium Rate for production companies will be $0.61, with the average premium rate (based on 2014 data) estimated to be $0.76.

However, the Proposed Framework's implementation of the Class Target Premium Rate will singularly benefit new production companies. We understand that under the Proposed Framework, production companies will be categorized as follows:

Older Production Companies: Companies that have been in operation long enough to benefit from an experiential rating program under the current system (e.g. NEER).	Under the Proposed Framework, the Class Target Premium Rate for these Companies will be determined by considering their past experience and rate (i.e., $1.09) plus or minus the applicable NEER adjustment, depending on whether they had been previously receiving a rebate or a surcharge.
New Production Companies: Companies with no prior experience before the implementation of the Proposed Framework.	Under the Proposed Framework, the Class Target Premium Rate for New Production Companies will be $0.76.
Production Companies that have been in operation for 1-3 Years: These companies do not have enough experience to benefit from a current experiential rating program such as NEER, but have enough experience to not be considered a New Production Company for the purposes of the Proposed Framework.	These companies will transition into the Proposed Framework at their current rate of $1.09.

As you can see from the above, the Class Target Premium Rate in the Proposed Framework for Older Production Companies and Production Companies that have been in operation for 1-3 Years will be based on the current premium rate of $1.09. As such, these companies will not benefit from the reduced Class Target Premium Rate of $0.76. In the interest of fairness, the CMPA therefore submits that when transitioning into the Proposed Framework, all employers use the Class Target Premium Rate, as the base for determining the employer's individual experience rate.

(c) Step 3 – Employer Level Premium Rate Adjustments

The CMPA supports the greater level of stability and predictability afforded to production companies through the Employer Level Premium Rate Adjustments.

The Proposed Framework will eliminate the current experience rating programs (i.e. NEER, CAD 7 and MAP) and replace them with Employer Level Premium Rate Adjustments. This proposed method will prospectively assess employers by considering each individual employer's historical claims experience and actuarial predictability.

The CMPA supports the Employer Level Premium Rate Adjustments. An annual and prospective readjustment of an employer's rates will provide film and television producers with a sense of stability and predictability, both of which are important determinants of success in the production industry.

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4. The Parent/Production Company Relationship in the Proposed Framework

We understand that the WSIB is considering applying to the film, television and digital media industry a method of rate classification similar to that applied to the construction industry. In considering this issue, we respectfully submit that it is not appropriate to compare the film and television industry to any other sector. In the film and television industry, producers incorporate sole purpose production companies to produce individual film or television productions. These sole purpose production companies have their own distinct corporate identities and maintain their own corporation papers, insurance and bank accounts. They exist for legitimate commercial reasons, including for tax purposes, issues concerning limited liability, and financing.

The CMPA submits that the Proposed Framework should recognize the legally distinct nature of the corporate entities operated in the film and television industry and thereby continue to experientially rate each production company individually, without regard to its corporate parent or any other production company. **These corporate structures are integral to the functionality of the film and television industry and piercing them will disturb the underpinnings upon which the industry legitimately and legally operates, thereby placing in jeopardy the economic investment it provides and the jobs it creates.** These corporate entities and the bases for their use have been extensively explored and accepted as entirely legitimate in labour board jurisprudence.[1] Labour Boards have been extremely hesitant to pierce the corporate veil in order to attach the liabilities of a subsidiary to a corporate parent.

At present, the WSIB experientially rates individual production companies without reference to their corporate parents. The CMPA sees no legitimate reason for deviating from this practice when transitioning to the new Proposed Framework. Further, as in Ontario, in British Columbia (Canada's second largest production centre), film and television productions are produced by corporate entities that are legally separate and distinct from their corporate parents. In recognition of the legitimacy of the corporate model used in this industry, **WorkSafeBC has successfully implemented a rate scheme whereby sole-purpose production companies are assessed separately from their parent companies.**

In light of the above, we submit that the Proposed Framework should recognize the individual corporate structures that are found in the film and television industry, and continue to experientially rate each sole purpose production company without reference to its corporate parent.

Conclusion

As set out above, we are thankful for the opportunity to participate in this consultation process. We are optimistic that the Proposed Framework will be a positive step forward as it will provide a more understandable and consistent means of classifying organizations and determining premium rates. Moreover, by adopting the proposals detailed in this document, Ontario's workers' compensation system will more fairly allocate premiums and create a more effective workers' compensation system overall.

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[1] It is a well-established labour law principle in various Canadian jurisdictions that each sole-purpose production company is treated as a separate and distinct legal entity. See for example: Alberta: *Dear Santa Productions Inc and TC, Local 362, Re*, [2013] Alta LRBR LD-009; *Redemption Alberta Inc. and IATSE, Local 212, Re* [2015] Alta. LRBR LD-020. British Columbia: *British Columbia and Yukon Council of Film Unions*, BCLRB No. B448/95; *Shavick Entertainment Inc, Shavick Entertainment Inc. v Motion Picture Studio Production Technicians, Local 891,* [1998] BCLRBD No 258; *Santa Buddies Productions Inc v Space Buddies Productions Inc*, [2009] BCLRBD No 215. Saskatchewan: *Chauffeurs, Teamsters & Helpers Union, Local 395 v Inconvenience Productions Inc*, [2001] Sask LRBR 260.

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I would be pleased to speak with you further on this matter, and may be reached at the coordinates below.

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Council of Ontario Construction Associations

A Submission

In response to

The Workplace Safety and Insurance Board Rate Framework Modernization Consultation

October 2, 2015

October 2, 2015
Council of Ontario Construction Associations
180 Dundas Street West, Suite 2001
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WSIB Rate Framework Modernization Submission

Introduction

The Council of Ontario Construction Associations (COCA) is a federation of construction associations representing more than 10,000 general and trade contractors operating in the industrial, commercial, institutional and heavy civil segments of the construction industry and who work in all regions of the province and employ approximately 400,000 workers. COCA is committed to working with the senior management of the WSIB and with officials in the Ministry of Labour and the provincial legislature to ensure that Ontario's workers' compensation system is sustainable, addresses the needs of both employers and workers effectively and efficiently and serves as a competitive advantage for attracting new business investment and jobs to the province. COCA is the largest and most representative voice for the non-residential construction industry in Ontario.

Since its formation in 1975, COCA has been continuously and very actively engaged in issues that could be broadly classified as "WSIB Reform" and these matters have been always been among this organization's very highest public policy priorities. In the conduct of this work, it is COCA's practice to work with our own members to develop solutions that support success in the construction industry and also to work with other industry associations to ensure the alternatives that we develop on our own fit into a more holistic approach that meets the needs of the broader economy. With regard to WSIB issues, COCA is an active and leading member of the Ontario Business Coalition (OBC) and we support the submissions made by that organization.

COCA is supportive of the general direction of the WSIB's Rate Framework Modernization proposals and we are pleased to provide the following submissions.

North American Industry Classification System (NAICS)

With regard to the classification of employers in Ontario's workers' compensation system, we concur that the current Standard Industry Classification system (SIC) is out dated and should be replaced with the North American Industry Classification System (NAICS). NAICS is already being used by ministries of our provincial government and departments of our federal government, it's used by several other provincial workers compensation schemes, it's widely used by state and national governments throughout North America for a variety of purposes and it's updated every five years to account for changes in economic activities and the emergence of new types of businesses. Because it's so widely used among governments and their agencies at all levels across the continent, sharing and comparing of data among jurisdictions for a wide variety of purposes is made much easier. We agree that the WSIB should migrate to a new employers classification system built around NAICS.

Number of Classes

The WSIB's original proposal recommended that there would only three classes for the construction industry, Classes G1, G2 and G3. However, further study and analysis by the WSIB concluded that Class G3 could be broken out into three separate classes, G3.1, G3.2 and G3.3 for a total of five construction classes. Classes G3.1, G3.2 and G3.3 are fully credible and do not have the broad risk disparity that was present in the original Class G3. Further study of risk disparity present in classes G1 and G2 may conclude that those classes too should be further subdivided into actuarially credible classes with tighter risk disparity profiles. We recommend that this work be undertaken.

Multiple Business Activities

While classifying employers according to their predominant business activity, determined by the relative amounts of insurable payrolls attributable to an employer's various business activities (the largest amount determining the predominant business activity) is by no means a perfect solution, it may be the simplest, easiest to understand and perhaps the best available option. The proposed risk adjusted premium rate setting should take into account the aggregated risks of all the various business activities that an individual employer may bring to the system which should be reflected in the employer's experience and blended into its premium. The various business activities of an employer and their risks should be blended into that employer's premium rate.

There are currently approximately 15,000 employers in the system that are multi rated. Most of these employers will be involved in two or more business activities that are complimentary in nature and the risks associated with these complimentary activities are not widely disparate. However among these 15,000 multi rated employers, there may be a small number that are engaged in two or more totally unrelated, widely dissimilar business activities with widely disparate risks. Consideration should be given to offering special rules or some form of multi rating for such businesses or providing them with assistance to reorganizing their dissimilar business activities under separate corporate banners.

In order to determine an employer's predominant business activity, the WSIB should carefully examine several years of payroll information. The WSIB should review an individual employer's payroll data with a view to determining what is most likely to be the predominant business activity in the next year and in the years ahead. Trends may be evident from the payroll analysis that would identify a shift in payroll from one activity to another. Examining only one year's payroll data will not provide an accurate picture of what an employer's predominant business activity will be moving forward. Several years of payroll information must be used to appropriately determine an employer's predominant business activity.

Temporary Employment Agencies

A good case can be made for some form of multi-rating for TEAs. A solution that deters cost avoidance should be developed through discussions with representatives of that industry. However, as a principle of insurance, claims costs must be assessed against the employer that paid the premium for the affected worker.

Per Claim Limit

Applying the current per claim limit of 2.5 times the maximum insurable earnings ceiling which is currently applied at the Rate Group level, on an individual small employer would be overly burdensome. To provide protection for small employers, we support the implementation of a graduated per claim limit. This would protect the small employer who experienced a single large claim. Large employers are better positioned to absorb. Consideration should be given to expanding the number of incremental steps, determined by employers' predictability, beyond the four in the proposed graduated per claim limit.

Long Latency Occupational Disease

In general, we believe that LLOD claim costs should be excluded from an employer's experience and should be accounted for at the Class level.

There may, however, be rare circumstances where a single employer is clearly responsible for the working conditions that caused an LLOD. Such a situation could involve a worker who worked for only one employer over a long period of years, an employer who knowingly refused to comply with the regulations or legislation of the day which if followed would have eliminated the causes of the LLOD. Under such circumstances, it is justifiable to assess the costs of the LLOD against the employer. This matter may require further examination.

Experience Window for Experience Rating

If the experience window remains at six years, then COCA supports giving greater weight to the more recent years within the six year time period. The more recent years take into account changes that could have been made in an employer's business processes and management systems. One year does not give a sharp enough picture to be predictive of future performance but here or four years would be. An alternate and simpler approach would be to shorten the window to four years.

Second Injury Enhancement Fund

There is near unanimous agreement in the construction industry that some form of cost relief must continue to be available in the new system to construction employers for their workers who bring injuries with them from previous employment. It is absolutely necessary in the construction industry to provide cost relief because of the high mobility of construction workers, especially in the unionized sector.

We acknowledge that there is a cost borne by employers for the SIEF program; it is not free. SIEF cost relief doesn't come from a magical fund that fell out of the sky. Cost relief for injuries inherited from workers' previous employment is paid for through employer premiums at the class level. In some provinces, the cost of SIEF is broken out by Class and industries have the ability to review and assess those costs and make a collective industry-wide determination to opt in or out of the SIEF program. This approach should be studied and considered for Ontario. That said, we believe the construction industry, given the choice, would opt in.

Self-Sufficiency of Classes
Classes should stand on their own and be accountable for the costs bring to the system. Costs determined to be "catastrophic" should be spread over a number of future years for rate stability.

Actuarial Predictability
In setting employer level premium rates, the WSIB should determine an employer predictability factor using insurable earnings, claim costs, number of claims, lost time injuries. the level of protection an employer needs from large rate fluctuations?

Experience Adjusted Premium Rates for Small Employers
The introduction of experience adjusted premium rates for small employers that are excluded from experience rating in the current system is a change that is welcomed by smaller contractors. Experience adjusted premium rates provides smaller employers with the opportunity to reduce their premium rates by improving their health and safety performance. That said however, under the proposed scheme, the ability of smaller firms (smaller firms have little credibility) to significantly reduce their premium rate is highly restricted and the rate they will pay is to the greatest degree influenced by the class average.

Risk Banding
As proposed, each of the five classes for the construction industry will have more than sixty risk bands or price points with a five percent price difference from one risk band to the next. The premium rates that employers will pay in the new system will be determined using of their net premium rates (net of CAD 7 adjustments) over the last three years. This is a reasonable approach to use to transition to the new Framework.
Employers

The 5% increments between risk bands provide more sensitivity to small changes in experience and avoid large premium rate swings that would be caused by larger increments between risk bands. This is a positive feature.

One of the important challenges faced by the WSIB in the development of a new rate setting process is balancing the need for rate stability with the need for responsiveness or put another way balancing collective liability and individually accountability. The WSIB's proposals in this regard are reasonable. Where experience dictates it, an employer will be moved up to three risk bands or 15% in either direction (an employer's rate will be increased as a result of poor experience or reduced as a result of good performance) in a year. An employer's ability to move will be dependent upon its credibility. Small employers have less credibility than large employers and as a consequence they will have limited ability to make significant movements within the range of risk bands in their class. Small firms will find themselves clustered around the class target rate. Despite the fact that some independent and confident contractors would prefer a more responsive system, in the main, the system as proposed

offers smaller firms the protection they need with stable premium rates and a limited ability to improve their rates.

New Employers

There is no way of predicting the performance of an employer that is new to the system because they have no history in the system. Therefore it is reasonable to assess them the class target rate. As experience is developed they should have the ability to move to a rate that is reflective of their experience.

Surcharging Employers

It absolutely reasonable to surcharge employers that consistently display poor health and safety performance, bring unacceptably high costs to the system and who are unwilling to improve. These bad actors must be held accountable for their poor performance. They must not be subsidized by the better performers in their class.

The WSIB should develop metrics to identify poor performers at the earliest opportunity and engage them in a step by step process to guide them to improvement. It has been suggested that employers with claims that are three times the class average should be considered for surcharge. The WSIB should consider ongoing reviews of employers' performance that would enable the identification of employers who are on the track to becoming poor performers at the earliest possible stage in order to make corrective interventions.

Consistent poor performers are not employers who experience a negative incidental "blip" in their performance. Consistent poor performers are those that show predictive evidence that they will inflict on the system disproportionately high costs relative to their class average in the years ahead. With regard to health and safety, the best predictor of future performance is past performance. However the WSIB must be careful not to interpret one year of poor performance as being consistent; there must be an established pattern.

The first step in the process would be for the WSIB to identify employers who appear to be on the track of consistent poor performance. The next WSIB would engage an identified employer, examine the causes of their poor performance to determine there is a pattern of poor management and then to provide guidance and encouragement about how they can improve. This is where a tool such as WorkSafe BC's Employer Safety Planning Toolkit could be used to help employers improve their health and safety performance and find their way into the mainstream. If the employer then procrastinates or refuses to take corrective action, there would then be a discussion about accountability and consequences of not taking steps to improve. The final phase in the process would be the assessment of a series of increasing financial penalties on the employer.

Consistently poor performing employers who, after a program of counselling similar to what we have outlined above, do not take steps to alter the course of their health and safety journey must be held

accountable. They cannot be allowed to inflict the costs of their poor health and safety management practices on other employers in their class. Subsidization of consistent poor performers, who after counselling fail to take steps to change, must not be abided in the system.

Fatal Claims Policy

The current fatal claims policy will be inoperable in the proposed Rate Framework because the policy is tied to the current experience rating programs which will cease to exist in the new Framework. This raises the question of how fatal claims costs should be addressed in the new system where the current policy is inoperable. The costs of fatal claims can vary greatly depending largely upon the circumstances of the deceased and the number of his or her dependants. While there are several options including the full cost method and the graduated claim limits method, it is our view that the fairest approach in assessing the cost of a fatal claim against an employer is to use the average cost of all fatalities. This is the practice followed in British Columbia where the average cost is $210,000.

Conclusion

Before closing, it should be noted that COCA has been extremely impressed with the WSIB's stakeholder outreach program on the RFM file. In particular we recognize the WSIB's Executive Director of Strategic Revenue Policy, Mr. J. S. Bidal, and his team for their responsiveness, their willingness to listen, their openness to different points of view and ideas, their patience, their thorough explanations and their follow-up. Their work has created better informed stakeholders which will no doubt produce higher quality stakeholder input and advice.

The opportunity to provide these submissions with regard to the proposed Rate Framework Modernization is greatly appreciated and we look forward to working with the WSIB on this initiative and others to ensure that Ontario's workers' compensation system is sustainable, addresses the needs of both employers and workers effectively and efficiently and serves as a competitive advantage for attracting new business investment and jobs to the province.

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October 2, 2015

Mr. David Marshall
President and CEO
Workplace Safety Insurance Board
200 Front St W
Toronto, ON M5V3J1

Subject: WSIB Rate Framework Modernization Consultation – CVMA Comments

Dear Mr. Marshall:

The Canadian Vehicle Manufacturers' Association (CVMA) representing FCA Canada Inc., Ford Motor Company of Canada, Limited, and General Motors of Canada Limited, appreciates the opportunity to provide input on the WSIB's Rate Framework Reform. CVMA has and continues to be engaged with the WSIB on funding and rate setting issues, having previously participated in the Funding Review conducted by Professor Harry Arthurs; the Rate Framework Consultation led by Doug Stanley; and, currently, the Rate Framework Modernization. We appreciate the WSIB's ongoing commitment to consulting with employers and other stakeholders as it moves to modernize its rate framework.

CVMA is a member of the Ontario Business Coalition (OBC) and our comments are provided from the auto industry perspective on the various papers supporting the Rate Framework Modernization consultation. Our comments are based on the five papers released in March 2015 with a particular focus on Paper 3: The Proposed Preliminary Rate Framework. Our comments also consider the WSIB update of July 2015 and published materials prepared in response to stakeholder comments received since the release of the papers and as follows.

Based on our review of this preliminary framework, CVMA members would fall under Class F with regard to employer classification. CVMA members operate a number of different workplaces of different sizes and with a wide variety of activities, including administrative offices, research and test facilities, parts distribution facilities, components manufacturing and vehicle assembly facilities. Based on our size and claims experience, CVMA members would be highly predictable under the proposed framework. While CVMA members would rely almost entirely on their own experience and costs under the proposed model for establishing premiums, our comments support the overall objective of designing and implementing a rate framework that is clear and consistent, transparent and understandable, robust and ensures that there is a viable and sustainable workers' compensation system in Ontario.

Overall, the framework provides the transparency needed to allow organizations to understand their costs and premium rates. In this regard, CVMA

- Supports the North American Industry Classification System (NAICS) as the basis for employer classification;

- Supports the three steps for risk adjusted premium rate setting approach – further refinement and discussion may be needed on specific elements and supporting policies to ensure a viable and sustainable workers' compensation system;
- Supports the proposed risk banding approach to minimize volatility of premium rates; and
- Supports moving to a prospective premium rate setting system, adjusting specific employer premiums through a risk adjusted rate setting process.

We are encouraged that the WSIB has indicated that a transition plan for the implementation of the new Rate Framework will be developed. This is important as the system is highly integrated with respect to the employer premium rates, the unfunded liability and the system's sustainability. As part of the transition plan, it would be beneficial to include periodic assessments of the implementation progress to allow for refinements if necessary.

Our specific comments on the consultation papers are below, followed by other related comments.

Paper 3: The Proposed Preliminary Rate Framework

North American Industry Classification System

CVMA supports for administrative purposes the use of the North American Industry Classification System (NAICS) as the basis for employer classification. WSIB will need to ensure that the number of classes is sufficient to ensure fairness. We recognize that further work is being undertaken in this regard and that more than the originally proposed 22 classes could be considered. In August 2015, materials were released and we note that Class F could potentially be divided into a number of smaller classes.

As the WSIB considers subdividing classes to address rate disparity between different activities within the sector, it is important to ensure that the new smaller classes remain predictable, sustainable and self-sufficient through acute or chronic economic downturns. In our experience, some sectors, such as the automotive industry, are subject to cyclical economic patterns, which often result in the reduction of insurable payroll that does not necessarily recover to pre-contraction levels. The WSIB should ensure that as classes are devised, there is sufficient variability among the companies in a class that during an economic downturn self-sufficiency is not compromised, or that rate premiums would require adjustments that negatively impact the competitiveness of the class members.

Multiple Business Activities

We recognize that the proposed approach of grouping employers according to their predominant class is intended to assist in addressing concerns identified with "rate shopping." The proposed approach is acceptable as long as the new premium rate for each company truly reflects the actual experience all of the employees of the employer.

A three-year window for determining an existing employer's predominant class seems appropriate and appears to be consistent with that of other jurisdictions. However, if there is a significant change in activity, for example sale of an entire business division, an employer should be able to notify the WSIB to implement a change in classification effective the next calendar year.

Temporary Employment Agencies

The approach proposed suggests that the premium rate associated with a particular temporary worker should reflect the risk and potential costs with the industry the temporary worker is assigned

and this is appropriate. With specific regard to the premium avoidance cost issue noted in the paper, the responsibility for assessment and payment of its own payroll and premiums must remain with the Temporary Employment Agency.

Class Level Premium Rate Setting

Overall, we support the proposed three-step approach as it is transparent, can be understood by employers and the interrelationships and the linkages are being examined holistically rather than as separate streams.

- *Long Latency Occupational Disease*

Long latency occupational diseases (LLOD) and allocation of associated costs is a complex issue. Costs associated with LLOD should be applied, as it is in the current system, equally as a collective costs. In many cases, it may be difficult to identify and confirm the workplace from which some historical exposures took place, and therefore, it would be appropriate to allocate the cost of the LLOD claim equally to all employers. Also, the original exposure may have occurred before the employers understood the link to the occupational disease and the employer can no longer influence the existing LLOD outcome by introducing new processes.

- *Second Injury Enhancement Fund*

The Second Injury Enhancement Fund (SIEF) has historically been a mechanism utilized to recognize non-work related pre-existing conditions. In this regard, CVMA supports discontinuing SIEF given that the WSIB has put in polices on pre-existing conditions and aggravation basis. With the discontinuation of SIEF, the WSIB should be focused on the proper implementation of the pre-existing condition and aggravation basis policies. WSIB must also ensure that a more thorough upfront investigation is conducted by the adjudicator including a mechanism for employers to provide feedback and historical data supporting the presence of a pre-existing condition.

- *Self-Sufficiency of Classes*

As mentioned previously, self-sufficiency of classes may pose significant risk for classes that are subject to cyclical economic downturns. During a down-turn, total employment in a particular industry may fall, and many jobs may be lost through the supply chain. Many of the jobs may not return to pre-downturn levels and this may impact the self-sufficiency of a class. Should complete self-sufficiency be contemplated, further discussion and analysis is needed to understand the potential impact on smaller or less diverse classes to ensure long-term viability. Also, the WSIB's funding and rate setting policies should include provisions to provide the Board discretion in rate setting including consideration of adverse economic circumstances.

With regard to the questions outlined in the paper regarding catastrophic claim costs, we support allocating the catastrophic claims costs over several years, meaning the Class Target rate would increase on a more gradual basis and to consider the remainder of the costs in future premium rate setting. Costs should be assigned to the specific class, except for LLOD.

- *Experience Rating Off-Balance*

CVMA continues to support a prospective rating approach to replace the existing experience rating programs. The Experience Rating off-balance should be spread across the class.

Employer Level Premium Rate Adjustments

- *Risk Banding*

The proposed risk banding approach appears to be appropriate. CVMA supports a risk band limitation to provide stability and protect against rate volatility.

While CVMA supports using the most recent six years period to determine employer level premium rates, we suggest that the years should be weighted, with more weight being placed on the most recent years to reflect current performance and trends. This would allow rates to more closely reflect the current performance of a company which will lead to a more reactive system where organizations can quickly see the results of their health and safety and return to work efforts. Further analysis of the weighting options and the implications for organizations needs to be undertaken and included in the next round of the Rate Framework Modernization Consultation.

- *New Employers*

The proposal to charge new employers with less than 12 months of experience the class target premium rate is appropriate. As the employers gain experience in the system and become more predictable, they should move into their appropriate risk bands.

- *Surcharging Employers*

CVMA supports a cap on employer level premium rate adjustments. However, employers with costs that are continuously above the cap should pay their fair share as these costs should not be subsidized by the class as a whole. We support the concept of applying a surcharge if an employer's experience is poor, except in the case of catastrophic claims where warranted. A surcharge would provide an incentive to improve performance and ensure continued accountability. A factor which needs to be considered in determining whether a surcharge should be applied is if the employer risk profile in Step G of the rate setting framework is consistently higher than the class risk profile, for example, 200 to 300% over three years.

Paper 4: The Unfunded Liability

With regard to determining allocation of the Unfunded Liability (UFL), we support the New Claims Cost (NCC) method outlined. Responsibility for historic claims is difficult to determine, and this would further complicated by the change in the classification structure. Method 2 may disproportionately attribute costs to remaining class members in sectors that are shrinking.

Paper 5: A Path Forward

In transitioning to a new framework, we support the WSIB's suggested approach of using the average of the last 3 years net premium rate for experience rated employers and using the existing Rate Group premium rate for those that are not experience rated.

Other Comments:

In addition to the specific elements and questions outlined in the five consultation papers, CVMA also offers the following comments that should be considered as part of the Modernization of the Rate Framework.

- *Fatality Policy*

The current Fatality Policy should be changed. We understand that the WSIB will be reviewing the policy and may consider alternative approaches to addressing the cost of fatalities. The concept of using the average cost of fatalities appears to be a reasonable approach, as is the concept of treating a fatality similar to a permanent impairment with regard to costs.

- *Additional Tools for Employers*

With the implementation of the new Rate Framework, we encourage the WSIB to provide additional tools for organizations to understand their rates, and ultimately their potential WSIB costs. This would allow employers to identify on a timely basis activities to further improve their performance. We also suggest that this tool should also be able to identify specific locations or accounts within an

organization. This enables employers to identify particular target areas and activities that are most relevant for each facility or location and supports the Health and Safety activities at each location.

We trust that the comments provided will be considered and look forward to working with the WSIB on further refining the proposed Rate Framework. Should you have any questions regarding the comments provided, please do not hesitate to call me at 416-364-9333.

Yours sincerely,

Yasmin Tarmohamed
Vice President, Environment, Health and Safety

cc: K. Lamb, WSIB
D. Weber, WSIB
J.S. Bidal, WSIB
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File: 53120KHJ2_15
Rate Framework Reform

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September 30, 2015

Delivered by email
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Ms. Diane Weber
Director, Consultation Secretariat
Workplace Safety and Insurance Board
200 Front Street West
Toronto, Ontario
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Dear Ms. Weber:

Re: Rate Framework Reform

Thank you for the opportunity to respond to the Workplace Safety and Insurance Board's consultation regarding Rate Framework Reform.

Who We Are

Electrical Contractors Association of Ontario ("ECAO") has been in existence since 1948. Our members include individual electrical contractors and construction employers who have a relationship with the International Brotherhood of Electrical Workers ("IBEW"). There are currently 11 area Electrical Contractors Associations throughout Ontario that have a relationship with the ECAO.

Throughout its history, ECAO has been involved in the certification of electricians and licensing of contractors. Since the introduction of the Apprenticeship and Tradesmen Qualification Act in 1965, ECAO has represented management on the Provincial Advisory Committee, which advises the Ministry of Training, Colleges and Universities (MTCU). Through the Electrical Contractor Registration Agency, ECAO is a strong advocate of the licensing of electrical contractors on the basis of passing a master electrician examination. ECRA, now an agency of the Electrical Safety Authority, licenses master electricians and electrical contractors. It also creates the master electrician examination.

ECAO strongly believes in competent, well-trained and licensed participants in the electrical trades in Ontario. Part of this responsibility includes active support for health and safety in the workplace.

We believe that dedication to occupational safety is a hallmark of the electrical trades.

General Comments

The ECAO supports the main concepts of the WSIB's proposed Rate Framework Reform.

- The ECAO supports a reform of the employer classification system from the Standard Industrial Code (SIC) to the North American Industry Classification System (NAICS). We will provide further comments regarding our concerns about risk disparity within the specific class into which the electrical trades would fall. In addition, we will comment on the following:

    - Classification of businesses with multiple business activities, including concepts of "business activity", ancillary operations, predominant business activities, and the inclusion of activities of work contracted out.

    - Classification of partners and executive officers of construction businesses.

- The ECAO supports a change to a prospective premium setting model, with retirement of the current retrospective experience rating programs of CAD-7 and NEER and replacement of MAP for small employers. We will provide further comments regarding some of the specific components of the premium setting model including:

    - past claims experience;
    - risk banding including the impact on the small employer;
    - SIEF cost relief;
    - surcharges for consistently poor performers;
    - fatal claim premium assessments;
    - long latency occupational diseases; and,
    - apportionment of the unfunded liability.

The ECAO has concerns regarding the period for and transition into a new Rate Framework. We will address our issues of concern relating to transition at the end of our submissions.

Risk Disparity

The most significant concern of the ECAO with the initial class structure was the significant risk disparity between business activities within class G3. That class as defined by NAICS would place electrical contractors in the same class as some of the highest risk business activities.

We were pleased to then review the WSIB's risk disparity analysis, which was presented in a brief further paper released in August 2015. The ECAO accepts the analysis presented by the WSIB in terms of a potential further subdivision of class G3. While the ECAO members would be unaffected by further subdivision of the other six classes addressed within the risk disparity paper, we endorse a balanced and structured approach as proposed by the WSIB in this paper.

A division of class G3 in three subclasses – G31, G32 and G33 – provides a fair resolution of the risk disparity on a basis that remains consistent with the classification structure set out in NAICS.

The WSIB's recently released rate group analyses was predicated on movement into the original class structure proposed by the Board in Paper 3. It would be helpful if this same analysis was completed

with a view to migration into subclasses G31, G32 and G33. The risk disparity analysis alone demonstrates very significant differences in the target rates for each of subclasses G31, G32 and G33.

A brief reference to current the rate group premiums is also helpful to illustrate this disparity.

ECAO members are classified in Rate Group 704. The 2015 premium rate for this RG is **$3.69**. With the introduction of the three subclasses to class G3, electrical contractors would be classified in subclass **G32**. As a comparator, we have set out the following table which includes other construction activities within construction class G3 based on current rate groups and 2015 premium rates:

Rate Group	G3 Subclass	Business activity	2015 premium rate
707	G32	Mechanical and Sheet Metal Work	$4.16
719	G33	Inside Finishing	$7.51
728	G31	Roofing	$14.80
737	G31	Millwrighting and Welding	$6.90
741	G31	Masonry	$12.70
748	G31	Form Work and Demolition	$18.31
751	G31	Siding and Outside Finishing	$10.25

The disparity in the current premium rates provides a stark illustration of the fairness of the creation of subclasses G31, G32 and G33. Four of the rate groups that would fall into subclass G31 currently bear four of the five highest premium rates. In comparison rate group 704, which includes ECAO members, has the lowest current premium rate of all construction rate groups (aside from non-exempt executive officers and partners). Classifying electrical contractors with demolition, roofing, masonry, and outside finishing would be punitive.

The risk disparity evidence in support of subdivision of class G3 is *overwhelming*. We endorse a subdivision on the basis of the WSIB's risk disparity analysis.

Business Activity

Ancillary Operations

The ECAO endorses an approach to the classification of an ancillary operation to an employer's business that is consistent with the current approach as set out in Ontario Regulation 175/98.

Contracting Out

Our interpretation of section 10 of Ont. Reg. 175/98 may differ from that which appears in Paper 3. Our view is that this section seeks to prevent contracting out an integrated portion of the employer's core business *for the purpose* of achieving a lower premium rate. However, an employer may have a legitimate business reason to utilize other service providers and subcontractors to perform work that might otherwise have been performed within the employer's own corporation or business. An interpretation of section 10 should guard against the former without preventing a legitimate business practice.

The concept of "contracting out" is currently inadequately described within WSIB policy or the regulation. The ECAO is concerned as to how this concept might evolve within Rate Framework Reform.

In the construction industry, subcontracting work is a common business practice. Where tasks are more efficiently and cost-effectively performed by a subcontractor, an employer should be free to subcontract without the risk of an "inclusion" of that subcontractor's business for the purpose to determining the employer's rate class. In our view, the concept of "contracting out" as contemplated by section 10 should only apply in circumstances where the act of contracting out services was for the purpose of thwarting the WSIB from applying an appropriate rate class for the principal's business activity.

We wish to use as an example an employer who is engaged in multiple business activities with material differences in the class target rate. If the employer contracts out part of its core business activity for the purpose of shifting the "predominant class" from one with a higher target rate to one with a lower target rate, it would be fair to include the value of the services contracted out to determine the employer's predominant class. When an employer contracts out for legitimate business reasons unrelated to classification by the WSIB, the contracted out services should have no bearing on the determination of that employer's predominant class. To do otherwise would unfairly limit a business from making legitimate and necessary business decisions. In any event, clear policy guidelines should be developed that assist a decision maker when assessing the purpose of a decision to contract out services.

The ECAO submits that "contracting out" policy guidelines *specific to the construction industry* should be developed. Such a process, in our view, will require further consultation with construction stakeholders.

Multiple Classifications and Predominant Class

We have concerns regarding the implementation of the WSIB's proposal to eliminate multiple classifications for employers with more than one business activity. We submit that further focused consultation will be necessary in relation to this issue.

Given the complexity of the construction industry, and the existence of multi-trade businesses, we request that the WSIB conduct consultation directly with construction stakeholders before implementing change to our industry sector.

Having said that, a significant reduction in rate classes (while respecting the rate disparity within class G3, as discussed elsewhere in our submission), will substantially reduce the number of construction employers who are engaged in multi-class business activities. In the case of ECAO members with multiple business activities, the most common situation involves businesses in the electrical and mechanical trades. Subclass G32 would include both of these trades. As a result, in many cases where our members currently engage in multiple business activities under separate classification units and rate groups, these business activities would be classed together in G32. Thus, the need for multiple classifications would be eliminated. However, this will not always be the case.

As for determining the "predominant class" for the purpose of classification of an employer with multiple business activities, we submit that much more discussion is necessary to explore this proposal. Once again, we request that specific construction industry consultation be undertaken before this proposal is fully designed and implemented by the WSIB.

Our concern with regards to the use of the predominant class (as opposed to multiple classifications) arises in several types of scenarios. For your consideration we set out a few of these issues:

- Within the same corporation, an employer may engage in more than one truly distinct business activity each with a substantial portion of the employer's total insurable earnings, and with markedly different class target premium rates for each such activity. The arbitrary choice of the activity with the largest portion of insurable earnings could result in an unfairly low or unfairly individual target rate for an employer's whose entire risk is far more complex. It is conceivable that the "largest" portion might not be the majority of insurable earnings where there are more than two business activities.

- If that same corporation is divided into separate and distinct corporations for each business activity, it is not clear whether each such corporation would be able to benefit from its own classification. Decisions about whether to go through the process of a business reorganization may well turn on whether an employer can achieve a lower rate.

- If distinct corporations that are not ancillary to each other are allowed to have separate classification, it would be an undue hardship to disallow this for smaller employers who cannot afford the cost of setting up such complex business structures. The WSIB has provided a recent example of this in its most recent September consultation update.

- Business activities with onerous rates but smaller proportions of insurable earnings could conceivably be combined with those with low rates and larger proportions of insurable earnings. Such a business structure could allow some employers to avoid the most onerous rates.

- The impact of an especially large multi-activity corporation could be felt throughout an entire class. For example, consider an employer with two separately classed business activities – the predominant activity in a class with a low target rate and the subordinate activity in a class with a very high target rate. The employer would be assigned to the predominant class. The high claim costs arising from the subordinate activity would then be part of the class experience of the class with the lower risk. Every other employer in the lower risk class would then be saddled with a class experience that includes the high cost claims of a completely different business activity.

- Reasonably equally proportioned business activities may result in fluctuation in the classification of a multi-activity business, depending on the year to year proportion of insurable earnings. While this could be managed to some degree by determining predominant activities over a period of more than one year, such a period of review might also have the unintended result of an employer being classed in a "predominant class" for a former business activity in which it is no longer engaged.

- As we have noted elsewhere in our submissions, by virtue of the risk adjusted premium model, smaller employers will migrate towards the class target as the proportion of claims experience is more heavily weighted to class performance. Such an employer may find that the class target for the "predominant" activity does not reflect a reasonable assessment of its actual risk for all or even a majority of its business activities.

- In contrast, we recognize that large employers will benefit from individual targets due to a larger proportion of individual experience than class experience. In the case of these employers, presumably a full balance of risks will drive such an employer's premiums closer to a rate more reflective of the employer's actual experience irrespective of the predominant class. However, this may not be as true in a case where there is marked difference between class target rates for each of the employer's business activities. While the lowest risk band for classes is constant, the highest risk band varies from class to class. A poor performing employer may benefit by ensuring that its "predominant" class has the lowest possible upper risk band.

These various manipulations would not be possible if multiple classifications continued to be applied. In advance of further consultation on this issue, we suggest that the WSIB consider whether multiple classifications are appropriate in situations where an employer is able to demonstrate a minimum proportionate threshold of insurable earnings in the class. For example, perhaps a minimum threshold of 20% of the employer's insurable earnings in each class activity could trigger multiple classifications.

We submit that it may be necessary to provide some tangible examples of the application of the predominant class rule would model to real data involving current employers with who would fall within this rule. We request that the WSIB conduct analysis to demonstrate the application of this rule as compared to a continuation of a multiple classification model.

Paper 3 suggests that the rules for segregation of payroll will no longer be necessary and, as a result, the WSIB's policy on payroll segregation can be deleted. We submit that this is a premature conclusion. In order to determine the "predominant class" it seems to us that employers with multiple business activities that would otherwise be classified in separate classes would still be required to segregate payroll in order to determine the apportionment of insurable earnings. Payroll segregation seems to be the only means to do this. However, a simplified payroll segregation policy that would be easier for employers to administer would be most welcome.

Construction Executive Officers and Partners

Currently, with the exception of the exemption not more than one person, executive officers and partners of partnerships of a construction business are subject to mandatory coverage even when those persons are not engaged in construction activities for the business. The WSIB introduced a separate and favourable rate classification for such persons who are not exempt.

The ECAO submits that the WSIB, in discussions with the Ministry of Labour, should propose a change in the legislation that would repeal the mandatory coverage of all executive officers and partners of partnerships if those persons are *not* engaged in construction activities. With such an amendment a separate and favourable rate classification would no longer be necessary.

In the absence of such a legislative amendment, the ECAO requests that a special construction subclass be maintained for all such persons in the construction industry, with a low fixed class premium rate. The claims experience of this subclass (which we anticipate will be very small) could be evenly allocated to all construction classes. That is, we are proposing a fixed annual premium rate for this group that falls outside of the risk adjusted model.

Premium Setting

Risk Adjusted Rate Setting

The ECAO agrees, in principle, with the WSIB proposal to move to a prospective premium setting model that also will replace the existing experience rating programs. The ECAO is in agreement that rate setting should be adjusted based on class and individual risk, with adjustments based on the size of the employer. We agree with the concept of risk bands and the WSIB's proposal to introduce a three risk band limit on the year to year movement from one band to another for an individual employer.

We note, however, that the adjustment of the risk apportionment between class risk and individual employer risk will have a very different impact on a large employer compared to a smaller employer. For small employers, the ability of that employer to improve upon its annual premium rate will be affected substantially by the overall performance of the class rather than the performance of the individual employer.

While this approach provides a necessary level of insurance to a small employer against wide swings in premium rates, that insurance also negates one of the core values of a risk adjusted rate. That is, an employer should take responsibility for its own performance from year to year, and should work diligently to improve and promote occupational health and safety within its business, irrespective of the size of the business.

The ECAO is comfortable with the graduated per claim limit approach as set out in Paper 3. Having said that, and in view of the WSIB's request for comments about the potential inclusion of a poor performer surcharge, the ECAO recommends further consideration to the risk band spectrum for employers who are *consistently* good or poor performers year after year. While large employers will have the greatest opportunity to move to the lowest possible risk band and also the greatest risk to move to the highest risk band based on individual performance, the same cannot be said of small employers. A flexible risk adjusted rate system and graduated per claim limit could allow for variations that reflect *continued* good or poor performance.

For example, a small employer who consistently has excellent performance year after year should be able to benefit from its success by having a greater risk adjustment towards its individual performance as opposed to the performance of the class as a whole. As was noted in Paper 3, based on the model proposed by the WSIB small employers will pay a premium rate that is "more reflective of the collective experience". We envision that smaller employers will have premium rates that are clumped around the class target, with little ability to improve upon that standing irrespective of individual performance. While that approach provides protection against adverse swings that a small employer might not be able to afford, it also works against individual responsibility. A consistently poor performer will have an upper premium range that is more reflective of collective experience than individual experience.

We suggest an approach that would reflect both continued good and poor performance performers. If the balance of collective experience will condense the risk band spectrum for an employer, we propose that once an employer reaches the end of that spectrum that it always be able to move one level lower (if at the lowest possible risk band) or one level higher (if at the highest possible risk band within the spectrum). The complete risk band spectrum for the class will, of course, be the ultimate limit. To limit the achievable upper and lower risk band due to the balance of collective versus individual experience communicates the message that at some point, good or poor performance no longer matters. It will

never be any worse or any better than last year's premium rate. An approach that still allows for risk band movement despite the small size of the employer would eliminate the need for a "surcharge" and would balance good and poor performance.

Paper 3 requests comments regarding the allocation of costs for a catastrophic occurrence. However, the paper does not define what is meant by "catastrophic". In failing to define that term it is difficult to address the issue. It is the ECAO's view that where an occurrence arises due to the actions or inactions of an employer, even a high cost claim year should not be defined as "catastrophic". Where emergency circumstances arise that are beyond the control of an employer or class of employers, such as extreme weather conditions that result in unavoidable injuries to multiple workers of an employer or across an entire class, we accept and agree that such costs should be born across the collective liability of all of Schedule 1 and appropriate cost relief to the individual employer and class is therefore appropriate. These types of circumstances, however, should be defined clearly so as to avoid dispute over what might merit such cost relief in the future.

The ECAO submits that the fatal claim premium assessment, which was specific in its application to the NEER and CAD-7 experience rating programs, should be discontinued entirely once those experience rating programs are fully retired. Particularly in view of the application of enforcement proceedings under the *Occupational Health and Safety Act,* the ECAO's position is that the actual claim cost of a fatality is sufficient for the purpose of premium setting in the new framework.

Second Injury and Enhancement Fund (SIEF)

We note that the stated policy intent behind the application of SIEF is to encourage employment of injured workers by new employers. It seems to us that measuring the success of SIEF in achieving that goal is difficult if not impossible, particularly where a hiring employer has no legal right to enquire about the claims history of a prospective employee. Since the introduction of SIEF, both the *Workplace Safety and Insurance Act* and the *Human Rights Code* specifically provide protection against discrimination in employment on the grounds of disability.

The true effect and value of the SIEF for employers has always been a fair apportionment of claim costs in cases where a workplace injury was superimposed on an underlying pre-existing condition or pre-existing impairment. This financial effect does not undermine the original purpose of the SIEF, but is the measurable reality of it. It is our view that this effect, on its own, has justified the existence and fair application of the SIEF over the past few decades. Over the last few years, the value of SIEF has been eroded through a markedly less generous application of SIEF during claims adjudication.

Many of the ECAO's members advocate for a continuation of some form of cost relief in the event of a significant pre-existing condition or disability.

In Paper 3, the WSIB noted the arguments of some stakeholders that the application of SIEF to specific claims tends to drive employer behaviours away from active return to work initiatives. These arguments do not fully appreciate the limited cost relief available to employers through SIEF. Relief is rarely more than 50% of the claim costs, and more frequently not more than 25%. An abandonment of claim management upon receipt of partial cost relief would counter the financial benefit of the cost relief. While these stakeholder comments seem anecdotal to us and based on an incomplete understanding of the benefits of cost relief, we concede that employers must make workforce decisions based on a balance of factors including costs of labour, productivity of workers, and costs of insurance related to

workplace injuries. These are business realities. In all cases, these realities are balanced by legislated means to regulate and enforce compliance with return to work, re-employment and workplace accommodation obligations for employers.

We anticipate that without the surcharges and rebates typical of a retrospective experience rating system, most employers will lose the ability to identify and understand the benefit of SIEF cost relief. Notwithstanding this, a continued use of SIEF or a similar cost relief program will have a continued value to employers in the apportionment of costs to the class or full collective of Schedule 1 without encouraging inappropriate employer behaviours.

Even in the absence of SIEF, the WSIB recently has developed policies dealing with pre-existing conditions in the context of benefit adjudication. We anticipate that retirement of SIEF will have the effect of encouraging a more active employer participation in claims adjudication and appeals relating to the interpretation and application of these pre-existing conditions policies.

We therefore encourage the WSIB to consider whether the continuation of SIEF or a modification of that cost relief program remains appropriate within the Rate Framework reform. We would be pleased to engage in further consultation on this issue. We will address transitional issues related to SIEF below.

Long Latency Occupational Diseases

The nature of a long latency occupational disease is such that it arises from circumstances of many years past. In many of these cases, our current level of knowledge of the harmful effects of certain physical, chemical or biological agents was unavailable to employers of the time. The onset of an occupational disease has arisen in some cases decades following exposure to these agents. In some instances, determining the precise source of exposure (or exposures) is difficult and at times impossible. The availability of evidence after years or decades is often limited or non-existent.

Some of the most significant occupational diseases involve occupational cancers related to exposure to asbestos. The use of asbestos was widespread in the post war years in a variety of applications, in manufacturing and construction, in small appliances, and as insulating material public facilities and residential homes. Current knowledge of the harmful effects of asbestos on human health was unavailable to employers at the time of its use.

It is the position of the ECAO that the claim costs of a long latency occupational disease should not be assessed as part of the individual cost experience of an employer, but instead should be borne by the entire Schedule 1 collective. Even if it can be shown that workers in a particular class are more likely to develop these diseases, for example in construction, mining, or firefighting, it would be unfair to conclude that the employers within these classes are more responsible for the onset of the diseases than society as a whole. This is especially the case when one considers that today's employers may not have been in business at the time that workers were exposed to these various agents.

Section 94 of the *Workplace Safety and Insurance Act, 1997* contemplates a situation where a worker's disease arose out of his or her employment by more than one employer. The section applies specifically to Schedule 2 employers. There is no comparable section of the Act that addresses employment within Schedule 1 or across Schedules 1 and 2. If the WSIB does not allocate long latency occupational disease claims to the entire Schedule 1 collective, the ECAO submits that where a worker was engaged in employment by more than one employer in more than one class within Schedule 1 for which the disease

can be attributed, the costs of a long latency occupational disease ought to be apportioned across the separate classes of such employers.

The ECAO also is aware that the WSIB is engaged in class action litigation, particularly as it relates to asbestos related diseases. In the event that the WSIB recovers damages from such litigation, the ECAO submits that any such recovery ought to be applied to reduce the cost experience of the classes for which the costs of claims relating to such diseases have been apportioned.

Apportionment of the Unfunded Liability

The ECAO recognizes and accepts that the unfunded liability (UFL) must be apportioned across all classes.

While the past responsibility (PR) method proposed by the WSIB in Paper 4 of the Rate Framework Reform consultation has merit, it is not possible for the ECAO to evaluate and compare this method to the new claims cost (NCC) method based on the limited information that has been provided in Paper 4. Since the paper was released the WSIB has completed its risk disparity analysis and proposes the possibility of dividing class G3 into three subclasses. The WSIB's UFL apportionment analysis set out in Paper 4, however, does not provide information as to how the UFL would be assessed among these three new subclasses on a NCC or PR method. This further analysis is necessary in order for the ECAO to provide informed submissions on the appropriate apportionment methodology.

Given the significant risk disparity within class G3, the ECAO submits that whichever method the WSIB uses to apportion responsibility for the UFL fairness dictates that it ought to be apportioned based on the NCC or PR of the G3 *subclasses* rather than at a G3 class level.

Transitional issues

It is difficult for us to provide full and meaningful comments with respect to a transition plan from the current rate framework. As a result, the ECAO requests that the WSIB establish a separate consultation process to engage stakeholders regarding transition once key decisions respecting the rate framework model have been made and communicated to all Schedule 1 employers.

In advance of such a further consultation, the ECAO notes that employers have made some business decisions, including labour and employment decisions related to injured workers, based on the current model in use. This includes decisions about the level of engagement in claim adjudication and appeals, application and use of SIEF cost relief, and adoption of extraordinary return to work measures. The experience rating windows of CAD-7 and NEER have undoubtedly influenced the degree of involvement of employers in their worker's claims.

With that in mind, we would encourage the WSIB to implement a transition that retires current experience rating and cost relief systems on a graduated basis concurrent with the introduction of a new rate framework model.

For example, an individual employer's claim experience for individual rate setting will be determined with regard to past claims. Existing claims at the point of a transition which would form part of that claims experience should continue to benefit from any cost relief granted to the employer even if SIEF is retired at the conclusion of the transition. Similarly, we would encourage the WSIB to not include past

claim years that have already transitioned outside an experience rating window. The time windows of the various experience rating programs vary, and so the transition may need to be flexible from class to class.

Ideally, the rate framework model will be well defined and communicated to employers sufficiently in advance of a transition to allow employers to modify claim management strategies to align with the new model. We suggest that at least a two year time frame prior to transition will be necessary, and that claims experience in the initial transition should be limited to claims within the immediate past three years, increasing each subsequent year during transition to an ultimate maximum of six years.

We are thankful for the opportunity to provide these submissions and we look forward to further such opportunities as the WSIB moves forward with this reform.

Yours very truly,

Jeff Koller
Executive Director

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October 1, 2015

Workplace Safety & Insurance Board
Consultation Secretariat
200 Front Street West, 17th Floor
Toronto, ON M5V 3J1

Dear Sir/Madam:

Re: WSIB Preliminary Rate Framework Consultation
Group Submission – Class B – Utilities Working Group

Please accept the attached as our submission.

Enbridge Gas Distribution is supporting “The Group” submissions in its entirety.

Going forward, we trust that this will ensure that “The Group” will continue to receive direct communication on ongoing items.

Sincerely,

Susanne Mellish

Attach.

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Workplace Safety & Insurance Board
Consultation Secretariat
200 Front Street West, 17th floor
Toronto, Ontario M5V 3J1
Attention: consultation_secretariat@wsib.on.ca

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Please receive the following collaborative submission in regards to the WSIB proposed Preliminary Rate Framework. The following employers have been meeting and discussing the consultation materials, updates, and analysis communicated by the WSIB Consultation group:

- Bruce Power
- Enbridge Gas Distribution
- Hydro One Networks Inc.
- Ontario Power Generation
- Union Gas

Since the release of the WSIB consultation materials in March 2015, the above mentioned group of employers ("*The Group"*) have continued to review and participate in WSIB-led Technical Sessions, as well as Working Group Sessions held in July, August, and September with J.S. Bidal, WSIB Executive Director and Earl Glyn-Williams, WSIB Lead. The Group appreciates the opportunity to continue in this consultation and we look forward to reviewing the outcomes following stakeholder input.

Introduction

The Group as a whole represents large employers with significant experience managing claims within the current NEER Experience Rating program under Schedule 1. Currently, The Group is represented in various Rate Groups (833, 835, and 838) under Class H: Government & Related Industries. Based on the current proposed changes, it would appear that the majority of the group will transition to the new "Class B: Utilities". The Group's familiarity with the current system, similar claims experience and similar industry trends led to discussions and shared interests with respect to the Rate Framework Consultation.

For the purposes of this submission The Group has focused primarily on Paper 3, but has also addressed questions raised in Paper 4 and 5. As a whole, The Group has taken into account the breadth of information provided by the information sessions, as well as the July Consultation Update, and the August Rate Group Analyses and

Risk Disparity Analyses documents. For clarity and continuity, the submission will focus on addressing the "Questions for Consideration", in the order they were posed within Papers 3, 4, and 5. Additional items/interests not addressed by the Papers will be included separately at the end of the submission.

PAPER 3: THE PROPOSED PRELIMINARY RATE FRAMEWORK

Step 1: Employer Classification

Employer Classification

Is the proposed structure adapted from NAICS an appropriate grouping of employers?

Yes, The Group supports the proposed adoption of the NAICS system, and believes it will provide a more appropriate grouping of employers. In contrast to the current SIC system, NAICS will provide an updated grouping of employers noting changes in industry, technology, and today's business climate.

Although the updated NAICS system is a move forward, the WSIB should endeavor to develop a Policy which specifically outlines a process for regular review of classifications similar to the NAICS review of every 5 years, in order to adapt to ongoing and future changes in business, industry, technology, etc. The prior SIC system was not reviewed regularly and eventually resulted in Employers applying in and out of rate groups in an effort to re-align themselves, as outlined by Mr. Douglas Stanley. Additionally, the policy and any periodic reviews should not only address changes in classifications, but undertake review and adjustment of classes based on the new make-up of classes to ensure self-sufficiency and credibility of classes based on risk profiles, claims costs, and insurable earnings.

Caution should also be undertaken noting that at the time the SIC system was implemented in 1993, a plan for review was also anticipated but was not followed. In the event the overseeing statistical agencies managing the NAICS structure disbands, or is modified, a plan for change/adaptation would have to be built into the governing Policy.

Do the proposed 22 classes appropriately reflect the industry categories in Ontario's economy today?

Yes, The Group support the change to the increased number of classes as outlined in the consultation materials. The Group understands the WSIB is reviewing a further expansion to 32 classes, as outlined in the July consultation update. Understandably, any expansion to additional classes will have to ensure that these additional classes can support the appropriate levels of risk, experience, and predictability for rate setting and liability. As mentioned above, if the WSIB establishes "classes" that differ from the true NAICS grouping, this

further emphasizes a need for a Board policy which outlines how the board will manage the classification system on a go-forward basis; including thresholds for when classes may be expanded and/or contracted further.

The WSIB is proposing to classify employers according to their predominant class, where the predominant class would generally be defined based on the class representing the largest share of an employer's annual insurable earnings.

- *Should the WSIB consider factors other than just insurable earnings?*
- *Should the WSIB also consider the risk involved in the business activity when determining the appropriate classification?*
- *Or a mix of both insurable earnings and risk?*

The Group supports the WSIBs plan for basing the rate and classification on the predominant class/business activity. The WSIB should endeavor to communicate the specific new Class that employer's will be assigned to well in advance of the 'go-live' date. Clear and early communication of anticipated class assignment, will provide employers the ability to review and evaluate the determination, and if concerned, employers will be afforded the opportunity to clarify/correct their assignment prior to "go-live". This process will limit confusion, further adjustments/movement, and reduce the possible financial impact that could result from an incorrect classification/rating.

Is a three year window for determining an existing employer's predominant class appropriate?

- *Is a longer window (e.g. four years) more appropriate or is a single year enough?*

Yes, 3 years should be sufficient for most employers and will limit the effect of changes in business activities.

<u>Temporary Employment Agencies (TEA)</u>

Should TEAs be treated differently from other employers under a new Rate Framework to address the premium cost avoidance issue (e.g. be allowed to have multiple premium rates)?

Within The Group providing this submission, these employers either do not utilize TEAs regularly, or where they are used, the temporary employees are hired for low risk labour (i.e. Clerical and Administrative workers). As a result, The Group does not have a definitive position on the issue, noting our limited experience.

How should the claims cost avoidance issue be addressed under a new Rate Framework?

The Group does support the proposed direction of incorporating increased "rates" by the TEAs allocated/billed to their "clients", whereby TEAs would have varying

rates dependent on the nature of the labour they are supplying, which they would bill/allocate to the "client employer". If a "Client Employer" knows they will be billed by the TEA for premium costs and risk associated with their temporary employees, this does have the potential of limiting the ability of employers to use TEAs to avoid high rates and premiums.

The Group does question how the WSIB is going to govern and monitor how TEAs allocate/assign costs to their 'clients', and whether the WSIB has the authority to monitor and audit the proposed changes. Will TEAs be required to provide Client Employers with a breakdown of the associated "rate" related to premium costs?

Step 2: Class Level Premium Rate Setting

New Claims Costs & Administration Cost:

Should the WSIB use the current RG approach of fixed per claim limit of 2.5 times the annual insurable earnings at the employer level, or should the WSIB use the graduated per claim limit approach outlined?

The Group's current understanding is that the size and experience of each employer participating in this submission would indicate we will be considered 90-100% predictable with respect to the predictability scale. Therefore, either approach is appropriate and would have limited impact even if the WSIB was to adopt a new Graduated Per Claim Limit approach.

Should the WSIB consider using a different graduated per claim limit than the one proposed? If so, what features should it have?

See above. Either approach would have minimal impact on employers who are 90-100% predictable under the over-arching proposed framework.

Should the WSIB continue with its current allocation of administration costs?

The Group supports the position to continue with the current allocation of administration costs and legislative obligations.

Long Latency Occupational Disease (LLOD)

Should LLOD (long-latency occupational disease) claim costs be shared equally by all employers as a collective cost or should these costs be charged directly to the individual employer?

The Group agrees that the LLOD claims should be shared equally by all employer's across Schedule 1. Today's employment climate has changed where workers' movement from occupation to occupation spans across multiple classes

and workers do not reside in one class/industry for the entirety of their working life.

Understandably, through years of claims experience and data collection, the WSIB has significant data on the number of LLOD claims, costs, pensions, etc. and the type of LLOD (NIHL, Silica, Asbestosis, etc.). It would be beneficial for this information to be shared and referenced in relation to further plans and direction related to the allocation of costs.

Additionally, as consideration is given for how the WSIB will issue "Claims Reports" (i.e. similar to the current Quarterly NEER Reports), it would be beneficial for the WSIB to include information related to LLODs to the appropriate 'exposure employers'. Including information related to the employer's Costs, awards, their percentage of accountability/responsibility, as well as the over-all cost to the system, would assist in driving prevention and improvement of safe work practices for employers. Knowledge of the 'true cost' to the collective system would assist employers in understanding the effect these claims have on their rates within the new framework, even if it is not impacting their own individual Employer Actual Premium Rate.

The Group recommends the WSIB endeavor to review and explore the Final Report of the Chair of the Occupational Disease Advisory Panel, issued in February 2005. The Group does recognize that the broader topic of Occupational Disease adjudication, and operational policy, is not within scope of the Rate Framework consultation, but has included some additional thoughts related to this topic, in the "Additional Comments" section below.

The WSIB should consider applying a threshold for entitlement to a NEL award for Noise Induced Hearing Loss claims, as done in other jurisdictions. By identifying a threshold for when a NEL is awarded, the board would reduce costs associated with administering and issuing the minimal-NEL benefits, where the cost outweighs the actual benefit itself. The entitlement to hearing aids and HC benefits would still apply, but a limit to the NEL award would ease the burden on the system.

SIEF

Given the design elements of the proposed preliminary Rate Framework that promote greater stability in premium rates, as well as the current legal landscape on disability issues, is the SIEF policy as it currently designed still relevant?

It has been expressed to The Group that the WSIBs implemented changes and improved adjudication related to the SIEF program has resulted in the New Claims Costs associated with SIEF being reduced from 30% of NCC to 5% of NCC over the last 5 years.

The Group believes that SIEF is still a relevant aspect of the WSIB process related to pre-existing conditions and their effect on claims and benefits. However, noting the strides made by the WSIB in recent years, and the recent Operational Policy changes related to pre-existing conditions, it may be warranted to continue to use SIEF, in a new/redesigned SIEF Policy, change in scope, and updated definition, and its applicability.

Discussion was also undertaken in regards to whether the WSIB would allow employers the option to opt out of SIEF Coverage, and what effect it would have on the Employer Premium Rate, and perhaps the Class Target Premium Rate.

Self-Sufficiency of Classes:

How should the WSIB handle catastrophic new claim costs situations that occur in a particular class?

a) *Include claim costs in the year that they occur, which may result in a higher premium rate being charged to employers?*
   OR
b) *Reduce the premium rate increase and add the remainder as an amount for future premium rate consideration?*

c) *How should catastrophic situations be defined? Should the WSIB consider pooling these costs at the class level or Schedule 1 level?*

The Group's understanding is that "catastrophic new claims costs" can be defined as either:

- A pandemic/wide-spread type illnesses that affect a specific group of employer's (i.e. Health Care industry affected by SARS, H1N1, etc.) burdening a specific class, or classes, which significant increased claims costs in a specific period, OR

- An unexpected event (i.e. plant explosion, mining disaster, plane crash, multiple homicides in the workplace) resulting in significant injuries/costs to a large number of employees for a particular employer, OR

- An unexpected change in a particular class (i.e. a number of employers suddenly leaving the marketplace) resulting in the class having to compensate for the disparity of future claims costs, no longer gathered through premiums.

Understandably, unique situations such as those described above (and perhaps other scenarios not yet identified) could arise and the employers, class, or classes, would be burdened with significantly high and unexpected costs that would not be considered through review of risk profiles and past claims experience. For situations where "catastrophic claims" occur and there is limited-

to-no control at the employer level, it would be The Group's position that the WSIB should consider some form of pooling for these costs. However, what level they are pooled could differ depending on the nature of the "catastrophe". Following a catastrophic event that affects one employer (i.e. plant explosion), or a limited number of employers, consideration should be given to pooling the costs at the class level, where a collective of similar employers can support the affected employer(s). Alternatively, a catastrophe that affects multiple, or the majority, of employers in a particular class (i.e. pandemic, or significant reduction in class insurable earnings), the costs could be pooled at the Schedule 1 level, noting that pooling at the class level would not be sufficient and would result in significant impacts to a multitude of employers.

The Group supports that in catastrophic scenarios, some level of pooling should occur in an effort to limit significant volatility in scenarios where employers have limited control and the event is significantly unpredictable. In order to better prepare and educate all employers of when this would apply, a clearly defined definition (or definitions) of "catastrophic claims" should be developed as part of an overarching Operational Policy. The policy would provide clarity of what will occur, how it will be applied, and how it will be communicated to employers, in the event these situations were to arise. Furthermore, consideration could be given to identifying an 'arms-length' entity to oversee these types of matters in an effort to eliminate political-based decisions, and ensure decisions are based on an objective review of the catastrophe itself and the effect it would have of employer, class, and Schedule 1 rates.

Step 3: Employer Level Premium Rate Adjustments

Actuarial Predictability

In setting employer level premium rates, what are the factors that the WSIB should consider in assessing the level of protection an employer needs from large rate fluctuations?

a) *Should the WSIB include in the assessment of actuarial predictability, insurable earnings, claim costs, number of claims, lost time injuries or some other factor?*
b) *Should the WSIB use different mixes of insurable earnings, number of claims?*
c) *Are the percentages of assignment between individual and collective experience appropriate?*
d) *Should a new employer be treated the same as an existing employer?*

The Group supports the proposed Framework's structure and the proposed process, and associated factors, for setting employer level premium rates, resulting in individualized Employer Premium Rates based on their own experience and predictability. Based on the data provided in Paper 3 (page 45), it would appear that the WSIB attempted numerous variations of weighted factors.

The resulting actuarial predictability appears appropriate based on the information provided.

Similarly, the Predictability Scale outlined (Paper 3, page 47) appears to provide a sufficient balance between individual experience and collective experience.

The proposed Framework offers challenges for new employers entering the system with no prior individual experience. Consideration could be given to introducing new employers to either; 1) the Class Target Premium Rate, or 2) the Class 'Average Premium Rate" initially. Thereafter, a formula could be established to apply a graduated/weighted "Employer Target Premium Rate" based on experience and total claims, year-over-year until sufficient experience is obtained to better establish a truer 'Employer Actual Premium Rate'. Consideration should be given to still allowing minor movement within the risk band, noting the Risk Band Limitations (discussed below) would afford protection from volatility, even to 'new' employers.

Does the introduction of experience adjusted premium rates for small employers, currently excluded from WSIB experience rating programs, introduce too much premium rate sensitivity?

No, the use of the predictability scale and collective liability will limit volatility in premium rate changes year over year. Small employers will be afforded the appropriate level of protection from large fluctuations, but also allow for an appropriate level of employer accountability.

Risk Banding:

Is using the average of the last 3 years net premium rate for experience rated employers or the premium rate of the RG for those employers who are not experience rated, a reasonable starting point for employers to transition to a new Rate Framework?

Yes, The Group supports the use of the last 3 years net premium rate. It would be beneficial for all Employers if the WSIB would provide (in written form) a breakdown of how the "net premium rate" is calculated. Understandably, the WSIB is reluctant to share the calculations/rates used in assessing the proposed framework, as the 'net rate' may change before final implementation. However, providing employers with a clear breakdown of the formula (and examples from mock NEER/CAD-7 statements) would allow employers to evaluate their own individual status as part of ongoing preparation.

Are the risk bands that are set at 5% increments to provide great sensitivity, and avoid large premium rate swings for employer with small changes in risk appropriate? Should the percentage increments be larger?

5% increments is appropriate and allows for adjustments based on experience, while also protecting against volatility.

Should the proposed preliminary Rate Framework use the most recent six prior years for determining employer level premium rates? Or three or four years?

The Group supports the use of six years for establishing Employer's Total Claims Costs. Six years would be more appropriate to support a truer picture of the actual costs of the claim. This would also increase predictability and make employers more accountable for their own costs.

The July Consultation Update outlines that some stakeholders are requesting/ recommending the use of a weighting scale, putting greater emphasis on recent data versus older data. The Group holds the position that the use of 6-years of unweighted costs is likely sufficient data to determine premium rates and question the level of benefit 'weighting' different years will provide.

Noting the WSIB has reviewed 'alternatives' and other models as part of the development of Paper 3, an updated Paper as part of the consultation process could include an alternative model **it ario s t es of ei tin** to outline the effect the weighting would have (if any), and offer discussion on the pros and cons of this proposition.

Does a three risk band limitation, relative to the experience of the class, provide suitable stability? Consider that this limitation itself leads to greater collective liability, should the limitation be higher? Should it be lower?

The Group supports the proposed limit on Risk Band movement of +/- 3 risk bands. However, the WSIB should provide clear analysis/reports annually (quarterly?) to employers allowing them to gauge where they are trending, and outline the Employer Target Rate to provide transparency to employers.

As discussed further below, improved online real-time information and accessibility to information would be strongly recommended as part of any proposed framework. The WSIB has made strides in improving eservices, but further improvement would offer increase service to stakeholders.

Should we consider forgiving employers who increase/decrease one or two risk bands? If so, would there be a need to increase the risk band limitation to four or five risk bands to appropriately balance premium rate stability and responsiveness?

The Group doesn't support the notion of forgiveness of 1 or 2 bands as it would result in confusion for employers. Additionally, forgiveness could potentially result in annual appeals by employers, and unnecessary administration and costs to the system. The simplicity within the +/- 3 band movement will benefit all employers and make it easier to understand. Movement of 4 to 5 bands would result in increased volatility and decrease stability for employers, which goes against the intent of the new framework.

Do risk bands generally provide a positive support and a level of stability in setting rates for employers, or would individualize rates for each employer capped at a specific %, plus or minus, relative to the experience of the class be preferred?

The Group supports the risk band approach, and the +/- 3 band movement. To a certain degree, the proposed framework already incorporates "individualized rates" for each employer, as well as a cap of "15%" movement from year to year. Additionally, the approach of having a broad range/number of "Risk Bands" dependent on the Class (and their risk/experience), allows for appropriate movement.

Furthermore, Paper 3 discusses that the maximum premium rate would be approx. three times the Class Target Premium Rate, and through the working group sessions, The Group understands that when/if needed maximum premium rate (i.e. highest risk bands) could potentially fluctuate from year to year as the class's collective liability changes. Similar to the recommendation to develop of policy on "Classification", the WSIB may consider outlining a specific policy on when, why, and how changes in Risk Band Ranges may change.

Overall, The Group believes the proposed framework appears to find a strong balance between collective accountability and individual employer accountability.

<u>New Employers:</u>

Should the WSIB charge new employers with less than 12 months of experience the Class Target Premium Rate? Or should they be risk banded?

The Group agrees that new employers should start at the Class Target Premium Rate, and as they gain experience/predictability over years in the system, they will move accordingly towards an individualized Employer Target Rate. A graduated approach based on year-by-year experience could be developed, similar to the predictability scale, but designed for new employers being as the employer begins to gain experience and

Similar to other topics outlined in this submission, a clear policy clarifying how new employer's will be treated should be established.

Surcharging Employers:

What factors should the WSIB consider when determining if an employer should be surcharged?

The Group supports the need for some type of surcharge mechanism for employers who fail to improve overall claims performance. Factors that should be evaluated would include; claims costs and rate increases (+3 risk bands) over a number of years, and/or employers continually residing in the maximum risk band for the class for a pre-determined number of years. Although collective/class liability is part of the new Framework for greater protection to rate volatility, the Framework does also incorporate increase employer accountability. In instances where employers are meeting the 'threshold' for penalties, mechanisms to hold employers accountable should be built into the new framework. The Group supports a graduated/tiered approach to reaching a surcharge threshold, whereby Employers are provided with escalating notifications in the event they are trending towards a surcharge scenario.

Additionally, the surcharge mechanism should be linked to overall claims/cost/experience performance over time (to-be defined), and should not be linked to individual claim types (i.e. fatality claims).

It would seem obvious to The Group that a well-defined policy would be required to outline processes, thresholds, level of accountability, maximum surcharges, support resources, etc. that would be required within the framework.

Should the WSIB not surcharge employers at all and include all the claim costs above a certain level as a collective cost in setting the Class Target Premium Rate?

As noted above, The Group supports that a surcharge approach should be included as part of the Framework. However, an integrated approach of surcharging continually 'poor' performing employers along with providing "collective accountability" within the class should be undertaken as well.

Noting the fact that the Maximum Risk Band is not a fixed amount and can increase over time, in relation to the class target rate, there is also the potential that employers at the maximum risk band may not be 'protected' by the collective group over the passage of time. Continually poor performance could lead to an increased maximum, resulting in increased rates for the 'poor' employer as well.

Paper 4: The Unfunded Liability

Should the WSIB use the NCC method or consider Method 2 of apportioning the UFL as described earlier in this paper?

The Group supports the ongoing use of the NCC method to assist in paying down the UFL. The WSIB should consider a graduated diminishment of the UFL portion of the 'rate' as we approach the full re-payment of the UFL. By gradually moving towards the "$0 UFL Rate" there may be some built in protection for employers and the board alike, and it would remove the 'perception' from other external parties/groups of an unwarranted sudden reduction in rates.

Paper 5: A Path Forward

Are there any other key considerations that could be considered in the development of a transition plan from the current system to a new Rate Framework?

The Group believes that a significant amount of communication to all employers, regardless of size and current experience rating program, will be required. The communication should be rolled out in multiple forums, including but not limited to:

- Direct Employer communications
- Communication to Employer Groups
- WSIB website & Social Media

With respect to employer-specific information, the WSIB should ensure significant advance notification (1 – 1.5 years notice) of each employer's anticipated *Class Target Rate*, *Employer Target*, and *Employer Actual Rates*.

Proper training and education on the new framework and any applicable electronic portals should be provided in advance in an effort to make the transition as seamless as possible for employers.

Where necessary, it would be appropriate to provide additional resources to employer groups (such as the Office of the Employer Advisor, OEA) in an effort to provide increased information to small employers who may not be equipped with internal resources to review and interpret information as it is conveyed. These enhanced resources should remain in place both during and after the transition, as it can be expected that many smaller employers won't react to the change until it has already taken place.

Additional Comments from The Group:

Operational Policies & Legislative Changes:

Throughout The Group's submission, we've outlined instances where we believe policies should be drafted and considered. The Group proposes that the WSIB

should draft an all-inclusive list of new policies and current policies that will require revisions/updates. Presumably, the Rate Framework Consultation itself will include drafts of these policies requesting employer/stakeholder feedback as part of the overall process.

Similarly, proposed changes in legislation and legislative language should also be shared with stakeholders for consideration and feedback.

Occupational Disease Advisory Panel (ODAP):

Noting the relation to questions on Long Latency Occupational Diseases and the way those claims fit into the Framework, the WSIB should also explore the previous recommendations made in the 2005 ODAP report. Given the overall intent of the new Framework is tied to the recommendations to provide Funding Fairness, it is The Group's position that there is opportunity within the scope of the framework to review how LLODs are reviewed and managed, and that there could be increased fairness obtained by having an arms-length panel to review how Occupational Diseases (new and historical) are assessed with regards to entitlement. A separate body that could evaluate objective occupational, epidemiological, and scientific evidence, in determining presumptive legislation and/or entitlement, would result in a more transparent and objective assessment and implementation of conditions, processes, entitlement, etc.

Fatalities

In the current experience rating programs for NEER and CAD-7, Operational Policy 14-02-17 Fatal Claim Premium Adjustment outlines when and how the WSIB applies a one-time premium increase in the year an employer incurs a traumatic fatality claim. It is The Group's position that the upon the transition to a new Rate Framework this policy will be become void and no longer be applicable, as NEER and CAD-7 will no longer exist. In addition, it is The Group's position that the new Framework would not revise/implement a new or similar version of the policy to penalize employers in a similar manner.

Currently, through discussions within working group sessions with the WSIB, The Group is aware of three possible considerations for how Fatality Claims could be addressed. In the event of a fatality, three possibilities include;

- Employers pay for the actual associated costs based on entitlements, related to funeral expenses and dependents, based on the worker's circumstances. These costs would be subject to a graduated per claim limit based on an employer's insurable earnings and the new Framework, whereby if the actual costs were greater than the maximum claim limit for that employer, the employers experience would be affected only by the maximum. Or,
- The employer is charged with the "average cost" of a fatality, and the amount would NOT be subject to the graduate per claim limit. The WSIB

would determine (and continually evaluate) the "average" cost that a 'fatality' costs the system based on claims data over a period of time (i.e. 6-years prior).

- The employer would be charged with the maximum graduated per claim limit outlined in the proposed Rate Framework. Whereby, the employer pays the per claim limit regardless of the worker's circumstances at the time of the fatality (i.e. funeral expenses, dependents, etc.).

The Group has undertaken various conversations surrounding how fatalities may be treated within the new Rate Framework, and prior to offering a position on the matter The Group feels more information, data, and modelling is required. The WSIB possess the necessary data related to costs and should endeavor to provide additional information to various scenarios.

The Group acknowledges the seriousness of any fatality claim, and the fact that it is likely the most significant claim any employer could experience, and as such additional information pertaining to the costs to employers and the system would be beneficial to all stakeholders evaluating how costs associated with fatalities should be administered.

Customer Service, Reporting, and Access to Information

The Group would be remiss not to express the need for ongoing improvements in services and availability of information to employers. Currently, for employers in the NEER Program, cost related information is issued on a quarterly basis but is typically not communicated to employers until 6 – 8 weeks after the closing of the "quarter". Improved electronic-based systems and portals providing real-time claims information, costs, decisions, etc. would benefit both Employers and WSIB Operations staff. Additionally, over time, improved systems and availability of information should reduce administrative costs.

Through working sessions related to the Framework, it has been shared that the WSIB is looking at the WorkSafeBC model and their online "Employer Safety Planning Tool Kit". The Tool Kit reportedly offers employers not only real-time claim information (costs, benefit types, decisions), but real time experience and premium rate information in the form of forecasting and other information which would benefit employers in reviewing what claim trends, risk profile projections, and premium rate projections are occurring, and where safety measures could be implemented to improve performance. Employers would benefit from additional presentations/slides/ screenshots related to the BC Tool Kit, or a mock Tool Kit, providing more specific examples of what would be provided to employers.

Additionally, employers continue to struggle with the limited electronic services provided by the WSIB with respect to claims management, and it is The Group's position that WSIB costs as well as indirect costs at the employer-level could be

reduced by expanding the e-services offered by the board, including but not limited to:

- Decision Letters
- Submission of Objection Letters
- Submission of Forms (WREO7E, Form 9s, etc.)
- WSIB Requests for Forms (i.e. Employer Progress Reports)
- Confirmation of Claim Numbers
- Appeals – Access to Claim Files
- Communication
    - WSIB could set minimum security/system requirements for email correspondence)

Movement to a more employer-centric model should include efforts to provide more timely information in an easy and accessible manner to all employers.

Self-Insurance

The Group understands that the notion of Self-Insurance and changing legislation is not within scope of the proposed Rate Framework Consultation. However, in an effort to review future opportunities and other avenues for improved funding fairness, The Group requests that the WSIB obtain and provide cost and claim data related to specific time-period data for claims. Specifically;

- Can the WSIB provide data to employers in relation to how many claims are closed within specific thresholds (5-days, 7-days, and/or 10-days of onset), along with associated claims costs and benefits paid?
- Can the WSIB review and analyze the data and determine the administrative and man-power costs associated with these "thresholds" to determine model what benefit (or detriment) a Self-Insurance model may provide to employers and the WSIB?

WSIB Autonomy

The Group believes that the WSIB's current policy and legislative approach which clearly outlines the WSIB's accountability and jurisdiction to oversee and apply funding and rate setting should continue. The efforts in recent years to ensure the UFL can be paid within the designated time frame, as well as the assurance afforded to employers that the premium dollars gathered are adequate to cover future benefits should remain in place.

Conclusion

Overall, based on the information included to-date The Group is of the position that the proposed Rate Framework will drive employer accountability and proper claims management which should drive decreased claims costs, reduced rates, proactive Health & Safety measures in the workplace and better prepare employers to visit true trends in costs, claim frequency, severity, etc.

Going forward, The Group would suggest that the WSIB should consider offer training/Web-Ex sessions to employers to become familiar with the new Rate Framework. This would assist in reaching as many employers (large and small) as possible and limit confusion and increase the knowledge base moving towards any new Framework.

We appreciate the opportunity to provide comments on this very important WSIB Rate Framework Consultation. We look forward to the next phase of the process and reviewing the report and submissions provided by all the stakeholders.

Yours Sincerely,

Bruce Power ***Enbridge Gas Distribution*** ***Hydro One***

Union Gas ***Ontario Power Generation***

Submissions to the WSIB Rate Framework Reform Consultation

October 2, 2015

Submitted by the Experience Rating Working Group
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The Experience Rating Working Group was formed in the 1990's and is composed of members of injured workers' groups, labour organizations, legal clinics, and interested individuals. The group's main objective is to expose the adverse affects of the incentive systems used by the Ontario workers' compensation system and to advocate for the discontinuance of experience rating. At the same time, the group has worked on ideas for alternative schemes which would more likely achieve the intended results of the incentive systems – improved health and safety and return to work.

To be blunt, we cannot support any rate scheme that adjusts premium rates for individual employers based on claims costs. This is a further expansion and entrenchment of experience rating and so it will carry with it all of the negative aspects of experience rating. It is bad for workers, and contrary to the fundamental principles of workers' compensation.

No link between claims costs and health and safety

Like any other experience rating initiative, the proposed framework will likely result in lower claims costs. Lower claims costs translate into lower costs to the system, and it is obvious to all concerned that this is the primary focus of WSIB management at present. The question, though, is *how* will the framework result in lower claims costs? The assumption is that experience rated premium rates (risk bands, in this case) will incent employers to improve workplace health and safety. This assumption is unproven.

There is no evidence that the threat of increased premiums incents employers to improve health and safety. In his systemic review of research on prevention incentives, Tompa noted that "with so little evidence, and such imprecise measures, it is difficult to draw robust conclusions about the effectiveness of experience rating".[1] Alan Clayton put it succinctly:

> What is contested is the facile assumption that experience-rated premiums result in action to achieve safer workplaces, that is, a reduction in accidents, injuries and illnesses rather than simply a reduction in claims. Starkly stated, the issue is that if the goal of accident prevention is to be a serious objective of workers' compensation schemes, then experience rated premiums are a very blunt and problematic instrument to achieving this end and may result in other, undesirable effects.[2]

[1] Emile Tompa, Scott Trevithick, and Chris McLeod (2007). "Systematic review of the prevention incentives of insurance and regulatory mechanisms for occupational health and safety" *Scandinavian Journal of Work and Environmental Health*, 33(2), p.7.

[2] A. Clayton (2012). "Economic incentives in the prevention and compensation of work injury and illness" in *Policy and practice in health and safety*, 10.1, p.p.40-41.

An earlier study from British Columbia drew similar conclusions. Hyatt and Thompson found that "[n]one of the studies are able to determine whether experience rating results in actual reductions in the frequency and costs of injuries, or whether some claims are either not reported or shifted to other forms of disability insurance."[3]

Like the current experience rating programs, the proposed rate framework has no direct link to health and safety. This disconnect between health and safety and experience rating in Ontario has been well documented. The value for money audit of experience rating programs in 2008 noted that employers could receive premium adjustments (rebates) for periods in which they were found to be in violation of the *Occupational Health and Safety Act (OHSA).*[4] We note that there is no provision to remedy this inconsistency in the new framework. It will still be possible for employers to receive rewards in the form of lower premium rates (moving to a lower risk band) while violating the OHSA, as long as they can keep claims costs low. The auditors made several recommendations to address the issue, all of which have been ignored to date.

The Framework ignores the Expert Panel and Arthurs recommendations

The Expert Panel on Occupational Health and Safety also recommended taking a step back from the use of claims experience in incenting health and safety.

> The panel strongly believes that health and safety incentives should not simply be tied to claims experience. An ideal incentive program should reduce emphasis on measures such as LTI by taking into account OHS practice improvements in the workplace, and reward employers for those improvements.[5]

The Panel recommended that the WSIB "review and revise existing financial incentive programs, with a particular focus on reducing their emphasis on claims costs and frequency".[6] The new framework stands in opposition to this recommendation. Although the framework does away with the distinction between lost time and no lost time, it continues and in fact expands the use of claims experience-based incentives. Under the proposed framework, claims experience becomes the main driver of

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[3] Douglas Hyatt and Terry Thompson (May 1998). *Evidence on the Efficacy of Experience Rating in British Columbia: A report to the Royal Commission on Workers' Compensation in BC,* p.51.
[4] Morneau Sobeco, *Recommendations for Experience Rating*, October 28, 2008.
[5] *Expert Advisory Panel on Occupational Health and Safety Report and Recommendations to the Minister of Labour*, December 2010, p.40 http://www.labour.gov.on.ca/english/hs/pdf/eap_report.pdf
[6] *Ibid*., at p.41

premium rates for all Schedule I employers. The framework contains no provision to recognize or reward health and safety improvements.

The Ontario government has indicated its intention to implement the Expert Panel recommendations without delay. The proposed rate framework stands in direct opposition to this intention.

Professor Harry Arthurs also urged the WSIB to address the disconnect between occupational health and safety and its experience rating programs. One of his recommendations was that employers found to be in violation of the WSIA or the OHSA should be ineligible for favourable premium adjustments for up to five years.[7] As noted, the new framework contains no provision that accounts for this recommendation.

The proposed framework expands experience rating and will exacerbate its negative effects

There is no dispute that the proposed framework is likely to result in lower claims costs. As we indicated at the outset of this submission, the important question is how this will be accomplished. There is substantial evidence that claims costs can and will be reduced through claims management and claims suppression. In fact, the rate framework, with its experience rated premium rates (risk bands) will continue to carry the many detrimental unintended consequences of the experience rating programs we have now. The late esteemed Professor Terence Ison identified the following practices that have been used to reduce claims costs: failing to report injuries; discouraging workers from reporting claims (including threats of dismissal); creating peer group pressure on workers not to make claims through worker safety programs; delaying completing paperwork and omitting relevant information to delay claims processing; and having as many claims as possible classified as medical care only (that is, as no lost time claims).[8]

In our practices, we have observed these tactics time and time again. We have also seen many cases where workers have been terminated, allegedly for non-compensable reasons, or induced to quit through harassment and other tactics. We have also seen instances where workers are given degrading make-work tasks such as sorting different sized ball bearings or different colours of paper with the apparent goal of encouraging the worker to quit in frustration.

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[7] Harry Arthurs (2012) *Funding Fairness: A Report on Ontario's Workplace Safety and Insurance System* (Toronto: Queen's Printer for Ontario).

[8] Terence G. Ison (1994). *Compensation Systems for Injury and Disease: The Policy Choices*, Butterworths, Toronto, p. 202

Another unintended consequence is the effect of experience rated premiums on hiring practices. A study from New Zealand found a direct relationship between experience rating and discriminatory hiring practices. It concluded that employers proactively manage compensation claims by discriminating against employees with disabilities in the hiring process to try to prevent future claims.[9] More specifically, they note that

> as the premium rate increases, experience-rating provides strong incentives to limit the level of employees' claims by discriminating on the basis of disability.[10]

The study shows that employers avoid hiring not just injured workers, but persons with disabilities in general, who are seen as a risk.

In his comprehensive report on funding, Professor Arthurs recognized that claims suppression was almost certainly occurring under the current experience rating system. He called the situation "a moral crisis" and made strong recommendations that the WSIB consider discontinuing the programs:

> Unless the WSIB is prepared to aggressively use its existing powers – and hopefully new ones as well – to prevent and punish claims suppression, and unless it is able to vouch for the integrity and efficacy of its experience rating programs, it should not continue to operate them.[11]

The moral crisis is on course to continue under the risk-adjusted premium bands of the proposed rate framework. As long as premium rates remain tied to claims costs, there will be a strong incentive for employers to reduce costs. The new framework makes this link readily apparent and clear: lower claims costs will equate to lower premium rates. Even well meaning employers are faced with the pressure to keep costs down and remain competitive. We have no doubt that all of the claims management and claims suppression behaviours that currently go on will continue, or even expand under the new framework. The drive to reduce costs will result in discouraging claims reporting, challenging entitlements, and managing workers out of employment through dubious return to work programs.

The WSIB rate framework materials suggest that claims suppression will be abated under the new framework because there will be less volatility in premium rate changes. The thought is that graduated per claim limits and controlled movements between bands from year to year will make rates more predictable. Predictability is good for

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[9] Mark Harcourt, Helen Lam, and Sondra Harcourt (September 2007). "Impact of workers' compensation experience-rating on discriminatory hiring practices" *Journal of Economic Issues*, Vol. XLI no. 3, p. 681 – 699, at p.695

[10] *Ibid*., at p. 694

[11] *Supra* Note 7, p.81.

employers and indeed one of the purposes of the compensation system, but we strongly disagree that this version of predictability will impact claims suppression and claims management practices. What is predicable is that if you report a claim, your rates will increase. As long as claims costs are used to set premium rates, there will be an incentive to reduce claims costs and for many employers, claims costs will be reduced by whatever means necessary.

The automobile insurance rate framework is a clear example of the future of workers' compensation under the proposed rate framework. Everyone knows their insurance rate will increase if they report an accident. Every driver in Ontario has, or knows someone who has, settled an accident by an exchange of money between drivers in return for a promise not to report the accident. This is more problematic in a worker's compensation context because of the power imbalance between the employer, who pays the premium and stands to lose by reporting, and the worker, who stands to suffer a loss if the claim goes unreported.

It is not lost on us that the proposed window for claims costs to be included in the calculation of risk is 6 years, which coincides exactly with the 72 month window in which benefits can be reviewed. This means that employers will have an incentive to contest claims and provide return to work only for so long as the worker's benefits can be reviewed and reduced. An employer could provide highly accommodated work for 72 months at which time, the worker can be terminated with no claim cost repercussions for the employer and no benefit costs to the WSIB. The worker, though, having lost his highly accommodated job will have no benefits and no prospects for finding new employment.

We note that Manitoba has a premium assessment rate framework that is very similar to the one proposed for Ontario, and that claims suppression is regarded to be a widespread concern.[12] A recent review in Manitoba found no connection between the rate framework and the implementation of health and safety programs, and that instead, costs were controlled by measures taken after an accident has occurred, including claims suppression in some cases:

> Experience rating systems are more effective in controlling the cost of claims after the injury has occurred through effective disability management programs, and in some cases rewards illegal suppression of claims. [13]

[12] Prism Economics and Analysis (November 2013) *Claims Suppression in the Manitoba Workers Compensation System: Research Report*, Prepared for Manitoba Workers Compensation Board.
[13] Paul Petrie *Fair Compensation Review* A Report to The Minister of Family Services and Labour, January 30, 2013, p.16.

The Manitoba review also noted that experience rating can contribute to "unsafe workplaces because employers focus limited resources on managing reported claims rather than on prevention".[14]

A recent report on claims suppression prepared for the Manitoba Workers Compensation Board suggests that suppression is fairly commonplace. The report notes that claim suppression largely remains hidden because employers try to hide claims from the start. The report found that six per cent of workplace injuries, about 1,000 workers annually, go unreported due to overt claim suppression tactics by employers. This includes threatening or bullying workers to deter them from filing claims as well as intimidating workers into withdrawing claims after they have been filed.[15]

We note that the Ontario Provincial Legislature is also worried about ongoing intimidation and has recently introduced amendments to the WSIA in Bill 109. The proposed amendments will impose and increase fines for some aspects of claims suppression. Unfortunately, as in Manitoba, there is no reason to have confidence that such measures will deter claims suppression—scared workers do not report.

The proposed Rate Framework is inconsistent with the WSIA

Professor Arthurs wrote in his report that "no public agency should act in violation of its own statute and any well-run agency should confirm that its programs are achieving the goals laid out in the statute".[16] Professor Arthurs was prompted to make this seemingly "obvious" comment by the WSIB's disregard for the statutory purposes of its experience rating programs – health and safety and return to work. Professor Arthurs recommended that the WSIB discontinue its experience rating programs "forthwith" if it could not confirm that the programs were fulfilling their mandated purposes. He recommended that the WSIB only continue to operate its experience rating programs if

(a) It declared that the purpose of those programs is solely to encourage employers to reduce injuries and occupational diseases and to encourage workers' return to work and
(b) it establishes a credible monitoring process to ensure that it was achieving those purposes.[17]

The new rate framework does nothing to further these recommendations or respect the statutory mandate. The current experience rating programs will cease under the framework, since experience rating will be incorporated directly into the rate setting process. The WSIB has been clear that the risk band system is experience rating and

[14] *Ibid.*
[15] *Supra* Note 12.
[16] *Supra* Note 7, P.82.
[17] *Supra* Note 7, p. 81.

falls under the authority of s.83, experience rating, and yet, there is no mention of return to work and only a vague reference to the framework acting as an "early warning system" for employers to address health and safety issues. The materials claim the framework can include health and safety initiatives but there is no description of what these might be or how they would be incorporated. It is obvious that health and safety is nothing more than an afterthought in the proposed framework.

Although the rate framework papers do not speak of insurance equity, this is clearly the main consideration of the proposed scheme. The rate framework papers focus on "risk" as measured by claims costs; there is no provision to measure health and safety risk. However, as Professor Arthurs has stated, "the "risk" metric is not the same as the "claims costs" metric usually associated with insurance equity."[18] Risk must encompass more than just the risk of financial consequences under the WSIA.

The WSIB has been advised by one of Canada's preeminent legal scholars, Professor Harry Arthurs that it does not have a statutory mandate to use experience rating for insurance equity purposes. And yet, this is exactly what the new framework proposes to do.

Injured workers are more than a financial risk

As noted, the proposed framework is based on a conception of risk that has been narrowly defined as the risk of costing money to the system. This is inconsistent with the broader purposes of the legislation, which are to promote health and safety, to facilitate return to work, and to provide compensation and other benefits to workers. What about the risk to health and safety? The risk of job loss due to illegal claims management practices?

The framework in fact contains no provisions to protect workers against the broader risks that are inherent in any system that relies on a claims cost metric: "if motivation for behavioural change is heightened, so too is the risk of abuse; and if the risk of abuse is heightened, so too must be the effectiveness of regulation to deter it, to punish it and to repair its negative consequences."[19] As noted, the framework contains no such provisions to deter, punish or repair abuses, and even if it did, the efficacy would be questionable.

The mental health risk

It is important to note, too, that many of the behaviours that are incented by experience rating have significant negative consequences for workers. Research shows that routine claims management practices such as questioning work relatedness or the level of

[18] *Supra* Note 7, p.61-62.
[19] *Supra* Note 7, p.63.

disability adversely affect the mental health of injured workers in the Ontario workers compensation system. A recent cross-sectional telephone survey of Ontario injured workers examined mental health status. The data suggest that becoming a WSIB claimant leads to mental health problems and/or significantly exacerbates existing mental health problems.[20] Another study showed that questioning the legitimacy of the injured worker can lead to mental health consequences such as stress, anxiety, and anger in the injured worker.[21] Instead of providing a nurturing and supportive environment where recovery occurs, claims management interactions may create ill health and exacerbate emotional stressors, in many cases promoting the development of psychological disease secondary to physical injury. These mental health consequences will continue to occur if the proposed rate framework is implemented.

The 'exceptions that prove the rule': long latency occupational diseases, fatalities, and temporary agency workers

Fatalities

Long latency diseases, fatal claims, and temporary agency workers –all three of these special circumstances exemplify the disconnect between the claims costs metric and actual health and safety. The most flagrant example is that of fatal injuries. As is well known, it is far cheaper to kill than to maim; that is, the claims costs associated with a workplace fatality can be extremely small. Fatalities represent a very small risk to the compensation system, although they can and usually do reveal a very high risk to health and safety. If risk is defined as purely a financial risk, as the framework proposes to do, then it would make sense to adopt the Ontario Chamber of Commerce's recommendation to just 'roll' the cost of fatalities into the plan as is. Of course, this has highly unpalatable consequences: it seems obscene that an employer who kills a worker should pay a lower premium than other employers in its group.

One alternative is to attribute a cost to fatalities, as is done in Manitoba, and as is done with the current fatal claims premium adjustment policy. Under that policy, the WSIB increases the cost of an employer's premium to an amount equal to any rebate they would have been eligible to receive in the year of a fatality. The limits of this are obvious – firstly, it applies only to the year of the fatality, whereas the costs of other accidents can span many years. Second, there is evidence to suggest that the fatal claim policy has been applied on a discretionary basis.[22] The Workplace Safety and Insurance

[20] F. O'Hagan, P. Ballantyne, and P. Vienneau (2012) "Mental Health Status of Ontario Injured Workers With Permanent Impairments," 2 *Canadian Journal of Public Health* 103(4), pp.303-8.
[21] Kilgour, Kosny, McKenzie, Collie (March 2015) "Interactions Between Injured Workers and Insurers in Workers'Compensation Systems: A Systematic Review of Qualitative Research Literature" *Journal of Occupational Rehabilitation*, 25(1), pp 160-181.
[22] Joel Schwartz (2014) "Rewarding Offenders: Report on how Ontario's workplace safety system rewards employers despite workplace deaths and injuries." Ontario Federation of Labour.

Appeals Tribunal (WSIAT) has recently held that the policy does not permit such discretion in the application of the premium adjustment. [23] The use of this discretion, illegal as it may be, means that there have been no cost consequences to employers for at least some worker fatalities.

The recent WSIAT decision noted above illustrates the moral bankruptcy of claims cost-based premiums. In that case, the employer was convicted under the OHSA for failing to ensure overhead guarding was in place. The OHSA fines totaled $375,000. The employer appealed the WSIB's application of the fatal claim policy which had the effect of rescinding its experience rating rebate of about $1 million. The WSIAT has not yet issued a final decision on the matter and it is possible that the decision will stand, but in any case, something is fundamentally wrong with a system that would provide a $1million refund to an employer who fails to take the minimal safety precaution of guarding its machinery. Yet this exact situation could occur under the proposed framework, which has no direct incentive to improve health and safety. An employer who chooses to pay a claims management firm to address claims that have already happened could very well pay less than an employer who invests that money in machine guarding and other safety initiatives instead.

Long latency occupational diseases

Long latency occupational disease cases also illustrate the deficiency of using claims cost-based premium adjustments. The WSIB has proposed to exclude long latency diseases from the cost record of individual employers because it is often impossible to know which employer is responsible. This is not always the case - where a worker has worked for one employer with known exposures over his entire work-life, the responsible employer is fairly clear. In any case, the exclusion of these disease cases makes possible a situation where a handful of employers with inferior safety practices are responsible for the majority of the claims, and the cost of those claims, but all employers in the group would pay equally.

If premium adjustments were made based on health and safety practices, though, the result could be different. Employers who invested in better health and safety equipment, those who adopted higher safety standards, or similar initiatives, would pay less, irrespective of actual claims costs. Safer employers would be compensated directly for their efforts.

Temporary Agencies

The final exception is perhaps the starkest example of the limits of claims cost-based premium adjustments: temporary agencies. When a temporary agency employee is injured while working at a client employer, under the proposed framework, the costs of

[23] *Decision No. 2346/12 I2*

that claim affect the temporary agency's premium rate. The temporary agency has no control over the conditions of work at the client employer. There is no way for any shift in risk bands to "act as an early warning sign" for the temporary agency to remediate health and safety conditions because it has no control over the conditions that require remediation. It is unlikely that the temporary agency will "pass on its costs" to the client employer. Under the current system, and with s.84 of the WSIA, temp agencies could pass on costs but they don't because it is bad for business. What they do, and what they would continue to do under the proposed framework is manage claims. Temporary agencies can and will aggressively object to entitlement decisions, and they can and likely will find a way to terminate the worker, or give him make-work projects.

The proposed claims premium structure actually makes work more dangerous for many temporary workers. This type of cost structure creates an incentive for employers to contract their more dangerous jobs out to temporary workers since there will be no effect on their premium rates if the temp worker is injured. Research has found that temporary workers have a high risk of injury.[24]

In 2008, the Toronto Star reported on a "loophole" that allowed companies with histories of serious work accidents to maintain good experience rating records by employing temporary workers.[25] The employers used poorly trained temp workers to do dangerous jobs, or took inadequate safety precautions, but because the temp workers were not their employees, the accidents did not show up on their claims records and the employers continued to receive rebates. If we substitute "lower risk band" or "lower premium" for "rebate", the same scenarios recounted in the Toronto Star article could, and likely will, continue under the proposed framework.

All of these cases – temporary agencies, long latency diseases, and fatalities – show the perils of claims cost-adjusted premiums and the fundamental disconnect between claims costs and health and safety. These perils cannot be repaired by creating exceptions for temp agencies, or fatal claims, or long latency diseases; instead, the solution is to abandon the use of claims costs as the metric for rate setting.

An alternative approach

We agree with the Board's proposal to use NAICS categories for classification, and we agree that the system would benefit from fewer groups or classes of employers, which is in accordance with the collective liability principle. As we have made clear, what we disagree with is the use of claims costs as the metric for risk-adjusted premium rates.

[24] See for instance, E. MacEachen et al. (2012) "Workers' compensation experience-rating rules and the danger to workers' safety in the temporary work agency sector" *Policy and Practice in Health and Safety* 10.1, p.77.
[25] David Bruser "Hiding injuries rewards companies" The Toronto Star, May 29, 2008.

Measure genuine indicators of health and safety

We suggest instead that "risk" be measured by actual health and safety leading indicators rather than claims costs. Leading indicators shift the focus to prevention rather than dealing with the costs of a claim after the accident has happened. The recently developed Institute for Work and Health leading indicator tool, for example, could be used to determine risk.[26]

Proactive inspections with penalties have also been found to reduce the frequency and severity of work injuries, and could also be used as a risk indicator.[27] Workwell used to be a strong and genuine health and safety tool, and we strongly support the reinstatement of penalties in Workwell to restore its effectiveness. Consider the auto insurance example. Your rates will stay the same if you drive over the speed limit, but they will go up if you are caught speeding by the police and found guilty of an offence. This is the inspection with a penalty.

To best facilitate return to work, we have long suggested that the WSIB support accommodations and tools tailored to the worker, what we have termed the "backpack". With this approach, the worker would carry with him/her tools or funds to support his/her integration to work. For instance, the WSIB could fund a sit-stand desk that the worker could take with him or her if s/he changed jobs. We have also attached our vision for an "excellence fund" as an appendix to this document.

We don't pretend to have all of the answers on what an alternative scheme should look like. Instead, we suggest investing some of the cost savings from the dismantling of the current experience rating programs in a research study aimed at finding a solid health and safety based alternative. Part of these savings could also be used to fund a cost analysis of the administrative cost savings of using a collective liability system rather than a risk banded system. It is possible that the savings would be significant enough to warrant abandoning the risk band approach.

Classification changes can lead to full coverage

Finally, we must comment on the potential that the rate framework has for expanding coverage in Ontario. The proposed use of the NAICS system and the necessary regulatory amendments that this shift will entail open the door to making coverage universal for all workers in Ontario. As we know, the Ontario workforce has one of the lowest rates of coverage in all of Canada, and expanding coverage could have a positive affect on premium rates.[28]

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[26] Institute for Work and Health (2015) "IWH leading indicator tool wins over advocates across Canada"
[27] Institute for Work and Health (2015) "Inspections with penalties linked to lower injuries: IWH review"
[28] *Supra* Note 7.

Full coverage would also increase fairness and equity for employers, in line with current WSIB values. It would be fairer to have all employers pay into the WSIB system which in part funds prevention for all Ontario workplaces.

The NAICS system contains the necessary structure to easily extend coverage to all employers and warrants further consideration.

Recommendations and Conclusions

Our recommendations are:

1. Dismantle the current experience rating programs without delay.
2. Abandon the "risk adjusted premium rate" aspect of the rate framework, or use actual health and safety indicators, rather than claims costs as the metric of risk.
3. Further study into alternative approaches, including health and safety indicators.
4. Reinstate penalties in Workwell audits.

Ontario's workers' compensation system was intended to be a no-fault system where the total cost of the system was shared by all employers. Adjusting premium rates based on claims experience re-introduces fault into the system, and fosters an adversarial process that the no-fault system was designed to eliminate. It also undermines the collective liability of employers by tying individual employer costs with individual employer claims records.

The proposed rate framework conceptualizes the injured worker as a "risk to the system". Implementing such a framework will result in the absurdity of making the WSIB an institution which instead of protecting the worker, as intended, turns that worker into a risk from which the institution now seeks protection.

As stated at the outset, we will not support any rate setting model that uses claims costs as the metric for establishing premium rates.

Appendix A: **EXCELLENCE FUND KEY PRINCIPLES**

We propose the Excellence Fund to allow the Board and employers to go forward with prevention and accommodation promoting timely and safe return to work (RTW). Funding for the Excellence Program would be transferred from all annual expenditures from the current experience rating program.

The Excellence Fund is set up as a merit system or incentive program which would:

1. Offer grants/loans to employers who want to make real health and safety improvements beyond their obligation under the *Occupational Health and Safety Act*. For example, the addition of patient lifts in health care facilities or the replacement of toxins with safe substances in the workplace. In order to qualify for a grant the employer must undergo an extensive audit by the Board through an accreditation process. The Joint Health and Safety Committee would be involved in the accreditation process. For purposes of the audit employers would be required to record all lost time injuries and no lost time injuries and incident reports. Employers passing accreditation will be publicly recognized. ie. ISO Banner. If an employer fails audit the Board and the Ontario government would not purchase any goods or services from them. Grants would be amortized over a reasonable period.

2. Give grants to employers to modify the workplace to accommodate an injured worker. This could be the accident employer or a new employer willing to hire an injured worker.

3. An employer may be given a prospective rate discount if accreditation is passed and no grant had been awarded during the deemed amortization period of the grant. Rate discounts will be adjusted through regular or spot audits. Audits could be triggered through a Ministry of Labour (MOL) enforcement action and would allow the Board to apply an administrative penalty which would go to the Excellence Fund.

4. Entitlement to grants for employers who modify the workplace to accommodate an injured worker move with the injured worker on RTW i.e. with the accident employer and/or a subsequent employer. Compensation for loss of earnings should resume in the event of job loss by the accommodated injured worker, which could be adjusted on the merits of the individual case.

cope343
LH:ph

RATE FRAMEWORK REFORM

CONSULTATION RESPONSE

LABOUR ISSUES COORDINATING COMMITTEE

The Labour Issues Coordinating Committee (LICC) is a coalition of agricultural commodity and farm organizations representing the interests of Ontario farm employers. It was formed in 1991 to develop consensus in the farm employer community (approximately 20,000) on employment and labour-related issues, and to represent their collective positions to government.

Thank you for the opportunity to comment. Don't hesitate to contact me if you have questions or concerns.

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Consultation Questions
Paper 3
Page 13

1) *Is the proposed structure adapted from NAICS an appropriate grouping of employers*?

   Yes. Regardless of the data collection system used there will be pros and cons. Using a system that will allow some form of comparison to other jurisdictions is important.

2) *Do the proposed 22 classes appropriately reflect the industry categories in Ontario's economy today?*

Yes. From agricultures perspective, we would acknowledge that agriculture is a long term mature industry and we may not be in a position to truly evaluate newer sector(s) of the economy. The Risk Disparity Analysis does not impact agriculture, but is understandable.

Page 20

1) *The WSIB is proposing to classify employers according to their predominant class, where the predominant class would generally be defined based on the class representing the largest share of an employer's annual insurable earnings. Should the WSIB consider factors other than just insurable earnings? For example, should the WSIB also consider the risk involved in the business activity when determining the appropriate classification? Or a mix of both insurable earnings and risk?*

   Yes. Clearly insurable earnings are a key approach to determine predominant class, but risk involved in the business activity could have a significant impact. A business could be composed of very diverse activities and therefore level of risk. You could have a large payroll in a section of the business with low risk (harvesting field crops) and a small payroll in a section of the business that is high risk (trucking). A mix of insurable earnings and risk would reflect the reality of the workplace. Unfortunately, you may lose some of the transparency if you move from a single measurable factor provided by the employer to a formula composed of employer information and WSIB risk calculation.

2) *Is a three year window for determining an existing employer's predominant class appropriate? Is a longer window (e.g., four years) more appropriate or is a single year enough?*

   The three year window is a reasonable compromise. Agriculture has both a seasonal and full time workforce. Like any business you are constantly adapting to economic conditions and yet there is often a constant pattern over time. At any given time an employer could expand or contract their business. So, regardless of the time frame selected any given business will see an advantage or disadvantage.

Page 22

1) *Should TEAs be treated differently from other employers under a new Rate Framework to address the premium cost avoidance issue (e.g., be allowed to have multiple premium rates)?*

TEAs provide a service, but the worker is exposed to the risk of the client employer business not the TEA's workplace. It is reasonable to charge a premium relative to the risk the worker is exposed to.

2) *How should the claims cost avoidance issue be addressed under a new Rate Framework?*

Insurable Earnings and risk rating combination should be in place. Regardless of the administrative structure put in place to manage the claims cost avoidance issue, employers will use the structure to their advantage. The ultimate solution is to evaluate the level of avoidance and remain flexible in your administration in order to honour the intent of the insurance program.

Page 30

1. *Should the WSIB use the current RG approach of a fixed per claim limit of 2.5 times the annual insurable earnings at the employer level, or should the WSIB use the graduated per claim limit approach outlined above?*

   Transparency is a good thing but can lead to some rough justice. With the per claim limit shifting from the Rate Group level to the employer, the small employers could be exposed to unreasonable premiums. So the graduated per claim limit is a reasonable approach.

2. *Should the WSIB consider using a different graduated per claim limit than the one proposed above? If so, what features should it have?*

   It would be something that should be monitored closely and amended if required.

3. *Should the WSIB continue with its current allocation of administration costs?*

   Thank you for the opportunity to comment. Why should the insurance sector of a workers compensation system cover the cost of activities that they do not control? Administration and enforcement of the Occupational Health and Safety Act and the prevention services of the Chief Prevention Office and related Health and Safety associations, and Office of the Worker/Employer Adviser are under the control of the Ministry of Labour. Their services benefit all of society, so all of society should pay for those benefits and not just employers.

   Business is often told to be competitive. When it comes to workers compensation programs are governments competitive with similar/neighbouring jurisdictions? Do other jurisdictions require payment of these services to be paid by employers? Agriculture for

the most part competes in a global market. When our federal/provincial/municipal governments put financial burdens on our employers that they do not put on our global competitors it drives both businesses and in some cases workers to other jurisdictions. Are we as a society so comfortable with buying food from other nations that do not share our value system(s)? Should we not maintain sovereignty of our food supply and other agricultural products?

Page 31

1. *Should LLOD claim costs be shared equally by all employers as a collective cost or should these costs be charged directly to the individual employer?*

Long Latency Occupational Disease (LLOD) is a relatively new issue for a workers compensation program. It is a very complex issue because i) not all industry sectors carry the same level of risk; ii) it is not a single traumatic incident, but occurs over time and potentially over many different employers and workplaces; iii) can be influenced by an individual workers genetic makeup; and iv) the individual workers life style.

LLOD claims cost should be pooled at the Class level. This is a topic that demands the sharing of risk among all concerned including the worker. Adjudication of claims is extremely critical in assigning responsibility across all stakeholders. Charging LLOD claims to the current employer is grossly unfair.

Page 34

1. *Given the design elements of the proposed preliminary Rate Framework that promotes greater stability in premium rates, as well as the current legal landscape on disability issues, is the SIEF policy as it is currently designed still relevant?*

Yes the SIEF policy is still relevant. Like the previous question, this is a very complex issue and as stated "involves judgement". Why would an employer ever hire someone with a known claims history if they take the risk of the entire burden of the next claim if there was a pre-existing condition? Would it be cheaper take a fine under the Human Rights Code or carry the cost of a long term condition? Employers must have a greater understanding of how the new system will impact premiums, when they hire workers with pre-existing conditions. The probability of older workers having pre-existing conditions is a concern.

Page 37

1. *How should the WSIB handle catastrophic new claim costs situations that occur in a particular class?*

a. *Should the WSIB include these claim costs in the year that they occur, which may result in a higher premium rate being charged to employers?*

Yes, but it should be monitored closely and if the premium rate increase is traumatic when the economy is soft, may need to be spread over 2-3 years.

How to balance rate stability with rate responsiveness is a difficult question? How do other jurisdictions manage this balancing act? How high is higher?

b. *Or, should the WSIB reduce the premium rate increase and add the remainder as an amount for future premium rate consideration?*

Yes, if the increase is huge when the economy is in a down turn. Some parameters would need to be developed so it does not overwhelm future premiums.

c. *How should catastrophic situations be defined? Should the WSIB consider pooling these costs at the class level or Schedule 1 level?*

Start with applying the costs to the Class level. The question is how much variability will you see at the class level? Stakeholders should have some input into what is considered acceptable for Class level or when it should go to the Schedule level. Understanding how this is managed in other jurisdictions would be important in making a decision. If our compensation system becomes so punitive relative to neighbouring jurisdictions, businesses will consider moving the business.

Page 49

1. *In setting employer level premium rates, what are the factors that the WSIB should consider in assessing the level of protection an employer needs from large rate fluctuations?*
    a. *Should the WSIB include in the assessment of actuarial predictability, insurable earnings, claims costs, number of claims, lost time injuries or some other factor?*

        Yes. Insurable earnings and claim costs are more important than number of claims and would include lost time injuries or not.

    b. *Should the WSIB use different mixes of insurable earnings, number of claims?*

Stakeholders should have input on what acceptable levels are and compare to other jurisdictions.

c. *Are the percentages of assignment between individual and collective experience appropriate?*

Yes, the percentages seem appropriate, but should be monitored and amended as required.

d. *Should a new employer be treated the same as an existing employer?*

They should be treated as an existing employer and over time they will get to the level of premium relative to risk. I suspect that most new employers fall within expected levels of risk. It is the very small percent that ends up being high risk. The probability of a new employer surviving in business is fairly low. If you charge a higher premium than existing employers you increase the likelihood of failure.

2. *Does the introduction of experience adjusted premium rates for small employers, currently excluded from WSIB experience rating programs, introduce too much premium rate sensitivity?*

When only 40% of employers can use experience rating programs it suggests there is not enough sensitivity in the program. What would 50% or 60% or 75% look like from a variability perspective? How do other jurisdictions manage this issue?

Page 61

1. *Is using the average of the last 3 years net premium rate for experience rated employers or the premium rate of the RG for those employers who are not experience rated, a reasonable starting point for employers to transition to a new Rate Framework?*

Yes the 3 year level seems to be a reasonable place to begin.

Page 64

1. *Are risk bands that are set at 5% increments to provide greater sensitivity, and avoid large premium rate swings for employer with small changes in risk appropriate? Should the percentage increments be larger?*

Yes, 5% is appropriate. No, the increments should not be larger.

2. *Should the proposed preliminary Rate Framework use the most recent six prior years for determining employer level premium rates? Or three or four years?*

   A rolling 6 years would be good.

3. *Does a three risk band limitation, relative to the experience of the class, provide suitable stability? Considering that this limitation itself leads to greater collective liability, should the limitation be higher? Should it be lower?*

   Three risk bands is a good place to start, monitor and amend as needed.

4. *Should we consider forgiving employers who increase/decrease one or two risk bands? If so, would there be a need to increase the risk band limitation to four or five risk bands to appropriately balance premium rate stability and responsiveness?*

   No. Subtle changes in premium should be acceptable.

5. *Do risk bands generally provide a positive support and a level of stability in setting rates for employers, or would individualized rates for each employer capped at a specific %, plus or minus, relative to the experience of the class, be preferred?*

   Risk bands are a good place to begin, monitor and amend as required.

Page 73

1. *Should the WSIB charge new employers with less than 12 months of experience the Class Target Premium Rate? Or should they be risk banded?*

   New employers should be risk banded. When you consider the range of Rate Group premiums that are now put into a single Class and that the new Class are related industries not related risk levels it seems reasonable to look at where like employers would fit on the risk bands and include new employers in that group. Adjustment to individual employer rating will occur quickly.

Page 74

1. *What factors should the WSIB consider when determining if an employer should be surcharged?*

   No employer knowingly and wittingly put workers in harm's way. Some employers remain so focused on the many other aspects of business that they are not as focused

on safety as they could be. Most employers support the "internal responsibility system" and make a solid effort to provide a safe workplace.

Employers who repeatedly have either (or combination) a high number of claims or high claim cost or repeated/same claims relative to insurable earnings should be targeted.

A single catastrophic event (high claims cost) in an otherwise good record should not be a trigger. Targeting a specific percentage of employers (i.e. 2%) is not a useful approach as small employers will be unfairly hit.

2. *Should the WSIB not surcharge employers at all and include all the claim costs above a certain level as a collective cost in setting the Class Target Premium Rate?*

   Surcharging can be a useful tool in forcing repeatedly bad actors to amend their management of worker safety. It in combination of other tools such as audits, prosecutions, public shaming would be an acceptable approach to amending behaviour.

Paper 4

Page12

1. *As outlined in the WSIB's Sufficiency Plan and described in Paper 5: A Path Forward, the UFL is projected to be significantly reduced when the WSIB may introduce a new Rate Framework. 1. Should the WSIB use the NCC method or consider Method 2 of apportioning the UFL as described earlier in this paper?*

   The NCC is the preferred approach to apportion UFL costs.

   The UFL is a challenging issue. Method 2 suggests a 48% increase to the NAICS Class A while many classes see a reduction. So with agriculture being a significant portion of Class A, why would we ever support a significant increase, when it is our understanding that agriculture had little to do with the level of the UFL. The NAICS Class A and the SIC Class C have a different make up, so it is not a direct/easy comparison.

Paper 5

Page 6

1. *Are there any other key considerations that could be considered in the development of a transition plan from the current system to a new Rate Framework?*

No.

Page 7

1. *Is using the average of the last 3 years net premium rate for experience rated employers and the premium rate of the RG for those employers who are not experience rated, a reasonable starting point for employers to transition to a new Rate Framework?*

   Yes. Regardless of the time frame and method used there will be winners and losers in the level of premium they will pay in the new approach relative to the old approach. Transition for 97% of employers within 6 years suggests a reasonable transition period.

GREATER TORONTO HOTEL ASSOCIATION

SERVING THE HOTEL INDUSTRY SINCE 1925

ORHMA
ONTARIO RESTAURANT HOTEL & MOTEL ASSOCIATION

WSIB Rate Framework Review Consultation

Greater Toronto Hotel Association

Ontario Restaurant Hotel & Motel Association

Joint Submission

Presented to:
Workplace Safety & Insurance Board RFR Review

October 2, 2015

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WSIB Rate Framework Review Consultation
Greater Toronto Hotel Association
Ontario Restaurant Hotel & Motel Association
Joint Submission

PART I: Introduction

1. Who We are

The **Greater Toronto Hotel Association** ["GTHA"] and the **Ontario Restaurant Hotel & Motel Association** ["ORHMA"] [collectively the "Associations"] are pleased to collaboratively respond to the **Workplace Safety & Insurance Board** ["WSIB" or the "Board"] **Rate Framework Review** ["RFR"]

Greater Toronto Hotel Association:

A major stakeholder in the industry, the GTHA is the voice of Toronto's hotel industry, representing 170 hotels, with approximately 36,000 guest rooms and 32,000 employees. Founded in 1925, the GTHA is dedicated to serving the interests of its members on issues of public policy at the municipal and provincial levels of government; providing services and information through regular member communication; and, advocating to raise their profile and prosperity as a vital component of Toronto's tourism industry.

Ontario Restaurant Hotel & Motel Association:

The ORHMA is the largest provincial hospitality association in Canada, with over 4,000 members and representing more than 11,000 establishments across the province. ORHMA represents the industry's interests at both the provincial and municipal levels of government.

GTHA and ORHMA members are assessed under WSIB **Rate Group** ["RG"] **919 (Restaurants and Catering)** and **RG 921 (Hotels, Motels)**, with 2015 premiums of $1.72 and $3.10 respectively. The projected 2015 payroll (projected by the WSIB) for **RG 919** is $7.3 billion and for **RG 921** $1.0 billion, collectively over 23% of the **Class I** payroll.

The 2015 collective premium for **RG 919 & 921** is $156 million, which is about 33% of the total **Class I** projected premium.[1] The Associations represent a significant workplace safety and insurance ["WSI"] sector.

As the RFR conjoins the current RG 919 and RG 921 in proposed **Class R, Leisure and Hospitality**, GTHA and ORHMA, very often naturally linked in matters of this type, have a special over-lapping mutual interest in the RFR project.

The Associations also enjoy a collaborative relationship with many other employer and trade associations, in particular, with respect to WSI matters, the **Construction Employers Council on WSIB Health and Safety and Prevention** ["CEC"]. We are aware of the longstanding CEC RFR representations, and for the most, are in accord with those views.

[1] All figures are direct or derived from the **WSIB 2015 Premium Rates Manual**.

PART II: A comment on the WSIB "Case for Change"

A. What is the problem?

1. **RFR Paper 2, "*Current State Analysis*"** presents the Board's reasons for change. It is important to note that this is not the first time that the WSIB has turned its mind to one or more aspects of the classification, rate setting and experience rating systems. The **Revenue Strategy** project of 1988 – 1993, which gave rise to the current regime, addressed the identical territory to that of the RFR.

2. We are struck by the absence of any recognition that the Board, with its eyes fully open and its policy mind in high gear, purposely and intentionally developed each and every one of the policies currently being criticized, in no less a thoughtful fashion than the current RFR project.

3. *What is so deficient with the current regime?* Our take is pretty simple. Nothing. Or more precisely, nothing that cannot be fixed without an architectural overhaul. Nothing is fundamentally wrong with the (1988 – 1993) **Revenue Strategy** classification design. It is evident though, and this was recognized by **Special RFR Advisor Doug Stanley**, that over the past 20 years the Board neglected to maintain these policies.

4. It is our view that the policy infrastructure remains sound. Administrative neglect is a reason for rolling up one's sleeves and getting to work, not for drafting up a new set of blueprints, which in time, will likely similarly decay through neglect.

5. Another reason offered is that "*inadequate experience rating programs that exclude many employers, lead to premium rate instability*" (see **Paper 2, Case for Change**, p. 7). Yet, the argument itself is internally inconsistent. If many employers are excluded from ER, then for those employers, premiums are not subject to "premium rate instability". The premiums remain perfectly stable. Moreover, employers that are excluded from ER are excluded for sound policy and design reasons. They are simply too small (we explore this further at p. 13). **Paper 2** implies (as did past RFR papers) that this is a hardship and an inequity for those employers. Yet, in **Paper 1, Executive Summary – An Overview of the Proposed Preliminary Rate Framework**, at page 10 Figure 4, we learn that a small employer will have a negligible variation in its premium.

Figure 4: Proposed Actuarial Predictability Scale

Predictability Scale (%)	<= 2.5	2.5 - 5.0	5.0 - 10	10 - 20	20 - 30	30 - 40	40 - 50	50 - 60	60 - 70	70 - 80	80 - 90	90 +
Individual Experience for Premium Rate Setting (%)	2.5	5.0	10.0	20.0	30.0	40.0	50.0	60.0	70.0	80.0	90.0	100.0
Collective Experience for Premium Rate Setting (%)	97.5	95.0	90.0	80.0	70.0	60.0	50.0	40.0	30.0	20.0	10.0	0.0

6. The overall suggestion that the proposed RFR regime is "simpler" is perhaps open to interpretation. We ask though, is this summary explanation, taken from **Paper 1**, p. 8, any simpler for an employer than the current scheme?:

> - **Step 2: Class Level Premium Rate Setting** would create an average premium rate for each individual class ("Class Target Premium Rate") based on the valuation of collective liabilities of new claim costs for employers within their respective classes, their allocation of administrative costs and the apportionment of the past claim costs for a particular class; and
> - **Step 3: Employer Level Premium Rate Adjustment** would adjust the Class Target Premium Rate for individual employers based on their risk, represented by their own claims experience and insurable earnings relative to their Class Target Premium Rate, to arrive at their individual risk band position and corresponding Employer Actual and Target Premium Rates.

7. The Board suggests that the current ER schemes are simply too complex (**Paper 2, Previous Review of Experience Rating**, page 9), making it "*difficult for most average employers to understand*". Yet, the Risk Banding (see **Paper 1**, pp. 10-11) is if anything more complex. Similarly, the Board suggests that problems with current ER design persist "*despite numerous program reviews*" (**Paper 2**, page 10, 2nd last para.) as if the Board is somehow exculpable from failing to fix problems as they come up, and this failure is a reason for re-design.

8. The Board argues that change is needed because 137,000 employers are "*paying too much*" while 77,000 employers are "*paying too little*" (see **Paper 2, Figure 2**, page 12). However, the overpaying or underpaying as the case may be has nothing whatsoever to do with the classification scheme and everything to do with deliberate WSIB premium policy in place since 2010. The Board refused to float the premium to the risk and now uses this as a reason for reform.

9. It is our considered view that a strong case for change has not been advanced.

10. At the end of the day, we are concerned that the Board will simply end up trading one set of design imperfections with a new but different set of design imperfections. When these imperfections come to light, a future WSIB administrative regime will look back to this RFR exercise, shake its metaphorical head, and commence to re-design what are, at the moment, RFR bedrock principles. *And so it goes*.[2]

11. We are struck by the stark similarities, and matching inherent risks, between the WSIB RFR initiative and the late-1990s Ontario property tax reform, the so-called "market-value-reassessment" ["MVR"] project. Similar to the RFR project, MVR enjoyed a protracted period of study and consultation,[3] followed by implementation,[4] at which point the proverbial "*stuff hit the fan*", sparking tax-payer and municipality revolt, all of which triggered another decade or more of post-implementation "reforms."[5] As likely will be the case with RFR, MVA became a political lightening-rod, with one expert noting that no matter how "*desirable the long-run outcome of any policy may be, its transitional effects may be sufficiently undesirable in political terms to kill it*."[6]

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[2] With all due regard to **Kurt Vonnegut**.

[3] In the case of MVR, literally over a period of decades, starting with the 1967 Ontario *Committee on Taxation*, which led to provincial control over property assessment (1970), followed by the *Blair Commission on the Reform of Property Taxation in Ontario*, leading to the development of "*the alternative system*" in 1978, the *Provincial-Local Government Committee* of 1978, the 1985 report *Taxing Matters: An Assessment of the Practice of Property Taxation in Ontario*, the 1993 *Ontario Fair Tax Commission*, the 1996 *GTA Task Force*, the 1996 "*Who Does What Panel*," all leading to a new assessment system commencing in 1998. **Reference:** Dr. Enid Slack, "*Property Tax Reform in Ontario: What Have We Learned?*", (2002) Canadian Tax Journal, Vol. 50, No. 2, 576 - 585, and, Slack, *Presentation to Seminar on Property Rates*, Community Law Centre, University of Western Cape, January 26, 2009.

[4] In 1998

[5] In 1999, 2000, 2001, 2004, 2005, 2006, 2007 and 2008, Slack, *supra.*, note 3.

[6] Slack, *supra.* note 3, at. p. 584.

The RFR project is hindered with another glaring risk – the effect of the ubiquitous unfunded liability.

12. We respectfully appeal to the Board to continue to focus on *Job 1* – the financial integrity of the system. Once the system has reached and maintained 100% funding for several years, attention can then be re-focused towards a number of other objectives, including RFR.

B. A comment on the Consultation Process

1. Refer to the **Rate Framework Modernization presentation on RG 921, Hotels, Motels and Camping**, page 7, which is replicated below:

How Could RG 921 Employers be Risk Banded?

- The chart below outlines possible risk bands for employers in RG 921 who will be moving to Class **R - Leisure and Hospitality**, by showing the number and percentage of employers and their actual risk band premium rate. This risk band distribution is subject to change if there are amendments, such as splitting up the classes.

R - Leisure and Hospitality - RG 921: 2014 Employer Actual Rate – Subject to Transition Plan*

	Lowest Band	Risk Bands									Highest Band	
Risk Band Movement from Class Premium Rate (Risk Band 0)	**-13**	**<-3**	**-3**	**-2**	**-1**	**Average 0**	**1**	**2**	**3**	**>3**	**20**	**Total**
Risk Band Rate	$0.99	-	$1.66	$1.75	$1.84	$1.94	$2.03	$2.13	$2.24	-	$5.14	
# of Employers	1	4	1	1	8	8	17	36	42	1,673	2	1,790
% of Employers		0.2%	0.1%	0.1%	0.4%	0.4%	0.95%	2.01%	2.35%	93.46%		100.0%

0.8% 98.8%

Overview of Analysis:

- A small percentage (0.8%) of employers will see a lower premium rate when compared to the average risk band rate.
- A small percentage (0.4%) of employers will pay the average risk band rate.
- About 98.8% of employers will see a higher premium rate when compared to the average risk band rate. The majority of these employers will gradually see their premium rate decrease over time, if cost experience is demonstrated to be in line with the class average experience.

* While the above charts outline the impact to employers considering a +/- 3 risk band limitation scenario that incorporates their Starting Point, these results may be different once a final transition plan (that has received stakeholder input) has been developed to transition employers from the current approach to setting and classifying rates under the proposed preliminary Rate Framework scheme.

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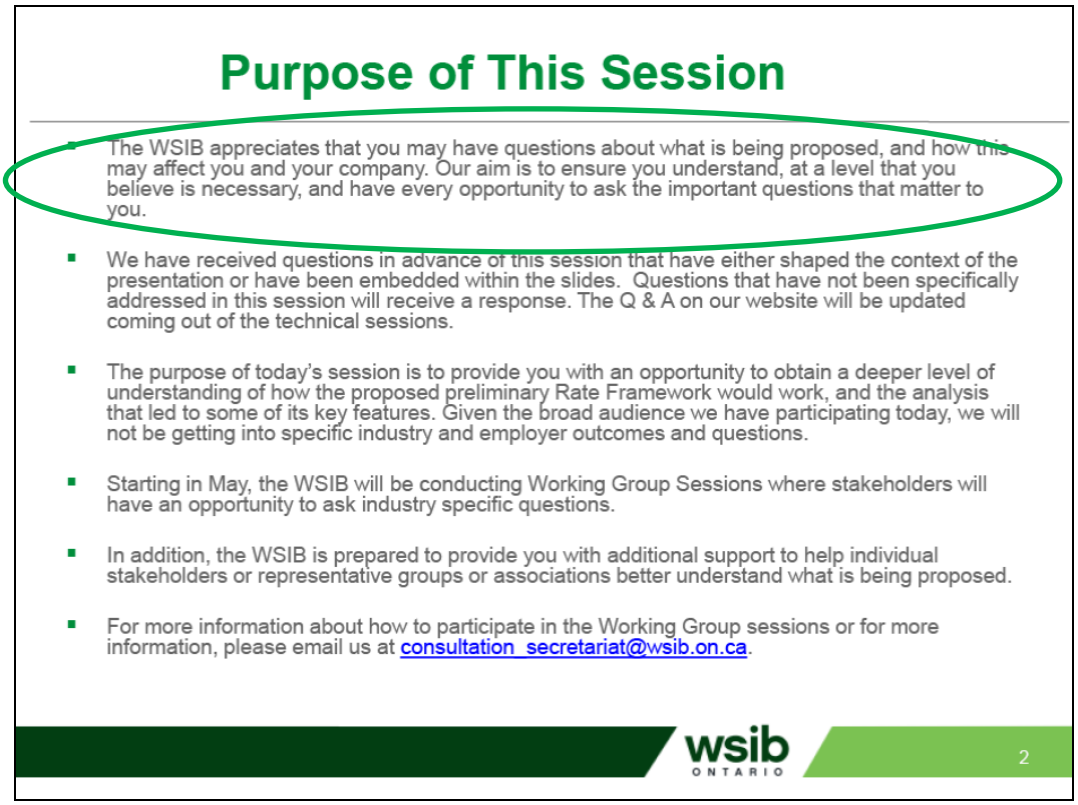
2. That is good, solid essential information. However, it is not nearly enough. With the data organized at the RG level, which of course is essential, most associations would benefit from identical information presented for their membership base. ***Without impact information at the company level, an informed comment is simply impossible***.

3. The Associations require the same type of information set out in **Slide 7** for our member firms.

4. We are struck by the openness suggested in the very first slide of all of the Board's presentations (replicated below). We are worried that the commitment to ensure "*understanding at the level you believe is necessary*", inadvertently or not, is being applied as "*the level the Board deems necessary*".



Purpose of This Session

- The WSIB appreciates that you may have questions about what is being proposed, and how this may affect you and your company. Our aim is to ensure you understand, at a level that you believe is necessary, and have every opportunity to ask the important questions that matter to you.
- We have received questions in advance of this session that have either shaped the context of the presentation or have been embedded within the slides. Questions that have not been specifically addressed in this session will receive a response. The Q & A on our website will be updated coming out of the technical sessions.
- The purpose of today's session is to provide you with an opportunity to obtain a deeper level of understanding of how the proposed preliminary Rate Framework would work, and the analysis that led to some of its key features. Given the broad audience we have participating today, we will not be getting into specific industry and employer outcomes and questions.
- Starting in May, the WSIB will be conducting Working Group Sessions where stakeholders will have an opportunity to ask industry specific questions.
- In addition, the WSIB is prepared to provide you with additional support to help individual stakeholders or representative groups or associations better understand what is being proposed.
- For more information about how to participate in the Working Group sessions or for more information, please email us at consultation_secretariat@wsib.on.ca.

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5. The Associations are uncertain as to the "next steps" in the consultation process - the so-called "*what we've heard*" and "*what we're thinking*" phase.

6. However, we are participating on the expectation that the consultation phase is not over with the October 2, 2015 submission deadline, and that this simply represents the end of one phase and the commencement of the next.

7. We also expect that our information requests will be honoured well in advance of the next phase of consultation. We are certain that the Board seeks as engaged consultation as we do.

PART III: Target Rates – a bridge to a reasonable transition

A. WSIB RFR Paper 5: A Path Forward

1. WSIB **RFR Paper 5: A Path Forward** introduces the discussion on the transition protocol from the current to the new system. At page 5, **Paper 5** puts the considerations this way:

> The following considerations would form the basis for adopting an approach to transitioning employers to their Employer Target Premium Rate:
>
> - Gradual, incremental movement towards Class Target Premium Rates;
> - Utilizing the decreasing/eliminated UFL to support movement towards Employer Target Premium Rates;
> - Balance between degree of premium rate increases and decreases;
> - Gradual, incremental movement towards Employer Target Premium Rates; and
> - Consideration for economic circumstances and potential legislative amendments.

2. The Associations have a much simpler proposition. Like the Board, we are concerned with the inflating influence of the UFL on premium rates. Our thoughtful suggestion is comprised of three distinct phases:

   a. ***Phase 1:*** Under the current system, commence a transition to target rates for all rate groups;

   b. ***Phase 2:*** Once all current RGs are at target *and* the UFL is zero *and* sustained, the new RFR is triggered;

   c. ***Phase 3:*** All employers transitioning from the current to the new system, commence at new system target levels.

B. The need to "get to target"; the UFL challenge; Transition

1. In **WSIB RFR Paper 2, Current State Analysis**, at page 13, the Board presents a reason behind the RFR project:

> With some employers paying too much and other employers paying too little, changes to the existing scheme are necessary in order for the WSIB to charge a fair premium to employers that reflects their claims experience.

2. Earlier, at page 12, **Paper 2** notes that "*the premium rate that the classes should be paying based on their new claim costs may be quite different from what the classes are currently paying*". This point is then illustrated in **Figure 2**:

Figure 2: Assessment of Employer Premium Rates

Category	Number of Organizations	Percentage of Organizations	Balance in Premiums ($M)
Employers paying the same rate*	30,000	13	-0.27
Employer paying too little	77,000	31	363
Employer paying too much	137,000	56	-369
Total	**244,000**	**100**	**-6**

**Paying a premium rate within a +/- 2% of the 2013 Net premium rate.*

3. Yet, the reason behind this disparity is glossed over. The reason has nothing whatsoever to do with any inadequacies, deficiencies or design faults with the current system.

4. Since 2010, the WSIB itself initiated and continued a premium rate policy that assured the very result the Board now ponders.

5. At the inaugural stage of what later became the RFR project, the **2010/11 Harry Arthurs' Funding Review**, the Board's financial future was very much in doubt. As a direct result of financial sustainability concerns identified in the **2009 Annual Report of the Ontario Auditor General**, since 2010 - a period of six (6) years - *WSIB premium rate setting policy prohibited declines in premium rates for any sector even when earned through improving performance*.

6. In 2010, the prevailing view was that the WSI system was in crisis and at the "tipping point". All actions and policies, including government initiatives, were focused on that single concern.

7. Initially, the Associations, as well as most other employer associations, enthusiastically supported this approach, adopting a general position that financial sustainability and UFL reduction was "**Job 1**".

8. The government introduced and implemented **O. Reg. 141/12** which set strict regulatory "sufficiency targets". The Board was instructed to ". . . *maintain the insurance fund in order to achieve partial sufficiency and sufficiency*" and meet prescribed sufficiency ratios by certain dates:

> 60 per cent on or before December 31, 2017.
> 80 per cent on or before December 31, 2022.
> 100 per cent on or before December 31, 2027. **[O. Reg. 141/12, s. 1 (2).]**

9. WSIB premium rate policy was one element of a comprehensive strategy establishing UFL reduction as the core objective of the WSIB and the government. In addition, the WSIB adjusted its administrative practices to reduce "time on claim" and enhance return to work ["RTW"] initiatives, with success.

10. During the 2011 **Funding Review** consultation, the "non-aligned experts" addressed the issue of rate group subsidization:

> Limits to rate increase/decrease. Cross-subsidization of rate-groups resulting from the non-application of rate decreases has started in the 2010 rate setting. Two questions for consideration are as follows: To what extent can this approach be maintained without harming the credibility of the rate setting process and/or negatively influence the employers' behaviour? Is there a need to develop a strategy about the return to a more traditional approach? **(Experts Report, p. 5)**

11. The state of the system several years later should come as no surprise to the WSIB. *The WSIB knowingly and deliberately caused this problem*. While initially supported by employers, the need for this has ended.

12. The retirement of the UFL is well ahead of schedule.

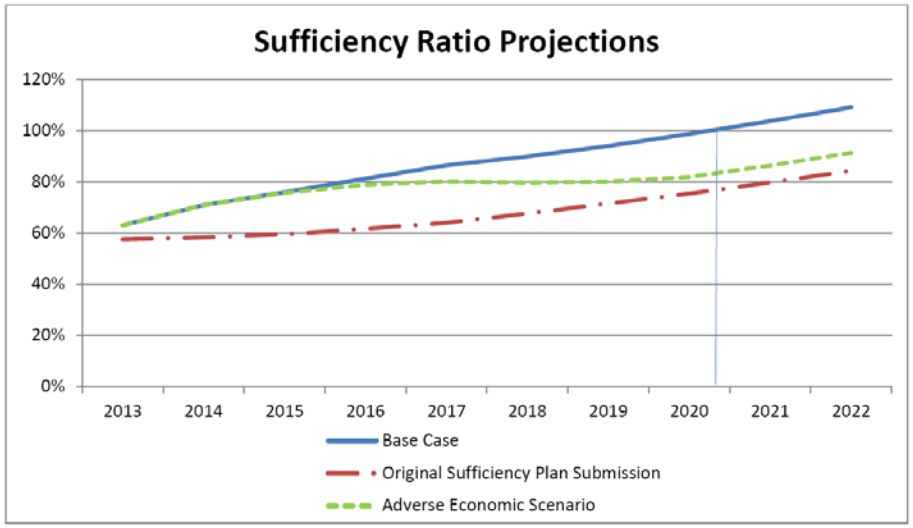
13. *The reason is simple:* the WSIB is over-taxing Ontario employers. This is made clear by this thumbnail review of the recent WSI history of **RG 919** and **RG 921** from 2005 to 2015:

    a. ***For RG 919:*** Premium rates went up 3% (from $1.67 to $1.72) even though the rate of lost-time injuries (LTIs) declined 49% (from 1.91% to 0.97%) and the cost per claim (in 2015 $) declined 29% (from $8,797 to $5,374).

b. ***For RG 921:*** Premium rates went up 20% (from $2.58 to $3.10) even though the rate of lost-time injuries (LTIs) declined 39% (from 2.50% to 1.52%) and the cost per claim (in 2015 $) declined 34% (from $14,375 to $9,546).[7]

14. On the question of reducing the UFL, WSIB stewardship has been exemplary. In the ***WSIB Sufficiency Plan Update*** publicly released in September, 2015, it is evident that the Board is well ahead of schedule. The extract (page 8 of the report) speaks volumes:

Workplace Safety and Insurance Board



Based on the assumptions outlined above, the WSIB projects the following Sufficiency Ratios as at December 31 of the respective year, showing the difference between our current base case (using actuals for December 31, 2013 and 2014) and the original Sufficiency Plan submission:

Year	Original Sufficiency Plan Submission (A)	Base Case (B)	Adverse Scenario (C)	Variance to Base Case (B – A)	Variance to Adverse Scenario (B – C)
2013	57.6%	63.0%*	63.0%*	5.4%	0.0%*
2014	58.4%	70.9%*	70.9%*	12.5%	0.0%*
2015	59.5%	76.0%	75.7%	16.5%	0.3%
2016	61.7%	81.3%	78.9%	19.6%	2.4%
2017	**64.0%**	**86.5%**	**80.2%**	**22.5%**	**6.3%**
2018	67.6%	90.0%	79.7%	22.4%	10.3%
2019	71.5%	94.1%	80.1%	22.6%	14.0%
2020	75.5%	98.7%	81.9%	23.2%	16.8%
2021	79.8%	103.7%	86.4%	23.9%	17.3%
2022	**84.3%**	**109.2%**	**91.4%**	**24.9%**	**17.8%**

* 2013 and 2014 Sufficiency Ratios are the actual results. Remaining Sufficiency Ratios are projections only.

C. Linking UFL success with RFR transition – solving a dilemma

1. For the first time in over 30 years, one can reasonably predict that the long UFL saga will conclude with the proverbial happy ending. The early retirement of the UFL can, and must, be integrally linked to RFR transition. In so doing, a serious potential pitfall is remedied.

[7] Data from **WSIB 2015 Premium Rate Manual**. Inflation impacts calculated as per **Bank of Canada**.

2. The significance of the problem becomes clear with the following charts (from **RG 921 RFR Presentation**, pages 11 & 12):

Current State Analysis: Class and Rate Group Level Target Premium Rates

- The WSIB has developed the related class-level and rate group level target premium rates under the Current State, based on the 2014 premium rates and using the underlying assumptions identified in Appendix A.
- Other possible considerations or approaches could be considered and could result in very different class-level target rates. In considering this information, it is important to recognize that the composition of the current Rate Groups differs from the modernized NAICS-based classification structure, making for a difficult comparison.

Industry Class	2014 Net Rate	2014 Target Rate ($10B UFL)	2014 Target Rate ($0 UFL)
A – Forest Products	4.93	5.79	3.60
B – Mining and Related	6.28	4.90	3.13
C – Other Primary Industries	4.04	4.70	2.95
D – Manufacturing	2.49	2.99	1.88
E – Transportation and Storage	4.83	4.53	2.79
F – Retail and Wholesale Trades	1.75	1.65	1.08
G – Construction	6.36	5.52	3.41
H – Government and Related	1.33	1.43	0.93
I – Other Services	1.27	1.25	0.81
Schedule 1	**2.46**	**2.46**	**1.56**

	2014 Rate Group Net & Target Rate		
Rate Group	Net Rate ($10B UFL)	Target Rate ($10B UFL)	Target Rate ($0 UFL)
905	2.95	2.75	1.75
908	1.19	0.99	0.68
911	1.90	1.68	1.10
919	1.71	1.69	1.11
921	3.09	3.32	2.09
923	3.59	3.52	2.21
929	4.39	3.74	2.34
933	2.98	3.52	2.20
937	1.99	2.06	1.33
944	3.16	2.50	1.59
956	0.19	0.19	0.13
958	0.34	0.47	0.32
962	1.15	0.92	0.63
975	4.12	3.84	2.40
981	0.70	0.93	0.63
983	0.33	0.36	0.24

Net Rate - represents the premium for respective industries, considering:
- RG rate freeze from 2013 published rates
- 2014 ER adjustments

Target Rate - represents the target premium for respective industries, considering:
- adjusted NCC to reflect actual experience
- balance to Schedule 1 rates of $2.46 and $1.56

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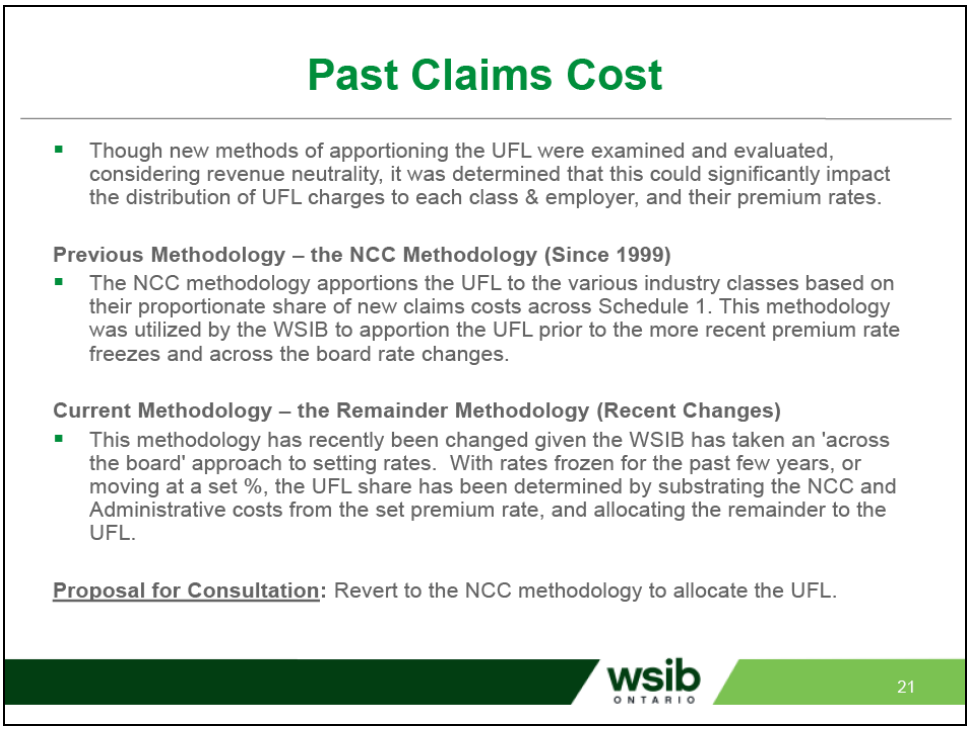
		Class Premium Rates with $10 UFL				Class Premium Rates with $0 UFL			
Class Letter	Class Description	Class Target Premium Rate ($)	Employer Target Premium Rate Risk Band Range ($) Minimum Band	Highest Band	# of Risk Bands	Class Target Premium Rate ($)	Employer Target Premium Rate Risk Band Range ($) Minimum Band	Highest Band	# of Risk Bands
A	Primary Resource Industries	4.68	0.24	14.94	83	2.93	0.15	9.27	83
B	Utilities	1.06	0.20	3.44	58	0.73	0.15	2.37	56
C	Public Administration	3.86	0.20	12.05	80	2.40	0.15	7.50	79
D	Food, Textile, & Related Manuf.	3.08	0.20	10.13	79	1.93	0.15	6.33	75
E	Resource & Related Manufacturing	3.30	0.20	10.98	81	2.06	0.15	6.82	77
F	Machinery & Related Manuf.	3.20	0.20	9.82	79	2.00	0.15	6.13	75
G1	Building Construction	5.22	0.26	16.64	83	3.21	0.16	10.22	83
G2	Infrastructure Construction	4.87	0.24	15.50	83	3.00	0.15	9.55	83
G3	Specialty Trades Construction	4.57	0.23	14.35	83	2.82	0.15	8.83	82
H	Wholesale Trade	1.73	0.20	5.49	67	1.13	0.15	3.59	64
I	General Retail	1.66	0.20	4.91	65	1.09	0.15	3.23	62
J	Specialized Retail & Dept. Stores	1.46	0.20	4.34	63	0.97	0.15	2.88	60
K	Transportation and Warehousing	4.26	0.22	13.98	83	2.64	0.15	8.59	81
L	Information and Culture	0.61	0.20	2.09	48	0.42	0.15	1.44	46
M	Finance	1.37	0.20	4.50	63	0.91	0.15	2.97	60
N	Professional, Scientific & Technical	0.55	0.20	2.06	48	0.38	0.15	1.42	46
O	Admin. Waste & Remediation	2.59	0.20	8.39	75	1.64	0.15	5.27	72
P	Hospitals	1.13	0.20	3.67	59	0.77	0.15	2.50	57
Q	Health and Social Services	2.28	0.20	6.86	72	1.46	0.15	4.41	68
R	Leisure and Hospitality	1.90	0.20	5.75	68	1.23	0.15	3.73	65
S	Other Services	2.43	0.20	7.71	74	1.54	0.15	4.88	70
T	Education	0.43	0.20	1.37	40	0.30	0.15	0.96	38
	Schedule 1	**2.46**	**2.46**		**1,534**	**1.56**	**1.56**		**1,482**

3. **WSIB RFR Paper 4** focuses on the UFL issue and discusses UFL allocation concerns (see **Slide 21** of the generic (April, 2015) **WSIB RFR Presentation**, replicated below):



Past Claims Cost

- Though new methods of apportioning the UFL were examined and evaluated, considering revenue neutrality, it was determined that this could significantly impact the distribution of UFL charges to each class & employer, and their premium rates.

Previous Methodology – the NCC Methodology (Since 1999)

- The NCC methodology apportions the UFL to the various industry classes based on their proportionate share of new claims costs across Schedule 1. This methodology was utilized by the WSIB to apportion the UFL prior to the more recent premium rate freezes and across the board rate changes.

Current Methodology – the Remainder Methodology (Recent Changes)

- This methodology has recently been changed given the WSIB has taken an 'across the board' approach to setting rates. With rates frozen for the past few years, or moving at a set %, the UFL share has been determined by substrating the NCC and Administrative costs from the set premium rate, and allocating the remainder to the UFL.

Proposal for Consultation: Revert to the NCC methodology to allocate the UFL.

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4. Yet, this overall problem is resolved with a simple, pragmatic, and prudent implementation and transition protocol, one that is easier to implement with each passing day – ***implement the new RFR scheme after the UFL has been wrestled to zero***.

D. Transitioning from the current system with zero UFL and all rate groups at target

1. All RFR entrants, be it new companies or long-standing firms, should enter the newly designed RFR grid at the firm's respective **Class Target Premium**.

2. This is a simple, clear approach, consistent with RFR design integrity expectations.

3. This ensures that all participants start on a level playing field, and are able to address emerging trends in real time.

4. Since the UFL will be zero, and all RGs will be at their respective target rate, significant transitional rate fluctuations will be minimal and likely in every instance, premiums will be lower than current rates.

PART IV: The application of the North American Industry Classification System (NAICS)

A. The purpose of NAICS

1. The introductory section to the **North American Industry Classification System** ["NAICS"] by Statistics Canada offers some important and telling caution with respect to the utilization of the NAICS for other than "*statistical purposes*".

2. Statistics Canada makes the intended purpose of NAICS clear. Under the heading "**Purpose of NAICS**" the following is noted:

> NAICS is designed for the compilation of production statistics and, therefore, for the classification of data relating to establishments. It takes into account the specialization of activities generally found at the level of the producing units of businesses. The criteria used to group establishments into industries in NAICS are similarity of input structures, labour skills and production processes.
>
> NAICS can also be used for classifying companies and enterprises. *However, when NAICS is used in this way, the following caveat applies: NAICS has not been specially designed to take account of the wide range of vertically- or horizontally-integrated activities of large and complex, multi-establishment companies and enterprises.* Hence, there will be a few large and complex companies and enterprises whose activities may be spread over the different sectors of NAICS, in such a way that classifying them to one sector will misrepresent the range of their activities.
>
> NAICS has been designed for statistical purposes. *Government departments and agencies and other users that use it for administrative, legislative and other non-statistical purposes are responsible for interpreting the classification for the purpose or purposes for which they use it*. (Statistics Canada – catalogue no. 12-501-X, page 9).

3. The WSIB has rigidly applied NAICS to the RFR model, with the only variation being whether the application is at the NAICS 2nd, 3rd or 4th digit level.

4. There is no sound policy reason for this if other means of grouping employers satisfactorily meets the test for "actuarial predictability", which the WSIB has set at a $2 billion annual payroll.

5. When applying the $2 billion threshold against the *current* classification grid, with a $7.3 billion payroll, **RG 919** easy meets this threshold. While at $1 billion, **RG 921** does not meet the proposed threshold, we ask the Board to apply RFR principles to the two current RGs and assess the results, and run a "**Risk Disparity Analysis**" for **RG 919** and **RG 921** (see also pp. 14 – 15).

6. The Associations sees no reason for strict adherence to NAICS as the default organizing tool.

7. We find it interesting that **New Brunswick**, also organized under NAICS,[8] and which has nowhere near the payroll of the Ontario system (**RG 919** and **RG 921** alone have the same payroll as the total New Brunswick $8.5 billion system payroll[9]) is able to manage two hospitality rate groups, those being:

RG 25	Hotels, Motor Hotels, etc.	(2015 rate $1.14)
RG 23	Restaurants and Caterers	(2015 rate $0.75)

B. The question of rate groups, employer classification and experience rating

1. The establishment of rate groups is a core and integral element of any WSI scheme. Rate classification is a valued requirement as: i) it is a prerequisite to experience rating; ii) it may be justifiable with respect to resource allocation in the long run and has an influence on prevention, and; iii) it is justifiable on the basis of employer equity.[10]

2. Experience rating as a premium modifier is most effective as the size of the assessed payroll base increases. It is not possible for small or even medium sized employers to benefit in any material manner from experience rating (and this is the case be it under NEER, CAD-7, MAP or the proposed prospective RFR scheme).

3. We continue to support the principles advanced in the Board's papers, "**Revenue Strategy, A Framework for the 1990s and Beyond, 1989**" and "**Revenue Strategy, The New Classification and Pricing Strategy, 1990**." While these may, in the eyes of some, be "old policies", the organizing ideas remain vibrant and advance employer equity over WSIB administrative ease.

4. The non-aligned experts[11] involved in the antedating 2011/12 **Funding Review Technical Sessions** affirmed that fair employer classification is an essential ingredient, although clearly expressed caution to proceed with a classification review while system funding remains the primary focus. We concur.

> Classification of employers in rate groups for rate setting purposes has been put on the table in the funding consultation process in order to examine any potential improvement that could lead to cost decrease and improvement in the funding position. ***It has no direct link with the funding situation***. **(Experts' Report, p. 6)**
>
> ***It would be reasonable to postpone a Rate Group structure review because the expected impact of this kind of review would have on the funding status is low.*** **(Experts' Report, p. 6)**

[8] And, coincidently once headed by WSIB RFR Special Advisor Doug Stanley, the primary initial proponent of NAICS for Ontario

[9] WorkSafe New Brunswick, 2015 Premium Rates, p. 4

[10] P.S. Atiyah, "Accident Prevention and Variable Premium Rates for Work-Connected Accident" Parts I & II (1974) 3 Ind. L.J. 1 & 89 at 1.

[11] The report from the non-aligned experts is hereinafter referenced as "**The Experts' Report**"

5. ER was born out of a cooperative process in the early 1980s – in effect, a powerful WSIB/employer partnership. It took a decade to design, perfect and introduce ER on a broad scale (from 1982 to 1992). ER received wide-spread employer support as a means to establish a higher degree of employer accountability.[12]

6. The underlying economic theory under-pinning experience rating is straight forward – higher costs internalized by employers for injuries should translate into workplace safety expenditures to the point where "*the marginal cost of reducing injuries equals the expected marginal benefits*."[13]

7. Employers have generally supported the following principles: a) The primary principle of ER is insurance equity; b) ER must be cost based; c) Sector specific options and design variations should be permissible. We continue to support those principles.

8. Whatever the design arithmetic for an ER program, smaller employers must receive appropriate and special consideration. The "*problem of small employers*" is aptly addressed in a May 1998 report to the **British Columbia Royal Commission on Workers' Compensation**:[14]

> **Problem of Small Employers**
>
> It is generally acknowledged that the employer's ability to control the frequency or severity of workplace accidents is limited, so that a particular accident may or may not reflect the underlying risks of injury in the workplace. If the employer's workforce is large, then rate-makers can rely on the statistical "law of large numbers" to ensure that the accident rate accurately reflects underlying risks. ***However, if the firm is small, then the accident rate may or may not accurately represent workplace safety***. Consider a firm with a single employee who experiences an accident unrelated to "controllable" workplace risks. For example, while making a delivery, the firm's only worker is killed by a drunk driver. This accident would identify the employer as a high-risk employer when, in fact, underlying workplace risks may be considerably less than average for the rate group. A practical consequence of this problem is that such an accident, in the context of an experience-rating program that charges firms for all incurred accident costs, could easily bankrupt the small employer.
>
> **In addition, it is questionable whether extending experience rating to small employers is, in fact, equitable. *Equity is not synonymous with equality*. While equity implies that similarly situated firms should be treated similarly, it also implies that firms that are different may be treated differently**. Experience rating is designed to adjust a firm's compensation costs so that they reflect the underlying risks inherent in the individual workplace. However, as noted, the individual firm's accident experience is not a good measure of underlying risks for small employers, so that, an experience rating program that is optimal for large firms is likely to be less effective for small ones and vice-versa. It is questionable whether a rate adjustment that is largely based on random events outside the employer's control offers small employers any real incentive to increase workplace safety. (emphasis added)

9. In Ontario, a significant number of employers are quite small. 98,000 employers fall under the "**Merit Adjusted Premium**" ["MAP"] plan, compared to 16,500 under the **NEER** plan and 6,000 under **CAD-7**.[15] The **MAP** plan appears to be a compromise ER program, ensuring some level of simple ER participation with smaller employers (up to $25,000 in premiums), and is relatively uncontroversial. As an alternative to the proposed RFR, serious consideration should

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[12] For a more detailed history, see "***Chronology and History of WSIB's Incentive Programs***", January 2011, posted on the WSIB website at http://www.wsib.on.ca/files/Content/FundingReviewFRChronologyHistory/ExperienceRatingChronologyHistory.pdf

[13] Barry T. Hirsch, David A. Macpherson, J. Michael Dumond, "Workers' Compensation Recipiency in Union and Nonunion Workplaces", (1997) 50 Indus. & Lab. Rel. Rev. 213 at p.6 of 73 (Westlaw).

[14] May 1998, Evidence on the Efficacy of Experience Rating in British Columbia, A Report to The Royal Commission on Workers' Compensation in BC, Hyatt & Thomason, found at http://www.wsibfundingreview.ca/resources.php and http://www.iwh.on.ca/wsib/resource-documents-on-experience-rating [hereinafter "Hyatt"] (last accessed April 8, 2011), at pp. 5-6. Professor Hyatt was a non-aligned technical expert participant at the Funding Review January 25/26, 2011 Technical Sessions.

[15] Funding Review, WSIB January 2011 "Employer Incentives" Deck, Slide 6.

be given to increasing the ceiling for MAP, which presently applies to $560 million in premiums (approx. 18% of the total Schedule 1 premium).

10. Under RFR, **RG 919** (Restaurants) and **RG 920** (Hotels) will be conjoined in the new **Class R, Hospitality Services**, with the Board applying the NAICS 2nd digit classification, **72 accommodation and food services**.

11. Yet, as illustrated in the **Rate Framework Modernization presentation on RG 921, Hotels, Motels and Camping**, page 7 (replicated below), we find that 98.8% of RG 921 participants are assessed at a rate higher than the **Class R** average, with 93% assessed at more than three (3) risk bands higher than the average. After direct inquires on our part, we learned that the vast majority of current **RG 921** employers will fall between 3 and 8 risk bands higher than the average rate.

How Could RG 921 Employers be Risk Banded?

- The chart below outlines possible risk bands for employers in RG 921 who will be moving to Class **R - Leisure and Hospitality**, by showing the number and percentage of employers and their actual risk band premium rate. This risk band distribution is subject to change if there are amendments, such as splitting up the classes.

R - Leisure and Hospitality - RG 921: 2014 Employer Actual Rate – Subject to Transition Plan*

	Lowest Band	Risk Bands									Highest Band	
Risk Band Movement from Class Premium Rate (Risk Band 0)	**-13**	**<-3**	**-3**	**-2**	**-1**	**Average 0**	**1**	**2**	**3**	**>3**	**20**	**Total**
Risk Band Rate	$0.99	-	$1.66	$1.75	$1.84	$1.94	$2.03	$2.13	$2.24	-	$5.14	
# of Employers	1	4	1	1	8	8	17	36	42	1,673	2	1,790
% of Employers		0.2%	0.1%	0.1%	0.4%	0.4%	0.95%	2.01%	2.35%	93.46%		100.0%

0.8% 98.8%

Overview of Analysis:

- A small percentage (0.8%) of employers will see a lower premium rate when compared to the average risk band rate.
- A small percentage (0.4%) of employers will pay the average risk band rate.
- About 98.8% of employers will see a higher premium rate when compared to the average risk band rate. The majority of these employers will gradually see their premium rate decrease over time, if cost experience is demonstrated to be in line with the class average experience.

* While the above charts outline the impact to employers considering a +/- 3 risk band limitation scenario that incorporates their Starting Point, these results may be different once a final transition plan (that has received stakeholder input) has been developed to transition employers from the current approach to setting and classifying rates under the proposed preliminary Rate Framework scheme.

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12. We contrast these observations with the same slide prepared for **RG 919, Restaurants and Catering**, where we discover that 90% of current **RG 919** employers will be assessed at a rate *lower* than the **Class R** average.

How Could RG 919 Employers be Risk Banded?

- The chart below outlines possible risk bands for employers in RG 919 who will be moving to Class **R - Leisure and Hospitality**, by showing the number and percentage of employers and their actual risk band premium rate. This risk band distribution is subject to change if there are amendments, such as splitting up the classes.

R - Leisure and Hospitality - RG 919: 2014 Employer Actual Rate – Subject to Transition Plan*

	Lowest Band	Risk Bands									Highest Band	
Risk Band Movement from Class Premium Rate (Risk Band 0)	-29	<-3	-3	-2	-1	Average 0	1	2	3	>3	20	Total
Risk Band Rate	$0.44	-	$1.66	$1.75	$1.84	$1.94	$2.03	$2.13	$2.24	-	$5.14	
# of Employers	1	133	183	1,912	13,338	850	586	121	47	104	5	17,274
% of Employers		0.77%	1.06%	11.07%	77.21%	4.9%	3.4%	0.7%	0.3%	0.6%		100.0%

90.1% 5.0%

Overview of Analysis:
- About 90.1% of employers will see a lower premium rate when compared to the average risk band rate.
- About 4.9% of employers will pay the average risk band rate.
- About 5.0% of employers will see a higher premium rate when compared to the average risk band rate.

* While the above charts outline the impact to employers considering a +/- 3 risk band limitation scenario that incorporates their Starting Point, these results may be different once a final transition plan (that has received stakeholder input) has been developed to transition employers from the current approach to setting and classifying rates under the proposed preliminary Rate Framework scheme.

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13. From this we conclude **Class R** is not a homogeneous insurance group and we ask for consideration for NAICS 3rd digit classification, **721 Accommodations Services** and **722 Food Services**, and that these group be **Class R1** and **Class R2**.

C. Multiple business activities – a word of caution

1. **WSIB RFR Paper 3** at pp. 14 – 20 sets out the proposed approach. The Board seeks to abandon multiple classifications and will classify individual employers based on the "predominant business activity". Predominant is defined (**at Paper 3, p. 15**) as the business activity "*that represents the largest percentage of the employer's annual insurable earnings*".

2. Linked to our request for an analysis of two distinct groups (**R1** & **R2**), the Associations provisionally oppose the planned move to assess on the basis of predominant business activity.

3. There is no sound policy reason for incongruent business risks to be assessed at the same premium rate. **O. Reg. 175/98** represents a thoughtful and well considered method to fairly and effectively assess distinct business activities operating within the same enterprise. The Board's proposal creates an artificial premium rate that, except for the largest of employers, will not be

mitigated through experience. This will skew otherwise competitive markets and present advantages and disadvantages where currently none exist.

4. We encourage the Board to more carefully assess this element of the RFR project, to set this aside at least at this stage, and re-assess the necessity post-implementation.

D. Temporary employment agencies

1. **WSIB RFR Paper 3**, at pp. 21 – 22, proposes an adjustment to the premium rate setting protocol for some temporary employment agencies.

> The proposed preliminary Rate Framework recommends that TEAs and their client employers would need to be classified in the same class in order to mitigate the premium cost avoidance issue. If this occurs, their premium rates would be similar in many cases.

2. The Associations support this recommendation. All temporary labour should be assessed based on the risk of the client employer, ensuring principled premium assessment.

3. Currently, there are two separate classification RGs and premium rates for the supply of labour. The "**Supply of Non-clerical Labour**" is assessed under **RG 929**, with a premium of $5.05/$100 of payroll (more than two times the average premium rate). The "**Supply of Clerical Labour**" is assessed under **RG 956** with a premium of $0.21/$100 of payroll.

4. With respect to the classification and assessment of the supply of non-clerical labour, business activities include the operations of employment and temporary help agencies which supply non-clerical workers to non-associated employers on a temporary or long-term basis. **(WSIB Document No. I-929-01: Supply of Non-clerical Labour Operations, Amendment/07, January 05, 2009)**.

5. However, there is a long list of exemptions. The list of non-clerical workers excluded from **RG 929** includes WSIB Classification Unit **I-919-05, Supply of Labour, Restaurant/Catering**.

6. The exemptions are clearly designed as an attempt to promote "apples-to-apples" premium assessment. They are however, cumbersome, confusing and may not always address the policy concern.

7. If an employer contracts with another person to have that person provide labour on a temporary basis to the employer, the premium rate(s) applied to that labour would be the same as if the employer hired the labour directly.

E. Graduated claim limits

1. **WSIB RFR Paper 3** (at pp. 29 – 30) introduces a question of graduated claim limits. The Board distinguishes the RFR proposal from current methodologies:

> In order to determine what the appropriate per claim limit should be at the employer level, the WSIB tested the current RG per claim limit (2.5 times the maximum insurable earnings ceiling (i.e. $84,100 for 2014 (2.5 x 84,100 = $210,250))). The WSIB found that applying the current RG per claim limit would be overly burdensome for small employers.

2. The Board proposes a graduated claim limit, with the following results:

Figure 9: Proposed Graduated Per Claim Limit Approach

Predictability Scale	2.5%	5%	10%	20%	30%	40%	50%	60%	70%	80%	90%	100%
Current RG method	2.5 times the maximum insurable earnings ($84,100) or $210,250											
Proposed Graduated Per Claim Limit Approach	0.5 times maximum IE ($84,100) or $42,050		2.5 times maximum IE ($84,100) or $210,250				5 times maximum IE ($84,100) or $420,500				7 times maximum IE ($84,100) or $588,700	

3. The Associations support the concept of graduated claim limits, and see no reason to discard the overall approach suggested by the Board.

4. However, we advance a suggestion to enhance the policy objective being sought – to increase individual employer accountability as insurable earnings increase.

5. The problem with the Board's proposal is simple. The graduated ranges "move in jerks" with clear and significant demarcation lines.

6. There is a better way. Instead of moving with clear and jarring demarcation lines, move employers up the accountability grid in the same manner as current employer ER rating factors are calculated.

7. This simple enhancement ensures that a minor upward movement of assessable earnings does not drive a jarring move into a higher per claim limit. The movement is always gradual. Accountability is calibrated smoothly and fairly for all employers, while delivering the same objective.

F. Graduated risk band limits

1. **WSIB RFR Paper 3** presents an extensive presentation of risk bands (**at pp. 60 – 68**).

2. The concept of, and application of, "risk bands" will prove to be the most difficult for individual employers to understand.

3. As we have addressed the question of transition elsewhere, our risk band comments apply to "post-RFR-transition." In other words, the trauma of moving from current to proposed has been completed.

4. As we have criticized earlier, we have not been presented with the most valuable background information – the presentation of the actual impacts for our individual members. Without that, informed comment is not possible.

5. In **Paper 3** (at p. 65), the risk band movement approach is summarized:

> ### *Analysis: Risk Band Movement and Stability*
>
> To ensure premium rate stability, year over year, employers would move from their Employer Actual Premium Rate towards their Employer Target Premium Rate. The WSIB tested in a fully developed model environment, the three risk band limitation for employers to move up or down, (while ensuring that for comparative purposes the organizations were active in both model years) to determine the amount of premium rate stability an employer would have over a number of years.
>
> ***Figure 25: Risk Band Movement***

	Risk Band Movement by Percentage (%)										
Model year	**<=-4**	**-3**	**-2**	**-1**	**0**	**+1**	**+2**	**+3**	**>=+4**	**Total**	**-3 to +3**
2007 to 2008	1.3	0.5	1.0	5.0	84.8	3.7	1.3	0.8	1.6	100.0	97.1
2008 to 2009	1.3	0.4	1.0	4.7	85.0	3.8	1.3	0.8	1.6	100.0	97.1
2009 to 2010	1.3	0.4	0.9	4.4	85.9	3.5	1.3	0.8	1.5	100.0	97.3
2010 to 2011	1.2	0.4	0.8	4.0	86.5	3.8	1.3	0.8	1.3	100.0	97.4
2011 to 2012	1.2	0.4	0.7	3.8	86.2	4.3	1.3	0.7	1.4	100.0	97.4
2012 to 2013	1.2	0.4	0.7	3.6	86.2	4.5	1.4	0.7	1.3	100.0	97.5

> This chart shows the percentage of employers who would see an Employer Target Premium Rate change year over year, relative to the Class Target Premium Rate, as though the proposed preliminary Rate Framework had been in place, focusing specifically at years 2007 to 2013.

6. In its July update, the Board comments on an alternative approach:

> ### Graduated Risk Band Limits
>
> Similarly, certain stakeholders have suggested that the WSIB explore linking the current three risk band limitation that limits year over year rate changes to provide greater rate stability, to the steps in the predictability scale (in a manner similar to the graduated per claim limit). This would see the current proposed risk band limitation of three risk bands (where each risk band represents a 5% increase in premium rate) vary based the predictability of employers. For example, this would suggest that the largest, most predictable employers could see an increased risk band limitation of +/- 5 risk bands, and smaller, less predictable employers could see a reduced risk band limitation of +/- 1 or 2 risk bands.

7. We cannot comment. While the Board is quite correct to respond to stakeholder suggestions, it must do so with the same depth and vigour as shown in its original blueprint. Yet, even with that, our capacity to respond is limited by the absence of integral data – the impacts on our members.

8. Our advice is clear and simple. Give us the data upon which to respond. Let us see the impacts of the original proposals and potential adjustments to that proposal.

9. We understand this will take time. This is where the time should be spent. Variable "what-if" scenarios are the precise way to get to the best design.

G. The question of surcharges

1. **WSIB RFR Paper 3** introduces the idea of surcharges over-and-above the normal risk band movement proposals (at p. 74). We find the Board's discussion, at best premature. Any discussion on the need for surcharges should be deferred until RFR has been operational for at least five (5) years.

> The proposed preliminary Rate Framework seeks to consider the application of a surcharge mechanism that would be applied against the Risk Adjusted Premium Rate Setting process. Alternatively, the WSIB would consider having employers within each class collectively subsidizing the sustained poor claims experience of these employers. The WSIB would like to receive stakeholder input on the merits of surcharging and the proposed approach that should be considered.

2. However, the need to surcharge employers should not be viewed as some "super enhancement" (albeit it a negative one) but rather as a failure of RFR to deliver on its objectives.

3. We have noted the comment in the July, 2015 **RFR Update**.

> **Surcharging Mechanism**
>
> A number of stakeholders have expressed their support for a special surcharge mechanism for employers who are above the premium rate cap on a sustained basis, which would result in greater employer responsibility for those claims costs, rather than have the industry as a whole bear that responsibility. Similar to the approach in Alberta, some have suggested that the WSIB consider using the Workwell program to work with these employers to identify and address these circumstances, towards a progressive surcharge if no improvement is seen after a number of years of effort.

4. It must be recognized that the very idea of surcharges is an approach incongruous to premium rate "stability". The quest for stability is a clear foundational consideration of the entire RFR exercise.[16] The argument for premium rate stability is at the forefront of the reasons for change, with this theme running throughout the Board's RFR presentations and papers.

5. The Associations oppose the imposition of surcharges but agree to a review of this element no sooner than five (5) years after RFR implementation. On the question of the adaption of **Workwell** to address this, we are opposed. Instead, we suggest this. In instances where continued poor performance is noticed (and **WSIB RFR Paper 3**, at p. 68, suggests this is at most 1,600 firms), inform the responsible safety association.

[16] See for example, **RFR Paper 2** at pp. 9 and 10; **RFR Paper 3** at pp. 34, 60, 64, 65, 69, and 75.

H. Weighting experience window

1. In the July 2015 RFR Update, the Board advises:

> **Weighting Experience Window**
>
> Some stakeholders have suggested that the proposed approach may provide an imbalance towards greater rate stability, with not enough focus rate responsiveness. To counter this perceived imbalance, some have brought forward the consideration of amending the proposed six year window by adding more weight to the claims and insurable earnings experience on the more recent years (e.g. most recent 2-3 years) and less weight on the historic years (e.g. years 4-6).

2. We do not support this proposition. Our comments in the section above can apply to this element as well.

3. Our lack of support for the alternative suggestion, is not to be interpreted as support for the Board's original proposal. We simply don't know and repeat our demand for firm specific information.

I. Catastrophic claims costs

1. **WSIB RFR Paper 3** (at p. 37) asks, almost as an aside, "*How should the WSIB handle catastrophic new claim costs situations (sic) that occur in a particular injury?*"

> **QUESTIONS FOR CONSIDERATION**
>
> 1. *How should the WSIB handle catastrophic new claim costs situations that occur in a particular class?*
>   - *a) Should the WSIB include these claim costs in the year that they occur, which may result in a higher premium rate being charged to employers?*
>   - *b) Or, should the WSIB reduce the premium rate increase and add the remainder as an amount for future premium rate consideration?*
>   - *c) How should catastrophic situations be defined? Should the WSIB consider pooling these costs at the class level or Schedule 1 level?*

2. While a solid question, it has not been contextually introduced. It must be explained. What is the data behind the question? What is a "catastrophic situation"? What is the Board's history with these circumstances?

3. Present us with an informed outline of the perceived problem and we will most certainly present you with an informed suggestion to address this.

PART V: Collectivizing certain WSI costs

A. Second Injury and Enhancement Fund

1. The WSIB Second Injury and Enhancement Fund ["SIEF"] is an essential insurance element that respects the competing intersection between *controllable* costs and the "thin-skull" legal paradigm governing entitlements.

2. Yet, **WSIB RFR Paper 3** (at page 33) makes it clear that the Board will completely eradicate this essential insurance feature from the Ontario workers' compensation system.

> ***Proposed Preliminary Rate Framework***
>
> The proposed preliminary Rate Framework seeks to discontinue the SIEF program as part of a prospective premium rate setting approach.

3. The Associations categorically oppose this position.

4. An in-depth SIEF policy discussion is set out at **Appendix A**.

5. For the reasons carefully set out, we are of the view that SIEF remains a valid and necessary program.

6. During the **Funding Review** consultation exercise, the **FR non-aligned experts** clearly advocated that the issue of SIEF should be left to the stakeholders.

> Employers feel comfortable with the current situation while workers are not vocal on the topic. This is a policy issue that should be discussed with stakeholders. **(Experts' Report, p. 8)**

7. SIEF must continue. The current design of SIEF is fair. SIEF is purely redistributive and does not add to system costs.

8. In its **July 2015 RFR Update**, the WSIB advised:

> **Second Injury and Enhancement Fund (SIEF)**
>
> The WSIB has heard many perspectives on the recommended approach to discontinue the Second Injury and Enhancement Fund (SIEF) program. This includes the concerns raised with the recommended approach and a clear consensus that some form of cost relief is required. Some stakeholders have also highlighted potential unintended consequences with the proposal to discontinue SIEF, while others have provided specific examples to support their view. These perspectives are important to us and will assist us in making the most appropriate decision on this point.

9. While the WSIB suggests some movement on its earlier position, and a clear consensus has emerged that "*some form of cost relief is required*", the Associations wish to be clear – we are asking that the *current* form of the SIEF remain in place, unaltered.

B. Long Latency Occupational Disease

1. Similarly, **WSIB RFR Paper 3** (at page 31) addresses the current exclusion of long latency occupational diseases ["LLOD"] from an employer's cost-record, but takes a contrary view:

> ***Proposed Preliminary Rate Framework***
>
> The proposed preliminary Rate Framework is continuing with the current assignment of LLOD claims as a collective cost that is pooled at the class level. As these costs are excluded from being considered under the current three experience rating programs, likewise, they would continue to be excluded from being considered under the Risk Adjusted Premium Rate Setting process.

2. We agree with this approach.

3. No employer, no matter of size, is held to account for all WSI costs.

4. Cost accountability seeks an inherent policy objective – one of continual performance improvement.

5. By the time the LLOD is diagnosed, often years if not many decades after exposure, the workplace bears little resemblance to the workplace at the time of exposure. More often than not, the exposure has long been remedied.

6. Holding an employer accountable in these circumstances, does not advance any credible WSI policy goal.

7. This position is long-standing WSIB policy, approved at the WSIB Board of Directors. This issue was exhaustively addressed in the **Board's Discussion Paper dated December 22, 1986** which addressed whether LLOD costs should be excluded from costs for experience rating purposes. In part, the paper states:

> Ideally, given its principal objective of directly influencing workplace health and safety performance through adoption of preventative measures, an experience rating plan should focus on identifying and targeting for possible rebate or surcharge all risks which are reasonably avoidable by employer preventative actions, while spreading all remaining risks through collective liability principles.
>
> In practice, of course, it is not always easy to segregate risks in this fashion. **However, on this basis, it seems clear that certain types of industrial disease claims, characterized by long latency periods (e.g. cancer, hearing loss) are not really amenable to direct influence by way of experience rating**.
>
> The reasons for this conclusion include the usually unappreciated connection between a disease and a work process at the time of exposure, the very long time lag between preventative actions and the impact on worker health, and the difficulty of apportioning causation (and subsequent charges) between what may have been a number of employers over a long period of time.
>
> The conclusion that the long latency industrial disease should properly be excluded from the ambit of experience rating does not, of course, imply that they are somehow less worthy of attention; it simply means that experience rating is not an appropriate or suitable method for seeking to influence their incidence. The same considerations do not apply, however to short latency industrial diseases such as dermatitis: there remains no reason why these should not be covered under the terms of an experience rating plan.

8. The (then named) WCB Board of Directors approved the exclusion of LLOD costs from an employer's record in **Board Minute #4, January 2, 1987, page 5147**, concluding that, "*Long latency industrial diseases should be excluded from experience rating*".

9. There is no sufficient reason to return to this question.

Concluding comments:

While progress has been made, **Job 1** of the WSIB continues to be the long term financial viability of the Ontario WSI system. There is no linkage between **Job 1** and the RFR project. We respectfully suggest that is distracting to engage in a massive project over a period of some years that will consume employer and WSIB resources, that will, if history offers any lesson, exhaust the Board. None of this contributes to the Board's primary focus.

We repeat our long expressed view that no real problem has been defined. Overall, employers have not been calling for any of these changes nor have employers ever advanced any suggestion for a complete revamp of rate classification or experience rating. This is 100% a WSIB initiative. Without employer support, radical redesign of the taxation scheme will likely be resisted. We caution the Board on the similarities of the RFR project and the late 1990s market value property tax reforms (market-value-reassessment). History may well repeat.

We continue to be concerned with the consultation process. There persists a reticence to fulfill the commitment to ensure we understand at the level we deem to be necessary. We have advanced reasonable requests for information. They have not as yet been honoured. We expect that as this phase of consultation comes to a close, the Board will re-group, develop the data we require, and allow us to commence the next consultation phase with the essential information.

After the RFR design elements have been completed, approved and understood, implementation must await the sustained elimination of the UFL. This may somewhat dull the market-value-reassessment similarities and will ensure a smoother and better received implementation.

All of which is respectfully submitted

Terry Mundell
President & CEO
Greater Toronto Hotel Association

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Appendix A: Second Injury and Enhancement Fund

SIEF Plays a Vital Role

1. We see the existence of the **Second Injury and Enhancement Fund** ["SIEF"] as a vital and *increasingly* important component of today's evolving workplace safety and insurance ["WSI"] system SIEF is based predominantly on general principles of equity. Any attempts to abolish or significantly alter the present approach taken to SIEF would result in very significant, *avoidable* inequities.
2. In this discussion we wish to explore the function, purpose and usefulness of the SIEF. We have asked and answered three questions:
   a. *What are the policy objectives of a second injury and enhancement fund?*
   b. *Does the current policy fit with these objectives?*
   c. *What is the best model for a second injury and enhancement fund in the Province of Ontario?*

Primary Interest Must Be One of Equity

1. The Board's primary interest, and ours, must be the same - equity. As the funders, one of our paramount objectives is to promote *equitable* employer accountability.
2. It must be clearly understood that the SIEF adds no additional costs to the system. The SIEF is simply a mechanism to pool liability, and allocate financial accountability. SIEF "expenditures" are not additional expenditures.
3. The primary policy objective of the SIEF is to promote equity.
4. The SIEF is not viewed as a cost cutting measure by employers. Employers continue to view state of the art accident prevention programs as the key ingredient to cost reductions, with reinstatement and rehabilitation actions being second. ***SIEF is about equity - not cost reduction***.
5. SIEF is very complimentary to experience rating. *In fact, in the absence of SIEF, experience rating actually becomes quite unfair*.
6. In 1988, twenty-one percent (21%) of lost time injury ["LTI"] claims were incurred by individuals older than 45 years of age, whereas by 2007, those older than age 45 represented forty percent (40%) of the total LTI claims mix.[17] This represents a doubling of the claims mix represented by older workers which intuitively, would lead to a greater involvement of pre-existing or underlying conditions, the very triggers for the application of the SIEF.
7. Moreover, from 1998 to 2007, "sprains and strains" grew from approximately forty percent (40%) of total LTIs to forty-nine percent (49%), an increase of over twenty-two percent (22%) with the most dramatic increase occurring since 2003.[18]
8. This very admittedly cursory review nonetheless supports the proposition that the noted increase in the utilization of the SIEF is not only expected and consistent with the core policy objectives of the SIEF, but is a reflection of a change in the mix of claims trends over the past two decades, a proposition which attracted no attention from the consultant.

[17] **Source:** Workplace Safety & Insurance Board ["WSIB" or "Board"] Annual Report Statistical Summary, 1997, Table 4 (p.7); 2007 WSIB Annual Report Statistical Summary, Table 5 (p.11).
[18] **Source:** 2007 WSIB Annual Report Statistical Summary, Table 8, Lost Time Claims by Nature of Injury or Disease (1998-2007), p. 13

Our overall position on the Second Injury and Enhancement Fund is:

1. The SIEF remains valid - it promotes employer equity and ensures fair employer accountability.
2. The SIEF is an essential insurance component to the WSI system.
3. We strongly support the continuation of the SIEF.

Focus of Our Submission - The Policy Objectives of SIEF a Second Injury and Enhancement Fund

1. Originally the use of a "Second Fund" in Ontario appears to be premised only on the desire to encourage employers to hire disabled workers. By Board order dated December 27, 1945, the "Second Injury Fund" was formally constituted. That Board order read in part:

   > **The Board orders that a Second Injury Fund be established. Where a workman has a second or subsequent injury which combined with a previous injury or disability causes costs in addition to the normal cost of such subsequent injury, the additional costs, on order of the Board, shall be charged to the Second Injury Fund.**

2. The obvious fear or impetus to the policy was that without the establishment of a Second Injury Fund, removing a portion of the assessed costs from an individual employer's cost record, employers would be loath to hire or rehire workers with a recognized permanent disability.

Expanded Basis of SIEF - Equity

1. By the late 1960s and early 1970s the basis of the policy had implicitly expanded to include equity or fairness considerations. *It is our opinion that the theme of equity has remained as the chief policy behind SIEF since that time*.
2. In comments made by the Honourable Mr. Justice McGillivray, in his report of **The Royal Commission In The Matter of the Workmen's Compensation Act**, dated September 15, 1967, and as evidenced by a Board Order dated March 25, 1970, it was recognized that a prior condition, which had not been disabling, could precipitate a disability which was compensable, and that in this type of situation Second Injury Fund relief should be granted.
3. The Honourable Mr. Justice McGillivray stated in his report:

   > **I recommend that in all cases where compensation may involve activation or aggravation of a pre-existing condition a portion of the compensation awarded be paid from the Second Injury Fund. (emphasis added)**

4. While the genesis of this shift in approach was the policy issue of employment for the disabled, the argument and recommended solution actually was one of employer equity.

Board Recognizes Equity as Basis for SIEF Relief

1. While the general theme of employer equity for SIEF was introduced in the late 1960s and early 1970s, the foundation of this theme was revisited, confirmed and expanded in the late 1970s.
2. The equity basis for relief under the "Second Injury and Enhancement Fund" (renamed from the Second Injury Fund) was recognized by Dr. William J. McCracken, Executive Director, Medical Services Division, and Mr. William Kerr, Executive Director, Claims Services Division, in their joint Inter-divisional Communication to the Board dated June 1, 1978. That document recommended that the Board Order of March 25, 1970 be rescinded and that a new policy on the application SIEF be approved.

3. In reference to the proposed policy Dr. McCracken and Mr. Kerr stated:

   > The basis on which financial relief is given to the employer is clear and provides for equitable transfers to the SIEF.
   >
   > The Board followed their recommendation and approved the new policy on November 3, 1978.
   >
   > This policy, as opposed to its predecessor clearly indicated not only that the pre-existing condition need not be disabling, but that it need not be symptomatic.

   Page six of the new policy read in part:

   > The medical significance of a condition is to be assessed in terms of the extent that it makes the employee liable to develop disability of greater severity than a normal person. There need not be associated pre-existing disability...
   >
   > Examples:
   >
   > Asymptomatic spondylolysis demonstrated on x-ray....

4. This change clearly reflected a focus on the equity basis for SIEF relief. The primary interest of the SIEF emerged as one of equity versus employment for the disabled.

5. ***Conclusion*** **-** Clearly then, the policy objective of the SIEF is one of equity. This has been and continues to be the core focus of the SIEF. While it is our view that there are subsidiary benefits, these are not the principal reasons for the maintenance of the program. The principal reason is employer equity.

The Need for Employer Equity

1. The need for employer equity in a no fault workers' compensation scheme is self-evident.

2. No fault ensures entitlement regardless of blame. "No fault" does not mean direct employer accountability for all WSI costs. The principle of collective liability certainly speaks against this.

WSI Based on Collective Liability

1. WSI is fundamentally based on the principle of collective liability. Essentially, it is an accident insurance system for both employees and employers.

2. Theoretically, there are two main criteria to be considered when setting insurance rates:

   the risk factor or circumstances out of the insured's control; and,
   costs of claims made against the insurance fund.

But, Ontario System Not Purely Collective Liability

1. However, if the Ontario WSI system was based on a pure model of collective liability, then all employers would be assessed the exact same rate of premium notwithstanding the nature of their industry or their individual accident experience record. Under such a model, there would be no need for SIEF since no individual case would influence the employer's record.

2. While such a model would be true to the principle of collective liability, it greatly offends any notion of employer equity. To satisfy the objective of equity while maintaining the principles of collective liability, the competing interests of employer accountability and appreciation of individual risk must be balanced.

Need For Balance of Collective Liability and Individual Risk

1. The Ontario WSI system sets an individual employer's premium through an integration of the risk of the industry in which he is engaged (the premium rate), and the risk of the specific company (experience rating).
2. Overall, this is a sensible approach to balance the requirement for a collective liability with another competing policy theme - that of employer accountability.

Employer Accountability Instils Motivation to Prevent Injuries

1. It is generally accepted that if an employer is accountable for WSI costs, then there is created a motivation to keep those costs to a minimum.
2. This motivation transcends into positive behaviour through more effective accident prevention programs and thus, lowering the claims demands on the system. The result - fewer claims and lower costs. Experience rating serves this objective.
3. But - there must be a mechanism to balance competing interests.
4. If industry is separated into various classifications to reflect risk, and premium rates are determined by performance, then there must be some type of safety valve operating to ensure a safeguard against aberrant factors.
5. Second injury funds provide a check in the system to ensure that employers who have workers with pre-existing conditions are not unfairly burdened by costs over which they have no control.
6. ***Conclusion*** **-** Equitable employer accountability is an essential component to the WSI system. Our elaborate classification system coupled with experience rating serves this objective well. However, accountability must as well be equitable. SIEF assists in achieving this.

SIEF is compatible with and complimentary to Experience Rating

1. The safety valve provided by SIEF is most important when an employer is part of an experience rating program.
2. It is accepted that a primary objective of experience rating is to improve equity in the distribution of WSI costs.
3. While the SIEF and experience rating both promote equity among employers, the policies are inherently different. SIEF is designed to limit the effect of circumstances over which the employer has no control, while the intent of experience rating has been to motivate the employer to improve management over safety and reinstatement practices - areas where the employer is undeniably capable of more effective control in the workplace.
4. The foundation of experience rating is employer accountability, with premiums being more closely linked to employer performance. The objective is twofold - to ensure equity (those that cost more pay more), and to motivate (no accidents - no costs).
5. Inherently implied is the concept of prevention - an employer should be held accountable for the preventable injury.
6. If it is a principle of the WSIA that cost accountability promotes positive safety performance by influencing corporate behaviour, and that an employer's accident record is reflective of that employer's accident performance (positively or negatively), then it makes no policy sense to hold an employer directly accountable for costs of a claim over which the employer had no control

(and alternatively, not hold the employer accountable for the costs for which the employer was responsible).

Weiler Supportive of Concept

1. In Professor Weiler's 1980 report to the Ontario Ministry of Labour, there is no mention of any incompatibility between the SIEF and experience rating. In fact, in his discussion of experience rating, Professor Weiler made the following point:

> Distributing the random cost of industrial accidents from the individual firm to the industrial group - sacrifices nothing of real value in the preventive function of experience rating.

2. This statement indicates that it highly unlikely that Professor Weiler would agree with a sweeping generalization that the SIEF would somehow undermine the purpose of experience rating.

3. As the precision and power of the experience rating system increases (as in the case of the NEER and CAD-7 models), the requirement for the safety valve is enhanced.

4. It is not only false that experience rating and SIEF are not compatible; the truth is that they are inseparable.

The Appeals Tribunal has long recognized the equity basis for SIEF relief

1. In ***Decision 182*** the Panel recognized that fairness or equity is the basis for the current application of SIEF. It is:

> A fund for the purpose of relieving employers in a particular class from the "unfair burden" of assessment related to disabilities, the severity of which or the duration of which has been increased by the existence of a pre-existing condition. It calls this special fund the "Second Injury and Enhancement Fund" and it charges to that fund the proportion of the costs of compensation benefits or medical assistance which it believes to be fairly attributable not to the compensable industrial injury itself but to a pre-existing condition.

2. The Panel in ***Decision 431/89*** had the following comments concerning the principles behind SIEF.

> It is clear...that <u>the policy is driven primarily by equity</u> and employment considerations (i.e. to relieve employers from a financial burden where a pre-existing condition enhances a compensable disability and to encourage employers to employ disabled workers).
>
> .....
>
> The equity considerations relate primarily to situations where the worker's recovery period is unusually long and probably attributable to some complicating factor other than the compensable accident.

3. In the absence of SIEF, any experience rating model becomes unfair, a position aptly demonstrated in the few decisions which follow:

> An employer was provided with 100% relief under the SIEF when a worker, who was a transport driver, "*got dizzy and blacked out*" while approaching a stop sign sustaining serious injury upon rear-ending another truck. The underlying dizziness was caused by a non-occupational disability and which led directly to the accident thus qualifying the employer for 100% SIEF. ***But for the SIEF, that particular employer would have been unfairly held to account for (in 2009) up to $375,500 cash*** **[WSIB Decision]**.
>
> In another case involving a transport driver, the driver went over a minor bump in the road but as a result of a serious and significant underlying condition sustained a catastrophic injury resulting in permanent total disability. The injury was deemed to have arisen out of and occurring in the course of

> the employment and thus was compensable. In the absence of the SIEF the employer would be held to account for costs up to $375,500 cash. The employer was relieved of 100% of the cost of the injury, a fair and just result [**W.S.I.A.T. *Decision No. 138/98***, (September 21, 1998)].
>
> A blind worker working in a retail outlet sustained serious injury while attempting to carry product upstairs. As the blindness was the cause of the injury, notwithstanding that the injury arose out of and occurred in the course of the employment, the employer was appropriately relieved of 100% costs of the claim [**W.S.I.A.T. *Decision No. 376/98*** (August 18, 1998)].
>
> A worker with serious underlying pre-existing knee disabilities sustained a significant permanent aggravation through a minor employment-related event when he "stepped on an air hose at work". The employer was relieved of 95% of the costs under the SIEF. [**W.S.I.A.T. *Decision No. 526/08*** (April 1, 2008)].

4. Hundreds of similar examples could be elicited, however, the point demonstrated is clear and simple – in the absence of the SIEF, employers would be unfairly held to account for significant costs arising out of minor workplace events.
5. Notwithstanding that the worker would be duly entitled to full loss of earnings benefits attributable to an aggravation of an underlying condition, it would be callously inequitable to hold an employer to account for costs over which the employer did not, in any material way, contribute.
6. ***Conclusion*** **-** experience rating not only is compatible with SIEF, it is actually flawed without it.

The Current Model of SIEF is Essentially Fair

1. The current Second Injury and Enhancement Fund is simply an actuarial mechanism by which a share of costs assigned to individual employers, rather than to a class generally, are equitably spread among all rate groups in Schedule 1.
2. The current model of SIEF satisfies two basic requirements dictated by equity, as discussed earlier.
3. First, it recognizes that a pre-existing *condition*, as opposed to a pre-existing *disability*, can influence, i.e. prolong or enhance a period of disability resulting from an "accident".
4. Second, it attempts to quantify the degree to which the pre-existing condition influenced that disability, and transfers from the individual accident employer to the fund that portion of the assessed costs that are adjudged to be attributable to the pre-existing condition.
5. The policy proposed by Dr. McCracken and Mr. Kerr referred to earlier, and approved by the Board on November 3, 1978, introduced a matrix to try to simplify and clarify the calculation of the appropriate cost transfer from the individual employer to the SIEF.
6. The matrix sacrifices little in the proper and equitable application of SIEF while providing an efficient administrative tool.
7. ***Conclusion*** -- The current model of SIEF is fair.

SIEF Compatible with "Thin Skull" Doctrine

1. The expansion of the basis of SIEF to include equity considerations was mirrored by the introduction and development of the concept of "thin skull" in the WSI system. This introduction can also be seen to be driven by considerations of equity.
2. The Honourable Mr. Justice W.D. Roach in his **Report on the Workmen's Compensation Act** dated May 31, 1950 clearly identified the thin skull doctrine and recommended a change in Board Policy to protect the worker with a "thin skull".

3. The Board eventually responded to Mr. Justice W.D. Roach's concerns. Until 1964, where there were pre-existing conditions, it was the practice of the Board to make awards upon the basis of 50 per cent of the established disability. A Board order of December 2, 1964 ensured that workers with pre-existing disability would receive a full award with a portion allocated to the Second Injury Fund, clearly addressing two inequities in the system. The first, the previous policy of cutting benefits in half for a worker with a "thin skull" had been unfair. The second was to allocate a portion of the entitlement to the SIEF.

4. The introduction of the "thin skull" principle to the WSI system and the resulting application of SIEF is an example of how that system attempts to balance the interests of workers and employers.

5. As stated by the Panel in **W.C.A.T. *Decision 431/89***:

> It must be remembered that the compensation system in the Province of Ontario is a no fault system, fully funded by employers, with the objective of delivering equitable benefits to the worker within an equitable financial framework for the employer.
>
> ***As shown in the "thin skull" situation, SIEF is an indispensable balancing mechanism***. This balancing mechanism should today apply in every type of case where a pre-existing condition prolongs or enhances a disability, even where, such as in psychological condition of chronic pain cases that pre-existing condition can be more specifically described as a pre-disposition to develop a certain type of disability. (emphasis added)

Equity or Fairness Considerations Linked to Degree of Control

1. Both the WSIB and Appeals Tribunal, in recognizing the need for equitable relief to employers where a pre-existing condition has enhanced or prolonged a compensable disability, have implicitly recognized that an employer has no control over a pre-existing condition.

2. An employer, in contrast does have some control or potential control over whether a compensable injury occurs. Employers dictate what work is to be done, and have a very strong influence on how that work is eventually performed. Employers clearly have control over the safety of the work environment and workplace.

3. A pre-existing condition which enhances or prolongs a compensable disability is an aberrant factor which an employer cannot influence. SIEF is a safety valve which ensures that this aberrant factor does not bias an employer's compensation record.

4. ***Conclusion*** -- SIEF is clearly compatible with the thin skull doctrine.

Additional Considerations

1. In his evaluation of second injury funds (***Workers' Compensation Benefits: Adequacy, Equity and Efficiency*; L.W. Larson and John F. Burton**) Larson explained:

> The second-injury fund principle recognizes that the full cost of disability sustained by the previously handicapped person should be borne by the workers' compensation program, but attempts to distribute equitably the burden by spreading the extra costs incurred as a result of the prior impairment rather than let them fall on the last employer.

2. Larson also made the following recommendations:

   - all jurisdictions should have second injury funds;
   - the funds should provide broad coverage;
   - a threshold level of severity for the previous impairment should be established;
   - funds should be fully publicized in order to gain optimum effect;

The Recommended Approach

1. We restate our support for the principles behind the SIEF. It is our view that the SIEF is valid, and represents an essential feature of the WSI system. We are fully supportive of employer accountability and endorse the theoretical models for rate classification and experience rating. Accountability and equity are not mutually exclusive concepts - in fact - they are clearly linked.

2. SIEF promotes employer equity. We recommend the following:

    a. That the SIEF continue to be supported.
    b. SIEF should be applied where:
    c. there exists a pre-existing condition the pre-existing condition has contributed to the causation or duration of an impairment

3. The present matrix for determining degree of accountability is continued.

4. That the SIEF be codified in ***Workplace Safety and Insurance Act*** with appropriate regulations.

5. That the Board automatically review every claim for potential relief under the SIEF at regular intervals. We strongly recommend that the Board take a more pro-active and interventionist role in the identification of cases requiring SIEF.

Sandra Haddad & Associates

October 2, 2015

Workplace Safety and Insurance Board,
200 Front Street,
Toronto, Ontario.
M5V 31

Subject: Rate Reform Consultation Process
Attention: Mr. Jean Serge Bidal

Haddad and Associates represent many employers throughout Ontario and Canada in matters related to Worker's Compensation. During the course of the rate reform, we have been meeting with our clients and other invited employers to provide your information and hold discussions. In our outreach to these employers, two things were apparent:

1. Employers we met with were, at the point of our contact over this past summer, not very familiar with your information, and did not clearly understand it. Those who had looked at it were not up to date on the status of your progress. Thus, it was easy to see that they would not submit anything directly on the matter to you in the consultation process. One or two were in tune with rate reform information, and relying on their association to make submissions to you.

2. The new formula was not felt to be *more transparent and/or simplified* as per the feedback from our clients. This was to be a key feature of the new process, as indicated in the message from the Chair, E. Witmer, and CEO, D. Marshall on March 31, 2015. We concur with the belief that it is not easier to comprehend and follow your proposed formulas.

We acknowledge that the Board has worked more recently to provide answers to some concerns and questions raised, however, we would forewarn that moving forward too quickly because of political pressures to do so, and without a very clear understanding of the longer term impact by all involved, may only lead to mistrust of the WSIB and any new system.

Trust has been an issue we have heard about many times recently noting the continual changing of utilized reserve factors for NEER calculations in a one year period. This is occurring while the Board is reporting significant reductions to the unfunded liability, but while making such formula changes without any warning or discussion with those that fund the system. In cases involving larger employers, this has cost them significantly more than expected in the last quarter of the year, and again, without any warning which would allow understanding or adjustment to their planned budget.

FROM THE OFFICE OF SANDRA HADDAD

The balance of this submission is to provide comments on the present rate reform process on the following items only, and is reflective of the views of Sandra Haddad. Her biography is attached for your review. You will note the long history of involvement in Ontario with regard to WSIB issues which allows insight historically into such prior rate reform discussions and activity. Sandra is also highly versed in other provincial funding and operational aspects of those models.

RATE REFORM

The items to be commented on will include discussion regarding the following:

1) Simplicity of the process to allow for understanding, as was indicated as part of the mandate.
2) Discussions on the Second Injury and Enhancement Fund (SIEF).
3) Occupational diseases and the Unfunded Liability.
4) Discussion on considerations in regard to catastrophic and unforeseen events; and a review of issues that have historically been declared to have a significant impact on the Experience Rating program.

Considerations:

In order to review where we are going, we should always consider the path we have taken, and learn from it.

NEER was introduced on a wider scale to many organizations in the early 90's. Immediately, it did have some significant impact for those with foresight and understanding. The first was that when employers were able to perform effectively in both safety and return to work combined, it would result in significant rebates. This came with reduced claims costs to the compensation board.

These rebates, and the ability to forecast them, did in fact promote high levels of access to leaders of organizations, and in some cases the organizations Board of Directors. It provided the momentum required to maintain support, and acquire tools needed to make things happen in regard to both Safety and Disability Management. It allowed for some organizational control and action, which was referred to as *self-sufficiency*, and which clearly did result in measurable and quantifiable outcomes. It was fairly easy to get the large employer to embrace these program developments, as they could see and understand the direct impact.

Many investments in programs were made not only to Safety programs, but also in return to work programming, as a direct result of experience rating. These programs promoted the development of best practices by employers, long before the reintegration policy of the WSIB. Best practices generated from those organizations most vested in understanding; none more so than those environments where labour, with employers, grasped the benefits of managing their programs together to reap the benefits.

I was disheartened when I saw some of the comments in the Arthur Report which referenced employers in a negative light. Many employers should have in fact been applauded for their efforts.

Comments on the larger employers seeking cost relief more frequently for example, should have been put into proper context. This, in my opinion, simply was a result of the smaller and medium sized employers having maximum corporate caps on their surcharges, and the fact was that with years of change in the reserves and loading factors, they no longer would have any financial benefit from seeking SIEF. Thereby, why seek it?

The NEER program eroded with time, but not without surprise.

At the onset of NEER a very important question was raised by those who could grasp the numerical aspects. The question was, "*what would occur once the new system was laden with 10 plus years of historical and ongoing costs related to old files, pensions, retirement pension accruals and ongoing benefits*?" This would later be compounded by the fact that premium rates remained too stable as there was no mechanism to ensure the rates moved in relation to what the actual costs incurred. Add to that an economic downturn, and other factors, and you were sure to have financial issues. You cannot look at funding, without seriously paying attention to ongoing cost related issues generated by policy. (i.e.- Issues such as FEL awards being granted to age 65, whether or not a person returned to work after the lock in.)

Our concerns with the present program as it initially stands, remains the same. There are concerns with the, *what if(s)*? There are concerns with what the level of premium rates will be once the 10 year history is in place, and policy and interpretations change, and this program is no longer new. We need a mechanism to consider, understand, and forecast the impact of such changes on the system.

There is a concern, and a hope that the province is not taking a step back in time to the days when Safety was being regarded as a *cost of doing business.* There needs to be clear and non-punitive elements that promote the understanding of businesses, so they know when they manage and improve Safety, they will have a competitive edge. In my day to day work, I do sense that businesses see clearly the need to provide a safe work place for workers in Ontario. I do see that the processes in the West, and the costing models, and I do believe they are more often perceived as a *cost of doing business.* Employers feel urgency in Ontario to avoid and manage costs; and the costs are clear and identifiable on a per claim basis.

Simplicity/Transparency:

Feedback from those attending the presentations reflected they really did not feel this was a simpler program to understand, and nor do I. Several employers attended both the Haddad session, and the session presented by the Board, prior to concluding on this opinion. They were also referred to the WSIB website for materials, and handouts that were made available and drafted by your organization.

The fact is that if it is not simpler, it cannot be more transparent.

By leaving out of this consultation process, the elements of how the Second Injury Enhancement Fund will work and language on how catastrophic events will be handled financially, the reform planned remains unclear and cannot be transparent.

Second Injury Enhancement Fund (SIEF):

It appears from recent presentations of the WSIB attended by Haddad that SIEF will remain in place as a principle, but with no defined language around the workings of it included as part of this consultation process.

Without those discussions being part of this consultation process it would, in my opinion, erode confidence in the WSIB's ability to quantify issues effectively. After all, SIEF had been identified as one of the key issues that drove up the unfunded liability, through resulting in large rebates for employers, as per the Arthur Report leading into this reform. How can one expect to comment on the consultation process without it being clear on how it will financially operate, and what the costs to employers might be?

Having said this, SIEF is a critical issue raised by our Schedule 1 clients. They fail to see how it is fair that they should pay full costs of a claim, when they may not be solely responsible, or responsible at all for the resulting diagnosis. This is particularly true in the resource based industries in the North, where work is frequently transitional, and where a worker may be with one company one season, and another the next simply due to who will be the successful recipient of a contract.

I recall partaking in the discussion for the need of the existence of cost relief historically in the Cam Jackson review years ago. It was successfully argued that the purpose of cost relief was *to encourage the hiring* of those with disabilities, without creating an unwanted financial risk to the employer hiring. This Policy continues to remove barriers from the hiring process for those with pre-existing disability or illnesses. To not have a financial program which recognizes the causal aspects of a pre-existing condition, the potential lengthening of a recovery and/or anticipated poorer outcomes in recovery could increase employer costs significantly. Not having this could have major implications to some businesses' bottom line and their sustainability. Ontario must have policy language that removes these barriers in a positive way, and removes any potential for discrimination.

Failure to do so would overturn the significant and historical efforts to remove barriers from the most vulnerable of our population and those that need help the most.

Occupational Diseases:

It appears that you (the WSIB) are now planning to shift occupational disease costs for the seven non-experienced rated illnesses, and that these will now remain removed from the calculation of the risk band. The costs will however, remain with the rate grouping.

Concern remains however, that if there is an allowance of a new and previously non-regulated occupational disease, that it could have substantial impact, and be damaging to a particular rate group.

Knowing that the economic stability of our province as a whole is in place is important. In such cases language should be considered to share costs across all rate groups. Firefighters, for example, were recently extended new benefit coverage, and this is in my opinion a societal issue, and one that the costs should be shared. This is particularly true when the initial costs fall into place for any retroactive decisions, resulting in a once only, but significant, increase to the rate group.

Additionally, I would point out that the history of the Occupational Disease Clinics held in the North did generate thousands of claims. This too could be catastrophic in nature for a rate group. Although I had asked from you the numbers of dollars that were generated by these clinic claims; I was advised these are not available through the Board. I maintain these are required to understand how Occupational Diseases and the Clinics could impact a rate group calculation under the new formula. Certainly, this information should be accessible and information like this needs to be gathered.

When these clinics were held, there appeared to be little in the way of consideration of how the outcomes resulting from them would be managed, or funded. Significant retroactive and unplanned costs were incurred. Recognition of a need for financial considerations to be incorporated into decisions to change policy, and consideration of how we will pay for any future costs related to these types of situations, must be part of due process. This issue should be discussed before finalization of this rate reform role out and as part of the consultation process so that stakeholders can clearly understand the process and potential control mechanisms to identify and manage these unique situations. It is simply put, a consideration for **risk management.**

Catastrophic Considerations:

Historically there have been several identified issues that have been blamed for the unfunded liability.

Some of these causes have been noted to be:

- A negative turn in the WSIB's investment portfolio,
- Increasing health care costs,
- SIEF,
- New arising health issues: i.e. SARS
- A turn in the economy, resulting downsizing, and/or closures of businesses, which results in a smaller premium base/funding,

I would add to this list with:

- WSIB mismanagement of policy, including the handling of the current Second Injury Enhancement Fund Policy;
- New views and interpretations in regard to injuries, and new policy (i.e. Firefighter cancers being allowed)

I would also note, at a recent Chamber of Commerce event, the deficit had been noted to be significantly decreased in part due to the solid investment returns. This reflects on how vulnerable the economic drivers of the economy can make the WSIB's financial well-being. This is also why consideration of risk for such uncontrollable financial variances must be built into the program. Without it in the present revenue neutral model being proposed, there could be wide fluctuations in premiums.

Part of the improved financial picture is also due to the more stringent reviews of SIEF (with no changing to policy language), adjusting views on entitlement issues (without change in policy language), and the adjusting of reserves to alter the levels of employer payment through the existing experience rating program. This too, demonstrates there is room to run the present experience rating program in a way that reduces the deficit and allows for required **flexibility,** which is not clearly reflected as an element of the currently proposed program.

Stakeholders need to understand where in the proposed system there will be flexibility be to deal with catastrophic events that impact the financial status of the Board. What protects them from having significant increases in a year over year rate setting?

Quality Control measures should be added back in as a primary focus at the WSIB as a cost control measure. Response timelines, consistent handling at all levels, understanding of policy, are all primary focus areas that should regularly be assessed internally. Failure to do so historically has had cost implications.

Conclusion:

Questions remain that need to be responded to, prior to moving forward, and not after the stakeholders buy into the concept of what you are proposing in totality.

Before indicating support stakeholders should first understand;

1. The ***language of the new cost relief policy*** so they can understand the financial impact in using this formula, and so they can understand how it will impact their costs?
2. The language on how **cost relief** will work to effectively *protect Ontario workers* who may have a health condition or disability that could put their chances of employment at risk when there is no financial protection to an employer?
3. The language on how ***catastrophic events*** will be *defined* and *handled from a financial perspective*. What safeguards will there be in place to ensure a rate group will not sustain steep and sudden changes in their rates, for issues that are unexpected, and due to an uncontrollable or devastating nature?
4. Will there be any ***flexibility*** to this program? Will there be any funds collected to assist in protecting a rate group?

5. What ***quality control*** measures will be put in place to ensure good management of the policies, decision timelines, consistency in decision making, etc.?

6. ***Ongoing financial risk assessments*** that identify and plan for financial hits due to changes that are beyond the control of the funding system, and the control of the employers who are paying to support this system.

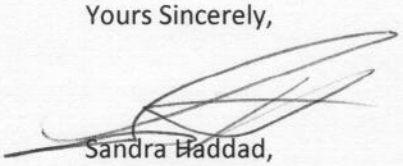
7. ***NAICS changes*** are to occur in 2017. Should stakeholders not await those updates to see how they might impact this reform and their position before commenting further?

8. Since we have been able to reduce the deficit using the present financial structure, would it not make sense to finish the reduction prior to considering any change? Clearly, a clean slate would hold great benefit in the neutral revenue strategy. Would it not make sense that with this ***opportunity*** of removing our deficit, we would take our time and do everything to ensure the best rate reform decisions possible? Ontario has an amazing opportunity to get this right!

As one last comment, there are many small temporary agency employees. The expectation that they would keep a rate group open for every business type they may do a day, or even an hour of work for seems cumbersome and difficult to manage. Ontario needs to remain competitive. Would it not be a consideration to have an array of about 4 groups that reflects equitably, and acts as a median for on all their work? Drowning them in paper work is not a solution; it is a problem.

I would like to thank you for the opportunity to respond. These are perspectives only, and without the dedicated time to delve into the detail I would have liked. It is hoped however, that some of these thoughts and positions will support those other submission which may have voiced similar concerns.

Yours Sincerely,



Sandra Haddad,
1-705-671-0938

Submission to WSIB Rate Framework Reform

The Home Care Perspective

October 2015

HOME CARE ONTARIO

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Introduction

Home Care Ontario members are committed to ensuring health and safety at work and to reducing the occurrence of workplace injuries and occupational diseases. However, in a recent survey of home care members, 71% reported that current WSIB decisions do not reflect a clear understanding of the home care sector as a place of work. In this regard, Home Care Ontario sees the Rate Reform Review as an excellent opportunity to highlight some of the issues inherent in the special nature of home care service delivery. These issues require more in-depth consideration in both WSIB policy and practice. This paper provides an overview of home care service provision in Ontario and commentary on the proposal to discontinue the Second Injury Enhancement Fund (SIEF) as Appendix 1.

Home Care Ontario Membership Contingent on WSIB Certification

For the purposes of this response, it is critical to note that Home Care Ontario members are required to provide evidence of WSIB certification in order to be approved as a member of the Association. As the concept of the "home as a workplace" has dramatically evolved over the past 20 years, institutional parameters cannot, and must not, be applied to the community. It is clear that special attention needs to be paid to the workplace insurance issues in this emerging and fast-growing sector.

Home Care Ontario Recommendations

The Rate Reform Review is an opportunity to highlight the special home care circumstances, which require consideration in WSIB policy and practice. Home Care Ontario suggests that WSIB:

- Acknowledge home and community care as a unique setting of health and social care and consider convening a group to examine sector specific workplace issues, and the potential of a sector specific compensation strategy. This strategy could include a combination of self-funding and subsidization by government and draw on elements from the WSIB's proposed reforms such as the establishment of risk bands based on a hybrid of claims cost and accident frequency.
- Provide more information about how future determination of rate banding or classification.
- Retain the Second Injury Enhancement Fund (SIEF), which is discussed at Appendix 1.

Background

About Home Care in Ontario

Home care is defined as an "array of services, provided in the home and community setting, that encompass health promotion and teaching, curative intervention, end-of-life care, rehabilitation, support and maintenance, social adaptation and integration and support for the family caregiver".[1] A summary of the history and evolution of home care in Ontario is at Appendix 2.

Home care is delivered by service provider organizations (SPOs) that meet high standards of excellence, many of which are reported publicly by Health Quality Ontario (HQO).[2]

[1] Canadian Home Care Association
[2] See http://www.hqontario.ca/Public-Reporting/Overview

Services within home care include nursing, personal support/homemaker, therapy (including physiotherapy, occupational therapy, speech language pathology, social work, nutrition/dietetics), medical supplies and equipment in the home. Home care services are intensely personal and provided at a time when individuals are most vulnerable.

Unique to home care service delivery is that it is provided in the patient's home, and family and/or friends provide the majority of care. As guests in the patient's home, the SPO staff manages the delicate balance of creating a safe working environment and providing safe care for patients while respecting their individual rights within their own homes. SPO staff demonstrates flexibility, autonomy and excellent problem solving skills in working effectively in an unregulated environment that is controlled by others and that was not designed as a place for health care service provision. While supplies and equipment can be brought into the home and families will typically do their best to accommodate the requirements for care, the reality is that the home setting has limitations as a place of safe care.

Delivering Safe Care at Home

Innovation and creativity are crucial in home care where the 'work environment' is indeed someone's home. When delivering home care, all providers understand that the control is, to a much greater extent, on the client's terms. Each new client environment poses potentially new and different challenges for the home care provider and can create an element of unpredictability for staff. In order to address occupational health and safety issues, it is imperative that the context of care be well understood.

Visits

Whether privately or publicly funded, home care services are paid on a per unit (typically per hour) basis. Not surprisingly, demand for service is greatest at the start and end of the day, necessitating a large 'casual' pool of staff and split shifts. In the government program, there is increasing emphasis on "time for tasks" with the expectation that some services will be completed within 15-30 minutes. Staff must be adept at conducting assessments, completing tasks and problem solving quickly.

Time for tasks, such as an allotment of 15-30 minutes to help a frail 80 year old up in the morning or go to bed at night leads to increased risk of injury to the employee and/or the patient – particularly when coupled with the challenges of the home environment.

Travel

Travel between clients is typical. Staff are therefore impacted by severe weather conditions, whether walking, using public transportation or driving their own vehicle.

Redeployment of staff

Clients have the right to change the time of their services and request a different staff to provide their care. Demands in the home may result in frequent changes in order to accommodate the client and family. The staff must ensure that the client will be ready for service every day as there is generally no opportunity to return to provide service later. In fact, the public system penalizes SPOs who attempt a visit when the client is not home.

SPOs manage new admissions and discharges daily. The timing of services, needs and location of clients does not always align with the availability and positioning of staff with

the requisite expertise. Reassignment is complicated by a factor of distance not found in other health care settings.

Down time cannot be leveraged in the same way that it can in an institution. It is sometimes too far to expect staff to travel in order to complete administrative type tasks.

The home setting

"Peoples' homes, both apartments and houses, are rarely suited to the provision of safe healthcare. Homes of the chronically ill are often run down. They become cluttered, dirty and poorly maintained environments. Icy walkways, pets, halls blocked by wheelchairs and walkers, and cramped spaces with little room for treatment-related equipment are common safety hazards" for home care staff.[3] Additionally, staff may have to address issues such as removal of safety hazards such as scatter rugs; smoking in the home[4]; safe care and management of equipment; and the need for access to proper hand washing stations, approved cleaning products and receptacles for waste, including sharps.

> Working in cramped settings without lifting and transfer equipment or assistance, for example, contributes to increased risk of injury.

As guests, workers, in the patient's home, SPO staff defer to the person's direction on all matters – ranging from basic household maintenance to timing of service and the people (and sometimes animals!) that are present. Staff considers each person's values and preferences in delivering care. SPOs carefully recruit, educate and support their staff emphasizing a strong customer service orientation.

Working alone

Working alone can provide staff with a sense of autonomy found nowhere else within health care and yet staff may be exposed to unwelcoming environments.

A judgment call

Notwithstanding the support provided to staff, there are challenges to delivering care and maintaining the integrity of the home. Mitigating risk is a judgment call by the funder, SPOs and their staff.

In extreme situations, SPOs can withdraw service if compliance to expectations is not achieved. However, a key metric by which SPOs are measured is their ability to achieve the client's goals and objectives. And, more importantly, SPOs and their staffs are highly motivated to find the solutions that balance the health care agenda with the person's way of life.

A system of compensation for home care workers

The current WSIB system has evolved over time and the approach for home and community care could be enhanced. Home Care Ontario suggests that now is the time to engage in dialogue with an expert group on the merits of a home care sector specific plan and the various approaches that could be taken to administer, finance and oversee its implementation.

[3] Canadian Patient Safety Institute p18
[4] Despite Ontario's legislation

By understanding the sector specific injuries in conjunction with the risks factors for occupational health and injury to staff delivering care in the home, stakeholders will be better equipped to develop innovative mitigation strategies that are practical, realistic and respectful of the client as steward of his home and the worker who must be assured a safe working environment.

Stakeholders will be positioned to understand the value of various technologies to the rate and nature of staff injuries, leading to improvements in guidelines that address the occupational risks for care in the home.

Conclusion

Ontarians want to receive care at home, a shift that is being adopted by the health care system and supported by families, who provide the majority of care at home. The challenge is to avoid simply moving institutional based systems to the home and community care sector. Home care worker compensation needs to be examined and "reset" in order to remove the legacy of facility practices and costs.

Home care service provider organizations have developed new safety approaches that respect clients and staff and the unique (for healthcare) setting of service delivery. By managing costs independently, the province will have a means of learning about the impact of shifting care to the home on staff safety and will be able to understand the effect of tools and policy development.

Given the evolution of home and community care and the critical role of the sector to address the health care needs of the aging population, the Association believes that it is time to examine the approach to worker injury compensation.

APPENDIX 1: Elimination of the Second Injury & Enhancement Fund (SIEF)

Home Care Ontario does not support the discontinuation of SIEF. The members of the Association believe that if employers are denied the option of applying for SIEF as a means of cost reduction, the WSIB should expect substantially more employer appeals of initial entitlement and use of the recently introduced policy Aggravation Basis policy (Policy 15-02-04, effective November 2014) as a basis for their appeal.

Background

As described in Policy 14-05-03, SIEF has two objectives:

1. To provide employers with financial relief when a pre-existing condition enhances or prolongs a work-related disability, and,
2. To thereby encourage employers to hire workers with disabilities.

Providing financial relief to employers where some portion the employer's claim costs arise from conditions unrelated to the workplace injury is expressly part of the SIEF's policy objectives.

Paper 3 indicates that the justification for SIEF will be removed by the predictability of premiums and the limitation on annual movement between risk bands in the proposed system. While these are laudable objectives, they are unrelated to SIEF. Employers apply to SIEF to lower their costs, not to make them more predictable or consistent.

Maintaining SIEF in the proposed framework will serve the same purposes it always has. It will reduce employers' costs of claims, where the claims are prolonged for reasons unrelated to the accidents giving rise to the associated WSIB claims, and provide an incentive to employ, and continue to employ, injured workers.

Mis-use of SIEF

Many of the objections raised in Paper 3 to SIEF arise not from the program itself, but rather from abuses or potential abuses of the program. In particular,

1) SIEF costs are increasingly being applied after the experience rating window closes,
2) Some employers request SIEF in 100% of their lost time claims,
3) Some employers, predominantly larger ones, make "excessive resort to SIEF to reduce their claims costs", and
4) Some employers "may" be investing more in SIEF than in prevention.

1) Experience Window Closing - These concerns must be considered in the context of the WSIB appeal process. The extreme delays in the WSIB appeal process, particularly as relating to obtaining file access and scheduling WSIAT hearings, are driving many appeals, including SIEF appeals, beyond the experience rating window. Addressing appeal efficiencies would be a more appropriate means of dealing with this delay issue than cancelling substantive rights. The WSIB would never consider denying benefits to a worker because their appeal took more than four years to reach a final conclusion. The same rationale should apply to any substantive rights in the Act or Policies. Furthermore, the extension of the window from the current four years to the proposed six years would largely reduce this problem.

2) 100% of Lost Time Claims - Employers who seek SIEF relief in 100% of their lost time claims, are clearly abusing the Fund. However, that abuse may arise not from a desire to

truly obtain SIEF (although that is a secondary objective), so much as a desire to obtain a copy of the worker's WSIB file and learn what is actually happening in the claim. Employers only gain access to the information in a worker's WSIB file by launching an appeal; any form of appeal. Launching a SIEF appeal, even where there is admittedly no hope of success, allows an employer access to the WSIB claim file. Commencing a legitimate SIEF appeal for every lost time claim would be counter-productive and not cost-effective for an employer. But as a means to obtain the WSIB file, a SIEF application, with or without any hope of success, is an effective tool.

3) Excessive Resort - Regarding "excessive resort to SIEF" by large employers, if the WSIAT and ARO's are granting the requests for application to SIEF, then the resort to SIEF cannot be excessive. If relief were not warranted, it would not be allowed in those cases. The observation that larger employers use SIEF more than smaller ones is not an inherent flaw with SIEF itself, so much as a shortcoming in awareness in the smaller employer community of its existence, the lack of earlier decision makers in granting SIEF where it is evident to do so or the challenges inherent in the appeal process that makes such appeals too hard for smaller employers to manage. As with the other concerns, the problem is not with SIEF itself, but rather with awareness, the earlier application of, and the appeal processes associated with applying for SIEF.

4) Prevention - As regarding employers potentially investing more in SIEF than accident prevention, the concern seems misplaced. At most, a SIEF application is a speculative exercise by an employer, with the prospect of reducing only some percentage of the cost of a claim. Prevention would eliminate those costs completely, and with certainty. Only the most misguided of employers would see SIEF as a superior means of cost containment as compared to prevention.

Conclusion

If employers are denied the option of applying for SIEF either as a means of cost reduction or obtaining WSIB file access, the WSIB should expect substantially more employer appeals of initial entitlement. At present, an employer might not appeal an initial entitlement decision, and allow the worker to obtain benefits uncontested, secure in the knowledge that if the claim is prolonged despite the best return to work efforts of both parties, the employer can apply for SIEF to obtain the file, review the medical information, and pursue an appeal to reduce its costs if such appeal is warranted. In the absence of SIEF, that same employer would have a much stronger incentive to appeal the initial entitlement decision at first instance. The elimination of SIEF will likely result in more appeals, rather than less.

APPENDIX 2: History of Government Funded Home Care

Home Care in Ontario

Home care is a publicly funded, not a publicly insured, service. In Ontario, publicly funded home care falls under the jurisdiction of the Ministry of Health and Long-Term Care (MOHLTC), which has steadily increased its investment in order to meet the increasing demand. Notwithstanding, the mandate of the publicly funded system is to support families to provide care at home.

> Families provide the majority of care at home, and to manage, many choose to use private funds to retain home care service provider organizations.

Government funded home care was formally established in Ontario in 1970 and has grown and evolved as a sector over the past 45 years. As has been the case ever since the inception of the publicly funded home care system in Ontario, service provision is based on a private sector delivery model where the corporate status of service provider agencies is varied. Today, the government funded home care system is responsible for providing almost 38 million visits/hours of high quality care at home to close to 700,000 Ontarians per year.[5] As the largest home care program in Canada, Ontario leads the way in building a system driven by quality and evaluated on several dimensions.

In Ontario, the publicly funded home care program is locally administered by 14 Community Care Access Centres (CCACs) across the province.[6] CCACs are accountable to the Local Health Integrated Networks (LHINs), regional organizations responsible for local health system planning, community engagement and funding a wide range of health service providers. CCACs serve to provide a simplified service access point and are responsible for determining eligibility for and buying on behalf of consumers the highest quality, best priced visiting professional and homemaker[7] services provided at home and in publicly-funded schools. CCACs also provide information and referral to the public on community-related services and authorize admissions to long-term care homes.[8]

Family's Role

Publicly funded home care services are designed to complement and supplement, but not replace, the efforts of individuals to care for themselves with the assistance of family, friends and community. Families are the mainstay of the home care system – only 2% of clients manage without a family caregiver.[9] Family caregivers provide 80% of care at home and many choose to privately retain support in order to cope with the challenges of work, family and distance to a person in need of care. Without family caregivers, government funded home care, as it is currently configured, would not be a feasible option.

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[5] MOH Health Data Branch Web Portal. Analysis of 2013/2014 YE 2013/2014 YE reports.
[6] A listing of CCACs can be found at http://www.ccac-ont.ca/Locator.aspx?MenuID=70&PostalCode=Enter%20Postal%20Code&LanguageID=1&EnterpriseID=15
[7] Homemaker serves as the generic term to describe the person who provides personal care, homemaking services and/or respite to enable the individual to remain at home in a safe and acceptable environment
[8] Canadian Home Care Association, p80
[9] Canadian Institute for Health Information, p1

Home Care Ontario estimates that 150,000 Ontarians purchase an additional 20 million visits/hours of home care services annually in order to remain at home.[10] Privately purchased home care service often provides the vital few hours of care and respite that enables families to continue their caregiving responsibilities while fulfilling their other obligations such as raising their children and holding a job. This privately retained service often supplements the publicly funded care. For some, the care may be paid by privately-insured employment plans. For most, the care is an out-of-pocket expense.

Family caregiver is the term used to denote a family member, friend or family of choice who gives unpaid care to someone, either at home or in a facility, who has a physical or mental health condition, or is chronically ill, frail, or elderly.[11] The use of the term "informal caregiver" is discouraged because, to many caregivers, it diminishes and invalidates the role and the nature of the care they provide.[12]

Why Home Care?

Most, if not all, people wish to remain independent at home in their community during their older years. Successful aging requires a holistic approach – avoiding disease and disability; maintaining cognitive ability; and engaging with life.[13] One of the most significant and least desirable outcomes for a community dwelling senior is to be prematurely institutionalized[14] because of the lack of home and community care based health and social support options.

Home care is critical to supporting individual health needs, managing chronic illness and system sustainability. A robust system incorporating both publicly and privately funded home care services can provide Ontarians flexibility and independence as they age; and can help them to preserve their memories and contributions to their communities and families. For the overwhelming majority who prefer to remain in their community, home care services are most desirable, cost effective and health effective.

Future Directions

The shift to care at home will continue. Ontarians want to remain at home as long as possible. Clinicians agree that outcomes are often better at home. And politicians recognize that health system value is improved with a robust home care system, which relies on family contribution. As the home care sector grows and evolves to respond to the demands of the system, there is a need for legislative and regulatory change that reflects the setting. The challenge is to balance the unique attributes of home care while ensuring safe and effective care for the client and a safe experience for the staff in the providing of that care.

[10] Ontario Home Care Association. (2009) Creating an Ontario Home Care Rebate to Prevent Additional Costs to the Frail and Vulnerable
[11] Caregivers Nova Scotia
[12] Caregivers Nova Scotia
[13] Rowe, J. W., & Kahn, R. L.
[14] For the purposes of this paper, institutionalization is understood to be a setting where decision-making related to ADLs (such as meals, baths and bedtimes) is outside of the control of the individual.

Works Cited

Canadian Home Care Association. (2008) Portraits of Home Care.

Canadian Institute for Health Information. (2010) Supporting Informal Caregivers - The Heart of Home Care. Analysis in Brief. Ottawa. https://secure.cihi.ca/estore/productFamily.htm?locale=en&pf=PFC1533

Canadian Patient Safety Institute. (2013) Safety at Home. A Pan-Canadian Home Care Safety Study. http://www.patientsafetyinstitute.ca/en/toolsResources/Research/commissionedResearch/SafetyatHome/Pages/default.aspx

Caregivers Nova Scotia. Caregiver Language. Retrieved on May 24, 2015 from http://caregiversns.org/about-us/position-statement-on-caregiver-language/

The Change Foundation (2011) Facing the Facts. Informal Care – The human & financial cost of informal caregiving in Canada. Toronto, Ontario.

Cousineau, N., et al., "Measuring Chronic Patients' Feelings of Being a Burden to Their Caregivers: Development and Preliminary Validation of a Scale," Medical Care 41, 1 (2003): pp. 110–118.

George, L.K., et al., "Caregiver Well-Being: A Multidimensional Examination of Family Caregivers of Demented Adults," Gerontologist 26, 3 (1986): pp. 253–259.

Ontario Home Care Association. (2009) Creating an Ontario Home Care Rebate to Prevent Additional Costs to the Frail and Vulnerable.

Rowe, J. W., & Kahn, R. L. *Successful aging.* Gerontologist, *37*, 433–440, 1997

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Please receive Hydro One's submission on the WSIB Preliminary Rate Framework. Attached you will find an extensive submission which has been developed through Working Group sessions where Hydro One representatives have met with representatives from the four other utilities identified in the submission.

This submission is representative of our perspective on the Proposed WSIB Rate Framework and the questions posed within the discussion papers. Hydro One has been an active participant through the ongoing Rate Framework Consultation, previously providing a submission regarding Mr. Douglas Stanley's Rate Framework Discussion Paper and the associated consultation with stakeholders.

Hydro One Networks operates one of the largest electricity transmission and distribution systems in North America. Hydro One Networks delivers electricity safely, reliably and responsibly to homes and businesses across the province of Ontario and owns and operates Ontario's high-voltage transmission network that delivers electricity to large industrial customers and municipal utilities, and low voltage distribution system that serves end-use customers and smaller municipal utilities in the province. We employ approximately 5,600 regular employees and about 2,000 hiring hall or temporary employees.

In 2001 Hydro One transferred from Schedule 2 to Schedule 1 so we have significant experience and insight while managing within the New Experience Experimental Rating System (NEER).

In April 2015, Hydro One participated in the WSIB's Technical Session with stakeholders and later worked with other Utility Employers in Working Group Sessions that met with J.S. Bidal and Earl-Glyn Williams to gain additional insight into the proposed Framework. Their assistance, support and clarification made this truly an active and productive consultation phase.

It remains our understanding that the Rate Framework Consultation will continue through numerous phases and that ongoing opportunities will be afforded to stakeholders for further comment as the process unfolds.

We appreciate the opportunity to provide comments on this very important WSIB Rate Framework Consultation and we look forward to the next phase of the consultation.

Yours Sincerely,

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Encl. *Utlility Working Group Submission* – October 1, 2015

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Please receive the following collaborative submission in regards to the WSIB proposed Preliminary Rate Framework. The following employers have been meeting and discussing the consultation materials, updates, and analysis communicated by the WSIB Consultation group:

- Bruce Power
- Enbridge Gas Distribution
- Hydro One Networks Inc.
- Ontario Power Generation
- Union Gas

Since the release of the WSIB consultation materials in March 2015, the above mentioned group of employers ("*The Group"*) have continued to review and participate in WSIB-led Technical Sessions, as well as Working Group Sessions held in July, August, and September with J.S. Bidal, WSIB Executive Director and Earl Glyn-Williams, WSIB Lead. The Group appreciates the opportunity to continue in this consultation and we look forward to reviewing the outcomes following stakeholder input.

Introduction

The Group as a whole represents large employers with significant experience managing claims within the current NEER Experience Rating program under Schedule 1. Currently, The Group is represented in various Rate Groups (833, 835, and 838) under Class H: Government & Related Industries. Based on the current proposed changes, it would appear that the majority of the group will transition to the new "Class B: Utilities". The Group's familiarity with the current system, similar claims experience and similar industry trends led to discussions and shared interests with respect to the Rate Framework Consultation.

For the purposes of this submission The Group has focused primarily on Paper 3, but has also addressed questions raised in Paper 4 and 5. As a whole, The Group has taken into account the breadth of information provided by the information sessions, as well as the July Consultation Update, and the August Rate Group Analyses and

Risk Disparity Analyses documents. For clarity and continuity, the submission will focus on addressing the "Questions for Consideration", in the order they were posed within Papers 3, 4, and 5. Additional items/interests not addressed by the Papers will be included separately at the end of the submission.

PAPER 3: THE PROPOSED PRELIMINARY RATE FRAMEWORK

Step 1: Employer Classification

Employer Classification

Is the proposed structure adapted from NAICS an appropriate grouping of employers?

Yes, The Group supports the proposed adoption of the NAICS system, and believes it will provide a more appropriate grouping of employers. In contrast to the current SIC system, NAICS will provide an updated grouping of employers noting changes in industry, technology, and today's business climate.

Although the updated NAICS system is a move forward, the WSIB should endeavor to develop a Policy which specifically outlines a process for regular review of classifications similar to the NAICS review of every 5 years, in order to adapt to ongoing and future changes in business, industry, technology, etc. The prior SIC system was not reviewed regularly and eventually resulted in Employers applying in and out of rate groups in an effort to re-align themselves, as outlined by Mr. Douglas Stanley. Additionally, the policy and any periodic reviews should not only address changes in classifications, but undertake review and adjustment of classes based on the new make-up of classes to ensure self-sufficiency and credibility of classes based on risk profiles, claims costs, and insurable earnings.

Caution should also be undertaken noting that at the time the SIC system was implemented in 1993, a plan for review was also anticipated but was not followed. In the event the overseeing statistical agencies managing the NAICS structure disbands, or is modified, a plan for change/adaptation would have to be built into the governing Policy.

Do the proposed 22 classes appropriately reflect the industry categories in Ontario's economy today?

Yes, The Group support the change to the increased number of classes as outlined in the consultation materials. The Group understands the WSIB is reviewing a further expansion to 32 classes, as outlined in the July consultation update. Understandably, any expansion to additional classes will have to ensure that these additional classes can support the appropriate levels of risk, experience, and predictability for rate setting and liability. As mentioned above, if the WSIB establishes "classes" that differ from the true NAICS grouping, this

further emphasizes a need for a Board policy which outlines how the board will manage the classification system on a go-forward basis; including thresholds for when classes may be expanded and/or contracted further.

The WSIB is proposing to classify employers according to their predominant class, where the predominant class would generally be defined based on the class representing the largest share of an employer's annual insurable earnings.

- *Should the WSIB consider factors other than just insurable earnings?*
- *Should the WSIB also consider the risk involved in the business activity when determining the appropriate classification?*
- *Or a mix of both insurable earnings and risk?*

The Group supports the WSIBs plan for basing the rate and classification on the predominant class/business activity. The WSIB should endeavor to communicate the specific new Class that employer's will be assigned to well in advance of the 'go-live' date. Clear and early communication of anticipated class assignment, will provide employers the ability to review and evaluate the determination, and if concerned, employers will be afforded the opportunity to clarify/correct their assignment prior to "go-live". This process will limit confusion, further adjustments/movement, and reduce the possible financial impact that could result from an incorrect classification/rating.

Is a three year window for determining an existing employer's predominant class appropriate?

- *Is a longer window (e.g. four years) more appropriate or is a single year enough?*

Yes, 3 years should be sufficient for most employers and will limit the effect of changes in business activities.

<u>Temporary Employment Agencies (TEA)</u>

Should TEAs be treated differently from other employers under a new Rate Framework to address the premium cost avoidance issue (e.g. be allowed to have multiple premium rates)?

Within The Group providing this submission, these employers either do not utilize TEAs regularly, or where they are used, the temporary employees are hired for low risk labour (i.e. Clerical and Administrative workers). As a result, The Group does not have a definitive position on the issue, noting our limited experience.

How should the claims cost avoidance issue be addressed under a new Rate Framework?

The Group does support the proposed direction of incorporating increased "rates" by the TEAs allocated/billed to their "clients", whereby TEAs would have varying

rates dependent on the nature of the labour they are supplying, which they would bill/allocate to the "client employer". If a "Client Employer" knows they will be billed by the TEA for premium costs and risk associated with their temporary employees, this does have the potential of limiting the ability of employers to use TEAs to avoid high rates and premiums.

The Group does question how the WSIB is going to govern and monitor how TEAs allocate/assign costs to their 'clients', and whether the WSIB has the authority to monitor and audit the proposed changes. Will TEAs be required to provide Client Employers with a breakdown of the associated "rate" related to premium costs?

Step 2: Class Level Premium Rate Setting

New Claims Costs & Administration Cost:

Should the WSIB use the current RG approach of fixed per claim limit of 2.5 times the annual insurable earnings at the employer level, or should the WSIB use the graduated per claim limit approach outlined?

The Group's current understanding is that the size and experience of each employer participating in this submission would indicate we will be considered 90-100% predictable with respect to the predictability scale. Therefore, either approach is appropriate and would have limited impact even if the WSIB was to adopt a new Graduated Per Claim Limit approach.

Should the WSIB consider using a different graduated per claim limit than the one proposed? If so, what features should it have?

See above. Either approach would have minimal impact on employers who are 90-100% predictable under the over-arching proposed framework.

Should the WSIB continue with its current allocation of administration costs?

The Group supports the position to continue with the current allocation of administration costs and legislative obligations.

Long Latency Occupational Disease (LLOD)

Should LLOD (long-latency occupational disease) claim costs be shared equally by all employers as a collective cost or should these costs be charged directly to the individual employer?

The Group agrees that the LLOD claims should be shared equally by all employer's across Schedule 1. Today's employment climate has changed where workers' movement from occupation to occupation spans across multiple classes

and workers do not reside in one class/industry for the entirety of their working life.

Understandably, through years of claims experience and data collection, the WSIB has significant data on the number of LLOD claims, costs, pensions, etc. and the type of LLOD (NIHL, Silica, Asbestosis, etc.). It would be beneficial for this information to be shared and referenced in relation to further plans and direction related to the allocation of costs.

Additionally, as consideration is given for how the WSIB will issue "Claims Reports" (i.e. similar to the current Quarterly NEER Reports), it would be beneficial for the WSIB to include information related to LLODs to the appropriate 'exposure employers'. Including information related to the employer's Costs, awards, their percentage of accountability/responsibility, as well as the over-all cost to the system, would assist in driving prevention and improvement of safe work practices for employers. Knowledge of the 'true cost' to the collective system would assist employers in understanding the effect these claims have on their rates within the new framework, even if it is not impacting their own individual Employer Actual Premium Rate.

The Group recommends the WSIB endeavor to review and explore the Final Report of the Chair of the Occupational Disease Advisory Panel, issued in February 2005. The Group does recognize that the broader topic of Occupational Disease adjudication, and operational policy, is not within scope of the Rate Framework consultation, but has included some additional thoughts related to this topic, in the "Additional Comments" section below.

The WSIB should consider applying a threshold for entitlement to a NEL award for Noise Induced Hearing Loss claims, as done in other jurisdictions. By identifying a threshold for when a NEL is awarded, the board would reduce costs associated with administering and issuing the minimal-NEL benefits, where the cost outweighs the actual benefit itself. The entitlement to hearing aids and HC benefits would still apply, but a limit to the NEL award would ease the burden on the system.

SIEF

Given the design elements of the proposed preliminary Rate Framework that promote greater stability in premium rates, as well as the current legal landscape on disability issues, is the SIEF policy as it currently designed still relevant?

It has been expressed to The Group that the WSIBs implemented changes and improved adjudication related to the SIEF program has resulted in the New Claims Costs associated with SIEF being reduced from 30% of NCC to 5% of NCC over the last 5 years.

The Group believes that SIEF is still a relevant aspect of the WSIB process related to pre-existing conditions and their effect on claims and benefits. However, noting the strides made by the WSIB in recent years, and the recent Operational Policy changes related to pre-existing conditions, it may be warranted to continue to use SIEF, in a new/redesigned SIEF Policy, change in scope, and updated definition, and its applicability.

Discussion was also undertaken in regards to whether the WSIB would allow employers the option to opt out of SIEF Coverage, and what effect it would have on the Employer Premium Rate, and perhaps the Class Target Premium Rate.

Self-Sufficiency of Classes:

How should the WSIB handle catastrophic new claim costs situations that occur in a particular class?

a) *Include claim costs in the year that they occur, which may result in a higher premium rate being charged to employers?*
   OR
b) *Reduce the premium rate increase and add the remainder as an amount for future premium rate consideration?*

c) *How should catastrophic situations be defined? Should the WSIB consider pooling these costs at the class level or Schedule 1 level?*

The Group's understanding is that "catastrophic new claims costs" can be defined as either:

- A pandemic/wide-spread type illnesses that affect a specific group of employer's (i.e. Health Care industry affected by SARS, H1N1, etc.) burdening a specific class, or classes, which significant increased claims costs in a specific period, OR

- An unexpected event (i.e. plant explosion, mining disaster, plane crash, multiple homicides in the workplace) resulting in significant injuries/costs to a large number of employees for a particular employer, OR

- An unexpected change in a particular class (i.e. a number of employers suddenly leaving the marketplace) resulting in the class having to compensate for the disparity of future claims costs, no longer gathered through premiums.

Understandably, unique situations such as those described above (and perhaps other scenarios not yet identified) could arise and the employers, class, or classes, would be burdened with significantly high and unexpected costs that would not be considered through review of risk profiles and past claims experience. For situations where "catastrophic claims" occur and there is limited-

to-no control at the employer level, it would be The Group's position that the WSIB should consider some form of pooling for these costs. However, what level they are pooled could differ depending on the nature of the "catastrophe". Following a catastrophic event that affects one employer (i.e. plant explosion), or a limited number of employers, consideration should be given to pooling the costs at the class level, where a collective of similar employers can support the affected employer(s). Alternatively, a catastrophe that affects multiple, or the majority, of employers in a particular class (i.e. pandemic, or significant reduction in class insurable earnings), the costs could be pooled at the Schedule 1 level, noting that pooling at the class level would not be sufficient and would result in significant impacts to a multitude of employers.

The Group supports that in catastrophic scenarios, some level of pooling should occur in an effort to limit significant volatility in scenarios where employers have limited control and the event is significantly unpredictable. In order to better prepare and educate all employers of when this would apply, a clearly defined definition (or definitions) of "catastrophic claims" should be developed as part of an overarching Operational Policy. The policy would provide clarity of what will occur, how it will be applied, and how it will be communicated to employers, in the event these situations were to arise. Furthermore, consideration could be given to identifying an 'arms-length' entity to oversee these types of matters in an effort to eliminate political-based decisions, and ensure decisions are based on an objective review of the catastrophe itself and the effect it would have of employer, class, and Schedule 1 rates.

Step 3: Employer Level Premium Rate Adjustments

Actuarial Predictability

In setting employer level premium rates, what are the factors that the WSIB should consider in assessing the level of protection an employer needs from large rate fluctuations?

a) *Should the WSIB include in the assessment of actuarial predictability, insurable earnings, claim costs, number of claims, lost time injuries or some other factor?*
b) *Should the WSIB use different mixes of insurable earnings, number of claims?*
c) *Are the percentages of assignment between individual and collective experience appropriate?*
d) *Should a new employer be treated the same as an existing employer?*

The Group supports the proposed Framework's structure and the proposed process, and associated factors, for setting employer level premium rates, resulting in individualized Employer Premium Rates based on their own experience and predictability. Based on the data provided in Paper 3 (page 45), it would appear that the WSIB attempted numerous variations of weighted factors.

The resulting actuarial predictability appears appropriate based on the information provided.

Similarly, the Predictability Scale outlined (Paper 3, page 47) appears to provide a sufficient balance between individual experience and collective experience.

The proposed Framework offers challenges for new employers entering the system with no prior individual experience. Consideration could be given to introducing new employers to either; 1) the Class Target Premium Rate, or 2) the Class 'Average Premium Rate" initially. Thereafter, a formula could be established to apply a graduated/weighted "Employer Target Premium Rate" based on experience and total claims, year-over-year until sufficient experience is obtained to better establish a truer 'Employer Actual Premium Rate'. Consideration should be given to still allowing minor movement within the risk band, noting the Risk Band Limitations (discussed below) would afford protection from volatility, even to 'new' employers.

Does the introduction of experience adjusted premium rates for small employers, currently excluded from WSIB experience rating programs, introduce too much premium rate sensitivity?

No, the use of the predictability scale and collective liability will limit volatility in premium rate changes year over year. Small employers will be afforded the appropriate level of protection from large fluctuations, but also allow for an appropriate level of employer accountability.

Risk Banding:

Is using the average of the last 3 years net premium rate for experience rated employers or the premium rate of the RG for those employers who are not experience rated, a reasonable starting point for employers to transition to a new Rate Framework?

Yes, The Group supports the use of the last 3 years net premium rate. It would be beneficial for all Employers if the WSIB would provide (in written form) a breakdown of how the "net premium rate" is calculated. Understandably, the WSIB is reluctant to share the calculations/rates used in assessing the proposed framework, as the 'net rate' may change before final implementation. However, providing employers with a clear breakdown of the formula (and examples from mock NEER/CAD-7 statements) would allow employers to evaluate their own individual status as part of ongoing preparation.

Are the risk bands that are set at 5% increments to provide great sensitivity, and avoid large premium rate swings for employer with small changes in risk appropriate? Should the percentage increments be larger?

5% increments is appropriate and allows for adjustments based on experience, while also protecting against volatility.

Should the proposed preliminary Rate Framework use the most recent six prior years for determining employer level premium rates? Or three or four years?

The Group supports the use of six years for establishing Employer's Total Claims Costs. Six years would be more appropriate to support a truer picture of the actual costs of the claim. This would also increase predictability and make employers more accountable for their own costs.

The July Consultation Update outlines that some stakeholders are requesting/ recommending the use of a weighting scale, putting greater emphasis on recent data versus older data. The Group holds the position that the use of 6-years of unweighted costs is likely sufficient data to determine premium rates and question the level of benefit 'weighting' different years will provide.

Noting the WSIB has reviewed 'alternatives' and other models as part of the development of Paper 3, an updated Paper as part of the consultation process could include an alternative model **it ario s t es of ei tin** to outline the effect the weighting would have (if any), and offer discussion on the pros and cons of this proposition.

Does a three risk band limitation, relative to the experience of the class, provide suitable stability? Consider that this limitation itself leads to greater collective liability, should the limitation be higher? Should it be lower?

The Group supports the proposed limit on Risk Band movement of +/- 3 risk bands. However, the WSIB should provide clear analysis/reports annually (quarterly?) to employers allowing them to gauge where they are trending, and outline the Employer Target Rate to provide transparency to employers.

As discussed further below, improved online real-time information and accessibility to information would be strongly recommended as part of any proposed framework. The WSIB has made strides in improving eservices, but further improvement would offer increase service to stakeholders.

Should we consider forgiving employers who increase/decrease one or two risk bands? If so, would there be a need to increase the risk band limitation to four or five risk bands to appropriately balance premium rate stability and responsiveness?

The Group doesn't support the notion of forgiveness of 1 or 2 bands as it would result in confusion for employers. Additionally, forgiveness could potentially result in annual appeals by employers, and unnecessary administration and costs to the system. The simplicity within the +/- 3 band movement will benefit all employers and make it easier to understand. Movement of 4 to 5 bands would result in increased volatility and decrease stability for employers, which goes against the intent of the new framework.

Do risk bands generally provide a positive support and a level of stability in setting rates for employers, or would individualize rates for each employer capped at a specific %, plus or minus, relative to the experience of the class be preferred?

The Group supports the risk band approach, and the +/- 3 band movement. To a certain degree, the proposed framework already incorporates "individualized rates" for each employer, as well as a cap of "15%" movement from year to year. Additionally, the approach of having a broad range/number of "Risk Bands" dependent on the Class (and their risk/experience), allows for appropriate movement.

Furthermore, Paper 3 discusses that the maximum premium rate would be approx. three times the Class Target Premium Rate, and through the working group sessions, The Group understands that when/if needed maximum premium rate (i.e. highest risk bands) could potentially fluctuate from year to year as the class's collective liability changes. Similar to the recommendation to develop of policy on "Classification", the WSIB may consider outlining a specific policy on when, why, and how changes in Risk Band Ranges may change.

Overall, The Group believes the proposed framework appears to find a strong balance between collective accountability and individual employer accountability.

<u>New Employers:</u>

Should the WSIB charge new employers with less than 12 months of experience the Class Target Premium Rate? Or should they be risk banded?

The Group agrees that new employers should start at the Class Target Premium Rate, and as they gain experience/predictability over years in the system, they will move accordingly towards an individualized Employer Target Rate. A graduated approach based on year-by-year experience could be developed, similar to the predictability scale, but designed for new employers being as the employer begins to gain experience and

Similar to other topics outlined in this submission, a clear policy clarifying how new employer's will be treated should be established.

Surcharging Employers:

What factors should the WSIB consider when determining if an employer should be surcharged?

The Group supports the need for some type of surcharge mechanism for employers who fail to improve overall claims performance. Factors that should be evaluated would include; claims costs and rate increases (+3 risk bands) over a number of years, and/or employers continually residing in the maximum risk band for the class for a pre-determined number of years. Although collective/class liability is part of the new Framework for greater protection to rate volatility, the Framework does also incorporate increase employer accountability. In instances where employers are meeting the 'threshold' for penalties, mechanisms to hold employers accountable should be built into the new framework. The Group supports a graduated/tiered approach to reaching a surcharge threshold, whereby Employers are provided with escalating notifications in the event they are trending towards a surcharge scenario.

Additionally, the surcharge mechanism should be linked to overall claims/cost/experience performance over time (to-be defined), and should not be linked to individual claim types (i.e. fatality claims).

It would seem obvious to The Group that a well-defined policy would be required to outline processes, thresholds, level of accountability, maximum surcharges, support resources, etc. that would be required within the framework.

Should the WSIB not surcharge employers at all and include all the claim costs above a certain level as a collective cost in setting the Class Target Premium Rate?

As noted above, The Group supports that a surcharge approach should be included as part of the Framework. However, an integrated approach of surcharging continually 'poor' performing employers along with providing "collective accountability" within the class should be undertaken as well.

Noting the fact that the Maximum Risk Band is not a fixed amount and can increase over time, in relation to the class target rate, there is also the potential that employers at the maximum risk band may not be 'protected' by the collective group over the passage of time. Continually poor performance could lead to an increased maximum, resulting in increased rates for the 'poor' employer as well.

Paper 4: The Unfunded Liability

Should the WSIB use the NCC method or consider Method 2 of apportioning the UFL as described earlier in this paper?

The Group supports the ongoing use of the NCC method to assist in paying down the UFL. The WSIB should consider a graduated diminishment of the UFL portion of the 'rate' as we approach the full re-payment of the UFL. By gradually moving towards the "$0 UFL Rate" there may be some built in protection for employers and the board alike, and it would remove the 'perception' from other external parties/groups of an unwarranted sudden reduction in rates.

Paper 5: A Path Forward

Are there any other key considerations that could be considered in the development of a transition plan from the current system to a new Rate Framework?

The Group believes that a significant amount of communication to all employers, regardless of size and current experience rating program, will be required. The communication should be rolled out in multiple forums, including but not limited to:

- Direct Employer communications
- Communication to Employer Groups
- WSIB website & Social Media

With respect to employer-specific information, the WSIB should ensure significant advance notification (1 – 1.5 years notice) of each employer's anticipated *Class Target Rate*, *Employer Target*, and *Employer Actual Rates*.

Proper training and education on the new framework and any applicable electronic portals should be provided in advance in an effort to make the transition as seamless as possible for employers.

Where necessary, it would be appropriate to provide additional resources to employer groups (such as the Office of the Employer Advisor, OEA) in an effort to provide increased information to small employers who may not be equipped with internal resources to review and interpret information as it is conveyed. These enhanced resources should remain in place both during and after the transition, as it can be expected that many smaller employers won't react to the change until it has already taken place.

Additional Comments from The Group:

Operational Policies & Legislative Changes:

Throughout The Group's submission, we've outlined instances where we believe policies should be drafted and considered. The Group proposes that the WSIB

should draft an all-inclusive list of new policies and current policies that will require revisions/updates. Presumably, the Rate Framework Consultation itself will include drafts of these policies requesting employer/stakeholder feedback as part of the overall process.

Similarly, proposed changes in legislation and legislative language should also be shared with stakeholders for consideration and feedback.

Occupational Disease Advisory Panel (ODAP):

Noting the relation to questions on Long Latency Occupational Diseases and the way those claims fit into the Framework, the WSIB should also explore the previous recommendations made in the 2005 ODAP report. Given the overall intent of the new Framework is tied to the recommendations to provide Funding Fairness, it is The Group's position that there is opportunity within the scope of the framework to review how LLODs are reviewed and managed, and that there could be increased fairness obtained by having an arms-length panel to review how Occupational Diseases (new and historical) are assessed with regards to entitlement. A separate body that could evaluate objective occupational, epidemiological, and scientific evidence, in determining presumptive legislation and/or entitlement, would result in a more transparent and objective assessment and implementation of conditions, processes, entitlement, etc.

Fatalities

In the current experience rating programs for NEER and CAD-7, Operational Policy 14-02-17 Fatal Claim Premium Adjustment outlines when and how the WSIB applies a one-time premium increase in the year an employer incurs a traumatic fatality claim. It is The Group's position that the upon the transition to a new Rate Framework this policy will be become void and no longer be applicable, as NEER and CAD-7 will no longer exist. In addition, it is The Group's position that the new Framework would not revise/implement a new or similar version of the policy to penalize employers in a similar manner.

Currently, through discussions within working group sessions with the WSIB, The Group is aware of three possible considerations for how Fatality Claims could be addressed. In the event of a fatality, three possibilities include;

- Employers pay for the actual associated costs based on entitlements, related to funeral expenses and dependents, based on the worker's circumstances. These costs would be subject to a graduated per claim limit based on an employer's insurable earnings and the new Framework, whereby if the actual costs were greater than the maximum claim limit for that employer, the employers experience would be affected only by the maximum. Or,
- The employer is charged with the "average cost" of a fatality, and the amount would NOT be subject to the graduate per claim limit. The WSIB

would determine (and continually evaluate) the "average" cost that a 'fatality' costs the system based on claims data over a period of time (i.e. 6-years prior).

- The employer would be charged with the maximum graduated per claim limit outlined in the proposed Rate Framework. Whereby, the employer pays the per claim limit regardless of the worker's circumstances at the time of the fatality (i.e. funeral expenses, dependents, etc.).

The Group has undertaken various conversations surrounding how fatalities may be treated within the new Rate Framework, and prior to offering a position on the matter The Group feels more information, data, and modelling is required. The WSIB possess the necessary data related to costs and should endeavor to provide additional information to various scenarios.

The Group acknowledges the seriousness of any fatality claim, and the fact that it is likely the most significant claim any employer could experience, and as such additional information pertaining to the costs to employers and the system would be beneficial to all stakeholders evaluating how costs associated with fatalities should be administered.

Customer Service, Reporting, and Access to Information

The Group would be remiss not to express the need for ongoing improvements in services and availability of information to employers. Currently, for employers in the NEER Program, cost related information is issued on a quarterly basis but is typically not communicated to employers until 6 – 8 weeks after the closing of the "quarter". Improved electronic-based systems and portals providing real-time claims information, costs, decisions, etc. would benefit both Employers and WSIB Operations staff. Additionally, over time, improved systems and availability of information should reduce administrative costs.

Through working sessions related to the Framework, it has been shared that the WSIB is looking at the WorkSafeBC model and their online "Employer Safety Planning Tool Kit". The Tool Kit reportedly offers employers not only real-time claim information (costs, benefit types, decisions), but real time experience and premium rate information in the form of forecasting and other information which would benefit employers in reviewing what claim trends, risk profile projections, and premium rate projections are occurring, and where safety measures could be implemented to improve performance. Employers would benefit from additional presentations/slides/ screenshots related to the BC Tool Kit, or a mock Tool Kit, providing more specific examples of what would be provided to employers.

Additionally, employers continue to struggle with the limited electronic services provided by the WSIB with respect to claims management, and it is The Group's position that WSIB costs as well as indirect costs at the employer-level could be

reduced by expanding the e-services offered by the board, including but not limited to:

- Decision Letters
- Submission of Objection Letters
- Submission of Forms (WREO7E, Form 9s, etc.)
- WSIB Requests for Forms (i.e. Employer Progress Reports)
- Confirmation of Claim Numbers
- Appeals – Access to Claim Files
- Communication
    - WSIB could set minimum security/system requirements for email correspondence)

Movement to a more employer-centric model should include efforts to provide more timely information in an easy and accessible manner to all employers.

Self-Insurance

The Group understands that the notion of Self-Insurance and changing legislation is not within scope of the proposed Rate Framework Consultation. However, in an effort to review future opportunities and other avenues for improved funding fairness, The Group requests that the WSIB obtain and provide cost and claim data related to specific time-period data for claims. Specifically;

- Can the WSIB provide data to employers in relation to how many claims are closed within specific thresholds (5-days, 7-days, and/or 10-days of onset), along with associated claims costs and benefits paid?
- Can the WSIB review and analyze the data and determine the administrative and man-power costs associated with these "thresholds" to determine model what benefit (or detriment) a Self-Insurance model may provide to employers and the WSIB?

WSIB Autonomy

The Group believes that the WSIB's current policy and legislative approach which clearly outlines the WSIB's accountability and jurisdiction to oversee and apply funding and rate setting should continue. The efforts in recent years to ensure the UFL can be paid within the designated time frame, as well as the assurance afforded to employers that the premium dollars gathered are adequate to cover future benefits should remain in place.

Conclusion

Overall, based on the information included to-date The Group is of the position that the proposed Rate Framework will drive employer accountability and proper claims management which should drive decreased claims costs, reduced rates, proactive Health & Safety measures in the workplace and better prepare employers to visit true trends in costs, claim frequency, severity, etc.

Going forward, The Group would suggest that the WSIB should consider offer training/Web-Ex sessions to employers to become familiar with the new Rate Framework. This would assist in reaching as many employers (large and small) as possible and limit confusion and increase the knowledge base moving towards any new Framework.

We appreciate the opportunity to provide comments on this very important WSIB Rate Framework Consultation. We look forward to the next phase of the process and reviewing the report and submissions provided by all the stakeholders.

Yours Sincerely,

Bruce Power ***Enbridge Gas Distribution*** ***Hydro One***

Union Gas ***Ontario Power Generation***

WORKPLACE SAFETY AND INSURANCE BOARD
RATE FRAMEWORK CONSULTATION

Submissions of the IAVGO Community Legal Clinic

October 5, 2015

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1. Introduction

IAVGO fundamentally disagrees with the Board's proposed rate framework. Worker stakeholders, researchers, the Expert Advisory Panel on Occupational Health and Safety, and Professor Arthurs have all told the Board about the serious problems caused by relying on claims experience to calculate individual employer's premium rates. But instead of addressing these issues, the Board proposes embedding claims experience even more deeply into the rate-setting process.

The Board has been told repeatedly that claims-experience based incentives:

1. are ineffective at promoting health and safety, and
2. encourage claim suppression and claims management.

In the redesign of its rate setting process, the Board has an opportunity to address these problems and align its individual-employer level incentives more closely with the statutory objectives of improving health and safety, and helping injured workers return to work.

But instead of taking this opportunity, the Board just assumes away all of the problems associated with experience rating. The Board assumes that claim suppression is the result of "design flaws" in its current programs, rather than problems inherent in basing premiums on claims experience. And the Board assumes that claims experience is an accurate measure of an employer's health and safety performance. And the Board further assumes that a premium rate setting method that relies even more heavily on claims experience will improve health and safety. The Board offers no foundation for these assumptions, nor any explanation for its refusal to implement the recommendations of the Expert Advisory Panel and Professor Arthurs.

IAVGO reluctantly participates in these consultations. We do so only to document our objections and with little hope that the Board will take our concerns seriously. We are frustrated and disappointed: we have spent many years helping injured workers who have been hurt by the employer behaviour that experience rating incents, and the Board refuses to even acknowledge, much less address, these issues. And to make things worse the proposed rate framework show that the Board is passing on the opportunity to both improve our workers' compensation system and make Ontario workplaces safer.

2. IAVGO's work and experience rating

IAVGO's submissions are from the perspective of experienced injured worker representatives. We are a community legal aid clinic that specializes in workers' compensation. We have been helping low-income injured workers with their workers' compensation cases for over 38 years. We have seven caseworkers, including three with over 25 years of experience representing injured workers.

IAVGO represents and advises hundreds of injured workers and their families at any given time. Our advisory services range from a 40-minute meeting to opening what we call "merit review" or "self-help" files to provide injured workers with more hands-on help. For these workers, we ghost-write letters to the Board, gather medical information, evaluate cases for merit, and make sure time limits are met. Over the years, we have advised and represented thousands of injured workers.

Our clients include some of the most marginalized workers in Ontario. In addition to their work-related disabilities, the injured workers we serve often have:

- mental health conditions, including depression, post-traumatic stress disorder, or addictions
- racialized identities
- limited literacy
- little or no English language skills
- low levels of education (usually high-school or below)
- no or limited Canadian immigration or citizenship status
- precarious employment both before and after the accident
- limited or no vocational skills
- no income other than social assistance or Ontario Disability Support Program

Our clients are particularly vulnerable to claim suppression and claims management. The employer-employee power imbalance is particularly pronounced for these injured workers and employers often exploit that imbalance. We regularly see workers who have been threatened or discouraged against reporting their injuries, face spurious employer appeals, are subjected to unfounded allegations of malingering, are fired on false pretences, are rushed back to unsuitable work before they are fit to do so, or are forced to return to work in fake and demeaning jobs.

In addition to our casework, IAVGO is dedicated to law and policy reform. We work together with injured worker groups, other legal clinics, private lawyers, and labour organizations to advocate for fairness for injured workers. This includes work on experience rating: we participate in the Experience Rating Working Group and we were heavily involved in the funding review. More recently, one of our staff lawyers wrote *Rewarding Offenders*, a report exposing how the Board's experience rating system requires it to pay huge rebates to employers that have committed serious occupational health and safety offences.

3. The fundamental flaw: continued reliance on claims experience-based premiums.

Our main concern with the rate framework is the continued reliance on claims experience in determining each employer's premium rate. Indeed, the proposed rate framework makes claims experience even more central to the determination of each employer's premium rates than now.

Basing premiums on claims costs creates incentives for employers to reduce claims cost. Some employers may invest in health and safety or build their capacity to accommodate disabled workers. But often it is easier, cheaper, and more direct to suppress or manage claims. Such behaviour hurts injured workers and undermines health and safety.

3.1 Claim suppression is widespread and would undermine the integrity of the rate framework.

Claim suppression is widespread. An April 2013 report, commissioned by the Board, attempted to quantify the extent of claim suppression in Ontario's workers' compensation system. The report's authors, Prisim Economics and Analysis, acknowledged that this would be difficult: claim suppression is "a practice that those who engage in it seek to conceal", and it is doubtful as to whether conventional research could ever validly estimate the amount of claim suppression or identify the motivation for suppressing claims.[1]

But the report does identify "plausible estimates" of things that are components of or closely related to claims suppression. This includes estimates that:

[1] Prisim Economics and Analysis, Workplace Injury Claim Suppression: Final Report, April 2013, p.2.

- Workers do not claim 20% of likely compensable, work-related injuries or illnesses.
- Employers do not report 8% of work-related injuries or illnesses (although the report acknowledges this may be underestimated)
- Employers misreport injuries or illnesses as no-lost time in between 3% to 10% of cases.
- 5.2% of the abandoned lost-time claims examined indicated that the worker had more than two weeks of lost-time.[2]

These figures seem low to those of us who work with injured workers. And they do not capture more subtle forms of claim suppression that employers use, like giving employees bonuses for low lost-time injury rates.

But limited as they are, Prisim's "plausible estimates" show that the scale of claim suppression is so vast that it would undermine the integrity of a rate framework based on claims experience. How can the Board claim that each employer is paying its fair share if employers either do not report or misreport 11-18% of injuries or illnesses? How can the Board claim the claims experience is a legitimate measure of an employer's health and safety performance if that many employers aren't reporting claims correctly?

3.2 Claim suppression results from claims experience incentives.

In a meeting with the Experience Rating Working Group to discuss the rate framework, Board representatives suggested that claim suppression is a complex problem, not clearly attributable to claims experience incentives. This suggestion is presumably based on comments made in the Prisim report on the motivation for claim suppression.[3]

The Prisim report says little about the causes of claim suppression. It acknowledges that the only source of evidence on the motivation for claim suppression it reviewed were the 100 Board enforcement files, so no "strong" conclusions could be drawn.[4] That said, the report notes that 49 of the 100 employers who were prosecuted hadn't even registered with the Board. According to the authors of the report, this

[2] Prisim Economics and Analysis, pp. 3-4.
[3] Prisim Economics and Analysis, pp. 3
[4] Prisim Economics and Analysis, p. 3.

implies that "a general aversion to compliance is a stronger motivation for under-reporting than any other factor", including experience rating.[5]

It is surprising that Prisim would advance even such a tentative conclusion about employer motivation for underreporting. The sample size was tiny (only 100 enforcement files) and it is highly unlikely that the Board's enforcement files are a representative sample of employer misreporting.[6] The high proportion of unregistered employers in the sample enforcement files likely tells us more about the Board's priorities in enforcement than about employer motivation for claim suppression.

And other than the incentive to reduce premiums, there is no credible explanation for the behaviour of the thousands of registered employers that suppress claims. Experience rating gives employers a direct and often substantial incentive to suppress claims. It is not be surprising that they respond to these incentives.

3.3 The Board assumes that rate volatility causes claim suppression.

The proposed rate framework only includes one measure to address claim suppression: reduced annual volatility for some employer's premium rates. The Board's argument seems to be that the current system allows too much volatility and that this is what provokes employers to suppress claims. According to the Board, the rate framework addresses this by capping the extent of premium rate changes in any year.

But the Board provides no evidence that it is the volatility of premiums that results in claim suppression. It is just assumed to be so. One would think that if there was any basis for this claim, there would be some supporting evidence – experience rating is used in many jurisdictions all over the world, presumably with for varying levels of premium volatility. Yet concerns about claim suppression are widespread.[7]

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[5] Prisim Economics and Analysis, p. 65

[6] In *Funding Fairness*, at p. 80 Professor Arthurs noted that the Board's prosecutions and convictions were "not a reliable measure of employer wrongdoing."

[7] See for example Doug Smith, *Turning the Tide: Renewing Workers' Compensation in Manitoba* (Canadian Centre for Policy Alternatives, 2002) at p. 20; Service Employees International Union, Submission to the Workers Compensation Act Committee, pp. 6-8 (Online: http://www.wcbactreview.com/pdf/sub101.pdf); and Prisim Economics and Analysis, Claim Suppression in the Manitoba Workers' Compensation System: Research Report, November 2013 (online at

There are common-sense reasons to doubt whether it is the annual volatility in the current incentive programs that causes claim suppression. It seems unlikely that employers that suppress claims calculate how much each potential claim might affect their NEER rebate or surcharge before they decide whether or not to threaten the worker not to report. Some may do this, but the more likely situation is that many employers and their front-line managers know that claims experience generally affects premium costs and respond accordingly.

Even accepting the Board's analysis that volatility is the problem, how does the Board know what level of volatility would cause claim suppression? Not only does the Board offer no explanation for this, it also assumes that that the proposed framework will both reduce incentives for claim suppression and improve incentives for health and safety. But if claims experience incentives are effective at changing employer behaviour, how can the Board just presume that all of those changes will be positive?

Without convincing answers to such questions, the Board's proposed system risks encouraging more claims suppression. While reducing volatility for some employers, the proposed rate framework is designed to more closely align each employer's claims costs with their premium rates. The materials describe it as "more responsive" and note that "[t]he proposed system would place more emphasis on an employer's accountability for claims costs, and charging that employer a premium rate that represents their fair and reasonable share."[8]

Through the proposed rate framework, the Board's message to employers will be stronger than ever: reduce claims costs and you will reduce premiums. There is a substantial risk that this will result in increased claim suppression.

3.4 The moral crisis deepens.

> *In my view, the WSIB is confronting something of a moral crisis. It maintains an experience rating system under which some employers have almost certainly been suppressing claims; it has been warned – not only by workers but by consultants and researchers – that abuses are likely occurring. But, despite these warnings, the WSIB has failed to take adequate steps to forestall or punish illegal claims suppression practices.*

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http://www.wcb.mb.ca/sites/default/files/Manitoba%20WCB%20Claim%20Suppression%20Report%20-%20Final-1.pdf) .

[8] WSIB, Rate Framework Reform, Paper 3: The Proposed Preliminary Rate Framework, March 201,5 at p. 36.

…

Unless the WSIB is prepared to aggressively use its existing powers … to prevent and punish claims suppression, and unless it is able to vouch for the integrity and efficacy of its experience rating programs, it should not continue to operate them.[9]

It is nearing four years since Professor Arthurs put the Board on notice that its inaction on claims suppression was a moral crisis, a moral crisis so serious that he recommended shutting down the Board's experience rating programs if they were not addressed. But the Board's inaction has continued. And now the Board, instead of addressing claim suppression, proposes a rate framework which risks perpetuating it.

Professor Arthurs made specific recommendations that the Board could and should have already implemented. He recommended that the Board:

- Adopt a "firm" policy to protect the integrity of its experience rating programs. (Recommendation 6-1)
- Train staff to detect claims suppression and require them to report it. (Recommendation 6-2.3)
- Establish a special compliance unit, headed by a senior officer and sufficiently resourced to detect and initiate the process for punishing employer abuses. (Recommendation 6-2.3)
- Require employers to designate a Health, Safety, and Insurance Officer (HSIO) responsible for ensuring compliance with the *WSIA*. (Recommendation 6-2.1)
- Require that HSIOs ensures that every worker gets a Board-prepared document briefly summarizing their rights under the *WSIA*. (Recommendation 6-2.1)
- Require that each HSIO make sure that every worker is told of their right to file a claim in the event of a workplace accident or illness. (Recommendation 6-2.1)
- Amend its experience rating policies to provide that employers found to have violated the *WSIA* or other occupational health and safety legislation be

[9] Professor H. Arthurs, *Funding Fairness: A Report on Ontario's Workplace Safety and Insurance System,* p. 81.

> automatically ineligible for favourable premium adjustments or rate rebates. (Recommendation 6-2.3)

And more globally, Professor Arthurs recommended that the Board:

> … commit itself to making the changes in its rules, structures and processes necessary to protect workers against claims suppression and other abuses that may occur in the context of experience rating programs. If it cannot or does not commit to making such changes within 12 months from the receipt of this report, and fails to initiate all necessary changes within its competence within 30 months, it should discontinue its experience rating programs.[10]

Professor Arthurs urged the Board to make dealing with claim suppression a priority:

> I view the adoption of these measures to protect the rights of injured workers as a matter of highest priority. While appreciating that it will take time for the WSIB to develop specific strategies, to consult with stakeholders about them, to train and deploy personnel, and to budget for this new initiative, I am also aware that if it does not adopt and implement these much needed reforms in the very near future, it likely never will. … And if these reforms are not put in place, in my view, the risks associated with ER programs are too significant to allow them to continue.[11]

The Board has made no commitment to making the changes necessary to protect workers against claim suppression and other abuse. And there is little evidence that it has done anything to seriously address claim suppression. The Board's response to the moral crisis on claims suppression was to commission the study by Prisim. But Professor Arthurs recommended action, not further study.

In the rate framework materials, Board says it has set up a "Specialized Employer Compliance Team" to deal with incidents of claim suppression which "may persist notwithstanding the proposed preliminary Rate Framework."[12] It remains to be seen whether this unit is given the resources, authority, and properly defined objections. Other than this new compliance team, the Board hasn't implemented a single one of the Funding Review recommendations to deal with claim suppression.

Ignoring the Funding Fairness recommendations and increasing reliance on claims experience is no way to deal with a moral crisis.

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[10] Funding Fairness, at p. 86.
[11] Funding Fairness, at p. 86.
[12] The Proposed Preliminary Rate Framework, at pp. 70-71.

3.5 The rate framework will encourage claims management.

Claims experience incentives also encourage employers to "manage" claims. Under this approach, employers focus on reducing claims costs instead of improving health and safety or return to work. Much of this behaviour is legal, but it hurts injured workers and undermines the purposes of the workers compensation system.

Employers manage claims through the appeals process and gamesmanship in return to work. Many employers routinely appeal their workers' claims, even when there is no legitimate reason for doing so. This makes workers' compensation more like litigation, to the detriment of injured workers. An adversarial system hurts injured workers in many ways, including:

- increasing delays in the adjudication of claims
- undermining the Board's investigative role
- subjecting injured workers to accusations of lying and malingering
- increasing the complexity of worker's compensation proceedings
- fostering distrust between injured workers, their co-workers and their managers and colleagues
- having their personal health information disclosed and scrutinized by employers and their representatives
- encouraging employers to hide, or at least avoid disclosing, relevant information.

Some employers abuse the return to work process either by offering fake, non-productive jobs that disappear when convenient, by firing injured workers on false pretences, and pressuring workers to return to work before they are ready or before their restrictions are identified.

To put it bluntly, claims cost incentives transform the injured worker's employer into an adversary at the very time he or she most needs support and understanding.

4. The rate framework materials are wrong about health and safety incentives.

The rate framework materials assume that an employer's claims experience is a valid measure of its health and safety record. Relying on this assumption, the Board claims that premiums based on claims experience will incent employers to invest in health

and safety. The Board is surely aware that neither of these assumptions are well-founded.

The Board has an opportunity here to make a substantial improvement to Ontario's occupational health and safety system. By focusing on leading indicators of health and safety performance, the Board could make Ontario's workplaces safer. And this approach would also allow for more principled solutions to the issues of long latency occupational disease and temporary employment agencies.

4.1 Claims experience is a poor measure of occupational health and safety performance.

An employer's claims experience is a poor measure of its occupational health and safety performance. Claims experience is a lagging indicator and it is distorted by other factors, including claim suppression and claims management. Using clams cost in particular leads to unacceptable results, as in the many cases where the Board has given large premium rebates to reward employers that committed serious *Occupational Health and Safety Act* offences.

Claims costs are driven by factors largely unrelated to the employers health and safety performance. As discussed above, claims costs do not differentiate between improved health and safety practices, claim suppression and claims management. Any of these strategies may reduce claims costs, but managing and suppressing claims doesn't do anything to improve health and safety. And other factors also affect claims cost, including:

- the unpredictability of accidents: some work-related accidents are impossible, or at least very difficult, for employers to predict or prevent. Sometimes even safety-committed employers have accidents. And the reverse is also true – employers with poor health and safety practices may be lucky and avoid accidents despite putting their employees at risk.
- the extent of a worker's injury: the extent of a workplace injury is beyond the employer's control. Instead, this will depend on the susceptibility of the worker to a particular type of injury. One worker may recover quickly from a back strain, incurring minimal claims costs, while another worker with the same injury may develop debilitating chronic pain, never return to work again, and spend the rest of his or her career on benefits.
- health-care costs: employers have little control over the health-care costs generated in each case. Some injuries will require expensive health care

treatment and others won't. These costs may not even correlate with the severity of the injury.

- the Board's actions: claims cost will often be closely connected to the Board's handling of a case. Sometimes claims cost will increase because of factors such as delay and low-quality adjudication. Increased claims cost because of the Board's mishandling of a case doesn't say anything about the employer's performance.
- the injured worker's wage rates: everything else being equal, the claims cost for an injury to a high-wage employee will be higher than the claims cost for a low-wage employee. The wages of an injured worker have little to do with an employer's safety practices.
- the employer's ability to accommodate injured workers: claims cost will often be related to an employer's ability to accommodate injured workers. Not all employers are equally well situated to do so. Much will depend on both the characteristics of the worker (the nature of the disability, vocational skills) and the employer (the size and diversity of operations, positions available, collective agreement obligations).
- the worker's vocational characteristics and the job market: if unable to return to work with the accident employer, some injured workers will be entitled to benefits based on their ability (in the Board's opinion) to find work in a new suitable occupation. Employers obviously have limited control of the job market or the worker's pre-injury vocational characteristics.

Given all of the variables at play, claims costs cannot be considered an accurate measure of an employer's health and safety performance.

Using claims experience to measure health and safety leads to absurd results, like the Board's payment of huge rebates to employers that committed serious *Occupational Health and Safety Act* offences.[13] With such results, how can the Board say that claims experience is a valid measure of health and safety performance?

[13] Joel Schwartz, Rewarding Offenders: Report on How Ontario's Workplace Safety and Insurance System Rewards Employers Despite Workplace Deaths and Injuries, 2015, online at: http://ofl.ca/wp-content/uploads/2014.11.24-Report-WSIB.Exp_.Rating.pdf. Although the Board found fault with several of the examples used in that report, it has never denied its experience rating programs require it to reward employers that have maimed workers and failed to comply with Ontario's minimum safety standards.

The proposed rate framework does nothing to address the disconnect between claims experience and actual health and safety performance. Instead it just ignores these problems and perpetuates the unfounded notion that claims experience appropriately measures health and safety.

4.2 Experience rating is ineffective at improving occupational health and safety.

The evidence of experience rating's effectiveness as a health and safety incentive is limited and unpersuasive. In the funding review, Professor Arthurs empirical studies on experience rating: there is modest – not overwhelming – support for the proposition that experience rating may indeed reduce accidents."[14] But many of these same studies that reached this conclusion also confirmed that "experience rating probably creates incentives for abuse such as claims suppression."[15]

A more recent study of Ontario's experience rating programs conducted by several of the scientists at the Institute for Work & Health, showed that higher rates of experience rating didn't significantly affect the overall accident rate. Instead a higher degree of experience is associated with fewer lost-time injuries and more no lost-time injuries.[16] The study found that experience rating was ineffective at preventing accidents that result in permanent impairments.[17] And again, the authors noted that experience rating incents cost management.[18]

Experience rating's limited effectiveness in improving health and safety shouldn't be surprising. As noted above, claims cost are a poor proxy for health and safety performance. And claims cost incentives are likely to be less significant than other indirect costs of injury (lost productivity, costs of recruitment and training etc.)[19] These indirect costs already provide an incentive for the employer to invest in health

[14] Funding Fairness, at p. 81.
[15] Funding Fairness, at p. 81.
[16] E. Tompa et. al, "Financial incentives in workers' compensation: an analysis of the experience-rating programme in Ontario", Canada. Policy and Practice in Health and Safety, 2012; 10(1):117-137at p.135.
[17] Tompa et. al, at p. 133.
[18] Tompa et al, at p. 135.
[19] A. Clayton, "Economic incentives in the prevention and compensation of work injury and illness," Policy and Practice in Health and Safety (2012) 10.1,27 at pp.387-38.

and safety. Often further investment would be more difficult or more expensive than claim suppression and claims management.[20]

Experience rating also undermines our prevention system by rendering important indicators of health and safety performance unreliable. Put simply, if employers are hiding or misreporting injuries, we cannot rely on the figures we have for workplace accidents and lost-time injuries. This makes it more difficult to measure health and safety performance and to know whether policy initiatives have been effective.

It is difficult to disagree with research lawyer Alan Clayton's conclusion:

> … if the goal of accident prevention is to be a serious objective of workers' compensation schemes, then experience-rated premiums are a very blunt and problematic instrument to achieving this end and may result in other, undesirable effects.[21]

4.3 The Board's approach contradicts the recommendations of the Expert Advisory Panel on Occupational Health and Safety.

The Board's move to increase the role of claims experience in premium rate setting is directly contrary to the Ontario's Expert Advisory Panel on Occupational Health and Safety recommendation that the WSIB review and revise its financial incentive programs "with a particular focus on reducing their emphasis on claims cost and frequency."[22]

The Expert Advisory Panel, comprised of academic experts, labour representatives and employers, wrote that it "strongly believes that financial incentives should not simply be tied to claims experience."[23]

Instead, the Expert Advisory Panel recommended that the Board's incentives focus on evidence of occupational health and safety improvements in the workplace and reward employers for such improvement.[24]

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[20] T.G. Ison, "The Significance of Experience Rating." Osgoode Hall Law Journal 24.4 (1986):723-742 at pp.727-729. See also D. Smith, "Turning the Tide: Renewing Workers' Compensation in Manitoba" (Canadian Centre for Policy Alternatives, 2002) at p.20

[21] A. Clayton, "Economic incentives in the prevention and compensation of work injury and illness," Policy and Practice in Health and Safety (2012) 10.1,27 at pp. 387-38.

[22] Expert Advisory Panel on Occupational Health & Safety, Report and Recommendations to the Minister of Labour, December 2010, at p. 41.

[23] Expert Advisory Panel, at p. 40.

[24] Expert Advisory Panel, at p. 40.

The Board offers no explanation as to its refusal to follow the Expert Advisory Panel's recommendations.

4.4 The better approach: focus on leading indicators.

It is unfortunate that the Board doesn't take the Expert Advisory Panel's recommendation more seriously: focusing on evidence of actual occupational health and safety improvements makes good sense. To put it simply, if you want to incent good health and safety practices reward good health and safety practices, don't use a vague proxy that also encourages illegal and undesirable employer behaviours.

Premium rate adjustments at the individual employer level should be based on evidence of actual health and safety practices, not claims cost. Claims cost is a lagging indicator, and, as discussed above it is unreliable and indirect. Instead, the Board would be better off focusing on leading indicators, indicators that measure health and safety before illnesses and injuries happen. The Institute for Work and Health has been involved in several projects working on developing such indicators and they have been used with considerable success.[25]

With further investment and cooperation with organizations like Institute for Work and Health and the Prevention Office, the Board could develop more comprehensive leading indicators of health and safety.

Focusing on leading indicators would help address the problems the framework materials mention about long latency occupational disease costs.[26] It is much easier to reward (or penalize) employers for taking (or failing to take) preventative steps to minimize exposures to harmful substances than to adjust premiums of employers years after their unsafe practices, especially when the multiple employers are involved or the responsible employer has gone out of business.

Focusing on the actual practices instead of claims cost also deals with the problem of our developing knowledge of occupational disease risks. The Board could adjust its incentives as more is learned about the causes of occupational disease. Employers would not be penalized for exposing workers to risks that they could not have been expected to know about.

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[25] See the Institute for Work and Health's pages on the Ontario Leading Indicators Project (www.http://www.iwh.on.ca/olip) and the Organizational Performance Metric (www.iwh.on.ca/opm).

[26] Proposed Preliminary Rate Framework, p. 31.

The potential benefit of a leading indicators approach to Ontario's occupational health and safety system is enormous. For better or for worse, the Board's incentives are by far the most financially significant and broad-reaching in the occupational health and safety system. These incentives should be used effectively, and the best way of doing that is to align them as closely as possible to the behaviours they are designed to affect.

5.0 Prioritizing the right things: "risk to the system" should be defined in relation to the objectives of the *Workplace Safety and Insurance Act*.

Aside from the unsupported claims about claims and health and safety, the Board justifies its continued reliance on claims experience through the concept of "insurance equity." The Board uses that term less than in *Pricing Fairness*, but the concept that fairness means each employer paying premiums that reflect its claims experience is pervasive throughout the rate framework materials.

The problem is that an employer's claims cost is not a true measure of its "risk to the system." This notion is based on a misguided and weakly argued understanding of the Board as a state-run insurance company, set up only to insure employers against the financial risk of workplace injuries. But the Board not just an insurance company: it is an independent government agency charge with administering a statutory scheme with the public policy objectives. Those policy objectives are set out in section 1 of the *Workplace Safety and Insurance Act*:

> **Purpose**
>
> 1. The purpose of this Act is to accomplish the following in a financially responsible and accountable manner:
>
> 1. To promote health and safety in workplaces.
>
> 2. To facilitate the return to work and recovery of workers who sustain personal injury arising out of and in the course of employment or who suffer from an occupational disease.
>
> 3. To facilitate the re-entry into the labour market of workers and spouses of deceased workers.
>
> 4. To provide compensation and other benefits to workers and to the survivors of deceased workers.

Note that while the objectives must be achieved in a "financially responsible" way, that is only the means, not the ends. And the ends – promoting occupational health and safety, helping injured workers return to work and recover, helping injured workers re-enter the labour market, and compensating them for their losses – are far different than those of any insurance company.

Professor Arthurs said much the same thing in *Funding Fairness*, rejecting the notion that the addition of "Insurance" into the Board's name changed it into an insurance company:

> … while the legislature has every right to call the WSIB an "insurance system," if it is to behave like an insurance company, the legislature must do more than change its title. It must reconfigure the statute so that the WSIB is structured, endowed with powers and regulated in ways appropriate to this new identify. This the legislature has not done: indeed, it has done the contrary. The WSIB is required to provide "compensation" rather than an "undertaking … to indemnify" — the defining characteristic of "insurance" under Ontario legislation; it is mandated to promote workplace health and safety, and to facilitate the return to work and labour market re-entry of injured workers — activities not normally undertaken by insurance companies; and the WSIB is not subject to oversight by either provincial or federal insurance regulators.
>
> …
>
> Consequently, to insist that the WSIB as presently constituted is just a state-owned insurance company is to ignore the history, language and structure of its governing statute, the functions undertaken by the WSIB pursuant to that statute, and the individual, corporate and public expectations that have shaped and reshaped Ontario's workers' compensation system for almost a century.[27]

The "system" that the Board should be considering when it talks about "risk to the system", is the workers' compensation system set out in the *Act*, with the objectives as set out in section 1. An employer's risk to the system, therefore, is the risks it creates through behaviours that undermine prevention, compensation, and returning to work.

The relevant provisions of the Act support this analysis. Sections 82 and 83, the provisions that allow the Board to adjust premiums at the individual employer-level, focus entirely on these objectives and do not even implicitly suggest that insurance

[27] Funding Fairness, at p. 14.

equity is a relevant consideration. Section 82 allows the Board to increase or decrease the premiums paid by particular employers:

> 1. If, in the opinion of the Board, the employer has not taken sufficient precautions to prevent accidents to workers or the working conditions are not safe for workers.
>
> 2. If the employer's accident record has been consistently good and the employer's ways, works, machinery and appliances conform to modern standards so as to reduce the hazard of accidents to a minimum.
>
> 3. If the employer has complied with the regulations made under this Act or the Occupational Health and Safety Act respecting first aid.
>
> 4. If the frequency of work injuries among the employer's workers and the accident cost of those injuries is consistently higher than that of the average in the industry in which the employer is engaged.

And section 83 allows the Board to establish experience and merit rating programs only "to encourage employers to reduce injuries and occupational diseases and to encourage workers' return to work." These are the objectives the Board should focus on instead of its myopic obsession with having each employer's premium rates reflect its claims cost.

This is not to say that fairness to employers is irrelevant. But fairness doesn't require basing premiums on claims experience. There are other fair ways to set premiums, and aligning them with the objectives of the workers' compensation system is both common sense and consistent with the governing statutory provisions.

In any event, the Board's claim that a rate framework based on claims experience would deliver some form of insurance equity is dubious. As discussed above, many employers game the experience rating system by managing or suppressing claims. These employers may have artificially low claims costs and be rewarded with lower premiums, while those employers that focus instead on health and safety and return to work have higher premiums than they should. There is nothing equitable about a system that rewards employers that suppress claims and take an adversarial approach to injured workers at the expense of those who do not.

6.0 The Board should do more to discourage temporary employment agencies.

The proposal to charge temporary agencies as if they are in the same class as the employers they are supplying is a half-measure. It is based on the premise that "TEAs are expected to pass along their premium costs to client employers as part of their fee."[28] This, the Board claims, would mean that "there would be minimal financial incentive for client employers to use TEA workers to avoid premium costs."[29]

The Board provides no evidence for the claim that temporary agencies will pass along their premium costs to the employers who use their services. And there are reasons to doubt this claim: maybe the agency would absorb any additional costs themselves to keep customers; maybe it would pay workers less; or maybe it will use the lower premium rates it gets for supplying workers to some businesses to subsidize increased rates for others. This is a complex issue that cannot just be assumed away.

A better approach would include direct disincentives for employers to regularly use temporary agencies. Although the Board is focused on the insurance equity issues, regular use of temporary agency employees is also an occupational health and safety hazard. As research from the Institute for Work and Health has found that temp agency employees are:

- less likely to complain about unsafe job conditions
- unfamiliar with the equipment, processes, staff and specific conditions of the workplace
- more often injured than other employees
- more vulnerable to claim suppression [30]

Employers should be discouraged from using temp agencies. Direct financial incentives to this effect would surely be more effective than the theoretical gymnastics the Board proposes.

[28] The Proposed Preliminary Rate Framework, at p. 21.
[29] The Proposed Preliminary Rate Framework, at p. 21.
[30] MacEachen, E. et. al., Workers' compensation experience-rating rules and the danger to workers' safety in the temporary agency sector, Policy and Practice in Health and Safety, Issue 1, pp. 77-95.

7.0 Create return to work incentives that travel with the worker.

The Board should provide incentives for employers to hire injured workers. These incentives should travel with the injured worker and apply to all covered employers, not just the accident employer.

Under the proposed rate framework, the injury employer has an incentive to offer modified work that lasts until the experience rating window closes or the worker are terminated "non-compensable" reasons. But using claims experience-based premiums along with cooperation obligations forces injured workers and their injury employers into an awkward and ill-fitting forced marriage. The result is often demeaning and unsustainable return to work jobs, and hostility between employers and injured workers.

Sometimes the best thing for an injured worker is to find a new job with an employer that can more easily accommodate their disability. That may also be the best thing for some employers who, because of their size of the nature of their work, may not be able to effectively accommodate injured workers.

But injured workers face substantial barriers in finding new employment. Injured workers are often disabled from working in the only field where they have the necessary training, qualifications and experience. They face discrimination in the job market because of their disabilities.[31]

Incentives for employers to hire injured workers would help alleviate some of these barriers. And this would be consistent with the Board's statutory mandate to help injured workers return to the labour market.

Surely this is a better approach than SIEF, which instead of providing incentives to hire injured workers, awkwardly purported to removed risks. SIEF is another example of the Board using indirect incentives and getting poor results. It is unsurprising that the program was not successful and just became a means for large employers to shift costs to smaller ones. SIEF should be scrapped and replaced by an incentive program that actually helps injured workers find new jobs.

[31] Martin Turcotte, Persons with disabilities and employment, Statistics Canada, December 3, 2014, online at http://www.statcan.gc.ca/pub/75-006-x/2014001/article/14115-eng.pdf.

8.0 Conclusion

We conclude by reminding the Board of Professor Arthurs' comment about experience rating. He said that "any well-run agency should confirm that its programs are achieving the goals laid out in that statute." Through this rate framework the Board furthers a pattern of direct defiance of that recommendation. The Board has done nothing to ensure that that its individual employer-level premium rate setting powers are serving the purposes required by the statute: improving health and safety and return to work.

Despite warnings from Professor Arthurs and others that claims experience-based incentive programs are inciting claim suppression and having very little effect on improving health and safety, the Board offers more of the same in its proposed rate framework. Instead of responding to problems, the Board pretends they don't exist.

This is not just about the Board's integrity and commitment to its constituent statute. Injured workers are suffering because of claims suppression and claims management. Workers are getting killed and maimed at work, while the most significant financial incentives in our prevention system are based on superficial notions of insurance equity.

We call on the Board to abandon the proposed rate framework and refocus its efforts on ensuring that its individual employer-level incentives support prevention and return to work.

Injured Workers' Consultants

Representing injured workers free of charge since 1969

October 2, 2015

Consultation Secretariat
Workplace Safety and Insurance Board
200 Front Street West
Toronto, Ontario
M5V 3J1

via email: Consultation_Secretariat@wsib.on.ca

Dear Consultation Secretariat:

Re: Rate Framework Reform Consultation

Injured Workers' Consultants is a community legal clinic representing injured workers free of charge in Ontario. Injured Workers Consultants has reviewed the submissions of the Experience Rating Working Group, the Bright Lights Injured Workers' Group and the Ontario Federation of Labour to the Rate Framework Reform Consultation. We endorse those submissions.

We urge you to consider the concerns and recommendations proffered in the above-noted submissions. The workers' compensation system in Ontario is mandated to encourage health and safety, to facilitate return to work, and to provide benefits to workers. We oppose any rate framework that adjusts premiums based on claims costs or experience, as it undermines those objectives and hurts injured workers. We urge you to consider the negative impact that the proposed reforms to the rate framework will have on these objectives.

Sincerely,
INJURED WORKERS' CONSULTANTS
Per:

John McKinnon

815 Danforth Avenue, Suite 411, Toronto, Ontario M4J 1L2
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HORTICULTURAL TRADES ASSOCIATION
landscape ontario.com
Green for Life!

October 2, 2015

WSIB Consultation Secretariat
200 Front Street West,
17th Floor,
Toronto, Ontario
M5V 3J1

Dear WSIB Consultation Secretariat;

Re: WSIB Proposed Rate Framework

Landscape Ontario appreciates the opportunity to submit our comments and recommendations to the WSIB about the WSIB proposed Rate Framework.

Landscape Ontario Horticultural Trades Association (LOHTA) started in 1973 and is a vibrant association representing over 2400 horticultural professional company owners who employ approximately 70,000 full time equivalent workers performing work activity in any or several of the following sectors:

- Garden Centres
- Grounds Management
- Growers
- Landscape Contractors
- Landscape Designers
- Lawn Care
- Interiorscape
- Irrigation
- Lighting
- Snow and ice

Our industry is comprised of primarily small business owners who are passionate about the sustainability of a prosperous Ontario that is supported by healthy green infrastructure.

Landscape Ontario's mission is to be the leader in representing, promoting and fostering a favourable climate for the advancement of the horticulture industry in Ontario. With that, Landscape Ontario and our industry members acknowledge that health and safety is a priority as we strive to provide healthy and safe workplaces. Further, we support the direction of the WSIB to maintain a simple, easy to understand and sustainable workplace insurance program in Ontario.

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This letter addresses the Proposed Framework, and includes recommendations to the WSIB. We are keen to have the opportunity to meet with the Proposed Framework senior management to discuss our recommendations further, prior to the finalization of the framework.

1) NAICS Classification and Proposed Classification of the Horticulture Industry:

The proposed use of the NAICS system of classification, seems to be a reasonable method of organization in principle and will enable comparative analysis, however we are very concerned and question the rationale for removing Landscaping and Related Services (Horticulture) from the Primary Resource classification to the proposed 'O-Classification-Administrative, Waste and Remediation' classification.

Based on other provincial and federal jurisdictions, our industry should remain with agriculture, as we are a major component of the value chain. We urge the WSIB to reconsider this proposed change and continue to identify our sector with the agriculture classification.

The horticulture industry across Canada is identified by our federal government as fitting within the Agriculture value chain. Agriculture and Agri-Food Canada oversee the activities of agriculture and its entire value chain and related businesses. Landscape Ontario, along with our national partner; the Canada Nursery & Landscape Association presently participate on several Agriculture and Agri-Food Horticulture Value Chain Roundtable Committees (HVCRT) and activities. In addition, we participate on several committees and working groups overseen by the Canadian Agricultural Human Resource Council. *For information on the Value Chain Roundtable:*http://www.agr.gc.ca/eng/industry-markets-and-trade/value-chain-roundtables/?id=1385758087741

In Ontario, our industry is also recognized within the agriculture value chain and related industry as our horticulturists grow, design, install and maintain green infrastructure. Some identify our industry members as 'urban agriculturists'. It is important to note too that our post-secondary programs are classified as agriculture based programs. In addition, the Ontario Ministry of Agriculture Food and Rural Affairs (OMAFRA) supports our industry with a Landscape Nursery Extension Specialist.

Landscape Ontario contributes to the Workplace Safety and Prevention Services (WSPS) as a member of the Agriculture and Horticulture Advisory Committee that was previously funded by the WSIB and now the MOL. The proposed rate group framework must connect with the MOL's classification as well, to ensure that prevention, insurance and compliance requirements are aligned as often performance in a variety of employment standards intersects with WSIB experience and health and safety performance.

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Recommendation: We urge the WSIB to classify the landscape horticulture industry and related services with agriculture under the Primary Resource Industry Group to support your expressed direction to ensure simplicity and understanding by employers and to support the sustainability of this industry.

2) Number and Organization of Rate Groups:

Landscape Ontario supports simplicity, fairness and stability in terms of the rate group framework. In order to provide comment on the number of rate groups, we require more information that clearly outlines the impact on employer groups and the WSIB system in terms of how the 22 groups will be reorganized into 32 rate groups. To bring clarity to employers to determine the impact on the rate group re-organization, combined with the unknown premiums and risk band approach to premium setting, we propose that the WSIB provide a calculator tool to enable employers to determine what their premiums could be based on the proposed classification of employers. The proposed classification structure is so broad that it is difficult to determine which employer groups may be included within each group as well. The WSIB should be transparent in terms of the criteria used to re-allocate rate groups and industry classification groups in order for this consultation to render valid feedback.

Recommendation:
To properly respond to the proposed number and organization of Rate groups, the WSIB should provide employers with a calculator tool that enables employer to identify:

- which industry/activity is included within each proposed group,
- the proposed impact on rates for each group when the risk banding is applied to each industry group, and
- the actual costs that will be imposed on each employer.

3) Second Injury Enhancement Fund (SIEF)

With the shift in employment patterns today, whereby workers are mobile, have more career changes than any generation before; compounded by an aging workforce, ergonomic issues caused by technology use, and pre-existing medical conditions caused by injury and illness, the WSIB must provide a responsible solution that does not place burden on individual employers. Furthermore, the proposal to eliminate the long-latency disease policy will place excessive burden on employers. Employers must not be penalized for hiring individuals with pre-existing conditions. Workers with pre-existing conditions and/or nearing the end of their career could be unfairly overlooked for

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employment if this is not fairly supported. Recognizing the complexity of this issue, the WSIB must develop a plan that is clear and fair to fund pre-existing conditions and long latency disease claims.

Recommendation:
The WSIB must develop a clear and fair plan to ensure that pre-existing conditions and long latency diseases are fairly funded.

4) Target Rates:

The current workplace insurance system currently challenge small business, however it is impossible to understand the impact of proposed target rates and thus raises concern. Our industry is primarily comprised of small business who lack administrative resources to support navigation through what appears to be a potentially complex framework.

In addition, employers with large and small workforces in a risk band whose experience is considerably higher or lower than the average cannot understand the impact or opportunity for accommodation and support without a detailed explanation of the costs.

Recommendation:
The WSIB should provide a detailed explanation of how risk bands will work and impact different businesses across the spectrum, and what administrative resources will be required to navigate the proposed framework in order to provide intelligent feedback. The WSIB should communicate how it will support the transition for such businesses who do not have access to such resources. Ultimately the WSIB should develop and distribute a calculator tool as proposed earlier, and prior to finalizing the framework to ensure transparency, and to enable all employer groups to access and compare their current premiums to costs under the proposed framework, and then be provided the opportunity for consultation, before finalizing the framework.

5) Incentive Programs:

The current and visible incentive programs, have supported metrics for employers of all sizes towards measuring performance in terms of claims, claims management and work reintegration effectiveness. In addition, they have enabled accurate budget projection development for financial plans. There is concern too, that an employer's risk profile will be based on claims costs under the proposed framework, without consideration of any pro-active prevention management systems in place. This could result in a declining commitment to developing prevention systems, particularly in smaller workplaces who do not move between risk bands.

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Recommendation:
The WSIB should provide incentive to firms committed to prevention, to ensure a safer Ontario.

In closing, Landscape Ontario urges the WSIB to ensure that the current RG 190-Landscaping and Related Services remains under the Primary Resource Industries Classification. We support a responsible WSIB Rate Framework that is developed with transparency, fairness and regular consultation/engagement with employers to ensure an effective and efficient approach to Ontario's workplace insurance.

It is important too, for the WSIB to recognize the current business climate in Ontario. We caution the WSIB from imposing premium increases, as Ontario's employers are already reeling from numerous costly health and safety legislative changes and compliance requirements imposed over the last eighteen months, combined with the increase in Minimum wage as of October 1 and the impact of the pending Ontario Registered Pension Plan.

Landscape Ontario looks forward to the opportunity to meet with the WSIB to discuss our submission with you in person, prior to the finalization of the framework.

Respectfully Submitted,

Sally Harvey CAE, CLM, CLT
Manager of Education & Labour Development

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Re: Proposed Rate Framework Reform, Paper 3 Date: 21 August 2015

From: Ruth Buchanan Bird (Part 1) and Ken Slater (Part 2), Manroc Developments Incorporated

Comments Introduction – Part 1 of 2

First of all, I will give you my background because I want you to grasp that I have many years experience with injured people and with workers' compensation claims. I have worked 2 years in health care at a medical clinic, and also 9 years in health care at 2 hospitals, all while doing workers compensation claims investigations for my main employer during the past 26 years. My comments are primarily in response to Steps 1 and 2 of your document. As Employer Level Premium Rate Adjustments (Step 3) are not my area of expertise, at the end but before concluding my submission, I will make some general comments only about that section. Then there will be a Part 2 will be from our accountant with comments related to the Step 3 section of your document

When I saw the proposal document, I was hopeful that finally, someone would see what the problems really are this time. Unfortunately, after reading this report, it was clear this was not the case. As well, I was not able to ascertain who the "stakeholders" involved in creating of this proposal as that information is not given. What I can say though is that once again, you clearly do not have the input from the right people – the front line people, employers and claims adjudicators, those who will tell you what things are causing the majority of the problems because they deal with them firsthand. You are using the opinions and ideas of people who spend most of their time at a desk analyzing figures, people who come up with theories, as has been done in the past, and has failed. And because these people never deal with the root *causes* of issues such as the ballooning of the UFL, they only address figures and actuarial predictions to come up with theories about why it continues to increase so dramatically, they do not see the actual causes.
It is true that the UFL has been decreasing, but had been out of control for years. It is still outrageously high, and you clearly intend to pay it down using these proposals, as stated on page 26, 2nd last paragraph "and the retirement of the UFL." The people who put these proposals together worked with the best of intentions, but because the causes of the problems are not addressed, the issues continue. In this document, they have devised theories about how to change ratings systems and classification systems to bring in more money in premiums which will be applied to the UFL. But they are unable to delve into what has caused the ballooning UFL. This report has been completed by people who know little and/or have nothing *directly* to do with claims management and so could not know the root causes. Increasing the amount of money coming into the board to pay down the UFL will only keep it at status quo. Changes need to be made that will stop adding to the UFL that will not, as these proposals most certainly will, cause great financial hardship for employers. I will make several suggestions and comments determined from my own knowledge and experience about how I believe this must change in entirely different areas. The problem is not the rating system; in fact, the problems are not any of the things discussed in those 76 pages. I believe any employer

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consulted will support what I have to say, and support that not having a full complement of employers to work on proposals such as these is only one of the problems.

Root Cause of Ballooning UFL:

It is fraud – ask any employer what the single largest problem is with the workers compensation system. It is fraud perpetrated by employees on employers and the WSIB, who were not injured on the job, but go to work and claim that they were. As I started working on compensation claims in 1989 after 2 years working in a medical clinic and 1 year in a hospital, I know this to be a fact. Because of what I knew about the injured employees' health records, I was put in the position of not being able to breach the confidentiality of patients when I would see employees claiming injuries - injuries that I knew had occurred in the past, somewhere else and/or not on the job. This is now, and has been for some time, an incredibly massive problem and no one at WSIB sees it. It is not the only problem, but it is by far the largest one.

And now, given that WSIB is now allowing claims for osteoarthritis, it will only get worse. Workers everywhere in the province will now be able to claim that their osteoarthritis is work related. Any reputable medical professional from the Mayo Clinic on down will tell you that with rare exception, osteoarthritis is a naturally occurring disease of aging found in the majority of people over 50. Think what just osteoarthritis, let alone all the fraud, will do to the UFL.

Proposal:- How do we to curtail the fraud?

1. The most important step is for the WSIB and its partners, the employers, to demand the same rights as all other insuring bodies in Canada (like Blue Cross, Great West Life, and RBC Insurance as examples) – for example, the right to ask for access to *all* the health records - not just WSIB and not just non-WSIB for certain dates – *all records* – as all other insuring bodies in Canada are allowed access to before claims are paid. The employee would have the right of course to deny the WSIB access but this would trigger the right of the WSIB to pay nothing out in claim costs. This is the procedure with all other insuring bodies – no release of records, no payments. Currently, the WSIB is only permitted to view other WSIB records, and very specific date periods of other records. All other insuring agencies have the right to view all medical records, no exclusions. They pay nothing out in claim costs until that release of information is signed *and* they have done a full investigation to ensure no fraud is being attempted. Workers compensation groups in Canada do not have these protections. It is shocking to keep paying out all this money when full accountability by the employee is not required. To believe that people will not tell a few lies in order to receive workers' compensation benefits is to deny a sad reality. A large tax free income with full free medical benefits – better than any private health care plan provides, while paying no premiums – plus possible free retraining (including living expenses, travel, etc) is the incentive for people to commit fraud against their employer and the WSIB. It is happening far too often and has been for some time. In my experience, it is happening more now than in the past and

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I believe other employers will confirm this. And it is well past the time the WSIB listened to employers and did whatever they could to stop it. This is the most costly problem and the root cause of why the UFL got so large.

2. Apply to the government to have every province's workers' compensation board legislated to cooperate with all other provincial boards. It is well known that few cooperate with each other, making it impossible to find out about previous injuries in other provinces.

3. Make the penalties to employees for fraudulently obtaining WSIB benefits, or attempting to defraud WSIB by making false statements, severe enough to be a determent – and fully enforce them. Put some teeth in the board's ability to recoup costs just like any other insuring agency when fraud is detected.

4. Hire more adjudicators so that each one's case load is small enough that they can thoroughly investigate claims. And give them all better training. This does not mean there are no good adjudicators, there are many, but there are too many with too large a case load and not enough training. I have had personal experience with one who was working on a back pain/soft tissue back injury refer to the employee's record of a "fractured calcaneus" as that the employee had previously broken his back. She did not bother to look up calcaneus – which is ankle, she just saw the word "fractured" and assumed it was a past back fracture. This error could be attributed to lack of time and/or lack of training. Another example is an adjudicator who did not know how to figure out how far it was to drive from Northwestern Ontario to New Brunswick. Another example is an adjudicator who did not know how to determine from the receipts the employee submitted how long it took him to make a long car trip. We were protesting that he got in his car and drove without stopping other than for a few minutes for gas and to grab a snack. The employee had been advised by the doctor (back soft tissue injury) to stay off work for 2 weeks, with no sitting or standing for more than 1 hour at a time which would exclude that long drive, let alone that he left the province without permission from the board or the doctor. He told the adjudicator that he "really took his time driving" to his destination. This was not the case and could be seen by the time/date stamps on the receipts he submitted. Given the distance the injured worker drove and the time it took him, it was clear he was not taking his time, and was completely ignoring clear instructions from his doctor to not sit or stand for more than 1 hour at a time. But the adjudicator did not either know how to ascertain this, or did not have the time to check. And a final example, an employee claimed to be suffering greatly because he had to occasionally pass through an area where there was mould and that he had a severe mould allergy. There were other issues with this employee making the employer suspicious that his claim was not valid. His symptoms were not anything like those of a mould allergy reaction, and that alone was not even looked at by the adjudicator. Nor did it occur to the adjudicator to have the employee tested to see if he in fact had an allergy to mould. All it took was our request that the employee have allergy testing done for him to drop his claim. Decreasing the case loads and increasing the training of adjudicators will only

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help deter fraud because it will give adjudicators all the tools they need to fully but fairly assess claims.

5. Start treating injured employees the same way other insuring bodies do – who want proof of the claims. Money would be better spent on re-training of adjudicators using the same methods as other insuring bodies, such as Blue Cross, Manulife, and Great West Life. It is clear that those companies are not suffering from massive unfunded liabilities!

Revenue Neutrality

You claim to have this goal, but what you have had, and will continue to have if you make these changes, are massive costs to employers. And it will not be revenue neutral. No one is asking employers why the UFL is ballooning out of control. The root cause(s) for its growth are not being examined. All that is being done here is a search for change using statistics and actuarial predictions that the WSIB thinks will lower the UFL – in fact what you say is that you will retire it. Just implementing these proposed changes is going to cost more in administrative costs, and then cost employers more, much more. The definition of revenue neutral (which your document claims this new plan will be) is receiving the same amount of taxes/premiums/income as before. With this plan, the increased financial hardship on the employers will increase their WSIB paid to the board, income which the board plans to apply to getting the UFL under control according to this document. This will make net income of zero, so it appears as "revenue neutral" on the books. This does not meet the definition of revenue neutral.

How these proposals in Step 1 & 2 will hurt employers and cause significant financial hardship:

1. Expanding to a 6 year window from the 4 year one currently used will drag a bad year over 6 years instead of only 4. There is no way that will do anything but cost an employer more and therefore increase the financial hardship.
2. The cancelling of the ability to have several rate groups, using only the one that fits with the majority of the employer's activities, can only cost employers more. Aside from that, it is prejudicial because if will force an employer to pay an unfair higher rate for a lower risk position(s). And it will likely cause the largest companies, who can afford to do so, to split off into several small companies so that the lower risk jobs are all under a separate company and therefore not being charged the higher blanket premiums you are proposing in this document. Simply put, using only the predominant class will unfairly over charge employers as it will be blanketing all groups with one rate.
3. Referring to #2 above - having fewer and larger groups for premium rate settings will move the lower risk groups in to higher premium groups: Too many will be lumped into one class. Collective liability punishes those with good records and

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eases punishment of those with bad records, decreasing the incentive to improve their record.

4. You state on page 10 that "the WSIB would continue to review those classes where risk disparity may exist to determine if further modifications of industry classes are advisable." In the meantime, while the WSIB is reviewing those classes, the employer will be forced to continue to pay the higher rates – for how long? And, again this will cause during the wait period, as well as possibly later given these proposals, increased financial hardship.
5. Your report proposes on page 15 to charge one rate for several types of work: That will unfairly allocate higher premiums to low risk groups.

Premium Cost Avoidance

Your plan to stop employers and TEA's from being classified separately is counterproductive as it will likely bring an end to a program that helps people gain experience, re-enter the work force, or see what career they would like to pursue simply because you propose to charge employers and the same premiums for regular workers as you do for TEA workers. You will make it unaffordable for TEA's to operate as they used so many classes of workers and you are proposing to classify them all under one rate group. If you do actually believe that employers are using TEA workers to avoid experience rating consequences as you state, it would be much more effective, and less of a financial hardship on everyone, if you put a percentage annual cap on the number of TEA workers an employer could use.

You state on page21 on this subject "It is conceivable that the client employers may use TEA workers to perform dangerous and/or unsafe work to avoid the experience rating consequences of injuries (claims cost avoidance)." I find this quite offensive and have no doubt many employers will, honest hard working employers who bend over backwards to work with WSIB and support the rights of workers. It would be an extremely rare thing for employers today to not care about the safety of their workers. This begs the question - where do you draw that almost slanderous conclusion from – what data? Why is it that you are quick to point fingers at employers, when the likelihood that workers are fraudulently claiming injuries is so very much greater? If you contact employers to research this, you will get a full picture of what is actually happening in the real world of WSIB claims. If you can make such a borderline slanderous conclusion about employers (and again, I would like to see the data used to lead you to such a conclusion), it should be very obvious how tempting - and easy - it is for an employee to defraud the WSIB, tempting because a large non-taxable income, with free full medical benefits, and/or a fully paid re-education with living & travel expenses is waived in someone's face, only requiring them to tell a few lies to avail themselves of it. It is that simple, sad as it may be. It is what is happening.

Adjusted Premium Rate Settings

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On page 23 of the proposal, it states "Simply explained, the proposed preliminary Rate Framework would see individual employers more fairly assessed based on their

own claims experience," – This is already being successfully and fairly handled through NEER, as NEER either penalizes or awards, depending on accident history. Why make costly changes something that is already working well? What you are proposing will only cause increased financial hardship on employers by trying to make them pay more, particularly when rate settings are not the problem. It appears to be manipulation of statistics to reach the conclusion you are seeking.

Premium Rate Setting Policy

What you have put in this document does not explain what is wrong with the current method of premium rate setting, or why it has to be changed. It only states a way to change it, and what to change it to, and that is to a new method that will increase financial hardship on employers to increase revenue that will be eaten up by (your hope) paying down the UFL. Again, this is an area where you should have employers send representatives to ensure that what is changed will actually work and benefit all concerned, not just place great financial hardships on employers.

Proposed Preliminary Rate Framework

On page 26 under your heading of you state "The WSIB's Funding Policy specifies that premium rate setting decisions and other funding-related actions would take into account a number of factors, including among others, new claims costs, administrative costs, and the retirement of any UFL." You are stating that under this new program you are proposing it will be the collective responsibility of the employers and their new premiums to retire the massive UFL. This is a WSIB debt, and incurred using WSIB policies – designed and set by WSIB, not the employers. Increasing the financial hardships on employers to make up for the UFL that was caused by decisions made by the WSIB is grossly unfair. And what will you then do with future unfunded liability costs, costs that are valid and necessary to any claim as they look after the future costs of each injured worker's claim? Unless you make changes that effectively deal with the fraud, the UFL will continue to grow out of control.

Proposed Graduated Per Claim Limit Approach

On page 30**,** where you discuss assessing larger employers who can, in your opinion, afford larger premiums – this is prejudicial in favour of the smaller employer and against the larger employer. The same percentage limits should apply to each. If not, this could result in larger companies who can well afford the costs in creating other companies breaking themselves down into smaller companies to avail themselves of the smaller company lower claim limit. To be fair, the same rules must apply to all,

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equally – a percentage is a percentage, whether it is 10% of $100,000 or 10% of $2,000,000.

Secondary Injury and Enhancement Fund

For this section, I will first address each item in your document under this heading.
On page 32, you state "Once an SIEF claim is approved for ongoing transfer of costs to the SIEF program, the incentive for the employer to improve recovery and encourage return to work opportunities for the worker may be lessened, since claim costs are no longer being charged to the accident employer;" – First of all, claim costs are still charged to the accident employer as your statistics should tell you it extremely rare that an employer receives 100% SIEF. That means that the longer an employee is off, the more the employee pays, and so your statement is incorrect. It is also a pretty outrageous slur against employers who have a well documented history of improving health and safety and working hard to get injured workers back to work. Where is the data that was used to draw this erroneous conclusion that employers are using SIEF in such a manner? Your data used in reaching this conclusion needs to be shared.

On this same page, you state that it is against the Ontario Human Rights Code to discriminate in employment against someone on the basis of disability. Of course it is, it should be. But by saying this, you are insinuating that employers are behaving illegally. What is truthfully happening is that employers are working with the board to get injured workers back on the job, light duty or full duty, as quickly as possible. Where is your evidence to back up that employers are breaking this Human Rights Code?

You also state that "There is no positive relationship found between SIEF and return to work, and some claims demonstrate negative return to work consequences;" – what data do you base this on? SIEF is to give employers cost relief when an injured worker has a prior disability (congenital or from a previous injury) that causes or contributes to a compensable accident, or prolongs the recovery period resulting from the new injury. What you are saying in the above quote is that because SIEF is granted, it delays return to work, and that there is a relationship between the two. This makes no sense whatsoever. SIEF is granted because the prior condition or injury is not the fault of the current accident employer and so a fair amount is applied in cost relief. Employers still pay a portion of the claim costs regardless, so it would be in their best interest to work with the board and the already trained employee to have them back to work as quickly as possible – which is what happens, not what you are saying above. And because it also brings an already trained worker back to the workforce, it is a win/win situation – the employee is back to work, and claim costs are minimal or none. As well, the vast majority of injured employees with a prior condition or injury that either caused or contributed to the accident are most likely going to have a longer recovery time. It is the injured worker's prior problem that delays the return to work. It is NOT the fact that the injured worker had a previous

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problem that the employer uses as an excuse not to bring the worker back as soon as they are ready. And another fact you neglect to mention is that it is the doctor who decides when the worker is ready to come back, *not the employer*. That fact alone shows that your statement about the employer using SIEF to delay bringing the injured employee back to work is impossible. And this entire paragraph shows that the author(s) of those statements about SIEF know very little about it, and therefore should not be making any recommendations. Here too is where employers and adjudicators should be part of this process of looking for solutions, not brought to the table as an afterthought when the proposals are already made.

You state as well "Some employers may be investing more in SIEF than in prevention. In particular, some employers were found to request SIEF cost relief on 100% of their lost time claims;" This too brings a few questions – How many employers, a percentage of all would be sufficient, are doing this with 100% of their claims, or even near that? Please share that data. Why are those who are so obviously wrong in applying far too often not being educated as to the proper procedures for SIEF? A clear way around the problem for those who abuse the time of the WSIB by having them look at all their cases would be to charge the employers each time they submit a request for SIEF - if their SIEF requests are over a certain percentage of total claims. This would be a much more effective and cost efficient way of dealing with that problem, instead of cancelling the entire current (and fair to all) approach that SIEF provides. As well, you state employers are spending more on applying for SIEF than they spend on accident prevention. Please provide the data that lead to it. I believe that what you are saying would be impossible as the costs to employers to improve and maintain health and safety and therefore prevent accidents are very high. When you compare them to the costs for applying for SIEF, which is only a matter of a letter and a bit of research, the differences would be huge. How did you arrive at such a conclusion? Again, I feel those making these proposals have no idea what SIEF is or how it works.

Then it is stated "SIEF is identified as one of the major factors driving experience rating, and the intent of SIEF is not to save employers money but rather to remove a potential barrier for the re-employment of the injured workers;" How is SIEF a factor driving experience rating? Its intent is to prevent employers from being unfairly financially penalized for a prior injury, congenital problem, or a disability when a worker has a new injury. And it is ONLY granted when the request is proven – something else that seems to be missed by your researchers, so how can it be a factor driving experience rating? This too makes no sense. It is a fair and equitable settlement so that the employer is not punished by severe claim costs for injuries or delayed recoveries caused by conditions that are not the employer's legal liability. Cancelling SIEF will cancel any protection an employer has from issues that are not their legal responsibility, and cause extreme financial hardship.

As to your next statement indicating that greater usage of SIEF leads to higher rebates or lower surcharges – Again, SIEF is ONLY granted where merited, where a prior

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injury or pre-existing condition has caused or contributed to the accident, or lengthened its recovery time. This is the correct and fair thing to apply - as without it you would be trying to make the current accident employer financially responsible for any injuries and conditions in the employee's past. And I believe you would find that this would be against the rights of any employer.

In your next statement, where you express dismay about SIEF being granted after the expiry of the experience rating window which then creates losses that need to be funded: What needs to be examined here is *why* it is taking so long for SIEF to be granted in the first place, not how to kill the program in its entirety. Should there be perhaps a two year time limit on applying for SIEF? Is it that the adjudicators have too heavy a case load to process requests in a timely fashion, or that they do not understand why the employer is requesting SIEF because their training is not as thorough as it should be? The delays are not caused by the employers, yet you want to punish them by cancelling a valid and needed program.

On page 33, you quote Morneau Shepell as saying that employers excessively resort to SIEF to reduce their claim costs. Again I would like to point out that SIEF is ONLY granted when merited – so if it is excessive, this would only mean that an excessive number of injured workers had a previous injury or disability that caused or contributed to the current claim costs. It does not mean anything but that, if it did, it would mean that SIEF is being granted in cases where the facts do not merit that it be granted and this of course is not happening. In effect what Shepell is saying is that SIEF is being granted when the facts to support it being granted are not there. I think you can agree that this is definitely not happening. I would like to know how Shepell came to that conclusion.

You go on to say that SIEF is predominantly used by larger employers and attribute that to them having more resources than smaller employers. Again, SIEF is granted only were merited, not because of company size! If a company is larger and has more workers, of course it is going to be making more use of SIEF because it has more workers. It appears that the authors of all the recommendations about SIEF have no idea what it is, or the statistics are being manipulated to try and show certain conclusions, and those conclusions are wrong.

On page 34, you quote Douglas Stanley: "not all employers that would have legitimate cause to obtain SIEF relief apply to obtain it." This is somewhat contradictory to previous statements indicating you think SIEF is over used. On top of that, I believe it is *also* the responsibility of the claim adjudicator to apply SIEF where warranted, and that a request from an employer is not always required? Adjudicators can and do apply SIEF when they think it is merited, but may miss when there is a case for it. This could be attributed to caseloads being too heavy, and training not thorough enough for adjudicators. Regardless of the reasoning why the adjudicators are not performing this part of their job where they should be, it

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completely contradicts the previous statements by Morneau Shepell who claims it is being over used and misused.

Summary Statements Regarding Your Proposal to Cancel the SIEF Program

These proposals regarding SIEF would cause significant financial hardship for employers. In fact, what this proposal would do is force employers to subsidize health issues not related to their current accident or their companies in any way. A new injury, totally unrelated to any previous injury or disability is not the same as a new injury caused or aggravated by a pre-existing condition. Your changes propose to make them such. And I find it hard to believe this would withstand a legal challenge. SIEF was created for reasons of fair and reasonable attribution of claim costs. Removing it will very likely cause another very negative effect – it quite likely will deter employers from hiring workers who would fall under this category - with the exception of the legal requirements around disabled workers. You state in your discussions that because of SIEF you are concerned that employers are "maybe" not hiring previously injured workers or workers with disabilities. Where is any evidence of that? Employers have no way of knowing the accident history of an employee before hiring them. What you are clearly missing here is that what you are proposing - penalizing the injury employer 100% even though they are not 100% responsible - will quite likely cause what you say concerns you – the practice of not hiring previously injured workers by screening them with extensive pre-employment medical examinations. Cancelling SIEF will make the costs of these medicals nothing compared to potential claim costs. Your suggestion that these new proposals will provide premium rates that will reflect such things as being unfairly charged for pre-existing conditions is also wrong. It will cause employers to be unfairly charged if you cancel the SIEF program. It is not possible to have these new rates that you propose reflect what SIEF would have covered. This entire new set of proposals is going to dramatically increase WSIB costs for employers. You talk about pricing fairness, but there is no pricing fairness in penalizing an employer for pre-existing conditions of injured workers. You say you are concerned about employers not hiring people who have met SIEF requirements, yet what you are proposing will encourage this to start. It is not happening now, it is a theory put forward to justify cancelling the SIEF and therefore reduce the UFL. Cancelling this program as you propose, instead of looking into all these issues, could be compared to amputating a leg when it is only the toe nail that needs to go.

General Comments about Employer Level Premium Rate Adjustments (Step 3)

As I this is not my area of expertise, I will only make some general comments:

1. You have not demonstrated what is wrong with the current ratings system; you have only put forth theories about new ones. Changes like those proposed have not worked in the past and will not work now because you are not dealing actual causes of the problems.

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2. The changes put in place in 1994 have already caused a great deal of financial hardship for employers who have worked very hard at cooperating with the board, and improved health and safety for their employees. These changes you are proposing (which as I have pointed out are looking in the wrong areas) will only serve to cause greater financial hardship. This will result in businesses closing, fewer jobs, fewer companies willing to set up in Ontario, and a slowdown of an already in troubled economy in Ontario as employers will quite simply not be able to afford to pay the costs of employing workers.
3. WSIB has been trying for a very long time to design a system that collects sufficient funds on an annual basis to pay present and future benefits (UFL) and when you look at the UFL, which has been dangerously high and growing for too many years. It is true that it has been improving, but it is still an incredibly high amount. It is time to try a different approach – demand equal rights with all other insuring bodies and inter provincial cooperation between compensation boards, and set up a new group to look for solutions to the problems of the WSIB, one that includes employers from all sectors, and adjudicators, before making any further proposals. Work with all the stakeholders.
4. You state that the current experience rating programs have historically generated a cumulative negative off-balance - *but those were programs proposed by you, and disputed by employers*. No one has implemented the employers' suggestions, which are not even permitted until this stage or later. You have more than proven that the types of people you use to look for solutions have never succeeded and the size of the UFL is the proof.
5. You state you want to examine the current programs and "consider appropriate mechanism(s) to address the off balance, yet you only look at one level, the bottom line, and how to make adjustments in that. Instead, you need to look at all the other elements involved in WSIB claims that lead to this rather poor bottom line, and listen to those who deal with claims first hand – the employers and adjudicators.
6. The ability for WSIB to surcharge employers with disproportionate claim costs is important. It is an effective incentive to keep employers improving their health and safety, and their accident records. However, it should never go on for 6 years, as penalizing an employer for 6 years for one bad year will also cause businesses to close, and companies to avoid working in Ontario.
7. Successful workers' compensation systems in other provinces and states (several states allow options outside standard workers compensation coverage besides the state run one) should also be looked at for information on how to improve the one in Ontario. No mention is made anywhere in this document that such successful examples were looked at, and this is counterproductive. Factual information from

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successful workers' compensation groups would be extremely helpful in analyzing what is wrong and how to fix it.

8. The proposed rating system is needlessly complex and it will be costly on all sides to implement. Instead of making things easier, particularly for smaller companies, they will be much harder because of the complexity and the costs involved in interpreting the new system.
9. You state that "there *may* be a difference between what an employer should be paying as their…. Rate and what the employer is paying under the current system" is misleading at best. There is no "may", it is guaranteed, as you are proposing to blanket groups, expand the window for claim history from 4 years (you already expanded it from 3 to 4 *to no avail* because the root cause – fraud – is never addressed) to 6 years, and cancel SIEF. Employers will again be forced to pay more and more to WSIB, and the problems will continue and grow.
10. If, as you propose in a question on page 61, you use the average of the last 3 years net premium rate for experience rated employers or the premium rate of the RG for those employers who are not experience rated as a reasonable starting point, this contradicts your reasoning for going from the 4 years history to 6 years in assessing an employer's financial responsibilities.
11. The fact that the government makes all the rules about what benefits are to be paid, yet pays nothing towards the system that protects our workers is flawed. The government should not have the authority to say what will be paid out when they are not contributing. This needs to be reviewed in great deal and changes made to make this a fair agreement.

Summary of Comments about entire Rate Framework Reform Paper 3

It is true that the UFL (Unfunded Liability) carried by the WSIB is improved but it is still far too large and therefore is a threat to the province and the workforce. I think you will agree that we cannot operate a functioning economy without a functioning workers' compensation insurance system, and ours is not working very efficiently, that is clear. No wonder the Ontario government is worried. Employers are worried too.

What the proposals you have put forward in this Rate Framework Reform Paper 3 will accomplish is to put such severe financial hardship on employers as to cause many of them to fold, or not come to the province at all, because it is not affordable to set up business in Ontario. This will be detrimental to our workforce and discourage new companies from coming here. And in turn, it will cause a slowdown in the economy. Until the issue of fraud is addressed, until the WSIB is given the same rights as all other insuring agencies, until adjudicators are given smaller case loads and better training, until employers and adjudicators are included in such discussions, until the penalties for defrauding the WSIB and the employers are severe enough to be a deterrent, until the WSIB has increased powers to pursue claims fully, and until other successful systems are

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examined for what can work in Ontario, and the UFL will continue to be a problem. And, as far as whom should held responsible for the errors made in allowing this UFL to get to the point it is at today – it is not the responsibility of the employers - as their suggestions about repairing the system have been listened to as a gesture only, and then ignored. The UFL is the responsibility of those who made it what it is today – WSIB. Continuing to try and make employers responsible for it by continually increasing their premiums to fit the next and the next and the next rate proposals will be a disaster.

Part 2 – Comments from our accountant:

It is hard to express comments on the new rate framework, as based on the information provided in the Rate Framework Reform, the Rate Group Analysis and the Risk Disparity Analysis, an individual business can not calculate the impact to their business.

After speaking to a private WSIB consultant, and to an official from WSIB they could not calculate what the new rates could be. WSIB has stated that there has been nothing developed for the individual employer.

However the official from the WSIB gave me a rough idea. By taking our premium for 2014, plus the expected NEER refund for 2014, and divide by the wages for 2014, the rate would be 7.25%.

Also from this WSIB official, it was stated the new rate framework would be effective in 2018, and would be calculated based on our history from 2011 – 2016.

I was also told that the higher rate group in the new class which is currently logging with premiums of 13.04% should not affect us as our company should be at the lower end of the scale, due to the fact that other rate groups are less than then our current rate group.

But our company is assuming that this has not yet been fully written in stone.

Our company would be opposed to anything new system that would increase our costs that we could not control.

However the WSIB official stated to me that NEER would be replaced, with a fixed monthly premium rate, adjusted yearly, based on our experience. This is a good idea as we would not have to worry about how to pay for a large unexpected NEER surcharge in December of each year.

In closing, we want to thank you for the opportunity to express our views on these proposals. We look forward to further discussions regarding any future changes.

Regards

Manroc Developments Incorporated

From: Christina Russell [mailto:crussell@mattina.ca]
Sent: Thursday, September 24, 2015 12:11 PM
To: Consultation Secretariat
Subject: Feedback on the Proposed System

Hello,

In reviewing the preliminary proposed framework there are some comments that our Company would like to put forward.
The possible removal of the current SIEF program fund would result in the loss of a great system which is currently in place. The benefit of this cost relief, especially in a transient work for (such as construction) would affect not only the labour market but also the sustainability of many companies. In our opinion, this may also affect the hiring practices of many companies who may be fearful of hiring workers who are at greater risks of suffering from certain second time injuries or developing long latency diseases. If all the fault will be assigned to the last employer, even if the worker was only with them for as short as a week, this will not go over well with our type of industry.

We are hoping that this proposal does not pass as the rest of the system seems to make sense and increase efficiencies all around.

Thank you for your interest in our comments!

Regards,

Christina Russell, Human Resources Generalist
Mattina Mechanical Limited
211 Lanark Street, Unit A
Hamilton, ON, L8E 2Z9
Ph: 905-544-6380, Ext. 243
Fx: 905-544-3288

MECHANICAL CONTRACTORS ASSOCIATION OF ONTARIO

WSIB Rate Framework Review Consultation

Mechanical Contractors' Association of Ontario

Submission to the WSIB

Presented to:
Workplace Safety & Insurance Board RFR Review

October 2, 2015

MCA ONTARIO 10 DIRECTOR COURT SUITE 103 WOODBRIDGE, ONTARIO L4L 7E8 TELEPHONE (905) 856-0342 FAX (905) 856-0385

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WSIB *Rate Framework Review* Consultation
Mechanical Contractors' Association of Ontario
Submission to the WSIB

PART I: Introduction

1. Mechanical Contractors' Association of Ontario – Who We are

For purposes of introduction, MCA Ontario is a major Labour Intensive Provincial Construction Employer Trade Association (Management) that represents approximately 350 Construction Companies across Ontario – involved in the Mechanical Contracting field (Industrial, Commercial and Institutional, i.e. HVAC, Plumbing, Steamfitting & Gas Piping Systems, Sheet Metal Installations, Fire Protection and Refrigeration Systems); and is the "*Designated Employer Bargaining Agency*" under the *Ontario Labour Relations Act* for mechanical work performed in the Industrial, Commercial, Institutional and Extended Power Sectors of the province. Our Member Firms employ approximately 14,000 Construction Tradesmen across Ontario. For further information go to: **http://www.mcao.org/about_mcao.php**

Our primary Workplace Safety & Insurance Board ["WSIB" or the "Board"] Rate Group ["RG"] is **RG 707 - Mechanical & Sheet Metal Work**. The **RG 707** 2015 premium is $4.16, and based on a projected 2015 payroll (projected by the WSIB) of $3.6 billion, we are in the largest RG (by payroll) within **Class G – Construction**, contributing a full 20% of the **Class G** payroll.

The 2015 projected premium for **RG 707** is $150 million, which is about 12% of the total $1.3 billion construction premium, which in turn represents 27% of the total system premium.[1] In short, MCA Ontario represents a significant sector.

MCA Ontario is a founding and senior member of the **Construction Employers Council on WSIB Health and Safety and Prevention** ["CEC"], a coalition of Ontario construction associations formed in 2008 dedicated to initiating reform of Ontario's workers' compensation system to better meet the needs of the province's construction industry. The CEC vision is a workers' compensation system that works effectively and efficiently for both workers and employers in the construction industry in Ontario. As the name **Construction Employers Council on WSIB Health and Safety and Prevention** suggests, Ontario's workplace safety and insurance ["WSI"] and immediately related issues are the single focus of the group's activities, attention and resources.

Through the CEC, we are also aligned with the **Employers' Council of Ontario** ["ECO"], a like-minded coalition of non-construction employers, with matching aims and purposes, and very similar broad positions.

B. The focus of our presentation

We will focus on the following:

1. A critique of the Case for Change as advanced by the WSIB
2. A discussion of target rates and the development of a bridge to a reasonable transition
3. Transitioning from the current system with zero UFL and with all rate groups at target
4. The application of the North American Industry Classification System (NAICS)
5. Collectivizing certain WSI costs

[1] All figures are direct or derived from the ***WSIB 2015 Premium Rates Manual***, with a particular focus on **Class G, Construction**, pp. 426-433.

PART II: A critique of the Case for Change as advanced by the WSIB

A. What is the problem? Is this project a solution looking for a problem?

1. MCA Ontario and the CEC made extensive presentations to the WSIB with respect to the Doug Stanley phase of the RFR project in April 2013. They bear repeating. They are as relevant now as they were in 2013. These were our key points:

> The January 2013 "***WSIB Rate Framework Consultation Discussion Paper***" (the "Paper") strongly presumes a problem and several potential "solutions". The Paper presents a cursory overview of relevant events over the past two decades.
>
> It is our respectful suggestion that the "problem" is not defined and the proffered solutions do not address the real deficiencies facing the system. In the Paper at p. 2 under the heading "**Why and Why Now**", the following is said:
>
> > *Why and Why Now?*
> > This is not the first time that the WSIB has turned its mind to one or more aspects of the classification, rate setting and experience rating systems. The list includes:
> > 1989 Revenue Strategy: A Framework for the 1990s and Beyond
> > 1998 Consultation Report on the WSIB Funding Policy
> > 2008 Recommendations for Experience Rating, Morneau Sobeco
> > 2009 Chair Mahoney's Report on Stakeholder Consultations
> > 2010 WSIB Funding Review
> > The conclusion reached in each of these examinations, was that there is something that needed to be fixed. In my assessment of the these reviews, the time has passed for asking the question, "is there a problem?", and it is now time to move on to, "how do we fix this problem?".
>
> In effect, the Paper seems to suggest that since there have been a number of studies over the years, a problem persists and it must be fixed.
>
> But, the Paper does not explain that not only did the 1989 **Revenue Strategy** identify a problem, **it fixed a problem.**
>
> The **Revenue Strategy** project was one of the most significant, engaged and comprehensive consultation projects ever undertaken by the Board in its almost 100 year history. The system which emerged still meets the needs of Ontario's employers. The primary focus of the **Revenue Strategy** was employer equity *not* WSIB administrative ease.
>
> In the **CITF** submission to the **Funding Review** this was noted:
>
> > It seems that the WSIB is vaguely seeking some administrative efficiencies as its primary objective. This is odd noting the current scheme is designed to promote a higher standard of employer fairness *even if* the administration is more complex. The **1989 Revenue Strategy** notes:
> >
> > > Grouping employers in this way may make administration of the compensation system more complex. ***However, it is fairer to employers*** . . . **(Revenue Strategy, 1989, at p. 9, emphasis added)**
>
> On administrative ease, at p. 7 the Paper actually takes a contrary view:
>
> > ***Ease of Administration***: The classification and pricing model must be simple, efficient and effective, to the extent possible, in order to facilitate an employer's ability to meet their reporting and payment obligations.
>
> No comprehensive case has been made for *any* change let alone a massive redesign.
>
> It seems that the WSIB is vaguely seeking some administrative efficiencies as its primary objective. This is odd noting the current scheme is designed to promote a higher standard of employer fairness *even if* the administration is more complex. The **1989 Revenue Strategy** notes:
>
> > Grouping employers in this way may make administration of the compensation system more complex. ***However, it is fairer to employers*** . . . **(Revenue Strategy, 1989, at p. 9, emphasis added)**

2. We continue to share the points expressed in a CEC letter of April 7, 2014 to WSIB CEO:

Dear Mr. Marshall:

We ask that this letter be read in conjunction with the **Construction Employers Council on WSIB Health and Safety and Prevention** ["CEC"] April 24, 2013 submission to the Rate Framework Review ["RFR"]. In our concluding comments presented a year ago, we said:

> Job 1 of the WSIB is long term financial viability. The Paper makes it clear that there is no linkage between this project and the financial integrity of the system. We respectfully suggest that is distracting to engage on a massive project over a period of some years that will consume employer and WSIB resources and if history offers any lesson, this will exhaust the Board when none of this contributes to the Board's primary focus.
>
> No real problem has been defined - a problem has been presumed. Employers have not been calling for any of these changes nor have employers ever advanced any suggestion for a complete revamp of rate classification or experience rating. This is 100% a WSIB initiative. Without employer support, radical redesign of the taxation scheme will likely be resisted.
>
> A massive reclassification was successfully developed over the period 1988 - 1993 through the Revenue Strategy. The primary focus of the Revenue Strategy was employer equity, even if WSIB administrative challenges increased. The Board commenced that project with the awareness that employer equity trumps administrative simplicity. Yet, the primary focus of this project is to simplify WSIB administrative needs. In other words, the paradigm has been turned upside down.
>
> The Paper implies "Rate Shopping" is a major problem although no evidence has been presented. Rate Shopping, if it is a serious concern, and this is doubted, would be limited to smaller businesses just entering the workplace safety and insurance system. If it is a problem, this is an indictment of WSIB diligence, nothing else.
>
> One culprit has been effectively highlighted in the Paper - lax WSIB administrative maintenance over the years. That is a real problem and accepted as such by employers. The solution is self-evident - start effectively maintaining these programs, starting with the most serious and pressing concerns and working through incrementally. No case has been made for an architectural makeover. A case has been made for better administration. Start that now.
>
> After participating in the RFR for over a year and after considering the report, Pricing Fairness ["PF"], we end where we started with a repeat of our April 24, 2013 conclusions. We ask that the Board not accept the recommendations set out in PF and instead administer the current classification scheme in the manner originally intended more than 20 years ago. Lax administration does not present a legitimate licence for program change. As we then said, "no case has been made for an architectural makeover - a case has been made for better administration".

While we do not intend to present a full response to every observation and recommendation set out in PF, some remarks warrant comment. We dispute that there is a "*growing sense of urgency and frustration among stakeholders and a genuine desire among many for the WSIB to get on* " with a new classification model (PF at p. 4). The RFR project was never inspired by employer demand. A suggestion that stakeholders malign the current system as "not fair" (PF at p. 5) is interesting. We suggest that the Board's current premium setting policy in place since 2010 not to adjust premiums downwards even if earned by sustained improved performance is the real culprit (if there is one) - not classification architecture. That noted, as you are aware, the CEC has supported this overall policy approach as an interim, short-term plan (we have addressed this in a recent communication). The linkage of classification reform to system sustainability (PF at pp. 5 - 7) is confusing. Simply put, there is no linkage, a sentiment with which we know you agree.

Even though PF attempts to repackage the case for change (PF pp. 7 - 9) the arguments remain as unconvincing today as they were a year ago. The commentary suggesting that the Standard Industry Classification (SIC) is no longer relevant (PF at p. 8) is itself, not relevant. The SIC grid was simply a starting point 25 years ago. We now have a "made in Ontario" scheme. The one cross-subsidization example presented (PF at p. 9) is an argument for administrative maintenance - the true culprit - not system re-design.

We agree with the overall rate setting commentary (PF pp. 9) and have focused on this with the Board over the years. The "across the board" approach, as we have recently suggested, must be addressed. We expect that it will and have asked that those discussions commence soon and wrap-up by year's end.

> We have never disagreed with any well-considered plan to modernize experience rating ["ER"] (PF pp. 10 - 12) but temper that potential project with two comments: one, construction demands a retrospective scheme; and two, there is no urgency for change. More to the point, bearing in mind that the current ER models took years to develop and fully implement, change must be carefully, methodically and painstakingly addressed. This one element itself is a massive project. To be frank, this is not the right time to embark down this road. As we have said, "Job 1 of the WSIB is long term financial viability". As you well know, the CEC has been (rightly) complimentary to the WSIB administration for the remarkable transition underway. But, this transformation is still in its infancy and remains fragile. As we said, "this will exhaust the Board when none of this contributes to the Board's primary focus".
>
> While we do not support implementation of the Pricing Fairness proposals, this was still an important project. We will continue to work in partnership with the Board to achieve incremental and continual improvement. The immediate next step is to focus on 2015 premium rates and ancillary issues such as target rates and unfunded liability contribution rules, as set out in a recent communication to you.
>
> Regards,
>
> Jason Ottey, CEC Chair

3. These comments remain valid criticisms.

B. A direct to response to RFR Paper 2, "*Current State Analysis*"

1. **RFR Paper 2, "*Current State Analysis*"**, presents an unreliable and skewed analysis of the reasons for change.

2. The first observation we present is what is missing. From reading the narrative offered, one could be excused for believing that all of the current classification and experience rating ["ER"] programs were designed by some alien civilization from a distant world.

3. We say this of course with exaggerated glib, but nowhere in this paper (or any RFR paper for that matter) is there any recognition that the Board, with its eyes fully open and its policy mind in high gear, with focused determination, purposely and intentionally developed each and every one of these policies in no less a thoughtful fashion than the current RFR project.

4. In fact, if anything, the policy development process behind the policies the Board now condemns, was far superior in its approach, competence and outreach. The **Revenue Strategy** project of 1988 – 1993, which gave rise to the current regime, addressed the identical territory to that of the RFR. If that approach was so wrong, and according to the Board of that there is no question, one would expect a very clear analysis as to why it was that an earlier regime of WSIB management was so mistaken. Yet, we see no such analysis.

5. Paradoxically, the **Revenue Strategy** preferred employer equity over administrative simplicity whereas administrative simplicity (for the Board - not employers) is the clear *raison d'être* for this reform. The absence of a crystal clear analysis as to what went wrong is concerning.

6. Our take on all of this is pretty simple. Nothing went wrong in the initial (1988 – 1993) **Revenue Strategy** classification design. But, since implementation, the Board neglected these policies and did little to properly maintain them. Yet, the policy infrastructure remains sound. Administrative neglect is a reason for rolling up one's sleeves and getting to work, not for drafting up a new set of blueprints, which in time, will similarly decay through neglect.

7. The second is the absence of any real recognition of the strong "case against" change (see **Paper 2, Case for Change**, p. 7). It is as if all we have said consistently, and rather well, in several papers over the past several years was for naught, and was either not heard, was ignored or was simply brushed aside.

8. The third is the very misleading suggestion that "*inadequate experience rating programs that exclude many employers, lead to premium rate instability*" (see **Paper 2, Case for Change**, p. 7). In a single short sentence, the Board contradicts itself and trips over its own words. If many employers are excluded from ER, then for those employers, premiums are not subject to "premium rate instability". The premiums remain perfectly stable. Secondly, the employers that are excluded from ER are excluded for sound policy and design reasons. They are too small. **Paper 2** implies (as did past RFR papers) that this is a hardship and inequity for those employers. Yet, in **Paper 1, Executive Summary – An Overview of the Proposed Preliminary Rate Framework**, at page 10 Figure 4, we learn that a small employer will have a negligible variation in its premium.

Figure 4: Proposed Actuarial Predictability Scale

Predictability Scale (%)	<= 2.5	2.5 - 5.0	5.0 - 10	10 - 20	20 - 30	30 - 40	40 - 50	50 - 60	60 - 70	70 - 80	80 - 90	90 +
Individual Experience for Premium Rate Setting (%)	2.5	5.0	10.0	20.0	30.0	40.0	50.0	60.0	70.0	80.0	90.0	100.0
Collective Experience for Premium Rate Setting (%)	97.5	95.0	90.0	80.0	70.0	60.0	50.0	40.0	30.0	20.0	10.0	0.0

9. It appears clear that this project is more about selling RFR and less about product design. The Board is making a pitch to the majority of employers (smaller enterprises) (see also **Paper 2, Classification Unit Analysis**, p. 8) for performance based premium rate variability, all the while knowing that it won't work for the small firm.

10. The fourth is the overall suggestion that the proposed RFR regime is "simpler". Indeed, it will be administratively simpler for the Board, but not at all for the customer. Is this summary explanation, taken from **Paper 1**, p. 8, any simpler for an employer than the current scheme?:

> - **Step 2: Class Level Premium Rate Setting** would create an average premium rate for each individual class ("Class Target Premium Rate") based on the valuation of collective liabilities of new claim costs for employers within their respective classes, their allocation of administrative costs and the apportionment of the past claim costs for a particular class; and
> - **Step 3: Employer Level Premium Rate Adjustment** would adjust the Class Target Premium Rate for individual employers based on their risk, represented by their own claims experience and insurable earnings relative to their Class Target Premium Rate, to arrive at their individual risk band position and corresponding Employer Actual and Target Premium Rates.

11. We challenge the Board to present the arithmetic as set out in **RFR Technical Paper 3** pages 52 – 63 to a group of average employers and honestly assess the level of comprehension.

12. The fifth is the suggestion that a weakness of the current scheme is "rate shopping," although the term has been dropped (see **Paper 2**, page 9, 2nd para.). This argument has always been nonsense since it is the WSIB that directly and exclusively controls where employers are placed.

13. The sixth is the argument throughout (see **Paper 2**, page 9, para. 3 for example), that the problems of the current regime (caused by WSIB neglect) would take more work to fix than to replace with the new RFR. Saying it does not make it so. The Board makes no case. It simply asserts.

14. The seventh is the suggestion that the current ER schemes are simply too complex (**Paper 2, Previous Review of Experience Rating**, page 9), making it "*difficult for most average employers to understand*". Yet, the Risk Banding (see **Paper 1**, pp. 10-11) is if anything more complex. Moreover, the Board suggests that problems with current ER design persist "*despite numerous program reviews*" (**Paper 2**, page 10, 2nd last para.) as if the Board is somehow entirely and perfectly exculpable from failing to fix problems as they come up, and this failure is a reason for re-design.

15. The eighth is the outrageous suggestion that change is needed because 137,000 employers are "*paying too much*" while 77,000 employers are "*paying too little*" (see **Paper 2, Figure 2**, page 12) when the overpaying or underpaying as the case may be has nothing whatsoever to do with the classification scheme and everything to do with deliberate WSIB premium policy in place since 2010. The Board has refused to float the premium to the risk and now uses this as a reason for reform. This is brazen.

16. The ninth is the suggestion that ER off-balances are creating inequities for some employers and claim and firm cost limits "*limit the ability to hold employers fully accountable for their costs*" (**Paper 2**, page 13, 2nd para.). This is an affront to logic. ER off-balances are growing (but still much less than past years) for two reasons – improved performance and over-taxed premiums. By its own admission, *in the same paper*, the Board admits to overcharging the majority of employers. Yet, it returns only a negligible amount of that excess tax in the form of a net rebate.

17. The tenth is the absurd conclusion that **Paper 2** presents "*a detailed understanding of why change is now required*" when it does nothing of the sort. To cap the hyperbole, the Board concludes with this, "*With some employers paying too much and other employers paying too little, changes to the existing scheme are necessary in order for the WSIB to charge a fair premium . . .*" Of course, the WSIB has chosen not to charge a fair premium since 2010. This concluding statement is a fitting end to the paper.

18. A strong case has not been advanced for architectural adjustment of the current rate classification system. MCA Ontario recognizes that the real problem has been lax WSIB stewardship, oversight and maintenance over the past two decades. Through its overt neglect of the current system, the Board has not established the *bona fides* to be entrusted with the design, implementation and stewardship of a wholly new scheme. We sincerely believe that design enhancements aside, the development and seamless implementation of a new classification and premium scheme will exceed the Board's administrative capacity.

19. We respectfully appeal to the Board to continue to focus on *Job 1* – the financial integrity of the system. Once the system has reached and maintained 100% funding for several years, attention can then be re-focused towards a number of other objectives. At the end of the day, MCA Ontario is concerned that the Board will end up trading one set of imperfections with a new but different set of imperfections.

C. A comment on the Consultation Process

1. MCA Ontario has increasing concerns with the RFR consultation – not at all with the earnestness of the Board staff engaged in it, but with the execution and overall approach.

2. We are of the view that for a consultation exercise such as this to be effective, and at all worthwhile, it must be very fluid. In other words, it must be a very engaged discussion and able to adapt and respond to questions and information requests in almost real time.

3. Yet, the current approach is deadline focused. The Board's goal has been to try to respond to as many meeting requests as possible within a prescribed time-line (i.e., by August), await submissions by October 2nd and regroup in some form in November (or later).

4. No doubt, the Board's team is run-off-its-feet, but in our view, the consultation mechanism that the Board designed is the blame – not the project. And, all the while, the current approach is not being very responsive to stakeholder asks. The process is far less than preferred and falls short of what is needed.

5. It would have been our preference to have addressed this phase of the consultation far differently through the **Chair's Advisory Groups**. Instead, the Board preferred model will achieve little more than facilitating the same conversation over-and-over several dozens of times, bringing several interest groups to a modest but less than required level of comprehension.

6. We presume that design ideas are what is ultimately being sought. That requires a very different approach than simple stakeholder edification. If all the Board is trying to achieve is stakeholder awareness, then your consultation model is satisfactory. Awareness on its own, while an essential component to consultation, is not enough.

7. The consultation continues "full steam ahead" when very basic and essential design elements are at the blueprint stage. For example, the April 28th outreach meeting was the 1st time we were made aware that model design was continuing. Our representative at that time made the strong point that completed model design was the first step – not an interim step.

8. It was in that meeting that the Board's consulting actuary advised, without providing much detail, that the Board was considering expanding the construction (G) class, specifically, the G3 group, which of course is now the case.

9. Refer to the **Rate Framework Modernization presentation on RG 707, Mechanical and Sheet Metal Work**, page 7, which is replicated below:

How Could RG 707 Employers be Risk Banded?

- The chart below outlines possible risk bands for employers who are in RG 707 who will be moving to Class G3 - Specialty Trades Construction, by showing the number and percentage of employers and their actual risk band premium rate. This risk band distribution is subject to change if there are amendments such as splitting up the classes.

G3 - Specialty Trades Construction - RG 707: 2014 Employer Actual Rate – Subject to Transition Plan*

	Lowest Rate	Risk Bands									Highest Rate	
Risk Band Movement from Class Premium Rate (Risk Band 0)	-46	<-3	-3	-2	-1	Average 0	1	2	3	>3	20	Total
Risk Band Rate	$0.39	-	$3.20	$3.37	$3.55	$3.74	$3.92	$4.12	$4.33	-	$9.91	
# of Employers	3	382	188	622	5,023	278	155	35	28	77	1	6,768
% of Employers		5.3%	2.8%	9.2%	74.2%	4.11%	2.3%	0.5%	0.4%	1.1%		100.0%
		91.53 %					4.35%					

Overview of Analysis:
- About 92% of all employers will see a lower premium rate when compared to the average risk band rate.
- About 4% of all employers will pay the average risk band rate.
- About 4% of all employers will see a higher premium rate when compared to the average risk band rate.

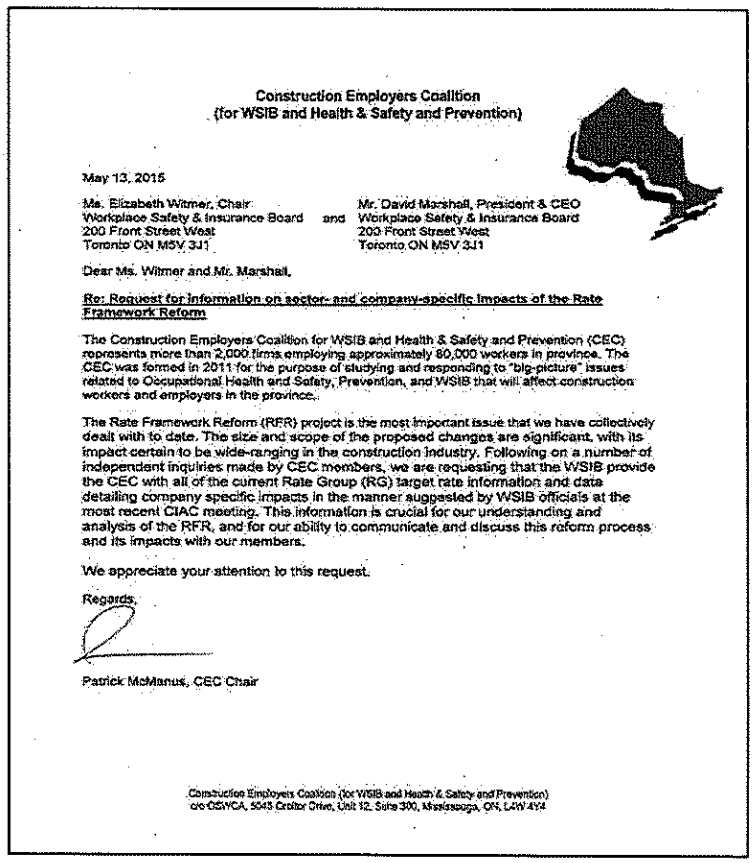
* While the above charts outline the impact to employers considering a +/- 3 risk band limitation scenario that incorporates their Starting Point, these results may be different once a final transition plan (that has received stakeholder input) has been developed to transition employers from the current approach to setting and classifying rates under the proposed preliminary Rate Framework scheme.

wsib ONTARIO For Illustrative Purposes Only – Based on 2014 Premium Rates within proposed preliminary Rate Framework 7

10. That is good, solid essential information. However, it is not nearly enough. With the data organized at the RG level, which of course is essential, most associations, including MCA Ontario, would benefit immeasurably from identical information presented for their membership

base. ***Without impact information at the company level, an informed comment is simply impossible.***

11. We have made this request on multiple occasions from the outset of this project, to no avail. In fact, Board staff recoiled at our request. The CEC has aggressively advanced the identical plea as outlined in the May 13, 2015 letter to the Board's Chair and President (replicated at the right).



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

May 13, 2015

Ms. Elizabeth Witmer, Chair
Workplace Safety & Insurance Board
200 Front Street West
Toronto ON M5V 3J1

and

Mr. David Marshall, President & CEO
Workplace Safety & Insurance Board
200 Front Street West
Toronto ON M5V 3J1

Dear Ms. Witmer and Mr. Marshall,

Re: Request for information on sector- and company-specific impacts of the Rate Framework Reform

The Construction Employers Coalition for WSIB and Health & Safety and Prevention (CEC) represents more than 2,000 firms employing approximately 60,000 workers in province. The CEC was formed in 2011 for the purpose of studying and responding to "big-picture" issues related to Occupational Health and Safety, Prevention, and WSIB that will affect construction workers and employers in the province.

The Rate Framework Reform (RFR) project is the most important issue that we have collectively dealt with to date. The size and scope of the proposed changes are significant, with its impact certain to be wide-ranging in the construction industry. Following on a number of independent inquiries made by CEC members, we are requesting that the WSIB provide the CEC with all of the current Rate Group (RG) target rate information and data detailing company specific impacts in the manner suggested by WSIB officials at the most recent CIAC meeting. This information is crucial for our understanding and analysis of the RFR, and for our ability to communicate and discuss this reform process and its impacts with our members.

We appreciate your attention to this request.

Regards,

Patrick McManus, CEC Chair

Construction Employers Coalition (for WSIB and Health & Safety and Prevention)
c/o CSWCA, 5045 Orbitor Drive, Unit 12, Suite 300, Mississauga, ON, L4W 4Y4

12. We are reminded of the most analogous historical example of a very similar - contextually identical actually – consultation facilitated by the Board. That dealt with the introduction of the NEER plan in the mid-1980s.

13. The Board's approach then represented the pinnacle of an engaged dialogue with the stakeholder community. We describe one such instance.

14. The Board brought together close to 1,000 members of a major trade association in late 1985.

15. The purpose was to educate and demonstrate the impacts of the NEER program, then in its infancy. From 1986 (NEER Year 1) to 1992, NEER was subject to voluntary participation with a majority affirmative vote process facilitated by a representative association and endorsed by the Board necessary for inclusion.

16. To engage with that industry, the Board replicated **at the firm level** the effect of the NEER plan on individual companies.

17. Every company was able to see the impacts of the proposed plan.

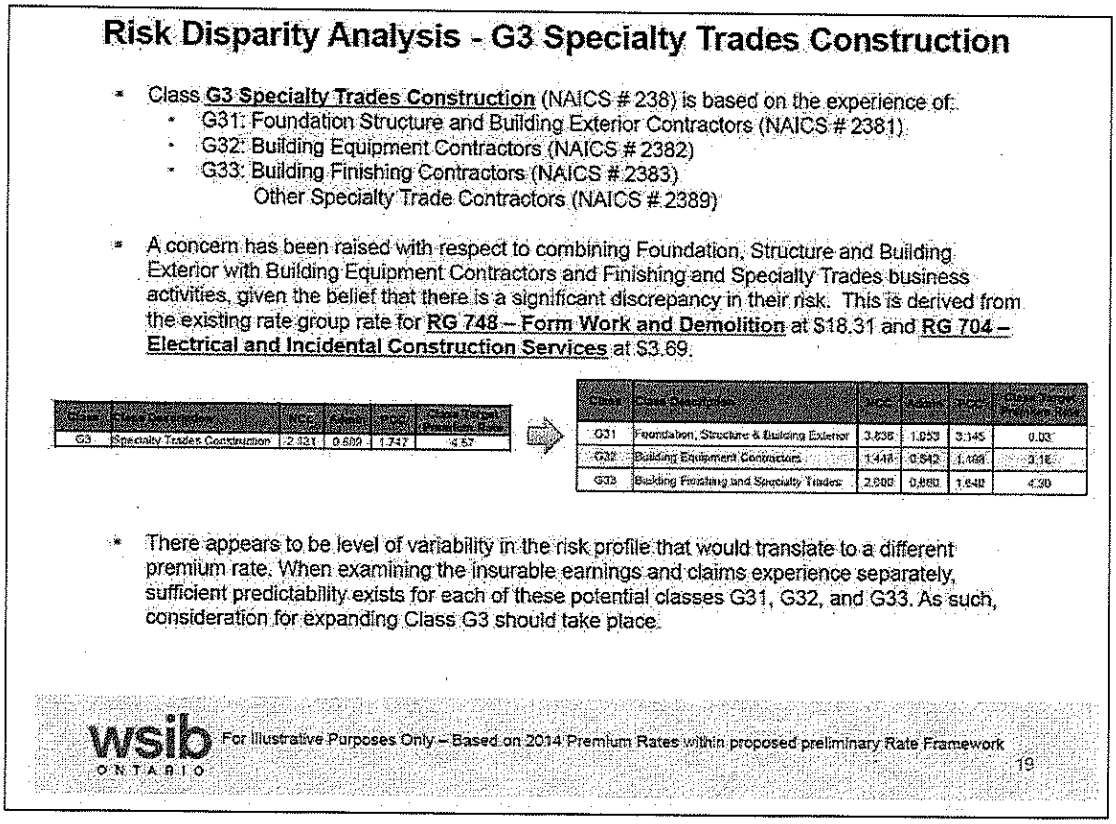
18. This facilitated design understanding and as a result of this depth of awareness in this particular sector, led to design enhancement.

19. ***This is the very type of information that is required now.***

20. For all of the reasons the Board was then of the view of the importance of this approach, principally targeted stakeholder awareness and engagement, the Board of today opposes it.

21. MCA Ontario requires the same type of information set out in **Slide 7** for our member firms and we re-assert our request.

22. In **Rate Framework Modernization presentation on RG 707, Mechanical and Sheet Metal Work**, at page 19, MCA Ontario was presented with a "***Risk Disparity Analysis – G3 Specialty Trades Construction***", replicated below:



Risk Disparity Analysis - G3 Specialty Trades Construction

- Class **G3 Specialty Trades Construction** (NAICS # 238) is based on the experience of:
  - G31: Foundation Structure and Building Exterior Contractors (NAICS # 2381)
  - G32: Building Equipment Contractors (NAICS # 2382)
  - G33: Building Finishing Contractors (NAICS # 2383)
    Other Specialty Trade Contractors (NAICS # 2389)
- A concern has been raised with respect to combining Foundation, Structure and Building Exterior with Building Equipment Contractors and Finishing and Specialty Trades business activities, given the belief that there is a significant discrepancy in their risk. This is derived from the existing rate group rate for **RG 748 – Form Work and Demolition** at $18.31 and **RG 704 – Electrical and Incidental Construction Services** at $3.69.

Class	Class Description	NCF	Assets	Prem	Class Group Premium Rate
G3	Specialty Trades Construction	2.431	0.689	1.747	4.57

Class	Class Description	NCF	Assets	Prem	Class Group Premium Rate
G31	Foundation, Structure & Building Exterior	3.836	1.053	3.145	8.03
G32	Building Equipment Contractors	1.448	0.542	1.168	3.16
G33	Building Finishing and Specialty Trades	2.886	0.880	1.648	4.30

- There appears to be level of variability in the risk profile that would translate to a different premium rate. When examining the insurable earnings and claims experience separately, sufficient predictability exists for each of these potential classes G31, G32, and G33. As such, consideration for expanding Class G3 should take place.

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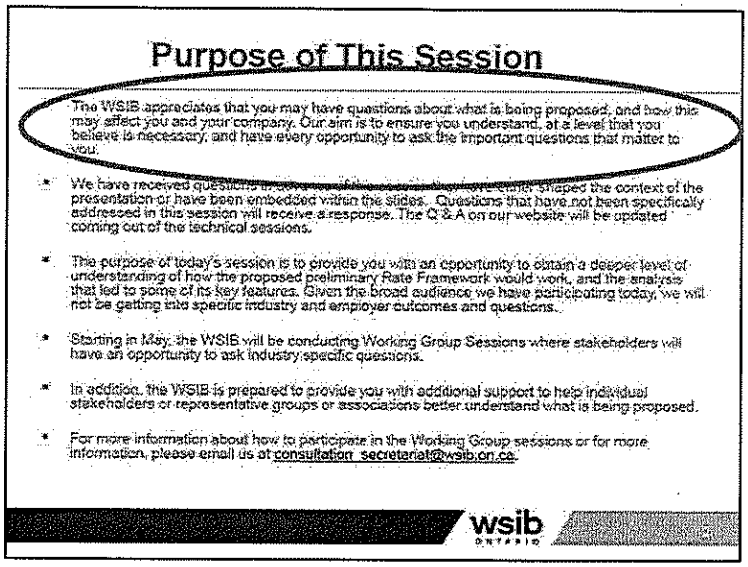
23. At **Slide 19**, the Board presents *some* limited information on the recently considered G3-1, G3-2 and G3-3 groups (hereinafter collectively G3-3). This precipitates an obvious request - *present the information for the G3-3 groups in the same manner as presented for G3* (at Slide 7). While we advanced this request several times, we were informed that the information cannot be compiled in time for the current phase of the Board's consultation. This is not satisfactory. The information is required now.



Purpose of This Session

The WSIB appreciates that you may have questions about what is being proposed, and how this may affect you and your company. Our aim is to ensure you understand, at a level that you believe is necessary, and have every opportunity to ask the important questions that matter to you.

- We have received questions [illegible] shaped the context of the presentation or have been embedded within the slides. Questions that have not been specifically addressed in this session will receive a response. The Q & A on our website will be updated coming out of the technical sessions.
- The purpose of today's session is to provide you with an opportunity to obtain a deeper level of understanding of how the proposed preliminary Rate Framework would work, and the analyses that led to some of its key features. Given the broad audience we have participating today, we will not be getting into specific industry and employer outcomes and questions.
- Starting in May, the WSIB will be conducting Working Group Sessions where stakeholders will have an opportunity to ask industry specific questions.
- In addition, the WSIB is prepared to provide you with additional support to help individual stakeholders or representative groups or associations better understand what is being proposed.
- For more information about how to participate in the Working Group sessions or for more information, please email us at consultation_secretariat@wsib.on.ca.

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24. We are struck by the openness suggested in the opening slide of all of the Board's presentations (replicated to the right). It is clear that the commitment to ensure "*understanding at the level you believe is necessary*" is being applied as "*the level the Board deems necessary*".

25. MCA Ontario is uncertain as to the "next steps" in the consultation process – the so-called "*what we've heard*" and "*what we're thinking*" phase.

26. When the Board developed what we will refer to as "***Proposition 1***" (the five technical discussion papers and earlier WSIB presentations), it did so with the expectation that there would be a "***Proposition 2***". "***Proposition 2***" is what will be the subject of a discussion later this year.

27. In other words, the Board expected the model to evolve.

28. We have asked during the consultation whether or not with the development of "***Proposition 2***" the Board expects there to be a "***Proposition 3***" (which is our clear preference, especially since we still have experienced inadequate information in this first consultation phase).

29. In other words, is "***Proposition 2***" seen as an important but interim consultative step?

30. The short answer presented to us initially was an unequivocal "no". In fact, the response to our query was itself a question – "*When should the Board stop*?", suggesting an implicit institutional impatience to an open-ended consultation protocol.

31. That question is easily answered. The objective must be getting it right – not perfecting it as much as possible within an arbitrary and WSIB imposed timetable. So, the process ends when the model is satisfactory – not when it is the "*best by a certain date*".

32. MCA Ontario is participating on the expectation that the consultation phase is not over with the October 2, 2015 submission deadline, and that this simply represents the end of one phase and the commencement of the next.

33. We also expect that our information requests, continuously advanced since the commencement of the consultation, will be honoured well in advance of the next phase of consultation.

34. We further expect that all participants will asked to formally respond to ***Proposition 2***.

35. We conclude this section with an interesting observation. During the course of our interaction with the WSIB administration during this phase, we reminded various meeting facilitators that the official WSIB position, as expressed by the WSIB Chair as recently as the **Chair Advisory Group** meetings in May 2015, was that the Board has not officially committed to RFR let alone to any specific design. All is on the table and open for discussion. It is the views of the stakeholders that is of critical interest to the Board's leadership. Let us conclude with the interesting revelation that the administration's reaction was less than consistent with this.

PART III: Target Rates – a bridge to a reasonable transition

A. WSIB RFR Paper 5: A Path Forward

1. WSIB **RFR Paper 5: A Path Forward** introduces the discussion on the transition protocol from the current to the new system. At page 5, **Paper 5** puts the considerations this way:

> The following considerations would form the basis for adopting an approach to transitioning employers to their Employer Target Premium Rate:
>
> - Gradual, incremental movement towards Class Target Premium Rates;
> - Utilizing the decreasing/eliminated UFL to support movement towards Employer Target Premium Rates;
> - Balance between degree of premium rate increases and decreases;
> - Gradual, incremental movement towards Employer Target Premium Rates; and
> - Consideration for economic circumstances and potential legislative amendments.

2. In addressing the transitional influence of the unfunded liability ["UFL"], **Paper 5** notes:

> One of the proposed key considerations to assess when transitioning from the current scheme to the proposed preliminary Rate Framework, is how it could be linked to the resolution of the UFL. The reduction of the UFL would provide significant maneuverability for employers who would find themselves particularly far from their Employer Target Premium Rate. For these employers, the gradual removal of roughly 40% of their premium rate due to the elimination of the UFL would provide the ability to maintain premium rates relatively stable, while making up significant ground towards arriving at their Employer Target Premium Rate.

3. MCA Ontario has a much simpler proposition which builds on the Board's thinking behind the above excerpt. Like the Board, we are concerned with the inflating influence of the UFL on premium rates. Our thoughtful suggestion is comprised of three distinct phases:

   a. ***Phase 1:*** Under the current system, commence a transition to target rates for all rate groups;

   b. ***Phase 2:*** Once all current RGs are at target *and* the UFL is zero, the new RFR is triggered;

   c. ***Phase 3:*** All employers transitioning from the current to the new system, commence at new system target levels.

B. The need to "get to target" (starting now)

1. In **WSIB RFR Paper 2, Current State Analysis**, at page 13, the Board presents a rather brazen "reason" behind the RFR project:

> With some employers paying too much and other employers paying too little, changes to the existing scheme are necessary in order for the WSIB to charge a fair premium to employers that reflects their claims experience.

2. Earlier, at page 12, **Paper 2** notes that "*the premium rate that the classes should be paying based on their new claim costs may be quite different from what the classes are currently paying*". This point is then illustrated in **Figure 2**:

Figure 2: Assessment of Employer Premium Rates

Category	Number of Organizations	Percentage of Organizations	Balance in Premiums ($M)
Employers paying the same rate*	30,000	13	-0.27
Employer paying too little	77,000	31	363
Employer paying too much	137,000	56	-369
Total	**244,000**	**100**	**-6**

**Paying a premium rate within a +/- 2% of the 2013 Net premium rate.*

3. Yet, the reason behind this disparity is glossed over. The reason has nothing whatsoever to do with any inadequacies, deficiencies or design faults with the current system.

4. Since 2010, the WSIB itself, at its most senior level, initiated and continued a premium rate policy that assured the very result the Board now ponders.

5. As a direct result of financial sustainability concerns identified in the **2009 Annual Report of the Ontario Auditor General**, since 2010 - a period of six (6) years - ***WSIB premium rate setting policy has prohibited declines in premium rates*** for any sector even when earned through improving performance.

6. Initially, MCA Ontario and the CEC enthusiastically supported this approach, adopting a general position that financial sustainability and UFL reduction was "**Job 1**".

7. In 2010 the prevailing view was that the WSI system was in crisis and at the "tipping point". All actions and policies, including government initiatives, were focused on that single concern.

8. WSIB premium rate policy was one element of a comprehensive strategy establishing UFL reduction as the core objective of the WSIB and the government. In addition, the WSIB adjusted its administrative practices to reduce "time on claim" and enhance return to work ["RTW"] initiatives, with success.

9. The government introduced and implemented **O. Reg. 141/12** which set strict regulatory "sufficiency targets". The Board was instructed to "*. . . maintain the insurance fund in order to achieve partial sufficiency and sufficiency*" and meet prescribed sufficiency ratios by certain dates:

> 60 per cent on or before December 31, 2017.
> 80 per cent on or before December 31, 2022.
> 100 per cent on or before December 31, 2027. **[O. Reg. 141/12, s. 1 (2).]**

10. From 2005, the WSIB established the following yearly premium rate policies:

> **2005:** ***WSIB Policy:*** *Premium rates will reflect performance.* The 2005 APR is $2.19 - the same as the average rate for 2004. ***WSIB Announcement:*** This 0% average rate change does not mean rates will stay the same for all employers. Premium rates for individual rate groups have been recalculated based primarily on injury frequency and claims costs for individual rate groups.

> **2006:** ***WSIB Policy:*** *Premium rates will reflect performance.* The 2006 APR is $2.00, an increase of 3% over 2005. ***WSIB Announcement:*** This 3 % APR rate increase does not mean rates will increase for all employers. Premium rates for individual rate groups have been recalculated based primarily on injury frequency and claims costs for individual rate groups.

2007: ***WSIB Policy:*** *Premium rates will reflect performance.* ***WSIB Announcement:*** The WSIB has introduced a number of measures to improve its financial situation. By helping to alleviate some financial pressures on the system, these measures have allowed our Board of Directors to keep the average premium rate at $2.26 per $100 of insurable earnings. This is unchanged from the 2006 average premium rate.

2008: ***WSIB Policy:*** *Premium rates will reflect performance.* ***WSIB Announcement:*** For the second year running, measures introduced in recent years to improve the WSIB's financial situation have provided the WSIB Board of Directors with the flexibility to keep the average premium rate unchanged for 2008 at $2.26 per $100 of insurable earnings.

2009: ***WSIB Policy:*** *Premium rates will reflect performance.* ***WSIB Announcement:*** The 2009 APR $2.26 - unchanged from 2007 and 2008 - is based on careful financial analysis, and an expectation that improvements will occur in health-and-safety and return-to-work outcomes consistent with the WSIB's Road to Zero and Prevention Strategies.

2010: ***WSIB Policy:*** *Premium rates will increase but not decline based on performance.* ***WSIB Announcement:*** For 2010, the WSIB Board of Directors has decided to freeze rates for the majority of employers, while applying the usual rate-setting methodology for the rate groups that have not achieved expected health and safety and return to work outcomes. The WSIB approach to rate-setting is based on industry accountability for workplace insurance costs. The WSIB's decision protects the financial sustainability of the system from current financial pressures, while being fair to the workers and employers who rely on it.

2011: ***WSIB Policy:*** *The APR will increase 2%. No rates will decrease.* ***WSIB Announcement:*** For 2011, in response to growing concerns about the unfunded liability (UFL) - the difference between the costs of claims currently in the system and the funds in the system to pay for them - and the future viability of the system, the WSIB has announced modest increases in employer premiums and a long-term plan for financial sustainability. This plan will ultimately ensure lower and stable premium rates for employers in the long term.

2012: ***WSIB Policy:*** *All premium rates will increase by 2 % regardless of performance.* ***WSIB Announcement:*** Any proposed changes to the premium rate structure resulting from the Harry Arthurs review would not come into effect until 2013. Ontario's workplace insurance system is in a transition period until then, and the modest premium rate increase for 2012 is the minimum necessary to stabilize the system's finances while being fair to the workers and employers who rely on it.

2013: ***WSIB Policy:*** *All premium rates will increase by 2.5% regardless of performance.* ***WSIB Announcement:*** This increased rate is a necessary step to reducing the WSIB's unfunded liability (UFL), which has grown to $14.2 billion.

2014: ***WSIB Policy:*** *All premium rates will be maintained at current levels regardless of performance.* ***WSIB Announcement:*** The decision balances the needs of Ontario's workers while providing stability for employers as the WSIB reviews its methods for setting premium rates in consultation with stakeholders to come up with the fairest and most effective solutions.

2015: ***WSIB Policy:*** *All premium rates will be maintained at current levels regardless of performance.* ***WSIB Announcement:*** For the second consecutive year, premium rates will be maintained at current levels for the majority of employers.

11. From 2011, the UFL (in constant 2015 $) has declined from $15.076 B to $6.86 B (as at March 31, 2015), an impressive 55% decline.

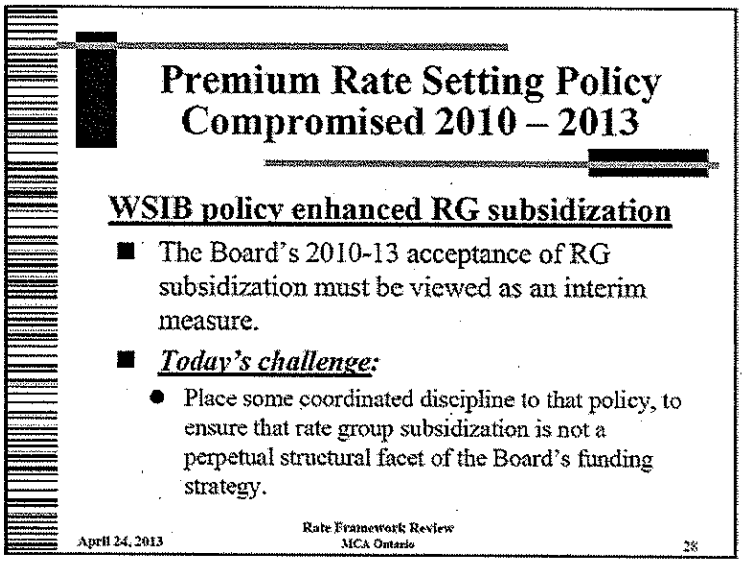
Year	UFL (in constant 2015 $ B)
2011	$15.076
2012	$14.549
2013	$10.872
2014	$8.993
2015 (March 31)	$6.860

12. During the 2011 **Funding Review** consultation, the "non-aligned experts" addressed the issue of subsidization:

> Limits to rate increase/decrease. Cross-subsidization of rate-groups resulting from the non-application of rate decreases has started in the 2010 rate setting. Two questions for consideration are as follows: To what extent can this approach be maintained without harming the credibility of the rate setting process and/or negatively influence the employers' behaviour? Is there a need to develop a strategy about the return to a more traditional approach? **(Experts Report, p. 5)**

13. The state of the system several years later should come as no surprise to the WSIB. *The WSIB knowingly and deliberately caused this problem.* While initially supported by employers, particularly Ontario's construction employers, the need for this has ended.

14. It worked, but it went on far too long. MCA Ontario and the CEC have been calling for a return to "*some coordinated discipline*" since 2013 **(see slide opposite from MCA Ontario's April 24, 2013 presentation to Doug Stanley).**



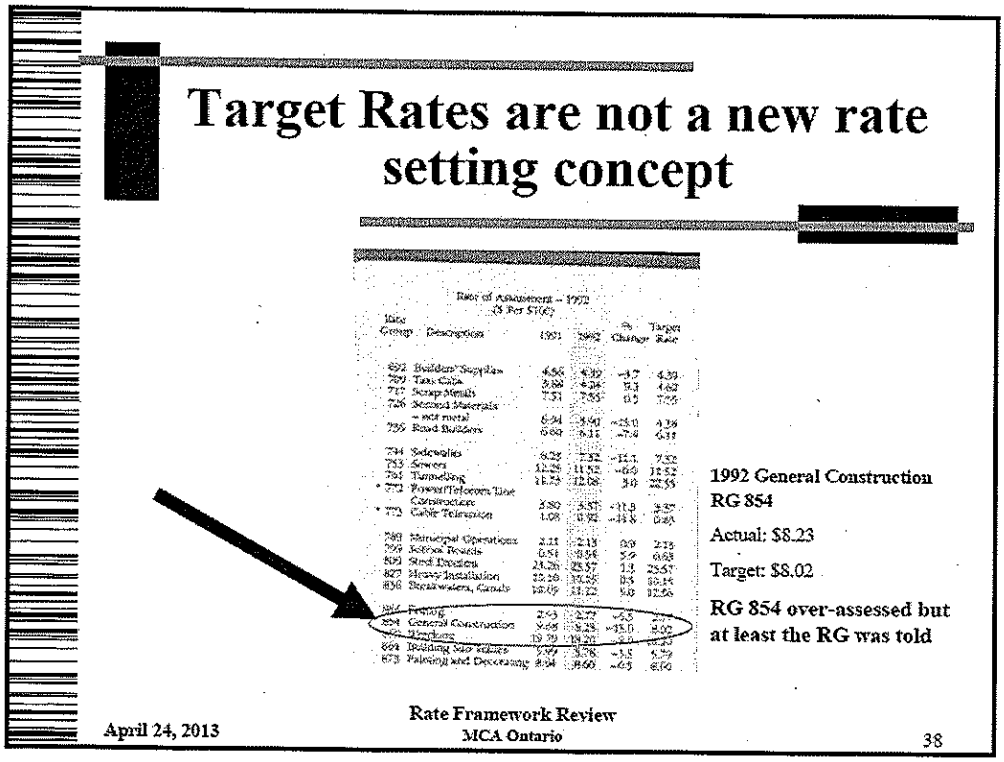
15. The retirement of the UFL is well ahead of schedule.

16. *The reason is simple:* the WSIB is over-taxing Ontario employers – specially Ontario's construction employers.

17. For construction, from 2005 to 2015 the lost time injury rate has declined 42% but the construction average premium rate has increased 14%.

18. Since 2011, MCA Ontario and the CEC has requested the WSIB to provide RG premium target rates.

19. It is important to note that the provision of target rates is not a new workers' compensation consideration, and was a routine element in premium rates as far back as 1992, a point we made on April 24, 2013 (see Slide 38 from MCA Ontario's April, 2013 presentation to Doug Stanley).



20. We have long held the firm view that, notwithstanding the premium rate policy in place or the reasons behind the policy, the provision of target rates was an essential feedback mechanism.

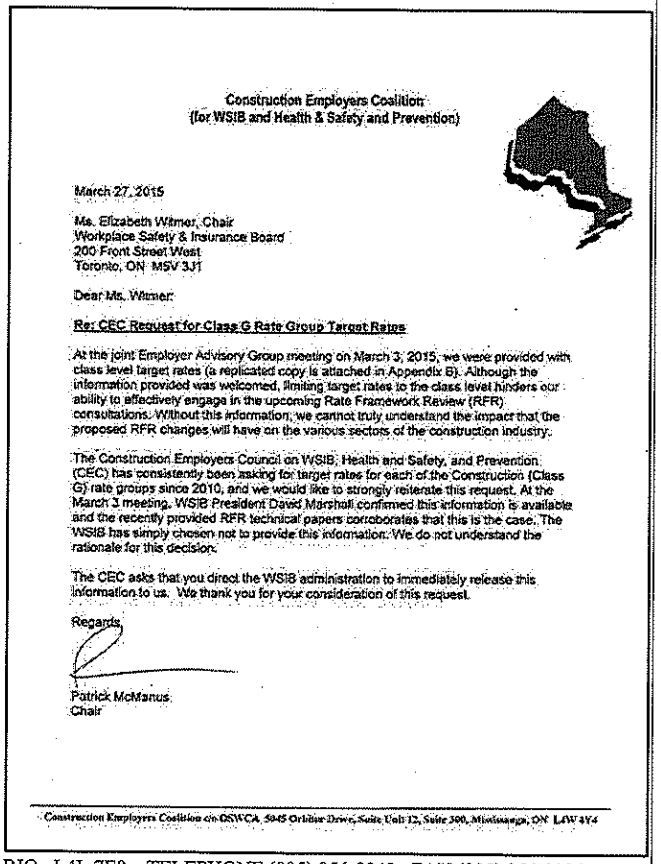
21. This is *especially* important when premiums did not reflect performance.

22. Unfortunately, despite repeated requests, the Board did not act on our appeals for 2011, 2012, 2013, 2014, or 2015.

23. This request was last formally introduced by the CEC in a letter of March 27, 2015 to WSIB Chair Witmer (replicated at right).

24. The Chair did act on the CEC request and as part of the RFR consultation exercise we were provided with target rate data.

25. It is now clear (and the WSIB admits) that the Board has been over-assessing Ontario construction employers. For 2014, the construction average rate was $6.36. For 2015, it was $6.65. It should be much less.



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

March 27, 2015

Ms. Elizabeth Witmer, Chair
Workplace Safety & Insurance Board
200 Front Street West
Toronto, ON M5V 3J1

Dear Ms. Witmer:

Re: CEC Request for Class G Rate Group Target Rates

At the joint Employer Advisory Group meeting on March 3, 2015, we were provided with class level target rates (a replicated copy is attached in Appendix B). Although the information provided was welcomed, limiting target rates to the class level hinders our ability to effectively engage in the upcoming Rate Framework Review (RFR) consultations. Without this information, we cannot truly understand the impact that the proposed RFR changes will have on the various sectors of the construction industry.

The Construction Employers Council on WSIB, Health and Safety, and Prevention (CEC) has consistently been asking for target rates for each of the Construction (Class G) rate groups since 2010, and we would like to strongly reiterate this request. At the March 3 meeting, WSIB President David Marshall confirmed this information is available and the recently provided RFR technical papers corroborates that this is the case. The WSIB has simply chosen not to provide this information. We do not understand the rationale for this decision.

The CEC asks that you direct the WSIB administration to immediately release this information to us. We thank you for your consideration of this request.

Regards,

Patrick McManus
Chair

Construction Employers Coalition c/o OSWCA, 5045 Orbitor Drive, Suite Unit 12, Suite 300, Mississauga, ON L4W 4Y4

26. The chart below is extracted from the **RFR RG 707 Presentation** (at page 20):

Industry Class	2014 Net Rate
A – Forest Products	4.93
B – Mining and Related	6.28
C – Other Primary Industries	4.04
D – Manufacturing	2.49
E – Transportation and Storage	4.83
F – Retail and Wholesale Trades	1.75
G – Construction	6.36
H – Government and Related	1.33
I – Other Services	1.27
Schedule 1	2.46

2014 Class Target Rate ($10B UFL)	($0 UFL)
5.79	3.60
4.90	3.13
4.70	2.95
2.99	1.88
4.53	2.79
1.65	1.08
5.52	3.41
1.43	0.93
1.25	0.81
2.46	1.56

Rate Group	2015 Rate Group Net & Target Rate: Net Rate ($10B UFL)	Target Rate ($10B UFL)	Target Rate ($0 UFL)
704	3.57	3.67	2.31
707	3.96	3.97	2.49
711	5.12	4.72	2.94
719	7.19	5.63	3.48
723	4.36	4.60	2.86
728	13.99	11.63	7.07
732	7.10	6.14	3.79
737	6.59	5.97	3.68
741	12.36	11.43	6.95
748	18.07	11.72	7.13
751	9.88	7.72	4.73
755	0.21	N/A*	N/A*
764	8.68	6.51	4.01

Net Rate represents the premium for respective industries, considering:
- RG rate freeze from 2013 published rates
- 2014 ER adjustments

Target Rate represents the target premium for respective industries, considering:
- adjusted NCC to reflect actual experience
- balance to Schedule 1 rates of $2.46 and $1.56

* A target rate cannot be reliably determined given the limited experience.

27. As noted, the WSIB 2015 Average Premium Rate ["APR"] for **Class G Construction** is $6.65.

28. The WSIB has shown that even with a $10 B UFL, the APR should only be $5.52. With zero UFL, the construction APR should be $3.41.

29. For 2016, the UFL likely will be less than $6.0 B.

30. At $6.0 B the construction APR should be approximately $4.68 (using 2014 as a base). This means that for 2016, the construction APR could decrease by more than 25% and still properly fund the WSIB.

31. In short, Ontario's construction employers, currently contributing approximately $1.25 B in premiums, are owed a minimum $300,000,000 premium reduction.

C. The challenge to reduce the UFL has exceeded expectations

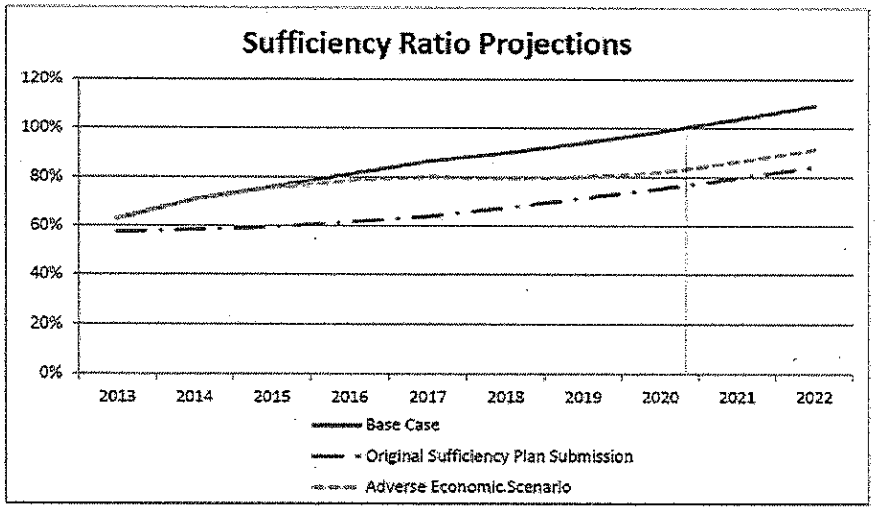
1. On the question of reducing the UFL, WSIB stewardship has been exemplary. Let us not forget however, that the single most important element in securing this reduction has been the over-taxing of Ontario's employers.

2. Yet, the achievement has nonetheless been remarkable.

3. In the ***WSIB Sufficiency Plan Update*** publicly released in September, 2015, it is evident that the Board is well ahead of schedule.

4. The extract (page 8 of the report) on the following page speaks volumes:

Workplace Safety and Insurance Board



Based on the assumptions outlined above, the WSIB projects the following Sufficiency Ratios as at December 31 of the respective year, showing the difference between our current base case (using actuals for December 31, 2013 and 2014) and the original Sufficiency Plan submission:

Year	Original Sufficiency Plan Submission (A)	Base Case (B)	Adverse Scenario (C)	Variance to Base Case (B – A)	Variance to Adverse Scenario (B – C)
2013	57.6%	63.0%*	63.0%*	5.4%	0.0%*
2014	58.4%	70.9%*	70.9%*	12.5%	0.0%*
2015	59.5%	76.0%	75.7%	16.5%	0.3%
2016	61.7%	81.3%	78.9%	19.6%	2.4%
2017	**64.0%**	**86.5%**	**80.2%**	**22.5%**	**6.3%**
2018	67.6%	90.0%	79.7%	22.4%	10.3%
2019	71.5%	94.1%	80.1%	22.6%	14.0%
2020	75.5%	98.7%	81.9%	23.2%	16.8%
2021	79.8%	103.7%	86.4%	23.9%	17.3%
2022	**84.3%**	**109.2%**	**91.4%**	**24.9%**	**17.8%**

* 2013 and 2014 Sufficiency Ratios are the actual results. Remaining Sufficiency Ratios are projections only.

D. Linking UFL success with RFR transition – solving a dilemma

1. One can now, and for the first time in over 30 years, reasonably prophesize that the UFL story will conclude with the preverbal happy ending. The early retirement of the UFL can, and must, be integrally linked to RFR transition. In so doing, a serious potential pitfall is remedied.

2. This problem is introduced in **WSIB RFR Paper 3**, at page 60:

> *Step I: Determining an Employer's Risk Band Movement*
>
> There may be a difference (varying from a very small to a large variance) between what an employer should be paying as their Employer Target Premium Rate and what the employer is paying under the current system. Some employers (especially those who are seeing their premium rates increase) would not want to experience drastic changes in their premium rates from one year to the next to reach their Employer Target Premium Rate.

3. We see a remedy to this problem. The transition discussion continues in **WSIB RFR Paper 5**.

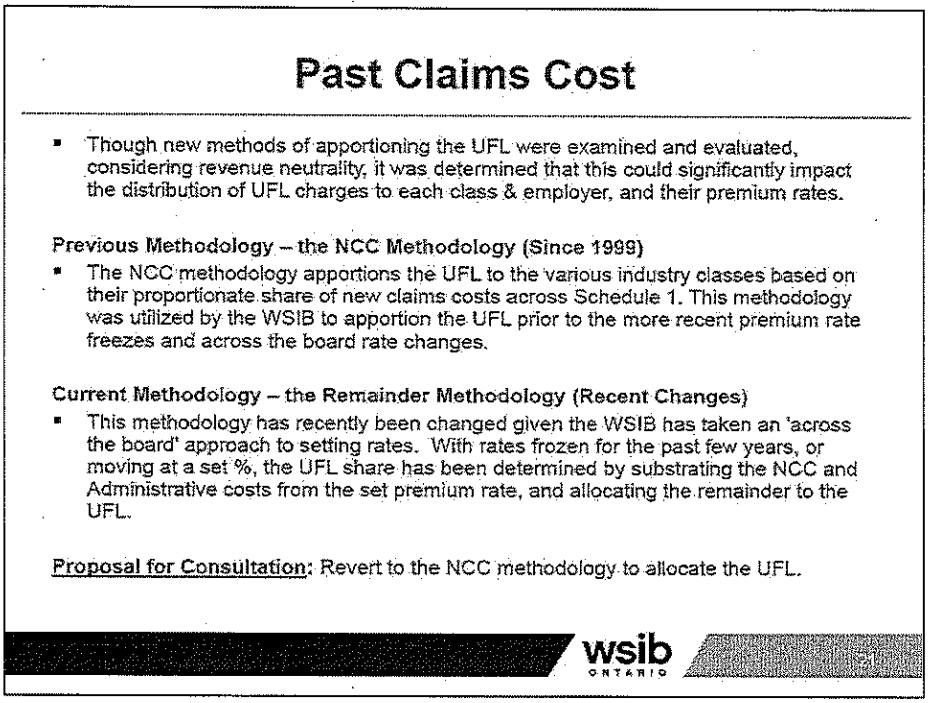
4. The significance of the problem becomes clearer with the following chart (from **RG 707 RFR Presentation**, page 21):

		Class Premium Rates with $10 UFL				Class Premium Rates with $0 UFL			
Class Letter	Class Description	Class Target Premium Rate ($)	Employer Target Premium Rate Risk-Band Range ($) Minimum Band	Maximum Band	# of Risk Bands	Class Target Premium Rate ($)	Employer Target Premium Rate Risk-Band Range ($) Minimum Band	Maximum Band	# of Risk Bands
A	Primary Resource Industries	4.68	0.24	14.94	83	2.93	0.15	9.27	83
B	Utilities	1.06	0.20	3.44	58	0.73	0.15	2.37	56
C	Public Administration	3.86	0.20	12.05	80	2.40	0.15	7.50	79
D	Food, Textile, & Related Manuf.	3.08	0.20	10.13	79	1.93	0.15	6.33	75
E	Resource & Related Manufacturing	3.30	0.20	10.98	81	2.06	0.15	6.82	77
F	Machinery & Related Manuf.	3.20	0.20	9.82	79	2.00	0.15	6.13	75
G1	Building Construction	5.22	0.26	16.64	83	3.21	0.16	10.22	83
G2	Infrastructure Construction	4.87	0.24	15.50	83	3.00	0.15	9.55	83
G3	Specialty Trades Construction	4.57	0.23	14.35	83	2.82	0.15	8.83	82
H	Wholesale Trade	1.73	0.20	5.49	67	1.13	0.15	3.59	64
I	General Retail	1.66	0.20	4.91	65	1.09	0.15	3.23	62
J	Specialized Retail & Dept. Stores	1.46	0.20	4.34	63	0.97	0.15	2.88	60
K	Transportation and Warehousing	4.26	0.22	13.98	83	2.64	0.15	8.59	81
L	Information and Culture	0.61	0.20	2.09	48	0.42	0.15	1.44	46
M	Finance	1.37	0.20	4.50	63	0.91	0.15	2.97	60
N	Professional, Scientific & Technical	0.55	0.20	2.06	48	0.38	0.15	1.42	46
O	Admin, Waste & Remediation	2.59	0.20	8.39	75	1.64	0.15	5.27	72
P	Hospitals	1.13	0.20	3.67	59	0.77	0.15	2.50	57
Q	Health and Social Services	2.28	0.20	6.86	72	1.46	0.15	4.41	68
R	Leisure and Hospitality	1.90	0.20	5.75	68	1.23	0.15	3.73	65
S	Other Services	2.43	0.20	7.71	74	1.54	0.15	4.88	70
T	Education	0.43	0.20	1.37	40	0.30	0.15	0.96	38
	Schedule 1	**2.46**	**2.46**		**1,534**	**1.56**	**1.56**		**1,482**

5. When viewed against 2014 premium rates (below), the problem of transition is readily apparent.

704	Electrical And Incidental Construction Services	3.69
707	Mechanical And Sheet Metal Work	4.16
711	Roadbuilding And Excavating	5.29
719	Inside Finishing	7.51
723	Industrial, Commercial & Institutional Construction	4.55
728	Roofing	14.80
732	Heavy Civil Construction	7.03
737	Millwrighting And Welding	6.90
741	Masonry	12.70
748	Form Work And Demolition	18.31
751	Siding And Outside Finishing	10.25
755	Non-Exempt Partners and Executive Officers in Construction	0.21
764	Homebuilding	9.10

6. **WSIB RFR Paper 4** focuses on the UFL issue and discusses UFL allocation concerns (see Slide 21 of the generic (April, 2015) **WSIB RFR Presentation**, replicated below):



Past Claims Cost

- Though new methods of apportioning the UFL were examined and evaluated, considering revenue neutrality, it was determined that this could significantly impact the distribution of UFL charges to each class & employer, and their premium rates.

Previous Methodology – the NCC Methodology (Since 1999)

- The NCC methodology apportions the UFL to the various industry classes based on their proportionate share of new claims costs across Schedule 1. This methodology was utilized by the WSIB to apportion the UFL prior to the more recent premium rate freezes and across the board rate changes.

Current Methodology – the Remainder Methodology (Recent Changes)

- This methodology has recently been changed given the WSIB has taken an 'across the board' approach to setting rates. With rates frozen for the past few years, or moving at a set %, the UFL share has been determined by substrating the NCC and Administrative costs from the set premium rate, and allocating the remainder to the UFL.

Proposal for Consultation: Revert to the NCC methodology to allocate the UFL.

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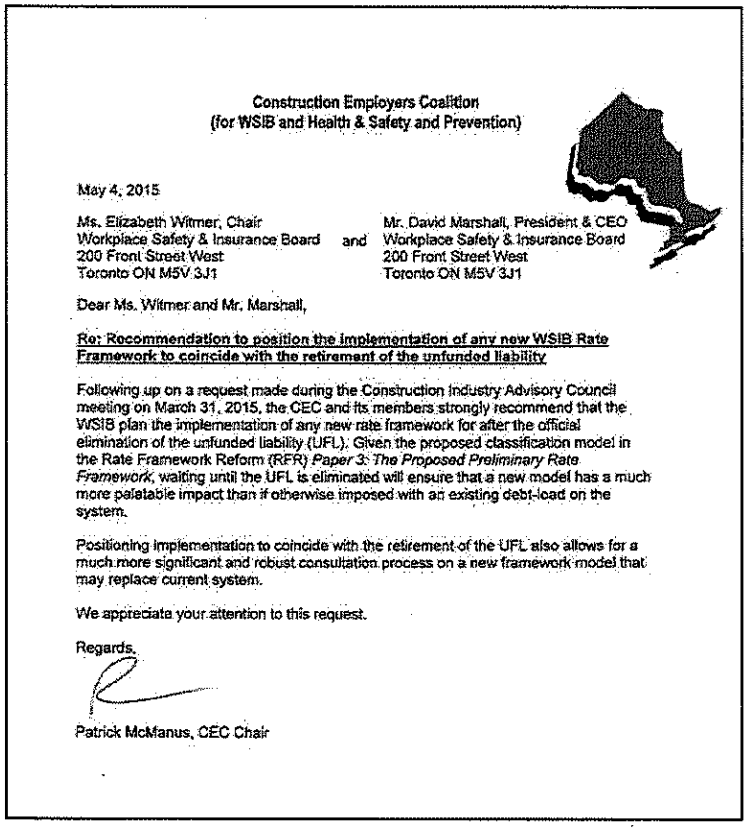
7. Yet, this overall problem is resolved with a simple, pragmatic, level-headed and prudent implementation and transition protocol, one that is easier to implement with each passing day – ***implement the new RFR scheme after the UFL has been wrestled to zero***.

8. This point was heightened in a May 4, 2015 CEC letter to WSIB Chair Witmer (reproduced to the right).

9. We encourage the Board to signal its acceptance of this important suggestion at the earliest opportunity.



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

May 4, 2015

Ms. Elizabeth Witmer, Chair
Workplace Safety & Insurance Board
200 Front Street West
Toronto ON M5V 3J1

and

Mr. David Marshall, President & CEO
Workplace Safety & Insurance Board
200 Front Street West
Toronto ON M5V 3J1

Dear Ms. Witmer and Mr. Marshall,

Re: Recommendation to position the implementation of any new WSIB Rate Framework to coincide with the retirement of the unfunded liability

Following up on a request made during the Construction Industry Advisory Council meeting on March 31, 2015, the CEC and its members strongly recommend that the WSIB plan the implementation of any new rate framework for after the official elimination of the unfunded liability (UFL). Given the proposed classification model in the Rate Framework Reform (RFR) *Paper 3: The Proposed Preliminary Rate Framework*, waiting until the UFL is eliminated will ensure that a new model has a much more palatable impact than if otherwise imposed with an existing debt-load on the system.

Positioning implementation to coincide with the retirement of the UFL also allows for a much more significant and robust consultation process on a new framework model that may replace current system.

We appreciate your attention to this request.

Regards,

Patrick McManus, CEC Chair

E. Transitioning from the current system with zero UFL and all rate groups at target

1. MCA Ontario supports the CEC position to have all RFR entrants, be it new companies or long-standing firms, to enter the newly designed RFR grid at the firm's respective **Class Target Premium**.

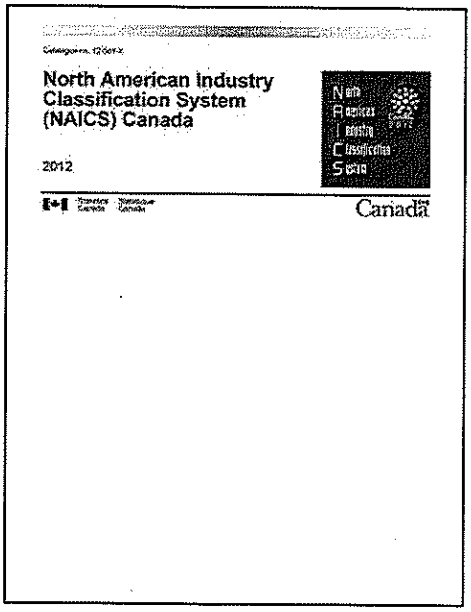
2. This is a simple, clear approach, consistent with RFR design integrity expectations.

3. This ensures that all participants start on a level playing field, and are able to address emerging trends in real time.

4. Since the UFL will be zero, and all RGs will be at their respective target rate, significant transitional rate fluctuations will be minimal and likely in every instance, premiums will be lower than current rates.

PART IV: The application of the North American Industry Classification System (NAICS)

A. The purpose of NAICS


North American Industry Classification System (NAICS) Canada

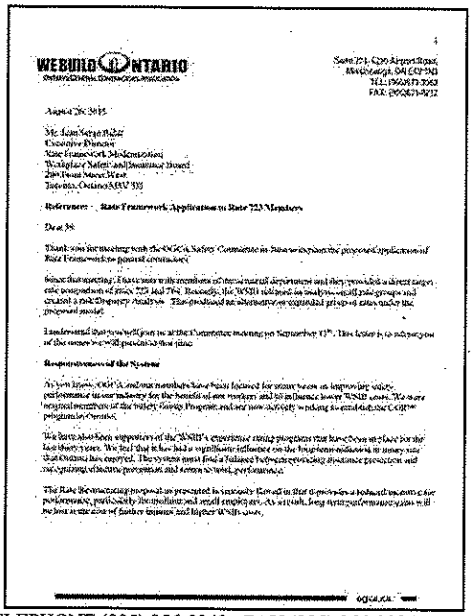
2012

Canada

1. The introductory section to the **North American Industry Classification System** ["NAICS"] by Statistics Canada offers some important and telling caution with respect to the utilization of the NAICS for other than "*statistical purposes*".

2. Statistics Canada makes the intended purpose of NAICS clear. Under the heading "**Purpose of NAICS**" the following is noted:

> NAICS is designed for the compilation of production statistics and, therefore, for the classification of data relating to establishments. It takes into account the specialization of activities generally found at the level of the producing units of businesses. The criteria used to group establishments into industries in NAICS are similarity of input structures, labour skills and production processes.
>
> NAICS can also be used for classifying companies and enterprises. *However, when NAICS is used in this way, the following caveat applies: NAICS has not been specially designed to take account of the wide range of vertically- or horizontally-integrated activities of large and complex, multi-establishment companies and enterprises.* Hence, there will be a few large and complex companies and enterprises whose activities may be spread over the different sectors of NAICS, in such a way that classifying them to one sector will misrepresent the range of their activities.
>
> NAICS has been designed for statistical purposes. *Government departments and agencies and other users that use it for administrative, legislative and other non-statistical purposes are responsible for interpreting the classification for the purpose or purposes for which they use it.* (Statistics Canada – catalogue no. 12-501-X, page 9).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3. In a letter to the RFR consultation group on August 25, 2015, the **Ontario General Contractors Association**, our CEC colleague, wisely noted that:

> The North American Industry Classification System (NAICS) was developed as an industrial classification system, not as a method of allocating insurance risk

4. The WSIB has rigidly applied NAICS to the RFR model, in a most fettered fashion, with the only variation being whether the application is at the NAICS 2nd, 3rd or 4th digit level.

5. There is no sound policy reason for this if other means of grouping employers satisfactorily meets the test for "actuarial predictability", which the WSIB has set at a $2 billion annual payroll.

> The WSIB assessed the actuarial predictability of each two-digit NAICS sector and determined that $2 billion in insurable earnings per year for each sector provided a level of predictability that can be relied upon to predict future outcomes and therefore fairly and accurately set premium rates.

6. When applying the $2 billion threshold against the *current* classification grid, one discovers that of the 12 construction RGs, five (5) RGs clearly exceed the threshold and a sixth comes very close.

7. Of the remaining six (6) RGs, they collectively have an assessable earnings base of $4.1 billion.

Class G Assessable Payroll by Rate Group
(From WSIB 2015 Premium Rate Manual)

Rate Group	Assessable Payroll ($ billion)
704 Electrical	$2.7
707 Mechanical	$3.1
711 Roadbuilding	$2.2
723 ICI Construction	$2.1
728 Roofing	$0.5
723 Heavy Civil	$0.9
737 Millwrighting	$0.7
741 Masonry	$0.5
748 Form Work	$0.5
751 Outside Finishing	$1.0
764 Homebuilding	$2.5

8. MCA Ontario sees no reason for strict adherence to NAICS as the default organizing tool.

9. MCA Ontario would prefer utilizing the current classification grid *unless specific RGs are not statistically credible.*

10. At a minimum, MCA Ontario proposes that current RGs 704, 707, 711, 719, 723, and 764 continue as currently structured and populated.

11. On the question of statistical credibility, while payroll is a sound indicator, certainly a sector with a $2 billion payroll and a very low injury rate (say under 1% such as many groups in the retail sector), does not necessarily sit on the same credibility plateau as a construction sector generating more claims albeit, with a lower payroll.

12. We note that it is interesting that **New Brunswick**, also organized under NAICS (and coincidently, once headed by WSIB RFR Special Advisor Doug Stanley – the primary initial proponent of NAICS), and which has nowhere near the payroll of the Ontario system (the total New Brunswick system

assessable payroll is $8.5 billion[2], whereas the Ontario construction sector alone has an annual assessable payroll of $19 billion), is able to manage seven (7) construction rate groups, those being:

RG 235 Highway, Street and Bridge Construction
RG 236 Construction of Buildings
RG 237 Heavy and Civil Engineering Construction
RG 238 Foundation, Structure and Building Exterior Construction
RG 239 Building Equipment Contractors
RG 240 Building Finishing Contractors
RG 241 Other Specialty Trade Contractors

13. At a minimum, MCA Ontario seeks the (potentially) proposed G3-1, G3-2 & G3-3 breakouts, but we do not adhere to a strict application of NAICS. For the most part, the current grid - at least for construction – is fine.

B. The question of rate groups and employer classification

1. The establishment of rate groups is a core and integral element of any WSI scheme.
2. Not only is a sound classification scheme an essential precursor to experience rating, as properly pointed out by the OGCA in its October 25, 2015 letter, equitable employer classification is an essential strategic component to injury prevention.
3. Rate classification is a valued requirement as: i) it is a prerequisite to experience rating; ii) it may be justifiable with respect to resource allocation in the long run and has an influence on prevention, and; iii) it is justifiable on the basis of employer equity.[3]
4. The long term result of a limited rate system would be increasing rates for small employers and decreasing rates for larger employers.[4] A single or limited rate approach would simply not be equitable, especially for smaller employers, who would be required to contribute at the average set rate and would lack the relative power to secure meaningful rate rebates, whereas the larger employer would be able to acquire strong experience rating gains.
5. Experience rating as a premium modifier is most effective as the size of the assessed payroll base increases. It is not possible for small or even medium sized employers to benefit in any material manner from experience rating (and this is the case be it under NEER, CAD-7, MAP or the proposed prospective RFR scheme).
6. A reduction of the number of RGs risks both adverse selection[5] and increased moral hazard.[6] Such a policy would pit smaller employers against larger employers and either promote small employers to be insurance free-riders or crush them under oppressive premium rates.

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[2] WorkSafe New Brunswick, 2015 Premium Rates, p. 4
[3] P.S. Atiyah, "Accident Prevention and Variable Premium Rates for Work-Connected Accident" Parts I & II (1974) 3 Ind. L.J. 1 & 89 at 1.
[4] Ian B. Campbell, "Experience Rating for Accident Compensation: A Necessity or Wishful Thinking" (1989) Department of Management Systems, Business Studies Faculty, Massey University, Occasional Papers: 1989 Number 4 at 18.
[5] Adverse selection refers to the greater tendency of high-risk individuals to seek insurance, particularly if the premium they would pay is less than their expected loss. Workers' Compensation Insurance In North America: Lessons For Victoria?, Upjohn Institute Technical Report No. 96-010, H. Allan Hunt, Assistant Executive Director, W.E. Upjohn Institute for Employment Research, Robert W. Klein, Director, Center for Risk Management and Insurance Research, Georgia State University, November 1, 1996, at p. 12-13. Found at: http://www.upjohninst.org/publications/tr/tr96-010.pdf
[6] Moral hazard occurs when insurance diminished an insured's incentive to prevent or contain losses, *ibid.*

7. We continue to support the principles advanced in the Board's papers, "**Revenue Strategy, A Framework for the 1990s and Beyond, 1989**" and "**Revenue Strategy, The New Classification and Pricing Strategy, 1990.**" While these may, in the eyes of some, be "old policies", the organizing ideas remain vibrant and advance employer equity over WSIB administrative ease.

8. The non-aligned experts[7] involved in the antedating 2011/12 **Funding Review Technical Sessions** affirmed that fair employer classification is an essential ingredient, although clearly expressed caution to proceed with a classification review while system funding remains the primary focus. We concur.

> Classification of employers in rate groups for rate setting purposes has been put on the table in the funding consultation process in order to examine any potential improvement that could lead to cost decrease and improvement in the funding position. ***It has no direct link with the funding situation.*** **(Experts' Report, p. 6)**
>
> ***It would be reasonable to postpone a Rate Group structure review because the expected impact of this kind of review would have on the funding status is low.*** **(Experts' Report, p. 6)**

9. Accurate and refined initial classification is an essential and integral element for the Board to achieve one of its fundamental objects to promote health and safety. Unless the initial classification generally represents the associated insurance risks, WSI premiums lose any connection to prevention. For all except the largest employers, ER is not an effective tool to calibrate the premium based on experience, be it prospective or retrospective. "Business activity" remains a sound and effective principle to act as the objectively based proxy for risk.

C. The question of employer incentives

1. ER was born out of a cooperative process in the early 1980s – in effect, a powerful WSIB/employer partnership. It took a decade to design, perfect and introduce ER on a broad scale (from 1982 to 1992). ER received wide-spread employer support as a means to establish a higher degree of employer accountability.[8]

2. Experience rating deals with the management of "moral hazard" in workers' compensation insurance, which is the "*resulting tendency of an insured to under-allocate to loss prevention after purchasing insurance.*"[9]

3. The underlying economic theory under-pinning experience rating is straight forward – higher costs internalized by employers for injuries should translate into workplace safety expenditures to the point where "*the marginal cost of reducing injuries equals the expected marginal benefits.*"[10]

4. Employers have generally supported the following principles: a) The primary principle of ER is insurance equity; b) ER must be cost based; c) Sector specific options and design variations should be permissible. We continue to support those principles.

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[7] The report from the non-aligned experts is hereinafter referenced as "**The Experts' Report**"

[8] For a more detailed history, see "***Chronology and History of WSIB's Incentive Programs***", January 2011, posted on the WSIB website at http://www.wsib.on.ca/files/Content/FundingReviewFRChronologyHistory/ExperienceRatingChronologyHistory.pdf

[9] Kenneth S. Abraham, "Distributional Risk: Insurance, Legal Theory, and Public Policy, (Yale University Press, New Haven and London) 1986 at 14.

[10] Barry T. Hirsch, David A. Macpherson, J. Michael Dumond, "Workers' Compensation Recipiency in Union and Nonunion Workplaces", (1997) 50 Indus. & Lab. Rel. Rev. 213 at p.6 of 73 (Westlaw).

5. The recent ER "debate" was triggered from long-standing opposition to the very idea of ER. The WSIB was not concerned before media reports surfaced (in 2008). In fact, in the mid-2000s, at its most senior levels, the WSIB affirmed ER as an essential program as minor program adjustments were designed and implemented.

6. Importantly, the systemic benefits of ER were heralded in a well-received report from the **Institute of Work and Health, "*Assessing the Effect of Experience Rating in Ontario: Case Studies in Three Economic Centers*", (June 2005)**: "*Our research indicates that NEER functions well, encourages prevention and contributes to positive workplace health and safety practices.*"

7. Recognizing that a design misstep will be unrecoverable, the Board must proceed cautiously. There is no urgency. There is no crisis. There are no deep-seated design flaws in the current programs.

8. Whatever the design arithmetic for an ER program, smaller employers must receive appropriate and special consideration. The "problem of small employers" is aptly addressed in a May 1998 report to the **British Columbia Royal Commission on Workers' Compensation:**[11]

> **Problem of Small Employers**
>
> It is generally acknowledged that the employer's ability to control the frequency or severity of workplace accidents is limited, so that a particular accident may or may not reflect the underlying risks of injury in the workplace. If the employer's workforce is large, then rate-makers can rely on the statistical "law of large numbers" to ensure that the accident rate accurately reflects underlying risks. ***However, if the firm is small, then the accident rate may or may not accurately represent workplace safety***. Consider a firm with a single employee who experiences an accident unrelated to "controllable" workplace risks. For example, while making a delivery, the firm's only worker is killed by a drunk driver. This accident would identify the employer as a high-risk employer when, in fact, underlying workplace risks may be considerably less than average for the rate group. A practical consequence of this problem is that such an accident, in the context of an experience-rating program that charges firms for all incurred accident costs, could easily bankrupt the small employer.
>
> **In addition, it is questionable whether extending experience rating to small employers is, in fact, equitable. *Equity is not synonymous with equality*. While equity implies that similarly situated firms should be treated similarly, it also implies that firms that are different may be treated differently.** Experience rating is designed to adjust a firm's compensation costs so that they reflect the underlying risks inherent in the individual workplace. However, as noted, the individual firm's accident experience is not a good measure of underlying risks for small employers, so that, an experience rating program that is optimal for large firms is likely to be less effective for small ones and vice-versa. It is questionable whether a rate adjustment that is largely based on random events outside the employer's control offers small employers any real incentive to increase workplace safety. (emphasis added)

9. In Ontario, a significant number of employers are quite small. 98,000 employers fall under the "**Merit Adjusted Premium**" ["MAP"] plan, compared to 16,500 under the **NEER** plan and 6,000 under **CAD-7**.[12] The **MAP** plan appears to be a compromise ER program, ensuring some level of simple ER participation with smaller employers (up to $25,000 in premiums), and is

[11] May 1998, Evidence on the Efficacy of Experience Rating in British Columbia, A Report to The Royal Commission on Workers' Compensation in BC, Hyatt & Thomason, found at http://www.wsibfundingreview.ca/resources.php and http://www.iwh.on.ca/wsib/resource-documents-on-experience-rating [hereinafter "Hyatt"] (last accessed April 8, 2011), at pp. 5-6. Professor Hyatt was a non-aligned technical expert participant at the Funding Review January 25/26, 2011 Technical Sessions.

[12] Funding Review, WSIB January 2011 "Employer Incentives" Deck, Slide 6.

relatively uncontroversial. As an alternative to the proposed RFR, serious consideration should be given to increasing the ceiling for MAP, which presently applies to $560 million in premiums (approx. 18% of the total Schedule 1 premium).

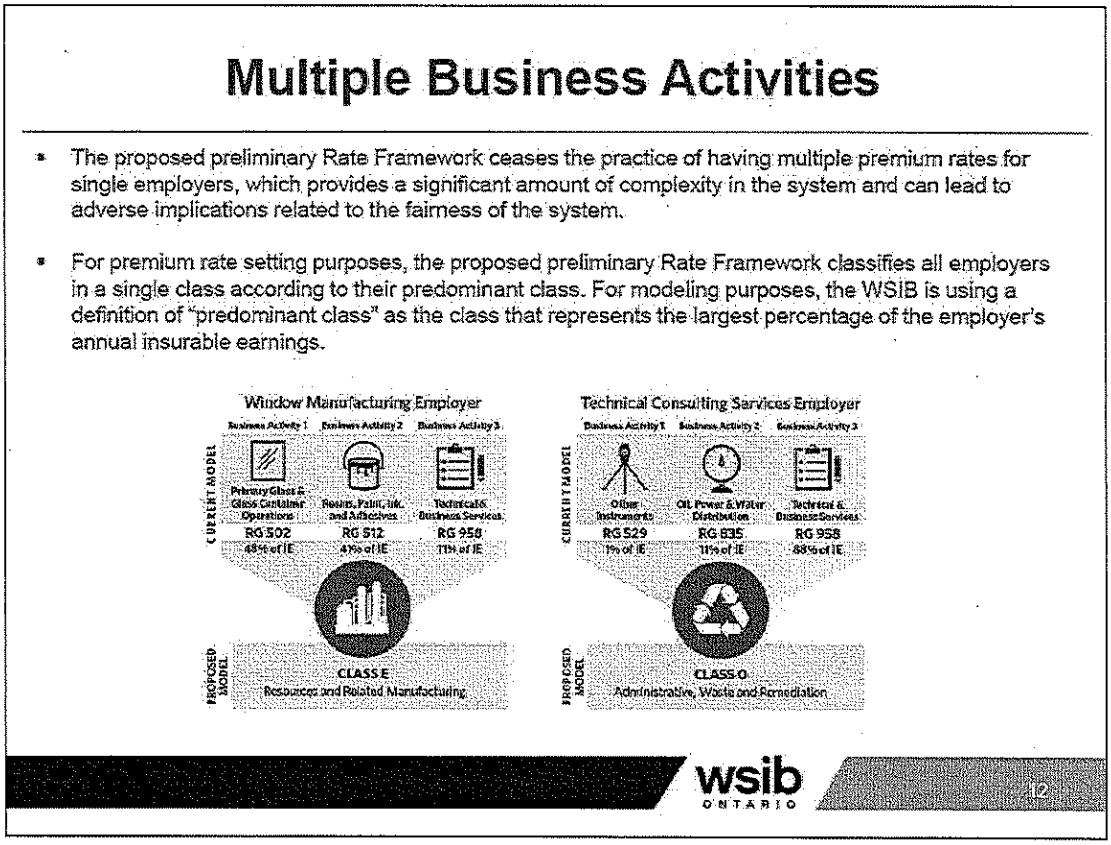
10. A fundamental ER design choice is whether the program is retrospective or prospective. Some industries may prefer one *over* the other or some elective approach (by the assessed employer) for one *or* the other. ***MCO Ontario, as does the CEC, strongly endorses a retrospective plan and will strenuously resist any movement towards a prospective ER plan, regardless of the (eventual) design arithmetic.*** With that said, we are not at all opposed to other industries adopting a different program. These are our reasons:

    a. *First*, the principal advantage of retrospective rating is a more direct and immediate link between claims experience and compensation costs.[13]

    b. *Second*, a retrospective scheme assists in middle management empowerment, proved to be a strong link between positive managerial action and senior management support and engagement.

D. Multiple business activities – a word of caution and a construction demand

1. **WSIB RFR Paper 3** at pp. 14 – 20 sets out the proposed approach. In a nutshell, the Board seeks to abandon multiple classifications and will classify individual employers based on the "predominant business activity". Predominant is easily defined (at Paper 3, p. 15) as the business activity "*that represents the largest percentage of the employer's annual insurable earnings*".



[13] Hyatt, at p. 11-12.

2. MCA Ontario opposes the planned move to assess on the basis of predominant business activity. We present several reasons.

3. *First*, it is clear that the Board's administration has less than a precise understanding of the actual effect of this proposed change. Post implementation, we predict that unintended consequences will be exposed in case after case. This approach represents a policy "shot in the dark" that has not garnered the depth of study one would expect for a profound policy adjustment.

4. *Second*, **WSIB RFR Paper 3** (at p. 19) clearly acknowledges that under the proposed RFR, even with **O. Reg. 175/98** intact, for most employers currently reporting under multiple rate groups, the issue becomes moot since "*in most cases, the business activities would fall under the same class*". In effect, the problem becomes redundant.

> Employers that currently report earnings under multiple CUs according to different business activities would continue to identify all of their earnings to the WSIB. In most cases, the business activities would fall under the same class (e.g., logging and reforestation services are two distinct business activities under the current classification system, falling under separate CUs and RGs for rate setting purposes. Under the proposed preliminary Rate Framework, both would fall under the same class: Primary Resource Industries).

5. *Third*, following the above, those employers post-RFR that remain in two or more business activities are clearly in distinct and disparate business. There is no sound policy reasons for incongruent business risks to be assessed at the same premium rate. **O. Reg. 175/98** represents a thoughtful and well considered method to fairly and effectively assess distinct business activities operating within the same enterprise. The Board's proposal creates an artificial premium rate that, except for the largest of employers, will not be mitigated through experience. This will skew otherwise competitive markets and present advantages and disadvantages where currently none exist.

6. *Fourth*, the Board's concern over "*a more burdensome classification structure and process*" is grossly over-stated. As already mentioned, most currently multi-classified employers, post-RFR will be not engaged in more than one classification unit. In effect, the RFR over-arching protocol resolves the worry. However, while the Board's proposal may be "easier" (albeit mainly for the Board), it is not fairer. Fair taxation, not easy taxation, is the objective.

> An employer may engage in more than one business activity. However, for premium rate setting purposes, classification would focus on what the employer is primarily in the business of, at the class level. In the current system, multiple classifications using several RGs are sometimes necessary for employers with multiple business activities in order to better approximate the "right fit" for the employer's premiums. This makes for a more burdensome classification structure and process.

7. *Fifth*, the proposal will eradicate the long-sought and hard-fought separate rate group for construction executive officers, now subject to compulsory coverage (even if not exposed to any construction risk). With the implementation of ***Bill 119***, MCA Ontario, along with the CEC and every major construction trade association, aggressively pursued a fair premium rate commensurate with the insurance risk. As is evident by the April 1, 2010 letter below, this was a priority right out-of-the-gate. Our efforts were successful. Construction executive officers not exposed to a construction risk are assessed under RG 755, Non-Exempt Partners and Executive Officers in Construction, at the fair rate of $0.21. We caution that any retrenchment of this policy will ignite a fire-storm of discontent in our sector.

Construction Industry WSIB Task Force

April 1, 2010

Ms. Dana Leshchyshyn
Executive Director, Operations, WSIB
Workplace Safety & Insurance Board
200 Front Street West
Toronto ON M5V 3J1

Dear Ms. Leshchyshyn:

Consultation on draft operational policies relating to Bill 119

On behalf of the **Construction Industry Task Force (CITF)**, I am enclosing the CITF response to the Board's "*Consultation on draft operational policies relating to Bill 119, mandatory coverage in the construction industry*" (reference your letter of January 18, 2010).

Our engagement on the development of *workable* policies is not coming to an end with these submissions, it is effectively beginning. As you are aware, the CITF has been a fervent supporter of *Bill 119*. However, more work is required to ensure the Board's policies receive the support of the CITF. As there is no real urgency at this point, and there is sufficient time to perfect the Board's policies, we are seeking to commence the more formal phase of policy development with a meeting with you and your colleagues to review our concerns and set out the next steps.

All that said, we are greatly concerned with what has been omitted from the policies.

First, notwithstanding an agreement from the WSIB at its most senior levels that a new rate group within the construction cluster for executive officers will be struck, no specific policy has yet been developed. As you know, we expect a new rate group with a premium commensurate with the true insurance risk of executive officers. CITF support for moving forward is contingent on such a policy being developed and presented to the CITF for ratification.

Second, the Board remains silent on a cornerstone commitment – to commence a process to explore the development of a verification system as contemplated by s. 152(1.1) and (1.2) of the *Workplace Safety & Insurance Act*. As you were present at the meeting held at the Minister's office last December, I will not repeat our position. The CITF expects that the Board will commence that dialogue before these policies proceed for approval. While the Board is approaching the policy development phase as being distinct from the verification protocol, the CITF links the two as being integral features of Bill 119.

We will be in touch to schedule our next discussion.

Yours truly,

C Thurston

Clive Thurston
Chair, CITF
cc: The Hon. Steve Mahoney, WSIB Chair
David Marshall, WSIB CEO
Tom Teahen, Chief, Corporate Services Cluster

8. We encourage the Board to more carefully assess this element of the RFR project. We encourage the Board to set this aside, at least at this stage, and re-assess the necessity post-implementation.

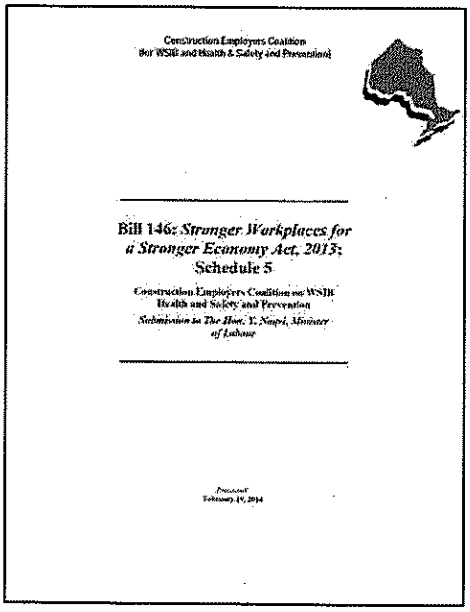
E. Temporary employment agencies

1. **WSIB RFR Paper 3**, at pp. 21 – 22, proposes an adjustment to the premium rate setting protocol for *some* temporary employment agencies.

> The proposed preliminary Rate Framework recommends that TEAs and their client employers would need to be classified in the same class in order to mitigate the premium cost avoidance issue. If this occurs, their premium rates would be similar in many cases.

2. MCA Ontario supports this recommendation.

3. In fact, this very recommendation was advanced by the CEC to the Minister of Labour with respect to Schedule 5 of the (then named) ***Bill 146, Stronger Workplaces for a Stronger Economy Act, 2013*** (and now *Bill 18, Stronger Workplaces for a Stronger Economy Act, 2014*).


Construction Employers Coalition
for WSIB and Health & Safety and Prevention

Bill 146: *Stronger Workplaces for a Stronger Economy Act, 2013*: Schedule 5

Construction Employers Coalition on WSIB Health and Safety and Prevention

Submission to The Hon. T. Naqvi, Minister of Labour

4. In part, this is what the CEC submitted when this bill was initially being considered:

> **CEC does agree with the need for premium equity – this can be immediately achieved without statutory or regulatory reform**
>
> While the CEC does not support Schedule 5 and is of the view it does not and will not deliver on the government's objectives, CEC strongly adheres to the principle that workplace safety and insurance costs should be the same for the same risk, an "apples-to-apples" or "level playing field" approach if you will.
>
> All temporary labour should be assessed based on the risk of the client employer, ensuring principled premium assessment.
>
> While for the most part this is consistent with WSIB priorities, current WSIB policy is a needless labyrinth of complexity. More importantly, current policy does not always ensure that our "apples-to-apples" preference is achieved.
>
> As a result, the government's worry that the WSI premium risk for *some* temporary labour may be less than if hired directly is a reasonable concern. This is presently a result of WSIB employer premium and classification policy, *albeit* a problem likely with some limited impact.
>
> ***CEC sees the need for WSIB policy reform and has a simple and specific but broad-reaching policy proposal to suggest.***
>
> Under the *Workplace Safety & Insurance Act*, S.O.1997, c. 16, Sch. A., as amended ["WSIA"] the WSIB Board of Directors ["BOD"] has broad policy setting powers. Section 159(2)(a) expressly confers the power to "*establish policies concerning the premiums payable by employers under the insurance plan*". This power manifests itself in the Board's design and maintenance of its employer classification and premium rate setting schemes, both elaborate, complex and intricate systems. While there is little direct legislative design imposed on the Board, the Board's polices adhere to Ontario Reg. 175/98.
>
> Our general apples-to-apples or level playing field principle is articulated to a degree in O. Reg. 175/98:
>
> > If an employer contracts with another person to have that person carry out an operation that would be a business activity or part of a business activity if the employer carried out the operation, the employer shall, for the purposes of determining what premium rates should apply to the employer, be deemed to be directly carrying out that activity. **O. Reg. 175/98, s. 10.**
>
> The CEC suggests that the principle set out in O. Reg. 175/98, s. 10 form the basis of a new policy dealing with the supply of temporary labour.

Currently, there are two separate classification rate groups ("RG") and premium rates for the supply of labour. The "**Supply of Non-clerical Labour**" is assessed under RG 929, with a premium of $5.05/$100 of payroll (more than two times the average premium rate). The "**Supply of Clerical Labour**", is assessed under RG 956 with a premium of $0.21/$100 of payroll.

With respect to the classification and assessment of the supply of non-clerical labour:

> Business activities include the operations of employment and temporary help agencies which supply non-clerical workers to non-associated employers on a temporary or long-term basis. **(WSIB Document No. I-929-01: Supply of Non-clerical Labour Operations, Amendment/07, January 05, 2009).**

However, there is a long list of exemptions:

Excluded are non-clerical workers whose work activities fall under the CUs listed below:

A-030-01, Logging Operations.
E-560-04, Marine Cargo Handling.
E-570-11, Supply of Drivers and Helpers.
G-732-02, Large Bridge Construction.
G-737-01, Millwright and Rigging Work.
G-737-04, Custom Welding Services.
G-748-01, Wrecking and Structural Demolition.
G-748-03, Structural Steel Erection.
G-748-09, Form Work (high-rise).
G-751-08, Steel Reinforcing.
G-764-01, Homebuilding Operations.
G-764-07, Supply of Labour, Construction.
H-861-05, Child Daycare and Nursery School Services.
H-875-14, Offices of Social Workers.
I-919-05, Supply of Labour, Restaurant/Catering.

The exemptions are clearly designed as an attempt to promote "apples-to-apples" premium assessment. They are however, cumbersome, confusing and may not always address the policy concern. Even the highlighted exemption above, "**Supply of Labour, Construction**" is confused with a list of its own exemptions (exemptions to the exemptions if you will):

> **Document No. G-764-07, Supply of Labour, Construction**
>
> Business activities include supplying labour to any industry to perform construction work, i.e. work that would be classified in a Class G (Construction) CU if carried on as a business activity in its own right.
>
> Excluded is the supply of labour to perform the following work:
>
> demolition (structural) or wrecking
> drywall and plaster
> high-rise forming
> large bridge construction
> masonry
> millwrighting and rigging
> roofing
> steel reinforcing
> structural steel erection
> welding
>
> Also excluded is the supply of labour to perform any work for residential construction which is 3 stories or less above grade.

The CEC policy solution:

Through WSIB policy, we recommend repealing current "Supply of Labour" Classification Units.

We suggest a simple policy statement in their stead (borrowing on the principle articulated in O. Reg. 175/98, s. 10):

> If an employer contracts with another person to have that person provide labour on a temporary basis to the employer, the premium rate(s) applied to that labour would be the same as if the employer hired the labour directly.

It is our considered view that this policy reform speaks to the government's concerns. If there is an additional worry that certain temporary employment firms may be conducting business while not being in good standing or up to date in their premiums, a Bill 119 type Clearance Certificate approach may be worthy of discussion.

F. Graduated claim limits

1. WSIB RFR Paper 3 (at pp. 29 – 30) introduces a question of graduated claim limits. The Board distinguishes the RFR proposal from current methodologies:

> In order to determine what the appropriate per claim limit should be at the employer level, the WSIB tested the current RG per claim limit (2.5 times the maximum insurable earnings ceiling (i.e. $84,100 for 2014 (2.5 x 84,100 = $210,250))). The WSIB found that applying the current RG per claim limit would be overly burdensome for small employers.

2. The Board proposes a graduated claim limit, with the following results:

Figure 9: Proposed Graduated Per Claim Limit Approach

Predictability Scale	2.5%	5%	10%	20%	30%	40%	50%	60%	70%	80%	90%	100%
Current RG method	2.5 times the maximum insurable earnings ($84,100) or $210,250											
Proposed Graduated Per Claim Limit Approach	0.5 times maximum IE ($84,100) or $42,050		2.5 times maximum IE ($84,100) or $210,250				5 times maximum IE ($84,100) or $420,500				7 times maximum IE ($84,100) or $588,700	

3. MCA Ontario supports the concept of graduated claim limits, and sees no reason to discard the overall approach suggested by the Board.

4. However, we advance a suggestion to enhance the policy objective being sought – to increase individual employer accountability as insurable earnings increase.

5. The problem with the Board's proposal is simple. The graduated ranges "move in jerks" with clear and significant demarcation lines.

6. There is a better way. Instead of moving with clear and jarring demarcation lines, move employers up the accountability grid in the same manner as current employer ER rating factors are calculated.

7. This simple enhancement ensures that a minor upward movement of assessable earnings does not drive a jarring move into a higher per claim limit. The movement is always gradual. Accountability is calibrated smoothly and fairly for all employers, while delivering the same objective.

G. Graduated risk band limits

1. **WSIB RFR Paper 3** presents an extensive presentation of risk bands (at pp. 60 – 68). MCA Ontario suggests that the concept of, and application of, "risk bands" will prove to be the most difficult for individual employers to understand and may well become the "Achilles Heel" of the RFR project. With no pun intended, there is a serious risk that, once RFR is "in play" employers will rebel when actual impacts become known.

2. As we have addressed the question of transition elsewhere, our risk band comments apply to "post-RFR-transition." In other words, the trauma of moving from current to proposed has been completed.

3. MCA Ontario admits difficulty in presenting other than generalized comments. As we have criticized earlier, we have not been presented with the most valuable background information – the presentation of the actual impacts for our individual members. Without that, informed comment is not possible.

4. In **Paper 3** (at p. 65), the risk band movement approach is summarized:

> *Analysis: Risk Band Movement and Stability*
>
> To ensure premium rate stability, year over year, employers would move from their Employer Actual Premium Rate towards their Employer Target Premium Rate. The WSIB tested in a fully developed model environment, the three risk band limitation for employers to move up or down, (while ensuring that for comparative purposes the organizations were active in both model years) to determine the amount of premium rate stability an employer would have over a number of years.
>
> ***Figure 25: Risk Band Movement***

	Risk Band Movement by Percentage (%)										
Model year	**<=-4**	**-3**	**-2**	**-1**	**0**	**+1**	**+2**	**+3**	**>=+4**	**Total**	**-3 to +3**
2007 to 2008	1.3	0.5	1.0	5.0	84.8	3.7	1.3	0.8	1.6	100.0	97.1
2008 to 2009	1.3	0.4	1.0	4.7	85.0	3.8	1.3	0.8	1.6	100.0	97.1
2009 to 2010	1.3	0.4	0.9	4.4	85.9	3.5	1.3	0.8	1.5	100.0	97.3
2010 to 2011	1.2	0.4	0.8	4.0	86.5	3.8	1.3	0.8	1.3	100.0	97.4
2011 to 2012	1.2	0.4	0.7	3.8	86.2	4.3	1.3	0.7	1.4	100.0	97.4
2012 to 2013	1.2	0.4	0.7	3.6	86.2	4.5	1.4	0.7	1.3	100.0	97.5

> This chart shows the percentage of employers who would see an Employer Target Premium Rate change year over year, relative to the Class Target Premium Rate, as though the proposed preliminary Rate Framework had been in place, focusing specifically at years 2007 to 2013.

5. In its July update, the Board comments on an alternative approach:

> **Graduated Risk Band Limits**
>
> Similarly, certain stakeholders have suggested that the WSIB explore linking the current three risk band limitation that limits year over year rate changes to provide greater rate stability, to the steps in the predictability scale (in a manner similar to the graduated per claim limit). This would see the current proposed risk band limitation of three risk bands (where each risk band represents a 5% increase in premium rate) vary based the predictability of employers. For example, this would suggest that the largest, most predictable employers could see an increased risk band limitation of +/- 5 risk bands, and smaller, less predictable employers could see a reduced risk band limitation of +/- 1 or 2 risk bands.

6. We cannot comment. While the Board is quite correct to respond to stakeholder suggestions, it must do so with the same depth and vigour as shown in its original blueprint. Yet, even with that, our capacity to respond is limited by the absence of integral data – the impacts on our members.

7. Our advice is clear and simple. Give us the data upon which to respond. Let us see the impacts of the original proposals and potential adjustments to that proposal.

8. We understand this will take time. This is where the time should be spent. Variable "what-if" scenarios are the precise way to get to the best design. This though requires a re-jigging of the Board's appraoch.

9. We are certain the Board will agree with us – the objective is to get it right; not get it wrong quickly.

H. The question of surcharges

1. **WSIB RFR Paper 3** introduces the idea of surcharges over-and-above the normal risk band movement proposals (at p. 74). We find the Board's discussion, at best premature. Any discussion on the need for surcharges should be deferred until RFR has been operational for at least five (5) years.

> The proposed preliminary Rate Framework seeks to consider the application of a surcharge mechanism that would be applied against the Risk Adjusted Premium Rate Setting process. Alternatively, the WSIB would consider having employers within each class collectively subsidizing the sustained poor claims experience of these employers. The WSIB would like to receive stakeholder input on the merits of surcharging and the proposed approach that should be considered.

2. However, the need to surcharge employers should not be viewed as some "super enhancement" (albeit it a negative one) but rather as a failure of RFR to deliver on its objectives.

3. We have noted the comment in the July, 2015 **RFR Update**.

> **Surcharging Mechanism**
>
> A number of stakeholders have expressed their support for a special surcharge mechanism for employers who are above the premium rate cap on a sustained basis, which would result in greater employer responsibility for those claims costs, rather than have the industry as a whole bear that responsibility. Similar to the approach in Alberta, some have suggested that the WSIB consider using the Workwell program to work with these employers to identify and address these circumstances, towards a progressive surcharge if no improvement is seen after a number of years of effort.

4. It must be recognized that the very idea of surcharges is an approach incongruous to premium rate "stability". The quest for stability is a clear foundational consideration of the entire RFR exercise. The argument for premium rate stability is at the forefront of the reasons for change, with this theme running throughout the Board's RFR presentations and papers.

5. In WSIB RFR Paper 2 (at p. 9), we are informed:

> - Employers have also expressed that premium rate stability is more important than premium rate responsiveness.

6. And, at p. 10:

> The issue of premium rate stability was also brought up by stakeholders as part of the 2013 Rate Framework Reform discussions. In this review, a number of design issues in the current experience rating programs have led to increased premium rate instability.

7. And, in WSIB RFR Paper 3 (at p. 34):

> Taken together, these design elements of the proposed preliminary Rate Framework promote a greater balance between premium rate stability and premium rate responsiveness that protects employers from premium rate volatility.

8. And at p. 60:

> The results of the above analysis showed that when the premium rate changes were small, it would take a longer time (either up or down) for employers to reach their Employer Target Premium Rates and there would be too much premium rate stability. Logically, the opposite would also be an issue when the premium rate changes were larger, employers would reach their Employer Target Premium Rate quite quickly and there would be too much premium rate responsiveness. The WSIB concluded that in order to ensure premium rate stability for employers, and that the trend in risk performance is real and statistically reliable (and not too responsive with the increases/decreases in premium rates), every year an employer could move either up or down to a maximum of three risk bands, relative to the performance of their class in order to reach their Employer Target Premium Rate.

9. And at p. 64:

> ***Pricing Fairness Recommendation #3.1, #4.2***
>
> *The existing experience rating programs (NEER, CAD 7 and MAP) should be abandoned and replaced with a prospective, risk adjusted premium rate setting system.*
>
> *There should be a drive to maximize the participation of employers of all sizes.*
>
> *A sectoral premium rate should be developed for each of the 20 - 25 sectoral groups, based on the collective claims experience all employers.*
>
> *Risk bands should be developed in each of the two-digit NAICS levels considering appropriate expansions and collapsing of the two-digit level, and ALL employers placed into those risk bands based on the risk that they present to the system, considering their level of actuarial credibility. If the costs increase the employer's rate would go up and if their costs decrease, their rate would go down.*
>
> *In the design of this system, stability is preferred over responsiveness and appropriate measures for stability ought to be considered.*

10. And at p. 65:

> To ensure premium rate stability, year over year, employers would move from their Employer Actual Premium Rate towards their Employer Target Premium Rate. The WSIB tested in a fully developed model environment, the three risk band limitation for employers to move up or down, (while ensuring that for comparative purposes the organizations were active in both model years) to determine the amount of premium rate stability an employer would have over a number of years.

11. And, at p. 69 a direct comment on the volatility of surcharges:

> While a retrospective program can be more responsive to short-term changes, this also means that there can be significant changes from year to year that result in employers moving from a surcharge position to a refund position, or vice versa. In the WSIB's view, and for many stakeholders, this means that the current programs are much too volatile.

12. And at p. 75:

> Throughout the document, the WSIB has illustrated, through examples, how the proposed preliminary Rate Framework would work for employers. These examples are intended to demonstrate that the Employer Level Premium Rate Adjustments would be a reflection of the real costs they are generating, balancing premium rate stability, while also ensuring measured responsiveness to employer efforts to reduce workplace injuries through risk and claims experience.

13. MCA Ontario opposes the imposition of surcharges but agrees to a review of this element no sooner than five (5) years after RFR implementation. On the question of the adaption of **Workwell** to address this, we are opposed. Instead, we suggest this. In instances where continued poor performance is noticed (and **WSIB RFR Paper 3**, at p. 68, suggests this is at most 1,600 firms), inform the responsible safety association.

I. Weighting experience window

1. In the July 2015 RFR Update, the Board advises:

> **Weighting Experience Window**
>
> Some stakeholders have suggested that the proposed approach may provide an imbalance towards greater rate stability, with not enough focus rate responsiveness. To counter this perceived imbalance, some have brought forward the consideration of amending the proposed six year window by adding more weight to the claims and insurable earnings experience on the more recent years (e.g. most recent 2-3 years) and less weight on the historic years (e.g. years 4-6).

2. We do not support the proposition referenced. Our comments in the section above can apply to this element as well.

3. Our lack of support for the alternative suggestion, is not to be interpreted as support for the Board's original proposal. We simply don't know and repeat our demand for firm specific information.

J. Catastrophic claims costs

1. **WSIB RFR Paper 3** (at p. 37) asks, almost as an aside, "*How should the WSIB handle catastrophic new claim costs situations (sic) that occur in a particular injury?*"

> **QUESTIONS FOR CONSIDERATION**
>
> 1. *How should the WSIB handle catastrophic new claim costs situations that occur in a particular class?*
>
> *a) Should the WSIB include these claim costs in the year that they occur, which may result in a higher premium rate being charged to employers?*
>
> *b) Or, should the WSIB reduce the premium rate increase and add the remainder as an amount for future premium rate consideration?*
>
> *c) How should catastrophic situations be defined? Should the WSIB consider pooling these costs at the class level or Schedule 1 level?*

2. While a solid question, it has not been contextually introduced. It must be explained. What is the data behind the question? What is a "catastrophic situation"? What is the Board's history with these circumstances?

3. Present us with an informed outline of the perceived problem and we will most certainly present you with an informed suggestion to address this.

PART V: Collectivizing certain WSI costs

A. Second Injury and Enhancement Fund

1. The WSIB SIEF is an essential insurance element that respects the competing intersection between *controllable* costs and the "thin-skull" legal paradigm governing entitlements.

2. Yet, **WSIB RFR Paper 3** (at page 33) makes it clear that the Board will completely eradicate this essential insurance feature from the Ontario workers' compensation system.

> *Proposed Preliminary Rate Framework*
>
> The proposed preliminary Rate Framework seeks to discontinue the SIEF program as part of a prospective premium rate setting approach.

3. MCA Ontario categorically opposes this position.

4. It should be noted that the current policy discussion initiated by the WSIB is virtually identical to a policy dialogue commenced more than twenty-five (25) years ago. Reference is made to the **WCB Discussion Paper**, ***The Application of the Second Injury and Enhancement Fund, January 5, 1990***. After an extensive consultation exercise (a more involved process than currently being addressed by the Board, triggered with the release of a detailed and comprehensive policy options paper), the Board shelved plans to adjust SIEF.

5. An in-depth SIEF policy discussion is set out at **Appendix A**. This is the same position advanced during the **Funding Review** consultation and the earlier phase of the RFR consultation.

6. Our positon has not changed. Not an inch. Nor should it.

7. For the reasons carefully set out, we are of the view that SIEF remains a valid and necessary program.

8. During the **Funding Review** consultation exercise, the FR non-aligned experts clearly advocated that the issue of SIEF should be left to the stakeholders.

> Employers feel comfortable with the current situation while workers are not vocal on the topic. This is a policy issue that should be discussed with stakeholders. **(Experts' Report, p. 8)**

9. SIEF must continue. The current design of SIEF is fair. SIEF is purely redistributive and does not add to system costs.

10. In its **July 2015 RFR Update**, the WSIB advised:

> **Second Injury and Enhancement Fund (SIEF)**
>
> The WSIB has heard many perspectives on the recommended approach to discontinue the Second Injury and Enhancement Fund (SIEF) program. This includes the concerns raised with the recommended approach and a clear consensus that some form of cost relief is required. Some stakeholders have also highlighted potential unintended consequences with the proposal to discontinue SIEF, while others have provided specific examples to support their view. These perspectives are important to us and will assist us in making the most appropriate decision on this point.

11. While the WSIB suggests some movement on its earlier position, and a clear consensus has emerged that "*some form of cost relief is required*", MCA Ontario wishes to be clear – we are asking that the *current* form of the SIEF remain in place, unaltered.

B. Long Latency Occupational Disease

1. Similarly, **WSIB RFR Paper 3** (at page 31) addresses the current exclusion of long latency occupational diseases ["LLOD"] from an employer's cost-record, but takes a contrary view:

> *Proposed Preliminary Rate Framework*
>
> The proposed preliminary Rate Framework is continuing with the current assignment of LLOD claims as a collective cost that is pooled at the class level. As these costs are excluded from being considered under the current three experience rating programs, likewise, they would continue to be excluded from being considered under the Risk Adjusted Premium Rate Setting process.

2. We agree with this approach.
3. No employer, no matter of size, is held to account for all WSI costs.
4. Cost accountability seeks an inherent policy objective – one of continual performance improvement.
5. By the time the LLOD is diagnosed, often years if not many decades after exposure, the workplace bears little resemblance to the workplace at the time of exposure. More often than not, the exposure has long been remedied.
6. Holding an employer accountable in these circumstances, does not advance any credible WSI policy goal.
7. This position is long-standing WSIB policy, approved at the WSIB Board of Directors. This issue was exhaustively addressed in the **Board's Discussion Paper dated December 22, 1986** which addressed whether LLOD costs should be excluded from costs for experience rating purposes. In part, the paper states:

> Ideally, given its principal objective of directly influencing workplace health and safety performance through adoption of preventative measures, an experience rating plan should focus on identifying and targeting for possible rebate or surcharge all risks which are reasonably avoidable by employer preventative actions, while spreading all remaining risks through collective liability principles.
>
> In practice, of course, it is not always easy to segregate risks in this fashion. However, on this basis, it seems clear that certain types of industrial disease claims, characterized by long latency periods (e.g. cancer, hearing loss) are not really amenable to direct influence by way of experience rating.
>
> The reasons for this conclusion include the usually unappreciated connection between a disease and a work process at the time of exposure, the very long time lag between preventative actions and the impact on worker health, and the difficulty of apportioning causation (and subsequent charges) between what may have been a number of employers over a long period of time.
>
> The conclusion that the long latency industrial disease should properly be excluded from the ambit of experience rating does not, of course, imply that they are somehow less worthy of attention; it simply means that experience rating is not an appropriate or suitable method for seeking to influence their incidence. The same considerations do not apply, however to short latency industrial diseases

such as dermatitis: there remains no reason why these should not be covered under the terms of an experience rating plan.

8. The (then named) WCB Board of Directors approved the exclusion of LLOD costs from an employer's record in **Board Minute #4, January 2, 1987, page 5147**, concluding that, "*Long latency industrial diseases should be excluded from experience rating*".

9. There is no sufficient reason to return to this question.

C. Collectivizing certain "Disablement" Claims Costs for the Construction Sector

1. In a similar vein to LLOD costs, and for the identical policy reasons, MCA Ontario and the CEC have long petitioned the Board to collectivize certain "disablement" claim costs that through the application of the WSIB policy "*the last employer of record*" are unfairly attributed to construction employers.

2. The "*black-letter*" application of this policy results in accountability for claims costs, even where the evidence proves that the condition was present prior to the worker commencing employment with that specific employer

3. While this appears to address a very narrow set of circumstances, it is a common problem within the construction sector.

4. Naming an employer the employer of record and thereby burdening that employer with the costs of a claim simply because it was the last employer rather than because the employment process was a significant factor in the development of the condition claimed, is contrary to the principles of fairness and equity, which are purportedly the foundation of the RFR exercise.

5. Section 15(3) of the WSIA distinguishes a Schedule 3 occupational disease from a disablement and provides a presumption linking the condition claimed directly to the last employment.

6. If the worker's disability does not meet the criteria for an occupational disease, it is then characterized as a disablement contributed to by the nature of the worker's employment with several employers [see for example **W.C.A.T. *Decision No. 381/ 92I* (February 26, 1993)**].

7. A disablement and an occupational disease are treated in essentially the same way when determining the date of accident, particularly where the conditions result from the cumulative effect of an exposure over months or years.

8. Yet, the costs of LLOD claims are allocated to the relevant class of employers rather than to specific employers [see for example **W.S.I.A.T. *Decision No. 622/98I* (June 10, 1998), par. 26**].

9. Appeals Tribunal jurisprudence suggests that in the case of a disablement, the WSIB identifies one employer as being responsible and charges that one employer with the costs of the claim, even though other employers may have contributed to the disability overall [see for example **W.C.A.T. *Decision No. 381/ 92I* (February 26, 1993)**].

10. The approach of choosing one employer among several has the potential for unfairness.

11. The WSIA and Board policy contain provisions providing for variations from the strict terms of a policy on the merits and justice of the case. **Operational Policy Document No. 11-01-03 "Merits and Justice"** notes there may be rare cases where the application of a relevant policy would lead to an absurd or unfair result that the WSIB never intended. Therefore, a decision-maker may depart from a policy if it can be shown that the case has exceptional circumstances that justify doing so [see for example **W.S.I.A.T. *Decision No. 1926/06* (January 30, 2007), par. 12**].

12. Yet, the routine application of the foundational legal principle occurs only at the Appeals Tribunal. For example, in **W.S.I.A.T.** ***Decision No. 1926/06*** the employer was granted its request for the costs of a claim to be excluded from experience rating even though the condition claimed was not included on the Board's schedule of occupational diseases.

13. Through the RFR exercise, we are asking that the costs of "long-latency" disablement claims (for want of a more apt descriptor) be excluded for construction employers in the same manner that LLOD claims are excluded.

D. Excess Earnings

1. MCA Ontario is disappointed at the blaring omission of the issue of the calculation of excess earnings in the RFR consultation.

2. WSIB officials are well aware of MCA Ontario's long-held views.

3. While the Board, at its most senior levels, pledged at the outset of the RFR project in 2013 that excess earnings would form part of the RFR process, the Board has bobbed-and-weaved on this issue ever since.

4. First, it was allocated to the RFR agenda.

5. Then, it was removed from the RFR agenda as it was slated for a direct consultation and dialogue. MCA Ontario agreed and welcomed this approach. High level discussions ensued, all initiated by MCA Ontario.

6. Then after many months of what later was interpreted as a clear act of prevarication, MCA Ontario was informed, after a direct follow-up it should be noted, that excess earnings was "bumped" from the policy agenda due to other more pressing concerns, such as the RFR exercise.

7. Later, MCA Ontario was simply advised, with no reasons offered, that the Board would not be proceeding with the excess earnings issue at all.

8. The Board's treatment of this important issue, thoughtfully presented by an association representing one of the system's largest rate groups, supported by the CEC, speaking for more than 25% of the entire WSI system, is, in a word, discreditable.

9. MCA Ontario fully expects the WSIB to recover from this maladministration through demonstrating a good-faith commitment to address this question within the next phase of the RFR consultation.

10. This is a technical issue that impacts pretty much exclusively the construction sector. A detailed analysis is attached at **Appendix B**. We will again summarize our positon.

11. Prior to 1989, for all industries *including* construction, excess earnings were calculated on a "pay-period" or pro-rata basis (example: if the ceiling was $31,200 per annum, premiums were not submitted for weekly earnings in excess of $600 [$31,200/52]).

12. In 1989 for all industries *except* construction the Board adopted a new method to calculate excess earnings commonly referred to as the "C.P.P. Method".

13. The C.P.P. method radically adjusted the way excess earnings were calculated. Under the C.P.P. method all payroll dollars are assessable until the ceiling is reached. This accelerated the flow of assessment to the Board particularly for high wage seasonal employers.

14. Employer stakeholders, *especially construction*, opposed the C.P.P. method. In spite of this opposition the C.P.P. method was approved by the (then named) WCB Board of Directors (for all industries *except* construction).

15. The Board Administration lauded the C.P.P. method as being simple, easily applied, and familiar to employers, but it will redistribute the premium burden among individual employers, and collect more premiums faster, problems which the Board considered only transitional.

16. For construction, the Board introduced a hybrid compromise method with the ceiling calculated pro-rata over 45 weeks (instead of 52).

17. This method remained in-place until 1998 when the WSIB *unilaterally* imposed the C.P.P. method on construction with no public consultation.

18. **Appendix B** is excerpted from a report presented to the WSIB several years ago, and re-introduced several times. The issue remains unresolved. While the ceilings and premium levels are not current, the principles remain untouched.

19. The C.P.P. method of premium assessment for high wage industries with a transient labour pool effectively leads to "double insurance." If every construction employer was exactly the same as the next, the calculation of "excess earnings" would not be a material issue. However, as each employer possesses unique characteristics, and as certain classes of construction employers are determinately distinctive (union versus non-union), a structural inequity persists which is no longer tolerable.

20. MCA Ontario fully expects the WSIB to address this important issue. Our request is simple - for the construction sector, return to the "pay-period" method of calculating excess earnings.

Concluding comments:

While progress has been made, **Job 1** of the WSIB continues to be the long term financial viability of the Ontario WSI system. There is no linkage between **Job 1** and the RFR project. We respectfully suggest that is distracting to engage in a massive project over a period of some years that will consume employer and WSIB resources, that will, if history offers any lesson, exhaust the Board. None of this contributes to the Board's primary focus.

We repeat our long expressed view that no real problem has been defined. A problem has been presumed. Employers have not been calling for any of these changes nor have employers ever advanced any suggestion for a complete revamp of rate classification or experience rating. This is 100% a WSIB initiative. Without employer support, radical redesign of the taxation scheme will likely be resisted.

We continue to be concerned with the consultation process. There persists a reticence to fulfill the commitment to ensure we understand at the level we deem to be necessary. We have advanced reasonable requests for information. They have not been honoured. We expect that as this phase of consultation comes to a close, the Board will re-group, develop the data we require, and allow us to commence the next consultation phase with the essential information.

All of which is respectfully submitted

Appendix A: Second Injury and Enhancement Fund

SIEF Plays a Vital Role

1. We see the existence of the **Second Injury and Enhancement Fund** ["SIEF"] as a vital and *increasingly* important component of today's evolving workplace safety and insurance ["WSI"] system SIEF is based predominantly on general principles of equity. Any attempts to abolish or significantly alter the present approach taken to SIEF would result in very significant, *avoidable* inequities.

2. In this discussion we wish to explore the function, purpose and usefulness of the SIEF. We have asked and answered three questions:

   a. *What are the policy objectives of a second injury and enhancement fund?*
   b. *Does the current policy fit with these objectives?*
   c. *What is the best model for a second injury and enhancement fund in the Province of Ontario?*

Primary Interest Must Be One of Equity

1. The Board's primary interest, and ours, must be the same - equity. As the funders, one of our paramount objectives is to promote *equitable* employer accountability.

2. It must be clearly understood that the SIEF adds no additional costs to the system. The SIEF is simply a mechanism to pool liability, and allocate financial accountability. SIEF "expenditures" are not additional expenditures.

3. The primary policy objective of the SIEF is to promote equity.

4. The SIEF is not viewed as a cost cutting measure by employers. Employers continue to view state of the art accident prevention programs as the key ingredient to cost reductions, with reinstatement and rehabilitation actions being second. ***SIEF is about equity - not cost reduction.***

5. SIEF is very complimentary to experience rating. *In fact, in the absence of SIEF, experience rating actually becomes quite unfair.*

6. In 1988, twenty-one percent (21%) of lost time injury ["LTI"] claims were incurred by individuals older than 45 years of age, whereas by 2007, those older than age 45 represented forty percent (40%) of the total LTI claims mix.[14] This represents a doubling of the claims mix represented by older workers which intuitively, would lead to a greater involvement of pre-existing or underlying conditions, the very triggers for the application of the SIEF.

7. Moreover, from 1998 to 2007, "sprains and strains" grew from approximately forty percent (40%) of total LTIs to forty-nine percent (49%), an increase of over twenty-two percent (22%) with the most dramatic increase occurring since 2003.[15]

8. This very admittedly cursory review nonetheless supports the proposition that the noted increase in the utilization of the SIEF is not only expected and consistent with the core policy objectives of the SIEF, but is a reflection of a change in the mix of claims trends over the past two decades, a proposition which attracted no attention from the consultant.

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[14] **Source:** Workplace Safety & Insurance Board ["WSIB" or "Board"] Annual Report Statistical Summary, 1997, Table 4 (p.7); 2007 WSIB Annual Report Statistical Summary, Table 5 (p.11).

[15] **Source:** 2007 WSIB Annual Report Statistical Summary, Table 8, Lost Time Claims by Nature of Injury or Disease (1998-2007), p. 13

Our overall position on the Second Injury and Enhancement Fund is:

1. The SIEF remains valid - it promotes employer equity and ensures fair employer accountability.
2. The SIEF is an essential insurance component to the WSI system.
3. We strongly support the continuation of the SIEF.

Focus of Our Submission - The Policy Objectives of SIEF a Second Injury and Enhancement Fund

1. Originally the use of a "Second Fund" in Ontario appears to be premised only on the desire to encourage employers to hire disabled workers. By Board order dated December 27, 1945, the "Second Injury Fund" was formally constituted. That Board order read in part:

   The Board orders that a Second Injury Fund be established. Where a workman has a second or subsequent injury which combined with a previous injury or disability causes costs in addition to the normal cost of such subsequent injury, the additional costs, on order of the Board, shall be charged to the Second Injury Fund.

2. The obvious fear or impetus to the policy was that without the establishment of a Second Injury Fund, removing a portion of the assessed costs from an individual employer's cost record, employers would be loath to hire or rehire workers with a recognized permanent disability.

Expanded Basis of SIEF - Equity

1. By the late 1960s and early 1970s the basis of the policy had implicitly expanded to include equity or fairness considerations. *It is our opinion that the theme of equity has remained as the chief policy behind SIEF since that time*.

2. In comments made by the Honourable Mr. Justice McGillivray, in his report of **The Royal Commission In The Matter of the Workmen's Compensation Act**, dated September 15, 1967, and as evidenced by a Board Order dated March 25, 1970, it was recognized that a prior condition, which had not been disabling, could precipitate a disability which was compensable, and that in this type of situation Second Injury Fund relief should be granted.

3. The Honourable Mr. Justice McGillivray stated in his report:

   I recommend <u>that in all cases</u> where compensation may involve activation or aggravation of a pre-existing condition a portion of the compensation awarded be paid from the Second Injury Fund. (emphasis added)

4. While the genesis of this shift in approach was the policy issue of employment for the disabled, the argument and recommended solution actually was one of employer equity.

Board Recognizes Equity as Basis for SIEF Relief

1. While the general theme of employer equity for SIEF was introduced in the late 1960s and early 1970s, the foundation of this theme was revisited, confirmed and expanded in the late 1970s.

2. The equity basis for relief under the "Second Injury and Enhancement Fund" (renamed from the Second Injury Fund) was recognized by Dr. William J. McCracken, Executive Director, Medical Services Division, and Mr. William Kerr, Executive Director, Claims Services Division, in their joint Inter-divisional Communication to the Board dated June 1, 1978. That document recommended that the Board Order of March 25, 1970 be rescinded and that a new policy on the application SIEF be approved.

3. In reference to the proposed policy Dr. McCracken and Mr. Kerr stated:

   The basis on which financial relief is given to the employer is clear and provides for equitable transfers to the SIEF.

   The Board followed their recommendation and approved the new policy on November 3, 1978.

   This policy, as opposed to its predecessor clearly indicated not only that the pre-existing condition need not be disabling, but that it need not be symptomatic.

   Page six of the new policy read in part:

   The medical significance of a condition is to be assessed in terms of the extent that it makes the employee liable to develop disability of greater severity than a normal person. There need not be associated pre-existing disability...

   Examples:

   Asymptomatic spondylolysis demonstrated on x-ray....

4. This change clearly reflected a focus on the equity basis for SIEF relief. The primary interest of the SIEF emerged as one of equity versus employment for the disabled.

5. ***Conclusion*** - Clearly then, the policy objective of the SIEF is one of equity. This has been and continues to be the core focus of the SIEF. While it is our view that there are subsidiary benefits, these are not the principal reasons for the maintenance of the program. The principal reason is employer equity.

The Need for Employer Equity

1. The need for employer equity in a no fault workers' compensation scheme is self evident.

2. No fault ensures entitlement regardless of blame. "No fault" does not mean direct employer accountability for all WSI costs. The principle of collective liability certainly speaks against this.

WSI Based on Collective Liability

1. WSI is fundamentally based on the principle of collective liability. Essentially, it is an accident insurance system for both employees and employers.

2. Theoretically, there are two main criteria to be considered when setting insurance rates:

   the risk factor or circumstances out of the insured's control; and,
   costs of claims made against the insurance fund.

But, Ontario System Not Purely Collective Liability

1. However, if the Ontario WSI system was based on a pure model of collective liability, then all employers would be assessed the exact same rate of premium notwithstanding the nature of their industry or their individual accident experience record. Under such a model, there would be no need for SIEF since no individual case would influence the employer's record.

2. While such a model would be true to the principle of collective liability, it greatly offends any notion of employer equity. To satisfy the objective of equity while maintaining the principles of collective liability, the competing interests of employer accountability and appreciation of individual risk must be balanced.

Need For Balance of Collective Liability and Individual Risk

1. The Ontario WSI system sets an individual employer's premium through an integration of the risk of the industry in which he is engaged (the premium rate), and the risk of the specific company (experience rating).
2. Overall, this is a sensible approach to balance the requirement for a collective liability with another competing policy theme - that of employer accountability.

Employer Accountability Instils Motivation to Prevent Injuries

1. It is generally accepted that if an employer is accountable for WSI costs, then there is created a motivation to keep those costs to a minimum.
2. This motivation transcends into positive behaviour through more effective accident prevention programs and thus, lowering the claims demands on the system. The result - fewer claims and lower costs. Experience rating serves this objective.
3. But - there must be a mechanism to balance competing interests.
4. If industry is separated into various classifications to reflect risk, and premium rates are determined by performance, then there must be some type of safety valve operating to ensure a safeguard against aberrant factors.
5. Second injury funds provide a check in the system to ensure that employers who have workers with pre-existing conditions are not unfairly burdened by costs over which they have no control.
6. ***Conclusion*** - Equitable employer accountability is an essential component to the WSI system. Our elaborate classification system coupled with experience rating serves this objective well. However, accountability must as well be equitable. SIEF assists in achieving this.

SIEF is compatible with and complimentary to Experience Rating

1. The safety valve provided by SIEF is most important when an employer is part of an experience rating program.
2. It is accepted that a primary objective of experience rating is to improve equity in the distribution of WSI costs.
3. While the SIEF and experience rating both promote equity among employers, the policies are inherently different. SIEF is designed to limit the effect of circumstances over which the employer has no control, while the intent of experience rating has been to motivate the employer to improve management over safety and reinstatement practices - areas where the employer is undeniably capable of more effective control in the workplace.
4. The foundation of experience rating is employer accountability, with premiums being more closely linked to employer performance. The objective is twofold - to ensure equity (those that cost more pay more), and to motivate (no accidents - no costs).
5. Inherently implied is the concept of prevention - an employer should be held accountable for the preventable injury.
6. If it is a principle of the WSIA that cost accountability promotes positive safety performance by influencing corporate behaviour, and that an employer's accident record is reflective of that employer's accident performance (positively or negatively), then it makes no policy sense to hold an employer directly accountable for costs of a claim over which the employer had no control

(and alternatively, not hold the employer accountable for the costs for which the employer was responsible).

Weiler Supportive of Concept

1. In Professor Weiler's 1980 report to the Ontario Ministry of Labour, there is no mention of any incompatibility between the SIEF and experience rating. In fact, in his discussion of experience rating, Professor Weiler made the following point:

   > Distributing the random cost of industrial accidents from the individual firm to the industrial group - sacrifices nothing of real value in the preventive function of experience rating.

2. This statement indicates that it highly unlikely that Professor Weiler would agree with a sweeping generalization that the SIEF would somehow undermine the purpose of experience rating.

3. As the precision and power of the experience rating system increases (as in the case of the NEER and CAD-7 models), the requirement for the safety valve is enhanced.

4. It is not only false that experience rating and SIEF are not compatible; the truth is that they are inseparable.

The Appeals Tribunal has long recognized the equity basis for SIEF relief

1. In ***Decision 182*** the Panel recognized that fairness or equity is the basis for the current application of SIEF. It is:

   > A fund for the purpose of relieving employers in a particular class from the "unfair burden" of assessment related to disabilities, the severity of which or the duration of which has been increased by the existence of a pre-existing condition. It calls this special fund the "Second Injury and Enhancement Fund" and it charges to that fund the proportion of the costs of compensation benefits or medical assistance which it believes to be fairly attributable not to the compensable industrial injury itself but to a pre-existing condition.

2. The Panel in ***Decision 431/89*** had the following comments concerning the principles behind SIEF.

   > It is clear...that the policy is driven primarily by equity and employment considerations (i.e. to relieve employers from a financial burden where a pre-existing condition enhances a compensable disability and to encourage employers to employ disabled workers).
   >
   > .....
   >
   > The equity considerations relate primarily to situations where the worker's recovery period is unusually long and probably attributable to some complicating factor other than the compensable accident.

3. In the absence of SIEF, any experience rating model becomes unfair, a position aptly demonstrated in the few decisions which follow:

   An employer was provided with 100% relief under the SIEF when a worker, who was a transport driver, "*got dizzy and blacked out*" while approaching a stop sign sustaining serious injury upon rear-ending another truck. The underlying dizziness was caused by a non-occupational disability and which led directly to the accident thus qualifying the employer for 100% SIEF. ***But for the SIEF, that particular employer would have been unfairly held to account for (in 2009) up to $375,500 cash*** **[WSIB Decision]**.

   In another case involving a transport driver, the driver went over a minor bump in the road but as a result of a serious and significant underlying condition sustained a catastrophic injury resulting in permanent total disability. The injury was deemed to have arisen out of and occurring in the course of

the employment and thus was compensable. In the absence of the SIEF the employer would be held to account for costs up to $375,500 cash. The employer was relieved of 100% of the cost of the injury, a fair and just result [**W.S.I.A.T.** ***Decision No. 138/98***, (September 21, 1998)].

A blind worker working in a retail outlet sustained serious injury while attempting to carry product upstairs. As the blindness was the cause of the injury, notwithstanding that the injury arose out of and occurred in the course of the employment, the employer was appropriately relieved of 100% costs of the claim [**W.S.I.A.T.** ***Decision No. 376/98*** (August 18, 1998)].

A worker with serious underlying pre-existing knee disabilities sustained a significant permanent aggravation through a minor employment-related event when he "stepped on an air hose at work". The employer was relieved of 95% of the costs under the SIEF. [**W.S.I.A.T.** ***Decision No. 526/08*** (April 1, 2008)].

4. Hundreds of similar examples could be elicited, however, the point demonstrated is clear and simple – in the absence of the SIEF, employers would be unfairly held to account for significant costs arising out of minor workplace events.

5. Notwithstanding that the worker would be duly entitled to full loss of earnings benefits attributable to an aggravation of an underlying condition, it would be callously inequitable to hold an employer to account for costs over which the employer did not, in any material way, contribute.

6. ***Conclusion*** - experience rating not only is compatible with SIEF, it is actually flawed without it.

The Current Model of SIEF is Essentially Fair

1. The current Second Injury and Enhancement Fund is simply an actuarial mechanism by which a share of costs assigned to individual employers, rather than to a class generally, are equitably spread among all rate groups in Schedule 1.

2. The current model of SIEF satisfies two basic requirements dictated by equity, as discussed earlier.

3. First, it recognizes that a pre-existing *condition*, as opposed to a pre-existing *disability*, can influence, i.e. prolong or enhance a period of disability resulting from an "accident".

4. Second, it attempts to quantify the degree to which the pre-existing condition influenced that disability, and transfers from the individual accident employer to the fund that portion of the assessed costs that are adjudged to be attributable to the pre-existing condition.

5. The policy proposed by Dr. McCracken and Mr. Kerr referred to earlier, and approved by the Board on November 3, 1978, introduced a matrix to try to simplify and clarify the calculation of the appropriate cost transfer from the individual employer to the SIEF.

6. The matrix sacrifices little in the proper and equitable application of SIEF while providing an efficient administrative tool.

7. ***Conclusion*** -- The current model of SIEF is fair.

SIEF Compatible with "Thin Skull" Doctrine

1. The expansion of the basis of SIEF to include equity considerations was mirrored by the introduction and development of the concept of "thin skull" in the WSI system. This introduction can also be seen to be driven by considerations of equity.

2. The Honourable Mr. Justice W.D. Roach in his **Report on the Workmen's Compensation Act** dated May 31, 1950 clearly identified the thin skull doctrine and recommended a change in Board Policy to protect the worker with a "thin skull".

3. The Board eventually responded to Mr. Justice W.D. Roach's concerns. Until 1964, where there were pre-existing conditions, it was the practice of the Board to make awards upon the basis of 50 per cent of the established disability. A Board order of December 2, 1964 ensured that workers with pre-existing disability would receive a full award with a portion allocated to the Second Injury Fund, clearly addressing two inequities in the system. The first, the previous policy of cutting benefits in half for a worker with a "thin skull" had been unfair. The second was to allocate a portion of the entitlement to the SIEF.

4. The introduction of the "thin skull" principle to the WSI system and the resulting application of SIEF is an example of how that system attempts to balance the interests of workers and employers.

5. As stated by the Panel in **W.C.A.T.** ***Decision 431/89***:

> It must be remembered that the compensation system in the Province of Ontario is a no fault system, fully funded by employers, with the objective of delivering equitable benefits to the worker within an equitable financial framework for the employer.
>
> ***As shown in the "thin skull" situation, SIEF is an indispensable balancing mechanism***. This balancing mechanism should today apply in every type of case where a pre-existing condition prolongs or enhances a disability, even where, such as in psychological condition of chronic pain cases that pre-existing condition can be more specifically described as a pre-disposition to develop a certain type of disability. (emphasis added)

Equity or Fairness Considerations Linked to Degree of Control

1. Both the WSIB and Appeals Tribunal, in recognizing the need for equitable relief to employers where a pre-existing condition has enhanced or prolonged a compensable disability, have implicitly recognized that an employer has no control over a pre-existing condition.

2. An employer, in contrast does have some control or potential control over whether a compensable injury occurs. Employers dictate what work is to be done, and have a very strong influence on how that work is eventually performed. Employers clearly have control over the safety of the work environment and workplace.

3. A pre-existing condition which enhances or prolongs a compensable disability is an aberrant factor which an employer cannot influence. SIEF is a safety valve which ensures that this aberrant factor does not bias an employer's compensation record.

4. ***Conclusion*** -- SIEF is clearly compatible with the thin skull doctrine.

Additional Considerations

1. In his evaluation of second injury funds (***Workers' Compensation Benefits: Adequacy, Equity and Efficiency***; **L.W. Larson and John F. Burton**) Larson explained:

> The second-injury fund principle recognizes that the full cost of disability sustained by the previously handicapped person should be borne by the workers' compensation program, but attempts to distribute equitably the burden by spreading the extra costs incurred as a result of the prior impairment rather than let them fall on the last employer.

2. Larson also made the following recommendations:

   - all jurisdictions should have second injury funds;
   - the funds should provide broad coverage;
   - a threshold level of severity for the previous impairment should be established;
   - funds should be fully publicized in order to gain optimum effect;

The Recommended Approach

1. We restate our support for the principles behind the SIEF. It is our view that the SIEF is valid, and represents an essential feature of the WSI system. We are fully supportive of employer accountability and endorse the theoretical models for rate classification and experience rating. Accountability and equity are not mutually exclusive concepts - in fact - they are clearly linked.

2. SIEF promotes employer equity. We recommend the following:

   a. That the SIEF continue to be supported.
   b. SIEF should be applied where:
   c. there exists a pre-existing condition the pre-existing condition has contributed to the causation or duration of an impairment

3. The present matrix for determining degree of accountability is continued.

4. That the SIEF be codified in ***Workplace Safety and Insurance Act*** with appropriate regulations.

5. That the Board automatically review every claim for potential relief under the SIEF at regular intervals. We strongly recommend that the Board take a more pro-active and interventionist role in the identification of cases requiring SIEF.

Appendix B: Excess Earnings

The Impact of WSIB Policy Pertaining to the Calculation of "Excess Earnings" for Construction Employers

A. Excess earnings: Background

1. Under the terms of the *Workplace Safety and Insurance Act,* S.O. 1997, c. 16, Sch. A., as amended ["WSIA"] workplace safety and insurance ["WSI"] benefits and employer premiums are capped at 175% of the average industrial wage [the "ceiling"] **[Note 1]**.

2. Earnings in excess of the ceiling, commonly referred to as "excess earnings", are not subject to premiums. The method to calculate excess earnings rests entirely within the policy purview of the Workplace Safety & Insurance Board ["WSIB" or the "Board"], so long as employer premiums do not exceed the ceiling **[Note 2]**.

B. Excess earnings: The policy framework - the evolution of WSIB excess earnings policy

1. Prior to 1989, for all industries including construction, excess earnings were calculated on a "pay-period" or *pro-rata* basis (*example*: if the ceiling was $31,200 per annum, premiums were not submitted for weekly earnings in excess of $600 [$31,200/52]). In 1989 for all industries except construction the Board adopted a new method to calculate excess earnings commonly referred to as the "C.P.P. Method" **[Note 3]**.

2. The C.P.P. method radically adjusted the way excess earnings were calculated. Under the C.P.P. method all payroll dollars are assessable until the ceiling is reached. This accelerated the flow of assessment to the Board particularly for high wage seasonal employers **[Note 4]**.

3. Employer stakeholders, especially construction, opposed the C.P.P. method. In spite of this opposition the C.P.P. method was approved by the (then named) WCB Board of Directors **[Note 5]** (for all industries except construction). The Board Administration lauded the C.P.P. method as being simple, easily applied, and familiar to employers, but it will redistribute the premium burden among individual employers, and collect more premiums faster **[Note 6]**, problems which the Board considered only transitional **[Note 7]**.

4. For construction, the Board introduced a hybrid compromise method with the ceiling calculated *pro-rata* over 45 weeks (instead of 52) **[Note 8]**.

5. This method remained in placed until 1998 when the WSIB unilaterally imposed the C.P.P. method on construction with no public consultation **[Note 9]**. While the Board recognized that more premiums will be collected faster, the *quid pro quo* would be lower construction premium rates.

C. Assessment of the impacts of the C.P.P. method in construction industry

1. Rate Group ["RG"] 707 (Mechanical and Sheet Metal Work) has been chosen for illustrative purposes. Through a review of premium rates alone, it seems that the Board was true to its word – premium rates did drop after 1998 (for RG 707 premiums dropped 18.1% from 1998 to 2000, from $4.93 to $4.04). In fact, rates even now are lower than in 1998 **[Note 10]**.

2. As a result of the premium rate reductions, the "per worker maximum premium" dropped from 1998 to 2000 (for RG 707, from 1998 to 2000, maximum premiums per worker dropped 16.5%, from $2,869.26 to $2,395.72). This decline trend though was temporary. Commencing in 2002 for RG 707, with some initial fluctuations, the trend was again upwards.

3. Significantly, while rates declined For RG 707, ***from 1998 to 2000 total premiums increased by $128 million*** (from $227.8 million to $355.8 million), a 56% increase, ***even though actual person hours increased by only 12.7%*** (1998: 12,033,181 hours; 2000: 13,558,894 hours) **[Note 10]**.

4. The switch to the C.P.P. method more likely than not was largely responsible for this dramatic increase in aggregate premiums, in spite of a decline in premium rates. In short, the Board lowered rates, but increased premiums collected.

D. A simple example to demonstrate the effect of the C.P.P. method:

1. The C.P.P. method is only of concern in high-wage high-turnover industries. High-wages is not enough and high-turnover on its own is not enough to red flag this policy. In the simple illustration which follows the *high-wage high-turnover* company is contrasted with the *high-wage low-turnover* company.

2. The basic assumptions are as follows:

   a. Both construction companies are in RG 732 (Heavy Civil). The "assessment year" is 2008. "Company X" has a stable labour force (low turnover), whereas "Company Y" has a high turnover rate.

   b. For each "person year of labour", Company X employs one (1) worker and Company Y employs two workers. In other words, for Company Y, the workers each work six (6) months – the same amount of labour is simply spread over two workers, instead of one. Worker "A" works January 1, 2008 to June 30, 2008; Worker "B" works July 1, 2008 to December 31, 2008.

   c. Each worker earns at a rate equal to two times the maximum ceiling ($73,400). For 2008, each worker earns $2,823 per week. Premium Rate: $6.34

3. **Example**: *The C.P.P. method; Premiums calculated on total actual earnings until maximum contribution reached.*

   a. *Company X*:

      i. Worker is engaged entire year. Earns $2,823 per week. Company X calculates premiums for the worker until the ceiling is reached.

      ii. Contributes premiums based on actual weekly earnings, with no regard for the ceiling.

      iii. Premiums per week are $178.98 per week. But, as Worker engaged for 52 weeks, premiums need to be contributed only until the maximum contribution per worker ($4,653) is reached, which is reached at Week 26. Total premiums are $4,653.

      iv. For Company X the impact of the C.P.P. method is purely cash flow. The C.P.P. method accelerates the flow of premiums to the Board, however, the total premiums payable is not altered.

b. *Company Y*:

i. Worker "A" earns $2,823 per week. Company Y contributes premiums based on derived weekly ceiling of $1,631.11 per week.

ii. Premiums per week are $178.98. Worker engaged for 26 weeks. Total premiums payable are $4,653.

iii. Worker "B" calculations identical. Total premiums are $4,653.

iv. Total premiums for Workers "A" & "B" are $9,306.

c. With this method, even though the exposures are the same for Company X and Company Y, Company Y will contribute *double the premiums* for the same insurance risk.

E. Relevant policy considerations

1. A policy review is likely warranted. The C.P.P. method likely remains unfair to certain firms as some firms with low labour turnover rates will contribute lower premiums for the same insurance risk. If the C.P.P. method is abandoned, construction premium rates may increase. **[see Note 11 for more policy considerations]**.

NOTES

Note 1:

1. A worker who experiences a loss of earning as a result of a workplace injury receives premiums under the WSIA for that loss of earnings **[WSIA, s. 43 (1)]** subject to certain limitations.
2. Worker benefit payments are limited to eighty-five percent (85%) of the difference between the worker's net average earnings before the injury and the net average earnings that the Worker is able to earn in suitable employment or business after the injury **[WSIA, s. 43(2)]**.
3. However, there is a statutorily imposed limit to the amount of "insurable earnings" which may be taken into account to calculate a workplace safety and insurance ["WSI"] benefit level. The WSIA imposes a maximum limit on the amount of average earnings to that of one-hundred and seventy five percent (175%) of the average industrial wage for Ontario **[WSIA, s. 54(1)]**, set by the WSIB based upon the most recent published material available by July first of the proceeding year **[WSIA, s. 54(2)]**.
4. Ontario employers are required by the WSIA to remit premiums to the WSIB with respect to insured workers. The establishment of premium rates rests within the exclusive jurisdictional purview of the Ontario WSIB. The Board shall determine the total amount of premiums to be paid by all insured employers **[WSIA, s. 81(1)]** and apportion the total amount of premiums among the classes, sub-classes and groups of employers having a regard for the extent to which each class, sub-class or group is responsible for costs occurred under the WSIA **[WSIA, s. 81(2)]**.
5. However, the WSIA clearly contemplates symmetry between the maximum premiums payable by an employer and the maximum benefits that may be claimed by a worker. Premiums are payable with respect to the maximum amount of average earnings determined "*as set out under the previously noted s. 54 of the WSIA*". **[WSIA, s. 88(3)]**.

Note 2:

1. The method utilized to calculate is established by the Board **[WSIA, s. 81(5)]**, and the Board may establish different payment schedules for different employers "*for premiums to be paid in a year based on such factors that the Board considers appropriate*" **[WSIA, s. 81(6)]**.
2. The WSIB is prescribed the powers to "*establish policies concerning the premiums payable by employers under the insurance plan*" **[WSIA, s. 159(2)(a)]** and has the more general power to establish its own "practice and procedure" **[WSIA, s. 131(1)]**. The Ontario WSIB has exclusive jurisdiction to examine, hear and decide all matters arising from the WSIA **[WSIA, s. 118(1)]**.
3. The WSIA does not set out any specific rules pertaining to "excess earnings" and these have been left to reside exclusively within the purview of discretionary WSIB policy. However, as broad as the Board's discretionary policy setting powers may be, they do not and cannot exceed statutory authority. In the context of "excess earnings" the Board is compelled to follow the statutory instructions that "*the premium payable by an employer applies only with respect to the maximum amount of average earnings*" **[WSIA, ss. 88(3), 54(1)]**.

Note 3:

1. The policy change was explored in the 1989 document, "***Revenue Strategy: A Framework for the 1990s and Beyond***" ["Revenue Strategy"] which had significant implications on most elements of the "business end of the Board's business", and materially reformed how employers were classified into rate groups and how premium rates were ultimately calculated.
2. The Revenue Strategy was released July 6, 1989, and following a short period of extensive consultation, the WCB administration presented a series of recommendations to the WCB Board of Directors on October 30, 1989 **[Report on the Consultation Process for the Revenue Strategy; Revenue Strategy Implementation Project, October 30, 1989]**. These recommendations were approved by the WCB Board of Directors November 10, 1989 **[WCB Minute # 3, November 10, 1989, p. 5327]**.
3. One of the proposals re-aligned the calculation of excess earnings **["Proposal 11 – Excess Earnings"]**. **Proposal 11** set out a recommendation which revolutionized the calculation of excess earnings, adopting what was referred to as the "*Modified Annual Maximum Method*", which has been commonly referred to as the "*C.P.P. approach*" as it mirrors the methodology employed by the Canada Pension Plan in calculating C.P.P. contributions.

Note 4:

1. The Board recognized that the C.P.P. method "*will accelerate the flow of assessment to the Board*" and that the impact "*will tend to fall most heavily on firms that tend to engage a disproportionately high ratio of seasonal workers*". Notably, with respect to the construction sector, the October 30, 1989 consultation report advised:

> **In the construction sector, the pricing of jobs may be affected since employers whose workers have already reached the statutory ceiling need not build workers' compensation premiums into the cost of a project. [October 30, 1989 Consultation Report, p. 9]**

Note 5:

1. Notwithstanding these shortcomings and stakeholder discord, the Board Administration proceeded to recommend the adoption of the C.P.P. method:

> **To conclude, each method proposed to calculate assessable earnings in seasonal industries is subject to its own shortcomings. On balance, however, Board Administrators continue to believe that the C.P.P. approach is the most desirable method for addressing this issue. Consequently, it is recommended that the proposal be adopted. To ensure that revenue neutrality is maintained, however, it is also recommended that, were individual rate groups will be adversely impacted by the effect of this proposal, any excess revenues should be estimated prior to the assessment year and taken into account when the relevant rates are set [October 30, 1989 Consultation Report, p. 9].**

2. The Board acknowledged that the C.P.P. method will "*increase the flow of funds from employers*" thereby offending the over-arching policy of "revenue neutrality". The Revenue Strategy was not intended to raise additional funds for the WSIB but to simply re-design the methodology for classifying employers and collecting premiums.
3. While the Board recognized the problem of "revenue neutrality" as being offended by several of the Revenue Strategy proposals, including **Proposal 11** [excess earnings], the remedy was to be globally introduced through premium rate setting protocols. Specifically, the Board proposed as follows:

> **To ensure, however, that the Board adheres to the principle of revenue neutrality it is recommended that, prior to the establishment of assessment rates for the 1991 and subsequent fiscal years, the Board Actuary estimate the projected additional funds (if any) to be generated by the Revenue Strategy and to then adjust the relevant assessment rates accordingly. Should this approximation either under- or over-estimate the funds in question, further changes should then be reflected in assessment rates for subsequent years [October 30, 1989 Consultation Report, p. 12].**

Note 6:

1. The Board Administration advanced the virtues of the "*new C.P.P. method*" as follows:

> **Under the new C.P.P. method, all earnings for each individual worker are assessed until the maximum assessable earnings ceiling is reached, regardless of the employment period. No pro-rating of the annual maximum earnings is required for workers who are employed less than a full year. The system is simple and easily applied, and is also familiar to employers because C.P.P. premiums are levied and collected in a similar manner. This ease of understanding promotes voluntary compliance, an essential component to revenue strategy [September 17, 1991 Report p. 9].**

2. The Board Administration however also reminds the Board of Directors that there are "*side effects*" associated with the C.P.P. method:

> **The C.P.P. method, particularly in combination with assessing on actual payrolls, has certain side effects. The most prevalent of these is a tendency to advance assessment payments in cases where workers earn at rates above the level of the assessable earnings ceiling. Furthermore, it may also have the effect of redistributing the assessment burden among individual employers and of expanding the assessable payroll base for the rate group as a whole. [September 17, 1991 Report p. 9].**

3. The Board Administration recognizes that the C.P.P. method may be "*problematic*" in high-wage, high-turnover industries (such as construction). The report notes:

> **The changeover to the C.P.P. method may be problematic, therefore, in high-wage, high-turnover industries. In these groups, an employee working for several employers during one year might earn well over the assessable earnings ceiling in total, yet it is possible that none of the employers in question would be able to deduct a portion of those earnings as excess earnings in determining assessable payrolls. [September 17, 1991 Report p. 9].**

Note 7:

1. The Board Administration was of the view that this was only a temporary or transitional problem noting that:

> **Once the assessable payrolls used in determining the assessment rate and the actual payrolls to which a rate is applied are both determined by the C.P.P. method, the higher assessable payrolls in these industries will be naturally compensated for, assuming other costs remain stable, by a lower assessment rate. [September 17, 1991 Report p. 9].**

2. While acknowledging that an inequity may present itself, the Board suggested this is transitory only, noting:

> **A potential inequity with this labour turnover effect only arises, therefore, when there is a changeover from one method to another. Until the assessment rates are being calculated with historical payroll data in which all assessable payroll was calculated by the C.P.P. method, there will be a changeover period during which the assessment rate will use historical data calculated by the pro-rated method. One the other hand, the assessable payrolls to which the rate will be applied during this period will be calculated by the C.P.P. method. The result, in some industries, will be higher rates being applied to higher assessable payrolls. [September 17, 1991 Report p. 9, emphasis in original].**

3. During the consultation process, several employer groups advocated that the principle of revenue neutrality ought to be applied at the firm level and not simply at the rate group level. In response the WCB Administration advised the WCB Board of Directors as follows:

> **During the consultation process, a number of employer groups advocated that revenue neutrality be applied at the lowest level, i.e. the firm level, wherever possible. However, it was generally recognized that it was not administratively feasible to apply a short-term adjustment to offset the rise in assessable payroll at the firm level [September 17, 1991 Report p. 10].**

Note 8:

1. On October 4, 1991 after further consultation with employer stakeholders, the WCB Administration recommended to the WCB Board of Directors that the construction industry be exempted from the C.P.P. method [**Revenue Strategy: Final Policy Recommendations, October 4, 1991, Minute #5, October 29, 1991, p. 5479**]
2. The WCB Board of Directors approved an alternative method to the C.P.P. methodology to be applied exclusively to the construction industry. The Board set out a modified version of the (then) method in place of "pro-rating" assessable payroll.
3. In response to the WCB Administration's reliance on reduction in premium rates approach to remedy any over collection of premium, COCA responded as follows:

> **However, COCA is concerned that such adjustments, based as they would be on average experience, would under-compensate some firms while over-compensating others, since employer turnover rates can differ considerably, within a given year from firm to firm [October 4, 1991 Report p. 3, emphasis in original].**

4. In a follow-up report of November 27, 1991, "**Revenue Strategy – Alternative to C.P.P. Method for Construction**", which was approved by the WCB Board of Directors in late 1991 [**BOD Minute #9, December 5, 1991 p. 5491**], set out an alternative to the C.P.P. method.
5. Part three of the report assesses the impact on the construction industry of the C.P.P. method. [**November 27, 1991 Report p. 2**].

> **Potentially, the construction industry may be affected more significantly than most others by the application of the C.P.P. method, since it combined relatively high wage levels with high labour turnover rates. In addition, hiring hall practices may diminish an employer's opportunity to mitigate the impact of the C.P.P. method by re-hiring the same workers after a break in employment. Other high-wage, high-turnover employers can often limit the impact on their assessable payrolls under the C.P.P. method by hiring back the same workers to the same job. In these cases, the employer would not be starting again from zero in accumulating assessable earnings, as it would be the case with the hiring of a new worker, but would simply continue the accumulation from the point that earnings had reached during the prior employment period(s) provided, of course, that the periods in question all occur within the same calendar year. Once the maximum was reached, any further earnings could be claimed as excess and, therefore, would not be assessable. [November 27, 1991 Report, pp. 2, 3]**

6. The WCB Administration and the WCB Board of Directors approved an alternative to the C.P.P. method to be applied exclusively for the construction industry. The policy is set out as follows:

> **Non-cumulative weekly maximum derived by dividing annual ceiling by 45**
> **Applied to each [full or part] week paid and/or work**
> **Subject to audit, but no annual reconciliation required for excess earnings. [November 27, 1991 Report p. 4]**

7. COCA recommended a variant of this option as follows:

> **A weekly non-cumulative maximum to be calculated by dividing the annual ceiling by 48.**
> **No year-end reconciliation should be required for excess earnings.**
> **A working week should consist of seven days [November 27, 1991 Report, p. 6]**

8. This recommendation was rejected by the WCB Administration, although, it was accepted that the weekly maximum would apply to a full period of seven (7) calendar days [**November 27, 1991 Report, Recommendations, p. 8**]

Note 9:

1. In 1998 the WSIB Board of Directors, with very little background information, retrenched from the 1991 alternative method for construction and subjected the construction industry to the C.P.P. method. In **WSIB Board Minute #15 of June 15, 1998, p. 6089**, the Board of Directors approved "*implementation of assessable payroll using C.P.P. method*" for the construction industry.
2. It appears that the June 19, 1998 recommendation [approved June 25, 1998] was simply one part of a larger review addressing general issues in the construction industry that would, using the Board's language, "*get their house in order*" [**June 19, 1998 Memorandum to WSIB Board of Directors, Linda Jolley, Vice-President Policy and Research**].
3. Absent from the 1998 material however is any reference to the long-standing and in-depth historical dialogue pertaining to the side-effects surrounding the adoption of the C.P.P. method for the construction industry. It seems to be the case that the focus of the Board of Directors in June, 1998 had less to do with the pros and cons of the C.P.P. method directly. The 1998 review was focused on more general "construction issues".

4. The "*assessable payroll-C.P.P. model issue*" was now being assessed within the context of a "*revenue leakage*" perspective. Little consideration was given to the equity and fairness of the C.P.P. method itself, which was the prime concern a decade earlier.
5. The presentation to the Board of Directors noted:

   Proposed method
   Excess earnings in Construction to be determined by C.P.P. method in the same manner as all other industries
   Result will be lower assessment rates for construction
6. This was the last policy consideration with respect to the excess earning issue in the Ontario Workplace Safety and Insurance system and within the context of the impact on the construction sectors.

Note 10:

1. The history of premium rates and earnings ceiling in Ontario from 1993-2008 is set out in **Table 1**:

Year	Rate Group Premium - 707	Earnings Ceiling
1993	4.84	52,500
1994	4.86	53,900
1995	4.84	55,400
1996	5.26	55,600
1997	5.00	56,100
1998	4.93	58,200
1999	4.42	59,200
2000	4.04	59,300
2001	3.89	60,600
2002	4.11	64,600
2003	3.96	65,600
2004	3.83	67,700
2005	3.67	67,700
2006	4.02	69,400
2007	4.02	71,000
2008	4.02	73,400

2. **Table 2** shows the total premiums collected by the WSIB for RG 707:

Year	Ceiling	RG 707	Total Assessable Payroll	Total Premiums
1993	52,500.00	4.84	867,304,570	179,195,159
1994	53,900.00	4.86	907,001,191	186,625,759
1995	55,400.00	4.84	968,719,414	200,148,639
1996	55,600.00	5.26	1,022,481,733	194,388,162
1997	56,100.00	5.00	1,062,266,101	212,453,220
1998	58,200.00	4.93	1,123,164,500	227,822,414
1999	59,200.00	4.42	1,245,067,075	281,689,383
2000	59,300.00	4.04	1,437,382,070	355,787,641
2001	60,600.00	3.89	1,620,456,437	416,569,778
2002	64,600.00	4.11	1,772,455,058	431,254,272
2003	65,600.00	3.96	1,951,219,574	492,732,216
2004	67,700.00	3.83	2,011,730,585	525,256,027
2005	67,700.00	3.67	2,144,617,461	584,364,431
2006	69,400.00	4.02	2,237,736,751	556,650,933
2007	71,000.00	4.02	N/A	N/A
2008	73,400.00	4.02	N/A	N/A

Note 11:

1. If it were the case that all construction employers had identical labour rates and labour turnover rates, the C.P.P. method becomes a moot point. If such were the reality, no matter what methodology the WSIB adopted with respect to the payment of premiums, all companies would be "in the same boat" and the Board's over-arching policy remedy, i.e., addressing the increase in revenue through premium rates, would be entirely satisfactory.
2. The C.P.P. methodology therefore becomes a relevant consideration and a potential source of inequity amongst different corporate players within the same rate groups who are subject to the same WSIB premium rate but different premium exposures due to variables in labour turnover rates.
3. In short, the high wage company with a high turnover rate is disadvantaged when contrasted against the competing company with a lower turnover rate. As the Board has observed in its historical review of this issue, "hiring hall" employers do not have the capacity through their own internal requirement policies to mitigate the impact of the C.P.P. methodology through re-hiring the same workers. Therefore, the C.P.P. methodology as well, creates a union versus non-union bias in the WSIB premium methodology (with union companies being disadvantaged over non-union companies) as well as a bias pertaining to variances in labour turnover rates.
4. It is evident that the 1998 policy revision went forward for reasons not entirely connected with the C.P.P. methodology. In fact, the historic and extensive in-depth discussions on the pros and cons on adopting the C.P.P. method for the construction sector were only summarily considered, if considered at all.
5. The adoption of an alternative to the C.P.P. method was no longer being viewed by the WSIB officials and WSIB Board of Directors as an issue of industry or individual employer equity, but instead as a "revenue leakage" consideration. In other words, the Board's institutional focus had significantly evolved and changed without any footing in the policy rationale against the adoption of the C.P.P. method for the construction sector.
6. The long-standing perspective of the Board's administration that the C.P.P. methodology will be counter balanced by lower premium rates was unquestionably accepted by the WSIB Board of Directors without any extensive analysis or background data being presented.
7. The 1998 policy decision must also be analyzed within the context of events contemporary to that time. There are two prime indicators that act as core performance measurements of the WSIB – premium rate levels and the Unfunded Liability ["UFL"]. It should come as no surprise that the WSIB possesses a clear institutional interest to ensure that both these indicators are as low as potentially possible, while still ensuring that the WSI system adheres to basic sound governance parameters as guided by prudent fiscal management and as demanded by the WSIA.
8. In the years just prior to 1998, the WSIB was failing on both of these prime indicators – premium rates were on the rise, as was the UFL. WSI reform was an ingredient to 1995 election commitments, and by 1998 the government and the WSIB expressed clear commitments to improve performance as measured by these over-arching parameters.
9. Therefore, a policy decision that would both reduce premium rates and yet still increase the aggregate premiums collected, would fit well within the institutional interests of the Ontario WSIB, even if some individual firms were disadvantaged (in the manner canvassed by the Board itself and the industry in the earlier policy debates on this subject).
10. The C.P.P. method was therefore an attractive policy alternative that proved irresistible. Its integrity had been long established and in fact had been in place for all "other than construction" employers for several years, had strong internal support, allowed for lower premiums while raising at least the same aggregate premium (and *may* have increased the overall premiums collected).
11. With one policy move, the WSI system had the appearance of more positive performance indicators with actual overall performance likely remaining constant. Irresistible indeed.
12. It is important and of significance that the WSIB [and WCB] Administration(s) had strongly urged the adoption of the C.P.P. method since 1989 for construction and all other industries. The "construction exemption" and the later "construction alternative" were put in place through the lobbying efforts of the construction industry (principally though COCA) and did not arise from any unilateral administrative recommendation from Board officials.
13. While at one level it is clearly evident that the adoption of the C.P.P. methodology in the context of calculating excess earnings is problematic to the construction sector, the question the industry must grapple with is whether or not the premium rate "remedy" is sufficient to counter balance the adverse effects of the adoption of the C.P.P. methodology.
14. It goes without saying that should the Board rescind the C.P.P. methodology for the construction industry (which is within the scope of its discretionary authority under the WSIA), or adopt an alternative, premium rates will increase.

15. In other words, there will be a clear cause and effect in the context of premium rates. In the earlier stages of the policy dialogue on the adoption of the C.P.P. methodology, the industry (through COCA) initially recommended that the WSIB administration consider alternatives that would allow a "firm level" remedy. These recommendations were outright rejected by the Board Administration at the time as being administratively unworkable.
16. Precise recommendations of a "firm level" approach were not discovered but it is at the firm level where the inequities arise and must be addressed. The payroll calculation method in place before the adoption of the C.P.P. method (the daily or pay-period maximum approach) provided equity at the firm level.
17. The Board's assertion that this led to a confused system and aberrant impacts was never challenged. The policy documents do not present any evidence of the Board's assertions.
18. It is <u>not</u> likely the case that all construction employers have very similar or identical exposures under the C.P.P. methodology and from this perspective re-opening the policy discussion has merit.
19. This will no longer be seen as an issue over which the Administration has a clear policy vested interest and therefore, the industry will be "on it's own" in developing the case for policy reform.
20. In addition, and of significance, WSIB premiums rate policy has an inherent political component. Increases in premium rates are very visible, and attract extensive scrutiny when on the rise. Increasing aggregate premiums through adjustments to the premium calculation methodology has an allure that brings a shroud of protection from increased public scrutiny. Raising tax rates is very public, whereas raising revenues through a complex application of technical rules is well hidden.
21. While retrenchment from the C.P.P. method will increase premium rates, in the long-haul, this may add more accountability to the Ontario workplace safety and insurance system, for the industry and the Board.

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ONTARIO BUSINESS COALITION (OBC)

October 2, 2015

Sent Via E-Mail: consultation_secretariat@wsib.ca

Re: WSIB Rate Framework Modernization Consultation

On behalf of the Ontario Business Coalition (OBC), we submit the attached response to the Workplace Safety & Insurance Board's (WSIB) "Rate Framework Modernization" consultation.

By way of introduction, the Ontario Business Coalition (OBC) is the largest coalition of employer associations dedicated to fairness in workplace safety and insurance. It includes employer associations from manufacturing, construction, petroleum products, retail, Schedule 2, hospitals, long term care facilities, home health, and staffing services industry. Collectively, our construction, health care, manufacturing and services members account for approximately more than 80% of the Workplace Safety & Insurance Board's ("WSIB") Schedule 1 covered employment.

OBC members are committed to the objectives of promoting an equitable and sustainable workplace safety and insurance system. We are committed to proactively influencing the "WSIB" and government on the design, direction and administration of the workplace safety and insurance system.

OBC appreciates the very structured approach which the WSIB has implemented in carrying out this consultation, which has allowed stakeholders many opportunities for meeting with staff and collecting additional data which is critical for providing a more thorough response. We agree that the complexity of the issue warrants a more engaged and lengthy consultation.

OBC looks forward to providing more input in the next phase of this consultation.

Yours sincerely,

Ian Cunningham
Chair

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ONTARIO BUSINESS COALITION (OBC)

Ontario Business Coalition
Submission to:
Workplace Safety & Insurance Board's
Rate Framework Modernization Consultation
September 2015

The following input is being provided on the key themes set out in the Workplace Safety & Insurance Board's Rate Framework Modernization Consultation and July 2015 Update.

1 Risk Disparity/Appropriate Number of Classes

The OBC continues to believe that the Risk Disparity and the Appropriateness of Classes is the most important element in the new framework.

More specifically, setting an equitable Class Target New Claims Cost component of a premium rate is critical to the success of the system. It will not be valid to set inequitable Class Target New Claims Cost components of the final premium rate and suggest that experience rating will correct the inequity. This is not the purpose of experience rating. For the vast majority of employers the Class Target New Claims Cost component will constitute the dominant factor in their final premium rate.

A separate one page document is enclosed setting out some comments on work done so far in the project on this issue.

Also enclosed are documents, addressing three existing classes, which trace the movement of existing rate groups into the new 32 Class proposed framework. The classes are:

Class D Manufacturing
Class G Construction
Class H Government and Related Services

It is apparent that the movement and division of rate groups in these existing classes shows that considerable work remains to be done on the risk disparity issue and assigning of equitable Class Target rates. Comments are included in each of the three

documents and we note that additional context and elements of the framework, such as moving to predominant business activity, may need to be considered to further understand the degree of disparity and what it means for the business activity.

2 SECOND INJURY ENHANCEMENT FUND

It appears that many OBC members wish to retain Second Injury Enhancement Fund (SIEF) relief in some form.

However, with the dramatic changes in the type of industries that will form Ontario's economy in future, it is clear that employees will no longer have long continuous careers in one industry and will bring pre-existing conditions to new employers.

Ontario should examine the approaches taken in other provinces. Perhaps a Class should have the option to opt in or out of SIEF if it is agrees that SIEF costs are to be allocated and shared at the Class level. WSIB needs to continue to implement and adhere to the aggravation and pre-existing policies that are now in place.

3 Long Latency Occupational Disease (LLOD) costs

OBC members are generally supporting the continued exclusion of LLOD claim costs from an employer's experience. However more discussion is warranted on whether some types of LLOD could be assigned at the employer level, some types assigned at the Class level, and some types assigned at the Schedule 1 level, based on the type of LLOD.

4 Experience Window for Experience Rating

OBC members wish to have recent years' experience given more weight in the 6 year average experience window. Perhaps the most recent 3 years could have stronger weight to give more exposure to recent improvements or deterioration.

5 Maximum Risk Band Movement Year over Year

The proposal is to limit premium rate movement to 3 risk bands up or down year over year, where a risk band represents a 5% move in rate. Larger employers with high credibility attached to their experience could easily generate more than 3 times 5%, or 15% move in rate. Thus it is understood large employers would like the greater movement to be possible.

But for small employers who have low credibility, such as less than 10%, it is not possible to generate a move of 15% in a year. So it may be unnecessary to limit anyone to less than 3 risk band movements in a year.

All of this is linked to how powerful the predictability or credibility scale is by size of employer. Also if new class target rates are widely disparate from existing rate group rates there will be demand for greater available movement.

6 Surcharging Mechanism

The surcharge concept is acceptable but "blips" in experience should not constitute a basis for a surcharge. There should be a reasonably long period of adverse experience to justify the surcharge.

7 Fatal Claim Policy

The existing policy will not work under prospective experience rating. It is better to assess the employer's with the average death claim cost across Schedule 1 for any death claim, regardless of the existence of dependents. This average claim cost on the employer's record could be subject to any individual claim limit appropriate for the size of employer, and then experience rating applied. We propose that the WSIB adopt the British Columbia approach, of using the average cost of fatality claims, which is approximately $210, 0000.

8 Construction Executive Officers' Premium Rate

Since Construction executive officers must now be covered mandatorily as employees for workers' compensation purposes, it seems unusual to have a special rate within an entity for these employees. It certainly will encourage more employer groups to request special rate concessions for employees who apparently are not in the "hands on" business activities. The whole premise of premium rates is that the same rate applies to all employees.

9 Multi rating vs Single Rate per Legal Entity

It appears the new concept of a single rate per legal entity regardless of multiple business activities is problematic. It does appear some accommodation is needed where a legal entity owns multiple businesses that have no relation to each other.

10 Prospective vs Retrospective Experience Rating

A separate one page document is enclosed proposing more information and discussion on the structure of prospective experience rating going forward. For instance, there has been no discussion about the implication of experience rating the Unfunded Liability component in an employer's premium rate. Some comparison of the strength of experience rating under the two approaches should be prepared, for the same level of claims experience relative to expected costs.

Yours sincerely,

Ian Cunningham
Chair

WSIB Premium Rate Framework Project

Issues for Ontario Business Coalition

Risk Disparity Analysis

The Risk Disparity Analysis prepared by the Board is very useful and helpful to solve the problem created by use of only 22 new classes (rate groups) and by requiring a rate group to be 12 times larger in future to have actuarial predictability.

The new work has addressed the issue of size threshold for a class/rate group by lowering the required minimum size from $2billion of annual earnings to $1billion in simple terms.

Next, the OBC had requested that new target premium rates for rate groups should be in the range of no more than +/-20% of existing rates.

The Risk Disparity Analysis set a boundary of +/-20% where the new Class Target Premium Rate is greater than the Schedule 1 rate of $2.46. It set a boundary of +/-40% where the new Class Target Premium Rate is less than the Schedule 1 rate of $2.46. It is not explained why this decision was taken. Further the comparison of Class rate here is not to the existing rate group rate. The comparison is to the next level of NAICS industry subclass rate. This definition is not completely clear.

This work expanded the number of new Classes(rate groups) from 22 to 32. All of this seems reasonable to help with the risk disparity problem. The Board has also provided to OBC a substantial table showing how each rate group would be allocated or divided and allocated into the new Class framework. This permits further analysis to see whether the new target rates are within the +/-20% threshold of existing rates. Specific analysis has been done on three existing classes – D, G and H in separate documents.

It seems quite possible that some existing rate groups do need to be split because they have at least 2 quite different risk groups within the rate group, and an analysis of past experience would justify a split. Next, the Board has spent effort trying to show how widely diversified actual results are within a rate group by employers. Perhaps more time needs to be spent understanding the issues implied by this.

Moving forward three issues continue to need work:

1. OBC continues to believe a 20% difference from existing rates is the threshold.
2. Minimum credible size for a new Class needs agreement
3. Ultimate number of new Classes needs agreement

WSIB Premium Rate Framework Project

Issues for Ontario Business Coalition

Prospective vs Retrospective Experience Rating

So far there has not been a lot of time spent on thinking about the different impact of a new prospective experience rating system vs the impact of the existing NEER system on the net premium cost that the employer ultimately pays.

Under the NEER program only the new claim cost and overhead components of the premium rate are effectively experience rated. The UFL component does not generate any refund or surcharge under the NEER program. Thus the actual vs expected claims and overhead costs are compared, credibility factors applied to each, and a refund or surcharge is generated.

Under the proposed prospective experience rating approach the actual claims costs are compared to the expected claims costs, with credibility factors applied to each to develop a percentage factor. This factor essentially says the credibility adjusted actual claims costs are, say, 85% of expected, or say, 112% of expected claims costs, as the case may be. This percentage adjustment factor is then applied to the Class Target premium rate to produce the Employer Target premium rate. Because the factor is applied to the full premium rate essentially the Claims, Overhead and UFL components are <u>all</u> receiving the same experience rating adjustment as the claims cost component. For the same actual claims costs, and if the same credibility factors were used this prospective rating approach is clearly more powerful than the retrospective NEER formula. Also, is it consistent with sharing the UFL at the Schedule 1 level?

Next, under the new approach, the comparison of actual to expected claim costs will have pooled claims for SIEF, LLOD and claim limit excesses removed, similar to the current system. But the experience rating percentage adjustment to Target rates is applied to the full premium rate, which, of course, includes these pooled claim costs. Does this mean we are experience rating the pooled claim costs?

Finally the WSIB paper suggests the prospective approach eliminates off balances. Is this correct? It seems possible to have prospective adjusted rates that will not replicate the total required premium at the system level, either because of systemic issues or experience imbalances. Other systems do include small premium adjustments to correct this.

It seems some further clarification and discussion is warranted.
Oct. 2015.

COMPARISON OF PREMIUM RATES BY RATE GROUP

UNDER

CURRENT RATE STRUCTURE VS PROPOSED NEW STRUCTURE

As of September 2015

Class D Manufacturing

A comparison of premium rates under the Current Premium Rate Structure vs the Proposed Preliminary Rate Framework is needed for each of the existing rate groups. A table is being prepared for each existing Class covering all rate groups in the Class. The year 2014 is the year of data.

A table for Class D - Manufacturing is attached to illustrate this comparison.

For the Current Rate Structure two premium rates are shown for each rate group in respect of 2014:

(i) Actual 2014 billed premium rate as set out in the premium rate manual. New Claim Cost component and the total Premium Rate are shown. This is the "frozen" premium rate.

(ii) Adjusted 2014 premium rate. NCC has been adjusted to reflect the actual 2014 new claims cost. Overhead and UFL components have been added using the current formula methodology. The "frozen" final rate aspect has been removed. This adjusted 2014 rate is the correct rate that should have been charged in 2014 under the current methodology.

The Schedule 1 average rate is $2.46 and the New Claims Cost is $1.10.

It is useful to understand that the Schedule 1 average rate of $2.46 is 2.24 times the NCC of $1.10. It is the Admin/Overhead and UFL components that make up the extra premium above the NCC of $1.10. This ratio of 2.24 is not constant for each rate group essentially because some of the fixed Overhead costs weigh proportionately more heavily on the lower premium rate groups. When allocated correctly the ratio ranges from 2.1 to 2.7 times the NCC. High ratios for low premium rate groups. Low ratios for high premium rate groups.

When examining the "frozen" 2014 billed rates it is apparent that these ratios are "all over the map". Mostly this is because NCC's changed over the past few years and this change did not get reflected by increasing or decreasing the final billed rate for the year.

Hence it is important to be using the Adjusted 2014 Premium rates as the baseline for comparison with the new Framework.

The table shows the allocated new Class under the Proposed Framework for each existing rate group, including the % allocation for split groups. Allocations of under 2% of payroll are not shown.

For the Proposed Premium Rate Framework structure Class Target Premium rates are taken from the Board's material released to date using the Risk Disparity Analysis which expands the original proposed 22 Classes(rate groups) to 32 Classes(rate groups). For each existing rate group the new proposed Class is shown along with the assigned new claims cost and Target Premium Rate for 2014. The Schedule 1 average rate of $2.46 and NCC of $1.10 are replicated in the Proposed Framework.

For both the Adjusted Current 2014 rate and the new Proposed Target 2014 rate the overhead and UFL components have been allocated in the rates in the same manner using current methodology to produce the same overall Schedule 1 rate. Essentially the UFL component has been allocated in proportion to the new claims cost of a Class, same as the current proper methodology. Under the new framework the range of ratios of Target premium rate to NCC is about 2.1 to 2.7, the same as with Adjusted 2014 rates. High ratios for low premium rates – low ratios for high premium rates.

The table attached then indicates for each existing rate group how much above or below the Adjusted 2014 rate the new Target rate would be. The purpose is to focus on rates which show a large disparity from existing rates. This is where further analysis will be required.

Our focus has been on trying to ensure that the new Target Premium Rate in the proposed framework is no more than + or -20% different from the Adjusted 2014 Rate. This becomes more complicated when the existing rate group is significantly split under the new framework.

The Risk Disparity Analysis is nice and going in the right direction by creating more classes where the original new proposed class had too much disparity of new claims costs. The 32 Classes seem to have about 2-3% of total system payroll in each Class. There are very few larger Classes and some between 1-2%. It may be reasonable to think of a target maximum of 50 Classes with about 2% of total payroll in each.

Class D- Comments

The 73 existing rate groups became 97 groups under the new framework, because many were split. This does not include the very small portions of existing rate groups, under 2% of rate group payroll, that were also split. These 97 groupings of companies were allocated to Classes D, E1, E2, F1, F2, F3, and specific groups to G32, H2, L and S. Very small amounts are moved to other new Classes.

About 47 of the groupings get new rates within 20% of existing, while 50 of the 97 get new Target rates that are more than 20% different than existing Adjusted 2014 rates.

D - Manufacturing page1

		Current Structure					New Structure			
		Billed 2014 Premium			Adjusted 2014 Premium		NAICS	2014 Class Target Premium		%+/- Current
RG	Name	NCC	Prem.	H/L Rate	NCC	Prem.	Class	NCC	Prem Rate	
207	Meat&fish	$1.67	$4.66		$1.73	$3.77	D	$1.40	$3.08	
210	Poultry	1.16	3.50		1.45	3.20	D	1.40	3.08	
214	Fruit&Veg	1.20	2.68		1.42	3.14	D	1.40	3.08	
216	Dairy	0.94	2.26		1.04	2.37	D	1.40	3.08	+30
220	Bakery	1.30	4.00		1.47	3.24	D	1.40	3.08	
222	Confectionery	0.83	1.80		0.65	1.58	D	1.40	3.08	+95
223	Biscuits/Snacks	0.98	2.79		1.17	2.62	D	1.40	3.08	
226	Crushed/ground food	0.79	1.69		0.92	2.12	D	1.40	3.08	+45
230	Alcohol	0.62	1.55		0.50	1.26	D	1.40	3.08	+144
231	Soft drinks	1.25	3.58		1.46	3.22	D	1.40	3.08	
238	Rubber	2.93	4.13		2.64	5.64	E1	2.07	4.45	-21
258	Foam/expanded plasti	2.02	2.92		1.87	4.06	E1	2.07	4.45	
261	Film/sheet plastic	1.07	2.46		1.14	2.57	41%D	1.40	3.08	+20
							59%E1	2.07	4.45	+73
263	Other plastic	1.64	3.23		1.68	3.67	E1	2.07	4.45	+21

D - Manufacturing page 2

		Current Structure					New Structure			
		Billed 2014 Premium			Adjusted 2014 Premium		NAICS	2014 Class Target Premium		
RG	Name	NCC	Prem.	H/L Rate	NCC	Prem.	Class	NCC	Prem Rate	
289	Cloth/carpet/textile	$1.89	$3.71		1.65	3.62	90%D	$1.40	$3.08	
							7%E2	0.81	1.88	-48
301	Clothing	1.29	2.43		1.34	2.98	71%D	1.40	3.08	
							27%E2	0.81	1.88	-37
308	Millwork/woodwork	2.32	5.57		2.17	4.67	E1	2.07	4.45	
311	Wood cabinets	2.10	4.16		2.03	4.39	F1	1.90	4.10	
312	Wood boxes/pallets	4.34	7.14		3.41	7.21	E1	2.07	4.45	-38
322	Upholstered Furniture	2.46	3.34		2.58	5.51	79%F1	1.90	4.10	-26
							20%S	1.08	2.43	-56
323	Metal furniture	0.90	2.33		1.07	2.43	F1	1.90	4.10	+69
325	Wood furniture	2.02	4.30		2.14	4.61	F1	1.90	4.10	
328	Furniture parts	2.25	4.17		2.28	4.89	F1	1.90	4.10	
333	Printing &binding	0.76	1.75		0.85	2.04	E2	0.81	1.88	
335	Publishing	0.24	0.56		0.29	0.76	L	0.23	0.61	-20
338	Folding cartons	0.81	2.65		1.02	2.38	88%E1	2.07	4.45	+87
							12%E2	0.81	1.88	-21

D- Manufacturing page 3

		Current Structure					New Structure			
		Billed 2014 Premium			Adjusted 2014 Premium		NAICS	2014 Class Target Premium		%+/- current
RG	Name	NCC	Prem.	H/L Rate	NCC	Prem.	Class	NCC	Prem Rate	
341	Paper products	$1.61	$3.18		$1.91	$4.23	97%E1	$2.07	$4.45	
							3%H1	1.35	2.99	-30
352	Steel smelting/refining	1.33	2.62		1.56	3.51	F1	1.90	4.10	
358	Foundries	2.42	4.29		3.05	6.47	F1	1.90	4.10	-37
361	Non-ferrous metals	2.44	3.59		1.88	4.08	F1	1.90	4.10	
374	Doors/windows	1.57	3.56		1.69	3.68	80%F1	1.90	4.10	
							19%E1	2.07	4.45	+20
375	Structural/architecture	2.55	4.71		2.36	5.07	94%F1	1.90	4.10	-20
							3%G31	3.94	8.27	+63
377	Coating metal product	2.17	4.19		1.98	4.28	F1	1.90	4.10	
379	Hardware /tools	1.18	2.74		1.02	2.33	F1	1.90	4.10	+76
382	Metal dies/molds	1.34	2.22		1.15	2.58	98%F2	1.16	2.59	
							2%F1	1.90	4.10	+59
383	HVAC equipment	1.37	2.78		1.69	3.70	F2	1.16	2.59	-30
385	Machine shops	1.70	2.61		1.64	3.59	F1	1.90	4.10	

D -Manufacturing page 4

		Current Structure					New Structure			
		Billed 2014 Premium			Adjusted 2014 Premium		NAICS	2014 Class Target Premium		
RG	Name	NCC	Prem.	H/L Rate	NCC	Prem.	Class	NCC	Prem Rate	
387	Other metal	$1.83	$3.68		$1.86	$4.04	97%F1	$1.90	$4.10	
							3%F2	1.16	2.59	-36
389	Metal containers	1.86	2.59		2.29	4.92	F1	1.90	4.10	
390	Stamped metal	2.44	3.59		2.93	6.21	98%F1	1.90	4.10	-34
393	Wire products	1.87	3.37		1.80	3.92	97%F1	1.90	4.10	
							2%A	2.14	4.68	
402	Appliances equipment	1.48	2.32		1.22	2.73	F2	1.16	2.59	
403	Other machinery	0.90	1.74		0.97	2.22	F2	1.16	2.59	
406	Elevators/escalators	0.99	2.70		1.41	3.11	30%F2	1.16	2.59	
							70%G32	1.44	3.17	
408	Boilers/pumps/fans	1.09	2.46		1.12	2.53	24%F1	1.90	4.10	+62
							48%F2	1.16	2.59	
							28%G32	1.44	3.17	+25
411	Agric/constr/mini/equip	1.76	2.89		1.65	3.62	95%F2	1.16	2.59	-29
							3%F1	1.90	4.10	

D- Manufacturing page 5

		Current Structure					New Structure			
		Billed 2014 Premium			Adjusted 2014 Premium		NAICS	2014 Class Target Premium		
RG	Name	NCC	Prem.	H/L Rate	NCC	Prem.	Class	NCC	Prem Rate	
417	Aircraft manuf.	$0.46	$1.56		$0.62	$1.51	F1	$1.90	$4.10	+171
419	Motor vehic assembly	2.44	3.59		1.98	4.28	F1	1.90	4.10	
420	Motor veh engines	1.26	1.89		1.28	2.85	80%F2	1.16	2.59	
							19%F1	1.90	4.10	+43
421	Other MV parts	2.44	3.59		2.30	4.93	58%F1	1.90	4.10	
							42%E1	2.07	4.45	
424	MV stampings	2.44	3.59		1.86	4.04	F1	1.90	4.10	
425	MV wheels/brakes	2.44	3.59		1.23	2.75	F1	1.90	4.10	+49
428	MV fabric	3.45	4.58		4.00	8.40	F1	1.90	4.10	-52
432	Trucks/buses/trailers	2.72	4.39		2.56	5.48	F1	1.90	4.10	-25
442	Railroad cars	1.03	2.74		1.05	2.38	F1	1.90	4.10	+72
460	Lighting/appliances	1.51	2.65		1.67	3.66	F2	1.16	2.59	-30
466	Commun/wireproduct	1.21	2.45		1.36	3.01	71%F2	1.16	2.59	
							13%F1	1.90	4.10	+36
							10%F3	0.15	0.41	-86
							5%H2	0.49	1.29	-57

D - Manufacturing page 6

		Current Structure					New Structure			
		Billed 2014 Premium			Adjusted 2014 Premium		NAICS	2014 Class Target Premium		%+/- current
RG	Name	NCC	Prem.	H/L Rate	NCC	Prem.	Class	NCC	Prem Rate	
468	Electronic devices	$0.11	$0.39		$0.15	$0.39	F3	$0.15	$0.41	
477	Industrial electric equipment	0.70	1.55		0.87	2.01	F2	1.16	2.59	
485	Bricks/ceramics	2.52	4.54		2.49	5.32	E1	2.07	4.45	
496	Concrete products	2.44	5.42		2.69	5.73	E1	2.07	4.45	-22
497	Ready mix concrete	1.94	3.93		1.87	4.09	E1	2.07	4.45	
501	Non-metallic mineral	1.29	3.02		1.39	3.08	91%E1	2.07	4.45	+44
							5%E2	0.81	1.88	-39
502	Glass	2.23	3.05		1.98	4.29	E1	2.07	4.45	
507	Petroleum, coal	0.56	1.17		0.67	1.62	96%E2	0.81	1.88	
							4%O	1.16	2.59	+60
512	Paint, resins, adhesives	1.06	1.75		1.12	2.52	E2	0.81	1.88	-25
514	Pharmaceu/medicine	0.32	0.96		0.44	1.13	E2	0.81	1.88	+66
517	Soap	0.59	1.68		0.68	1.62	E2	0.81	1.88	
524	Chemical	0.69	1.96		0.75	1.77	E2	0.81	1.88	

D- Manufacturing page 7

		Current Structure					New Structure			
		Billed 2014 Premium			Adjusted 2014 Premium		NAICS	2014 Class Target Premium		%+/- current
RG	Name	NCC	Prem.	H/L Rate	NCC	Prem.	Class	NCC	Prem Rate	
529	Jewellery/instruments	$0.30	$1.02		$0.38	$0.98	69%F3	$0.15	$0.41	-58
							27%F2	1.16	2.59	+164
							3%F1	1.90	4.10	+318
533	Signs	1.29	3.19		1.26	2.82	F2	1.16	2.59	
538	Sporting goods/toys	1.48	4.28		1.46	3.22	F2	1.16	2.59	-20
542	Other manufacturing	0.74	2.13		0.97	2.21	F2	1.16	2.59	

COMPARISON OF PREMIUM RATES BY RATE GROUP

UNDER

CURRENT RATE STRUCTURE VS PROPOSED NEW STRUCTURE

As of September 2015

Class G Construction

A comparison of premium rates under the Current Premium Rate Structure vs the Proposed Preliminary Rate Framework is needed for each of the existing rate groups. A table is being prepared for each existing Class covering all rate groups in the Class. The year 2014 is the year of data.

A table for Class G Construction is attached to illustrate this comparison.

For the Current Rate Structure two premium rates are shown for each rate group in respect of 2014:

(i) Actual 2014 billed premium rate as set out in the premium rate manual. New Claim Cost component and the total Premium Rate are shown. This is the "frozen" premium rate.

(ii) Adjusted 2014 premium rate. NCC has been adjusted to reflect the actual 2014 new claims cost. Overhead and UFL components have been added using the current formula methodology. The "frozen" final rate aspect has been removed. This adjusted 2014 rate is the correct rate that should have been charged in 2014 under the current methodology.

The Schedule 1 average rate is $2.46 and the New Claims Cost is $1.10.

It is useful to understand that the schedule 1 average rate of $2.46 is 2.24 times the NCC of $1.10. It is the Admin/Overhead and UFL components that make up the extra premium above the NCC of $1.10. This ratio of 2.24 is not constant for each rate group essentially because some of the fixed Overhead costs weigh proportionately more heavily on the lower premium rate groups. When allocated correctly the ratio ranges from about 2.1 to 2.7 times the NCC. High ratios for low premium rate groups. Low ratios for high premium rate groups.

When examining the "frozen" 2014 billed rates it is apparent that these ratios are "all over the map". Mostly this is because NCC's changed over the past few years and this change did not get reflected by increasing or decreasing the final billed rate for the year. Hence it is important to be using the Adjusted 2014 Premium rates as the baseline for comparison with the new Framework.

The table shows the allocated new Class under the Proposed Framework for each existing rate group, including the % allocation for split groups. Allocations of under 2% of payroll are not shown.

For the Proposed Premium Rate Framework structure Class Target Premium rates are taken from the Board's material released to date using the Risk Disparity Analysis which expands the original proposed 22 Classes(rate groups) to 32 Classes(rate groups). For each existing rate group the new proposed Class is shown along with the assigned new claims cost and Target Premium Rate for 2014. The Schedule 1 average rate of $2.46 and NCC of $1.10 are replicated in the Proposed Framework.

For both the Adjusted Current 2014 rate and the new Proposed Target 2014 rate the overhead and UFL components have been allocated in the rates in the same manner using current methodology to produce the same overall Schedule 1 rate. Essentially, the UFL component has been allocated in proportion to the new claims cost of a Class, same as the current proper methodology. Under the new framework the range of ratios of Target premium rate to NCC is about 2.1 to 2.7, the same as with Adjusted 2014 rates. High ratios for low premium rates – low ratios for high premium rates.
The table attached then indicates for each existing rate group how much above or below the Adjusted 2014 rate the new Target rate would be. The purpose is to focus on rates which show a large disparity from existing rates. This is where further analysis will be required.
Our focus has been on trying to ensure that the new Target Premium Rate in the proposed framework is no more than + or -20% different from the Adjusted 2014 Rate.

The Risk Disparity Analysis is nice and going in the right direction by creating more classes where the original new proposed class had too much disparity of new claims costs. The 32 Classes seem to have about 2-3% of total system payroll in each Class. There are a very few larger Classes and some between 1-2%. It may be reasonable to think of a target maximum of 50 Classes with about 2% of total payroll in each.

Class	G - Construction	Current Structure					New Structure			
		Billed 2014 Premium			Adjusted 2014 Premium		NAICS	2014 Class Target Premium		%+/- current
RG	Name	NCC	Prem.	H/L Rate	NCC	Prem.	Class	NCC	Prem Rate	
704	Electrical	$1.69	$3.69	close	1.67	3.67	90%G32	$1.44	$3.17	
							7%N	.21	.55	-85
707	Mechanical	1.66	4.16	close	1.81	3.97	97%G32	1.44	3.17	-20
711	Roadbuilding/Excav	2.21	5.29	close	2.18	4.72	39%G33	2.07	4.45	
							49%G2	2.28	4.87	
							5%O	1.16	2.59	-45
							6%E1	2.07	4.45	
719	Inside Finishing	2.76	7.51	high	2.62	5.63	G33	2.07	4.45	-21
723	Industrial/Commercial	2.02	4.55	close	2.12	4.60	83%G1	2.45	5.22	
							8%N	.21	.55	-88
							5%G33	2.07	4.45	
728	Roofing	5.55	14.80	high	5.56	11.63	G31	3.94	8.27	-29
732	Heavy Civil	2.66	7.03	high	2.88	6.14	89%G2	2.28	4.87	-21
							10%G33	2.07	4.45	-28

737	Millwright/Welding	2.57	6.90	high	2.79	5.97	73%G32	1.44	3.17	-47
							12%S	1.08	2.43	-60
							12%G31	3.94	8.27	+39
							3%F1	1.90	4.10	-31
741	Masonry	5.91	12.70	close	5.46	11.43	G31	3.94	8.27	-28
748	Formwork/Demolition	6.84	18.31	high	5.61	11.72	91%G31	3.94	8.27	-30
							7%G33	2.07	4.45	-62
751	Siding/Outside	3.78	10.25	high	3.63	7.72	87%G31	3.94	8.27	
							11%G33	2.07	4.45	-42
764	Homebuilding	3.35	9.10	high	3.06	6.51	62%G1	2.45	5.22	-20
							23%G31	3.94	8.27	+27
							11%G33	2.07	4.45	-32
							3%O	1.16	2.59	-60

SECTION G Comments-

It seems odd that so many of the existing rate groups apparently will see large reductions of much greater than 20% in the Adjusted 2014 Premium rate with the new Class target premium rate assigned. In the attached table, the existing 12 rate groups become 27 groupings for assignment to a relatively few Classes in the new framework. Of the 27 groupings only 7 have new rates within the 20% threshold of existing rates. It appears that 18 have reductions of more than 20 % and only 2 have increases of more than 20%

Construction rate groups are mostly assigned to new Classes G1, G2, G31, G32 and G33, with small amounts assigned to Classes to E1, F1, N and O. Rates in E1 and F1 are comparable to the Class G rates, while N and O are lower. There are very few other participants in the G Classes. This requires analysis since it does not seem that that the premium rates balance.

		Current Structure					**New Structure**			
		Billed 2014 Premium			**Adjusted 2014 Premium**		**NAICS**	**2014 Class Target Premium**		
RG	**Name**	**NCC**	**Prem.**	**H/L Rate**	**NCC**	**Prem.**	**Class**	**NCC**	**Prem Rate**	

COMPARISON OF PREMIUM RATES BY RATE GROUP

UNDER

CURRENT RATE STRUCTURE VS PROPOSED NEW STRUCTURE

As of September 2015

Class H Government and Related Services

A comparison of premium rates under the Current Premium Rate Structure vs the Proposed Preliminary Rate Framework is needed for each of the existing rate groups. A table is being prepared for each existing Class covering all rate groups in the Class. The year 2014 is the year of data.

A table for Class H Government and Related Services is attached to illustrate this comparison.

For the Current Rate Structure two premium rates are shown for each rate group in respect of 2014:

(i) Actual 2014 Billed premium rate as set out in the premium rate manual. New Claim Cost component and the total Premium Rate are shown. This is the "frozen" premium rate.

(ii) Adjusted 2014 premium rate. NCC has been adjusted to reflect the actual 2014 new claims cost. Overhead and UFL components have been added using the current formula methodology. The "frozen" final rate aspect has been removed. This adjusted 2014 rate is the correct rate that should have been charged in 2014 under the current methodology.

The Schedule 1 average rate is $2.46 and the New Claims Cost is $1.10.

It is useful to understand that the Schedule 1 average rate of $2.46 is 2.24 times the NCC of $1.10. It is the Admin/Overhead and UFL components that make up the extra premium above the NCC of $1.10. This ratio of 2.24 is not constant for each rate group essentially because some of the fixed Overhead costs weigh proportionately more heavily on the lower premium rate groups. When allocated correctly the ratio ranges from about 2.1 to 2.7 times the NCC. High ratios for low premium rate groups. Low ratios for high premium rate groups.

When examining the "frozen" 2014 billed rates it is apparent that these ratios are "all over the map". Mostly this is because NCC's changed over the past few years and this change did not get reflected by increasing or decreasing the final billed rate for the year. Hence it is important to be using the Adjusted 2014 Premium rates as the baseline for comparison with the new Framework

The table shows the allocated new Class under the Proposed Framework for each existing rate group, including the % allocation for split groups. Allocations of under 2% of payroll are not shown.

For the Proposed Premium Rate Framework structure Class Target Premium rates are taken from the Board's material released to date using the Risk Disparity Analysis which expands the original proposed 22 Classes(rate groups) to 32 Classes(rate groups). For each existing rate group the new proposed Class is shown along with the assigned new claims cost and Target Premium Rate for 2014. The Schedule 1 average rate of $2.46 and NCC of $1.10 are replicated in the Proposed Framework.

For both the Adjusted Current 2014 rate and the new Proposed Target 2014 rate the overhead and UFL components have been allocated in the rates in the same manner using current methodology to produce the same overall Schedule 1 rate. Essentially the UFL component has been allocated in proportion to the new claims cost of a Class, same as the current proper methodology. Under the new framework the range of ratios of Target premium rate to NCC is about 2.1 to 2.7, the same as with Adjusted 2014 rates. High ratios for low premium rates- low ratios for high premium rates.
The table attached then indicates for each existing rate group how much above or below the Adjusted 2014 rate the new Target rate would be. The purpose is to focus on rates which show a large disparity from existing rates. This is where further analysis will be required.
Our focus has been on trying to ensure that the new Target Premium Rate in the proposed framework is no more than +or -20% different from the Adjusted 2014 Rate. This becomes more complicated when the existing rate group is significantly split under the new framework.

The Risk Disparity Analysis is nice and going in the right direction by creating more classes where the original new proposed class had too much disparity of new claims costs. The 32 Classes seem to have about 2-3% of total system payroll in each Class. There are a very few larger Classes and some between 1-2%. It may be reasonable to think of a target maximum of 50 Classes with about 2% of total payroll in each.

CLASS H GOVERNMENT & RELATED SERVICES

		Current Structure					New Structure			
		Billed 2014 Premium			Adjusted 2014 Premium		NAICS	2014 Class Target Premium		% +/- Current
RG	Name	NCC	Prem.	H/L Rate	NCC	Prem.	Class	NCC	Prem Rate	
810	School Boards	$0.35	$0.81	high	$0.25	$0.65	T	$0.16	$0.43	-40
811	Educational Facilities	0.13	0.36	close	0.13	0.35	96%T	0.16	0.43	+15
							2%L	0.23	0.67	+90
830	Power &Telecom Line	1.57	4.45	high	1.40	3.13	G2	2.28	4.87	+40
833	Elect Power Generat	0.24	0.78	close	0.27	0.75	B	0.41	1.06	+30
835	Oil Power&Water Dist	0.39	1.07	close	0.38	1.02	98%B	0.41	1.06	
							2%K2	.1.16	2.60	+55
838	Nat Gas Distribution	0.30	0.69	low	0.33	0.91	48%B	0.41	1.06	
							52%K2	1.16	2.60	+150
845	Local Gov't Services	1.17	2.24	change	1.78	3.86	96%C	1.78	3.86	
							4%N	0.21	0.55	-85
851	Nursing Care Homes	1.70	3.29	close	1.54	3.38	Q1	1.52	3.32	
852	Residential Care Hom	1.34	3.30	close	1.42	3.11	Q1	1.52	3.32	

853	Hospitals	0.43	1.10	close	0.41	1.07	P	0.44	1.13	
857	Nursing Services	1.81	3.31	close	1.54	3.37	Q2	0.67	1.61	-53
858	Group Homes	1.74	3.14	close	1.39	3.07	Q1	1.52	3.32	
861	Treatment Clinics	0.43	1.10	close	0.40	1.04	Q2	0.67	1.61	+55
875	Prof Offices/Agencies	0.29	0.73	close	0.29	0.77	82%Q2	0.67	1.61	+109
							12%S	1.08	2.43	+215
							6%N	0.21	0.55	

Section H Comments –

The first observation is that the Adjusted 2014 rate for Rate Group 845 need a large increase specifically for the legislated benefit increase for firefighters.

It is apparent from the table that too many rate groups are being allocated to new Classes with a Target Rate that is far above the +20% increase threshold. A review requires looking at the makeup of the new class to see if it can be split. Also where an existing rate group is being split it is necessary to look into the experience of the existing rate group to see if there are two quite separate and different experience groups.

Variations of less than 20% from Adjusted 2014 Rates generally have not been highlighted

		Current Structure					New Structure			
		Billed 2014 Premium			Adjusted 2014 Premium		NAICS	2014 Class Target Premium		
RG	Name	NCC	Prem.	H/L Rate	NCC	Prem.	Class	NCC	Prem Rate	

ontario chamber of commerce

RESPONSE TO

THE WORKPLACE SAFETY AND INSURANCE BOARD'S PROPOSED PRELIMINARY RATE FRAMEWORK

Submission to the WSIB Consultation Secretariat

SEPTEMBER 2015

Acknowledgements

We would like to thank the following members of the Ontario Chamber of Commerce WSIB Taskforce, chaired by Jason Mandlowitz, for their contributions to this submission. Without their expertise and guidance, this submission would not have been possible.

Members:

- Sandra Dueck, Greater Peterborough Chamber of Commerce
- Jeff Hayes, Greater Oshawa Chamber of Commerce
- Gerry Macartney, London Chamber of Commerce
- Bob Malcolmson, Greater Oshawa Chamber of Commerce
- Jason Mandlowitz, Mandlowitz Consulting and Paralegal Services
- Joyce Mankarios, Greater Sudbury Chamber of Commerce
- Christian Millet, Eacom Timber Corporation
- Tracy Nutt, Greater Sudbury Chamber of Commerce
- Bill Saunders, Belleville & District Chamber of Commerce
- Bill Stewart, Greater Kingston Chamber of Commerce
- Nick Stewart, Timmins Chamber of Commerce
- Ted Wigdor, Ontario Stone, Sand & Gravel Association

About the Ontario Chamber of Commerce

For more than a century, the Ontario Chamber of Commerce (OCC) has been the independent, non-partisan voice of Ontario business. Our mission is to support economic growth in Ontario by defending business priorities at Queen's Park on behalf of our network's diverse 60,000 members.

From innovative SMEs to established multi-national corporations and industry associations, the OCC is committed to working with our members to improve business competitiveness across all sectors. We represent local chambers of commerce and boards of trade in over 135 communities across Ontario, steering public policy conversations provincially and within local communities. Through our focused programs and services, we enable companies to grow at home and in export markets.

The OCC provides exclusive support, networking opportunities, and access to innovative insight and analysis for our members. Through our export programs, we have approved over 1,300 applications, and companies have reported results of over $250 million in export sales.

The OCC is Ontario's business advocate.

Author: Kathryn Sullivan, Policy Analyst, Ontario Chamber of Commerce, September 2015

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ontario chamber of commerce

September 2, 2015

Mr. David Marshall
President & CEO
Workplace Safety and Insurance Board's (WSIB)

Thank you for the opportunity to respond to the Workplace Safety and Insurance Board's (WSIB) Proposed Preliminary Rate Framework consultation paper released in February 2015.

Building a 21st century workforce is a core component of the Ontario Chamber of Commerce's (OCC) five year *Emerging Stronger* economic agenda. Keeping the province's economy firmly on the path from recovery to growth will require changes to the way government and its agencies work. Ontario needs a workers' compensation system that is both responsive to labour market needs and fiscally sustainable.

Over the past number of years, the OCC has made a series of recommendations to the WSIB in an effort to make the organization more responsive to the needs of employers. The 2013 OCC report *Are We There Yet? An Employer Perspective on WSIB Reform* recognizes that achieving a self-sustaining workers' compensation system requires the continuation of structural reforms.

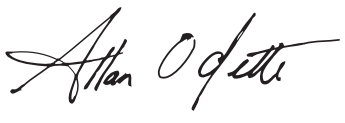
We have seen progress in some areas since the release of that report. Employer premiums have been frozen since 2013. The WSIB's unfunded liability – the difference between payments for future benefits to workers and the funding received from employers – has fallen by $5 billion since 2012. But more work remains.

While in some respects the Proposed Preliminary Rate Framework marks a positive change from the existing rate setting process, there are many elements within the proposed framework that could raise the cost of doing business in Ontario.

As such, we are eager to provide you with 10 recommendations that, if adopted, will create greater certainty for employers and ensure that Ontario benefits from an effective workers' compensation system. The recommendations align with the key goals of the Proposed Preliminary Rate Framework, including its commitment to transparency, balanced rate responsiveness, and its efforts to fairly allocate premiums.

Thank you for taking the time to review this submission. We look forward to working with you over the coming weeks and months to create a workplace insurance system that is more responsive to the needs of employers and workers.

Sincerely,



Allan O'Dette
Ontario Chamber of Commerce

Below follows the coalition of signatories that endorse our position.

Kathy McKay
Executive Director
Ajax-Pickering Board of Trade

Todd Armstrong
General Manager
Barrie Chamber of Commerce

Bill Saunders
Chief Executive Officer
Belleville & District Chamber of Commerce

Jackie Kavanagh
General Manager
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Matt Marchand
President & Chief Executive Officer
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Martha Dennis
General Manager
Woodstock District Chamber of Commerce

HOW DOES THE CURRENT WSIB SYSTEM WORK?

The WSIB classifies employers according to the nature of the service or product that their business provides into one of nine classes. Each class has an alphabetic identifier:

A. Forest Products
B. Mining & Related Industries
C. Other Primary Industries
D. Manufacturing
E. Transportation & Storage
F. Retail & Wholesale Trades
G. Construction
H. Government & Related Services
I. Other Services

The WSIB then considers the business activity involved in providing the service or manufacturing the product to determine the premium rate that the employer will be charged. Each rate constitutes a rate group. There are currently more than 150 rate groups in the system.

Within each rate group, employers are further divided into classification units based on the similarity of their businesses in terms of service/product and risk profile. The WSIB tracks the relative claims experience of each classification unit within a rate group. If the accident costs of a particular classification unit diverge from the rate group average, it is flagged and potentially moved to another rate group that is more reflective of its current risk profile. There are currently more than 800 classification units in the system.

Problems with the current WSIB system

1. Rates can, and often do, change year over year
In the current retrospective system, all employers within a single rate group are charged the same initial premium rate, regardless of their payroll size. The employer is then charged a surcharge if their actual claim costs exceeded the expected claim costs. The employer receives a rebate if actual costs were less than the expected costs.

As a result of this surcharge/rebate system, employers can be subject to varying premium costs on a year-to-year basis. In fact, it is not uncommon for employers to move from a surcharge position to a rebate position or vice-versa from one year to the next. This variance is problematic: in both cases, an employer's cash flow will have been impacted for 20 months (the time it takes the WSIB to issue surcharges and rebates). Meanwhile, employers eligible for a rebate are not paid interest for the amount that they paid in excess of their actual claim.

The WSIB proposes to shift from the current retrospective system to a prospective system. In the prospective system, the premium rate paid by employers will be based on their individual claims history. The WSIB will review the employer's claims experience each year and adjust the premium rate on an annual basis as required. We support the implementation of a prospective system on the grounds that it would address the current system's issue of substantial premium rate volatility on a year-to-year basis.

2. The system relies on an outdated classification system
The WSIB classification system relies on Standard Industry Classification (SIC), an industry classification system. The SIC system is outdated and does not reflect significant changes in the economy that have occurred over the past 30 years.

Additionally, for the last twenty years, North American statistical agencies have moved away from the SIC system and towards the North American Industry Classification System (NAICS). One of the goals of the NAICS was to capture emerging industries. The changes in the economy as well as the replacement of the SIC with the NAICS means that, in practice, the WSIB's classification structure is out of step with the current context. This hinders the WSIB's capacity to accurately assess risk and determine rate groups.

The WSIB initially proposed to adapt the 22 class structure used in the most recent version of the NAICS (and more recently published an analysis suggesting an expansion to a 32 class structure to account for risk disparity within certain industries). This structure would be updated every five years to capture new and emerging industries. We support the implementation of the NAICS system on the grounds that it would improve the WSIB's capacity to assess risk and determine rate groups as well as the responsiveness of the system to changes in Ontario's unique economy.

THE PROPOSED RATE FRAMEWORK

The WSIB proposes to discontinue the practice of subdividing employers into rate groups and classification units. Instead, it proposes to capture the distinctiveness of employers by increasing the number of classes from nine to 32 (see Appendix 1 for a full listing of these classes).

However, instead of paying a premium rate in accordance to their rate group or industry class, employers will now pay an employer centric premium rate based on their own risk or claims experience in relation to the collective liabilities of employers within their class.

Within each class, employers will be assigned to a price point or 'risk band' that is indicative of their risk profile from the lowest level to the highest level of risk. Risk bands are defined as unique price points within each industry class (between 40-80 per industry class, with each representing a 5% increment in premium rate), to provide each employer with an annual prospective rate that reflects their own risk and experience. The greater variance of risk within a class, the greater the number of risk bands.

The premium rate paid by employers will be adjusted in accordance to their individual claims experience. Put simply, the new system will adjust employers' premiums based on their claims costs. To accomplish this, the WSIB will evaluate individual claims experience each year. In order to ensure premium rate stability for employers, every year an employer could move either up or down a maximum of three risk bands, with each band representing a five percent increase or decrease in the amount paid by the employer.

CHALLENGES WITH THE PROPOSED RATE FRAMEWORK

The proposed rate framework will create savings for some employers, and create new costs for others. The new proposed rate framework is a significant departure from the existing system and creates a great deal of uncertainty in the employer community. By eliminating the 155 rate groups that currently determine employer risk premiums and replacing them with 32 classes, many employers will find themselves paying different risk premiums.

In July 2015, the WSIB published a consultation update that explains how employers within a specific rate group in the current classification structure might be classified in the proposed classification structure. While the update provides information on the range of premium rates within a class, the actual rates paid by employers within a class will vary quite significantly in accordance to their individual claims experiences and the number of risk bands allocated to that class. There is still considerable uncertainty as to how much the actual premium rates paid by employers will change as a result of these reforms. Employers rates will increase or decrease based on their claims cost experience relative to their industry. However, the adoption of a new Rate Framework would not affect the total amount of premium dollars collected by the WSIB, thereby remaining revenue neutral for the workers' compensation system as whole. The proposal seeks to ensure that the costs of the system are attributed to individual employers and industries to better reflect the risk and claims experience that they bring.

RECOMMENDATION 1
The WSIB should provide a public and detailed analysis of how the proposed rate framework changes will impact employers.

Employers with effective health and safety programs could end up subsidizing employers with high claims costs as a result of the proposal to stop surcharges. In the current system, all employers within a single rate group are charged the same initial premium rate, regardless of their payroll size. The employer is then charged a surcharge if their actual claim costs exceeded the expected claim costs. The employer receives a rebate if actual costs were less than the expected costs. As indicated in the preceding section, this process is very inefficient.

In the proposed framework, employers will be assigned a rate that more accurately reflects their individual claims experience based on an analysis of the employer's claims cost history for the past six years. The WSIB will review employers' claims on an annual basis. If an employer performs well by submitting fewer than the expected number of claims, they might be moved to a lower risk band. Conversely, if an employer performs poorly they might be moved to a higher risk band. Employers can be moved a maximum of three risk bands (either up or down) per year, representing a maximum increase or decrease of approximately 15 percent (relative to their class). The maximum premium rate that an employer would pay in the proposed framework would be the rate charged to the highest risk band in their class.

The elimination of the surcharge mechanism in the proposed framework becomes problematic when an employer's costs far exceed the rate charged to the highest risk band in their class. The high claims costs incurred by the employer would be absorbed by the remainder of the class through increases to the average class premium rate.

We recognize that effective health and safety programs can significantly reduce injury rates and, subsequently, the claims costs incurred by employers. We feel strongly that employers with dedicated and effective occupational health and safety programs should not subsidize employers who fail to do the same. However, we are mindful that claim cost experience is not always directly related to occupational health and safety. A significant and costly accident can result even where an employer has taken all reasonable steps to implement and administer an occupational health and safety program. For this reason, it is unfair in many circumstances to surcharge an employer without first providing them an opportunity to address the cause of the accident(s).

The Workers' Compensation Board of Alberta developed a Poor Performance Surcharge (PPS) program to address this very issue. The PPS is applied only to those employers with consistently poor claims records that are at least 80 percent worse than their class average.

The PPS is a progressive system; in the first year that the employer is identified as a poor performer, they are issued a warning letter that includes recommendations as to how the employer might improve its health and safety programs to reduce its claims costs. In the second year, the employer may be charged a maximum surcharge of 25 percent. The surcharge rate increases each year that the employer remains a poor performer up to a maximum surcharge of 200 percent after five or more years of poor performance.

The PPS encourages employers to take immediate action to improve their health and safety management efforts to help reduce injuries and avoid further surcharges while also ensuring that other employers in their class are not forced to pay the cost of their poor performance.

RECOMMENDATION 2

The WSIB should implement a program similar to the Alberta PPS to encourage high cost employers to improve their health and safety management efforts and to ensure that the cost of poor performance is absorbed by poorly performing employers rather than other employers in their class.

A limited number of classes risks grouping employers with very different risk profiles. In July 2015, the WSIB provided further analysis illustrating a suggested expansion of the number of classes proposed in the Proposed Preliminary Rate Framework from 22 to 32 in response to feedback received that the original structure could have negatively impacted employers with low risk profiles that are classified in a group with employers with significantly higher risk profiles. For example, the WSIB originally proposed to classify both electricians and demolition workers in the same class, despite the fact that electricians have much lower risk profiles than their counterparts in the demolition business.

Although a 32 class structure represents a step in the right direction, many of our members have expressed concern that the proposed class structure still does not accurately reflect their risk profile. This is problematic and could impose undue costs on businesses, particularly low risk operations that have been classified amongst those associated with high risk.

RECOMMENDATION 3
Expand the class structure to more accurately reflect the risk profiles of employers, while maintaining the predictability of industry classes and premium rate stability for employers.

The shift towards predominant business activity classification will increase the cost of doing business. Under the current system, if an employer's operations involve two or more business activities, they are able to segregate their payroll and pay different premiums based on their insurable earnings. For example, if 30 percent of an employer's activities occur in the resins, paint, ink, and adhesives rate group, while 70 percent of the employer's activities occur in the oil, power, and water distribution rate group, the employer is able to pay premiums according to the rate groups that each of those operations is subject to, providing that the employer is able to segregate their payroll. Using this same example, under the proposed framework, this employer would be subject to a premium rate based solely on its predominant business activity, in this case, oil, power, and water distribution.

In some ways, this approach is not new to the system as it resembles the classification process used for small employers that are unable to segregate their payroll.

This new classification method for employers with multiple business activities raises some concerns. In the case of employers whose earnings for each business activity are similar, the employer will be paying a premium rate based on their predominant business activity, and risk profile. In some circumstances these employers may be paying more WSIB premiums as compared to the current classification and rate-setting model, and some may be paying less than the current system. Additionally, if the employer's insurable earnings between business activities fluctuate it is possible that the predominant business activity could change year to year. This would jeopardize the WSIB's stated goal of stable premium rates.

The WSIB has proposed that temporary employment agencies be exempt from these new rules, and instead be allowed to continue to pay premiums in multiple classifications/premium rates. We believe that all employers with fluctuating business activities would similarly benefit from the opportunity to report earnings in multiple rates.

RECOMMENDATION 4
The WSIB should reconsider implementing the predominant class model and continue to allow businesses to pay different rates based on their activities in different business areas.

The Elimination of the Second Injury and Enhancement Fund would reduce reemployment opportunities for injured workers. The WSIB proposes to eliminate the Second Injury and Enhancement Fund (SIEF). In the current system, employers can transfer health care and compensation costs incurred as a result of a worker's pre-existing condition to the SIEF. The SIEF encourages employers to return injured workers to modified work or regular employment.

The SIEF reduces the actual claims costs that are used to calculate rebates and surcharges. Greater usage of SIEF leads to higher rebates (or lower surcharges). Morneau Shepell argues that some employers use the SIEF excessively to reduce their claims costs, resulting in an inequitable sharing of common costs which could undermine the return to work initiative.

We believe that the opportunities for reemployment provided to injured workers by the SIEF contribute to the fairness of the WSIB structure. The SIEF is not a financial incentive used by employers to receive higher rebates (or lower surcharges) but to provide opportunity to injured workers. The continued success of second injury policies in other Canadian jurisdictions, including British Columbia and Alberta, where workplace insurance boards administer a budgetary surplus demonstrates that second injury policies do not undermine the financial sustainability of the system.

RECOMMENDATION 5
The WSIB should retain the SIEF to encourage the reemployment of injured workers.

The proposed claims experience 'window' to determine premium rates could result in employers being charged for risks that are no longer a feature of their workplace. The WSIB proposes to extend the number of years of experience used to determine both an employer's rate setting and experience rating up to six years. This proposed claims experience 'window' is much higher than other jurisdictions in Canada. Our members are concerned that this feature of the proposed framework could serve to penalize employers for historic claims costs that no longer reflect the risks of their workplace as a result of more recent improvements to health and safety.

Premium rates are determined by both the Workers' Compensation Board of Alberta and Work Safe BC using the preceding three years of claims experience. Work Safe BC weights the most recent year at 50 percent, the prior year at 33.3 percent and the most distant year at 16.7 percent. The weighting system used by Work Safe BC rewards employers who reduce claims costs through improvements to their health and safety programs.

RECOMMENDATION 6
The WSIB should implement a weighted cost claims 'window' based on employers' claims cost history over the past three rather than six years to ensure that the rate charged to employers is reflective of their recent commitments to health and safety.

OTHER WSIB ISSUES NOT RELATED TO THE PROPOSED RATE FRAMEWORK

The WSIB's unfunded liability is a drag on Ontario's competitiveness. According to the WSIB's 2015 Q1 Sufficiency Report. The WSIB's unfunded liability (UFL), the amount by which future payment obligations exceed the present value of funds available to pay them, stands at $8.3 billion. Ontario's premium rates, still among the highest in the country, have helped reduce that unfunded liability over the past number of years. High premium rates have been a long-standing concern for employers in Ontario, who are doubtful to tolerate further hikes. Rate increases impede job growth and could drive employers underground or encourage them to relocate elsewhere.

As recommended by the OCC previously, better oversight of the WSIB would inject more transparency into the system and help drive down the UFL.

RECOMMENDATION 7
The WSIB should be subject to oversight by the Auditor General.

The WSIB Fatal Claims Adjustment Policy will be redundant in the new framework. In 2008, the WSIB introduced the Fatal Claims Adjustment Policy in response to public criticism of a feature of the existing framework which made it possible for an employer to receive a rebate in the same year that they experienced a workplace fatality. The Fatal Claims Adjustment Policy effectively ensures that if an employer experiences a workplace fatality, they will be forced to pay a fee that is equal to the amount they would have received as a rebate.

Since neither rebates nor surcharges will be a feature of the proposed framework, this policy is redundant. In the proposed framework, workplace fatalities will contribute to the actual claims costs of the employer which could then result in the employer being moved to a higher risk band.

RECOMMENDATION 8
The Fatal Claims Adjustment Policy should be eliminated from the framework as soon as possible.

The workplace safety market should be opened up to competition. It is important to promote safe workplaces and broad insurance coverage for workplace-related injuries and illnesses. However, the WSIB's legislated monopoly on workplace insurance is not the best answer for enhancing workplace safety and protecting workers' incomes. The OCC supports competition in the marketplace and the ability for employers to choose from a range of workplace insurance options to achieve the best results. If the WSIB model truly represents the best coverage at the lowest price, employers will choose WSIB coverage over others. Competition, flexibility, and choice are the hallmarks of a good system.

Further, we have concerns about the inclusion of construction employers in the workers' compensation scheme as per Bill 119. Employers should be allowed the option to opt out of the workers' compensation scheme in instances when they have already obtained private insurance coverage.

RECOMMENDATION 9
The Government of Ontario should study the merits of introducing comparable WSIB delivery models including options such as full and/or partial privatization.

RECOMMENDATION 10
The Government of Ontario should amend the Workplace Safety and Insurance Act to exempt construction employers who have obtained comprehensive 24/7 insurance coverage from coverage under the WSIB scheme.

CONCLUSION

This submission has outlined some of our key concerns regarding the proposed rate framework reforms outlined by the WSIB. While our members support the WSIB in its efforts to improve its business practices through the implementation of a modernized classification framework, more work remains to be done.

The 10 recommendations outlined in this submission are intended to create greater certainty for employers and ensure that Ontario benefits from an effective workers' compensation system.

Our primary concern with the Proposed Preliminary Rate Framework centres on the undetermined impact it will have on the cost of doing business in Ontario.

The OCC and its province wide network of chambers of commerce and boards of trade will continue to work with government and the WSIB to ensure the needs of employers are considered in all areas of reform.

To get in touch, please contact Karl Baldauf, Vice-President, Policy and Government Relations at karlbaldauf@occ.ca or 647.888.2866.

Thank you.

APPENDIX 1: PROPOSED CLASS STRUCTURE BREAKDOWN

A Primary Resource Industries
B Utilities
C Public Administration
D Food, Textile and Related Manufacturing
E1 Non-Metallic/Mineral Manufacturing
E2 Printing, Petroleum/Chemical Manufacturing
F1 Metal/Transportation/Furniture Manufacturing
F2 Machinery/Electrical/Other Manufacturing
F3 Computer/Electronics Manufacturing
G1 Building Construction
G2 Infrastructure Construction
G31 Foundation/Structure/Building Exterior Contractors
G32 Building Equipment Contractors
G33 Specialty Trade Contractors
H1 Petroleum/Food/Vehicle/Other Wholesale
H2 Personal/Building Materials/Machinery Wholesale
I1 Vehicle/Building Material/Food & Beverage Retail
I2 Furniture/Home/Clothing Retail
I3 Electronics/Appliances/Personal Care Retail
J Specialized Retail & Department Stores
K1 Rail/Water/Truck & Postal Service Transportation
K2 Air/Ground/Pipeline/Courier Transportation & Warehousing
L Information & Culture
M Finance
N Professional, Scientific & Technical
O Administrative, Waste & Remediation
P Hospitals
Q1 Nursing & Residential Care Facilities
Q2 Ambulatory Health Care & Social Assistance
R Leisure & Hospitality
S Other Services
T Education

THE TRH GROUP PARALEGAL PROFESSIONAL CORPORATION

LEGAL SERVICES – WORKERS' COMPENSATION - LOSS CONTROL - APPEAL REPRESENTATION

September 25, 2015

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Dear Consultation Secretariat;

Re: Consultation Submission – Ontario Concrete and Drain Contractors Association ("OCDCA")

Thank you for providing the opportunity to offer input on the WSIB's proposed rate framework.

The TRH Group Paralegal PC has been engaged by the Ontario Concrete and Drain Contractors Association ("OCDCA") to provide a response to the proposed rate framework. The OCDCA was established 36 years ago and has over 30 active members with the goal of advancing the concrete and drain industry. The OCDCA and their members are committed to occupational health and safety and appreciate the opportunity to provide feedback on this rate reform.

The OCDCA supports the WSIB's effort in working towards a system that is fair for all employers in Ontario. The OCDCA and their members have very serious concerns with the current experience rating system, processes and time frames. The current system is flawed and does require significant improvements. A system that promotes fairness, transparency, ease of understanding and reflective of an employer's experience would be ideal and the right direction.

Once a new system has been thoroughly explored with stakeholder input a transition plan is required with significant thought, planning and testing. Employers need time to understand the proposed model, how it will specifically impact them and how their health and safety programs can impact the rates. The WSIB has not offered enough information for specific calculations for each employer to learn, test and provide full comment on the proposed plan nor the transition of such a plan.

The OCDCA supports improvements to the system however; they require more details to make full and fair comment. The current model does not offer enough information to do so.

The following are our comments on the information that has been provided on the Proposed Rate Reform:

Employer Classification

The preliminary papers published by the WSIB outline the removal of the existing 155 rate groups and implementing a class structure to 22 classes while using the 2012 North American Industry Classification Structure "NAICS" to drive the class for the firm. It is understood that once the WSIB actuarial personnel completed a risk disparity review they identified that there would be a more stable system with the expansion to 32 classes while still utilizing the NAICS codes.

The OCDCA would like information on the expansion and the results of the impact before the WSIB finalizes the classification structure and class allocation proposal. This information would assist in evaluating the advantages/disadvantages and impact to the members to provide a well thought out response. Not enough information has been provided to date. OCDCA would like to participate in this reform and detailed analysis.

The members would also like more information on the impact of having the proposed removal of multiple rate groups (multi-class). Not enough information has been provided to adequately review the implications.

Firms that have separate business activities that are not dependent upon each other should have the opportunity for the appropriate multi-rate in the respective class (or blending). Removal of the multiple rate groups suggests an unfair system. This is the opposite of the intent and objective of the reform.

The proposed system suggests that firms that are currently multi rated be classed where the predominant share of payroll is derived. There should be a mechanism to allow for employers to maintain multiple rate classes along with the opportunity to segregate the payroll. Particularly in cases where the businesses are so separate and distinct that even being the "best performer" and the lowest in the band that the firm cannot get low enough to be competitive with others in the market because they are not classed similarly. The risk of the business activities may not be reflective if classed under the predominant payroll class methodology as proposed. This does not support a level playing field for employers in Ontario and contradicts the intent of proposed reform.

The proposed system would also eliminate the current rate group "755" that provides construction employers the opportunity to utilize a lower rate for executive officers that are not "on the tools". This rate group is appropriate and should remain (provision for multi-class/rate) as it is fair and reflective of the risk level and predictability of a firm. Firms that currently have this rate will see an increase to their premium rate when the risk and claims experience has not increased. The proposed model promotes risk level and claim cost experience as the driver in setting rates. Removal of this rate (and others in current multi-rated companies) could increase a firms rates/cost with no increase to risk or claims cost. The opposite of the intent of this reform.

The OCDCA would like the WSIB to revisit the proposed model with respect to the elimination of multiple rate groups. The information supplied by the WSIB does not provide enough information to test the impact of this proposal with single (predominant) class and multiple classes. It is necessary to review these points and multi classes to ensure that the plan is fair and does not punish or discourage an employer by employing and operating multiple businesses in Ontario.

Long Latency Occupational Disease ("LLOD")

Under the current experience rating system LLOD claim costs are allocated to the rate group itself. (collective cost at the class level and not experience rated).

With the transient nature of the workforce in the concrete and drain industry, this practice should remain status quo in a new system. It is unfair to charge employers today for diseases that result from exposure years ago that the current employer may not have had any control over.

Second Injury and Enhancement Fund ("SIEF")

The proposed preliminary framework papers suggest that the SIEF policy would be eliminated with the implementation of the new system. The members strongly believe that this policy should remain. The concrete and drain industry has a transient workforce and the SIEF program provides the opportunity to hire a worker and retain a worker that has a prior disability.

This policy assists both the employer for financial incentive to hire/retain and provides injured workers with greater employment opportunities. Removal of the policy would cause negative consequences to both employers and ultimately workers. The policy is relevant and should remain.

Fatal Claim Policy / Catastrophic Situations

The existing Fatal Claim Policy removes the rebate for a firm in the year of the fatality. This rebate (funds) are actually funds applicable to the prior year(s) experience rating for the employer and not the year of the fatality.

The new system should address fatalities / costs as the year is assessed and adjusted accordingly.

Banding Increments and Transitioning

The banding systems hierarchical approach of class, risk level and adjustments reflective of claims cost experience on the surface makes sense however; the WSIB has not offered enough information on this to comment. Further, with the class and multi-rate elimination these implications could be significant and require more conversation.

In the event the "banding" model is adopted the fluctuation in bands should be capped to no more than the 15% annually (5% band increments to max of 3 bands per year up or down). Employers need the opportunity to adjust based on their claims / cost performance.

Employers would like to have the ability to impact their rate and performance by controlling the claim costs and investing in effective health and safety programs. Since there have been delays in processing and decision making during the initial stages of a claim, at the operations level, the suggestion from members have been a provision to allow the employer to pay the worker regular wages for a short period of time in the initial stages of the claim.

This allows the employer to create an appropriate re-integration plan for the worker that is safe and suitable without the worker being concerned of where/how is/she is going to be paid. It also assists the employer in managing claim costs and not having to wait for WSIB to render a decision weeks later. This would also reduce the burden on the WSIB system and make the employer more self-reliant.

Transiting of the proposed plan, if adopted, will require great thought as employers need the ability to adjust to the plan and rates. Many members are currently locked into multi-year contracts with fixed rates and are unable to adjust in the event their net premium rates are going to be increased. Significant increases can be detrimental to a corporation. A suggestion of a starting target should be within 5% of their current net premium rate and then adjust to target rate over 5 years to transition into the system.

Alternatively, commence a new system once the UFL has been satisfied. In the event a firms rates are to increase the suggestion is that that increase would be offset by the removal of the portion in the base rate of the UFL.

The OCDCA and its members are committed to occupational health and safety and would embrace a fair, transparent system however; more information is required to provide a full and fair comment to this rate reform. The OCDCA would like to participate in an open forum on this plan, its development, testing and transition plan.

Yours very truly,

M Cornwell

Michelle Cornwell
The TRH Group Paralegal PC

c.c. Robert Celsi, Executive Director, OCDCA

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ntrod ction

Ontario's workers compensation system's experience rating programs have skewed the lost time injury statistics for the Province. Employers able to hide their serious injuries as no lost time accidents reduce their compensation costs and then become eligible to receive a rebate from the Workplace Safety and Insurance Board (WSIB). The other side of this program provides penalties for employers who have a higher level of lost time injury statistics and costs. The money at stake for many employers can add up to millions of dollars. In addition, efforts to accommodate injured workers now see injured workers coming back the next day to some sort of modified work. As a result, injuries that at one time would have been listed as lost time injuries are now being listed as no lost time injuries. It does not matter whether legitimate modified meaningful work is being provided or if the employer is simply hiding the claim, the result is the same. If it is cheaper to hide the injuries than prevent them, then many employers with an eye to the bottom line will do just that.

In addition to these financial incentives, the Ontario Ministry of Labour uses lost time injury statistics as a means to target workplaces for inspections. These are all tremendous incentives for employers to reduce the statistics.

For decades, the Ontario Federation of Labour had been hearing anecdotal evidence from our affiliates about workers who had been brought back to work the day after an accident in casts, wheelchairs and even stretchers so as to prevent the accident from being listed as a lost time injury. We were told of employers who were providing gifts or cash bonuses for work groups that had no reported lost time injuries. The information we were hearing indicated that it was widespread across all sectors.

The WSIB is now proposing to embed experience rating into the rates employers pay to the WSIB. This will expand the worst aspects of experience rating right across the system to include employers not previously eligible to participate in the experience rating programs.

Brief istor

The WSIB's main experience rating programs – NEER and CAD 7 – were introduced in 1984 with the aim of providing a financial incentive to promote improved health and safety practices in the workplace. These programs were introduced notwithstanding the fact that there were no authoritative studies available at the time to demonstrate that experience rating, where introduced, had produced safer workplaces. No cost benefit analysis was done to ensure that the programs would, indeed, add value to the compensation system as a whole.

The experience rating programs, which we feel are the driving force behind this effort to hide claims, was voluntary and had limited participation until the beginning of 1990 when it was made mandatory and greatly expanded. That same year, limited return to work obligations on employers were introduced. This required the employer to provide modified work so injured workers could return to their workplace sooner. These obligations were strengthened beginning in 1995. The experience rating programs were also expanded in 1995 to include even more employers.

Prior to 1990, total injury claims involved roughly half no lost time and half lost time with just one percentage point between the two types of injuries. Starting in 1990 we noticed a shift in how injury claims were being reported to the Board. By 2012, the last year that this data was made publicly available, there was 36.5 percentage points between the two types of injuries. It is the opinion of the Ontario Federation of Labour and our affiliates that these programs have been more effective in reducing the number of claims than they are in reducing the number of injuries.

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Experience rating programs have skewed the calculation for the severity rate which is another widely used measurement. Since it is calculated by taking a ratio of lost time hours over corresponding units of exposure, they will not provide an accurate picture of the true severity of injuries in the workplace if the lost time hours are skewed.

One technique that can be used to hide lost time injuries is to use the employers' sickness and accident benefit plan. Workers or lower-level management, whose job performance evaluation can be affected by the lost time injury rates, may have an incentive to see work related injuries listed as non-occupational lost time. This could also be a factor if substantial cash bonuses are provided to work crews who do not report any lost time injuries. This could result in significant peer pressure to use the benefit plan rather than report the injury to WSIB.

The rate framework proposal will only make this situation worse.

Ontario's workers compensation system has never put in place an evaluation system to monitor the impact of these programs on employer reporting practices. Such a system should have been established before the experience rating programs were introduced. This evaluation was, in fact, emphasized by Paul Weiler in his 1980 report, *"Reshaping Workers' Compensation in Ontario,"* made by the following observation:

> "I believe it would be irresponsible to miss the opportunity afforded by the introduction of this new merit rating scheme for enhancing the state of our knowledge for the future. As I have already suggested with reference to other proposals, before this new policy is actually implemented, an evaluation study should be developed to monitor its impact on employer behavior in order to provide the Ontario public and policy makers and a more informed basis upon which to appraise and use experience rating in the future."

Unfortunately, Mr. Weiler's advice was ignored. Now, all these years later, the fundamental premise of experience rating programs – that they result in employers investing time and money to make their workplaces safer – remains unproven.

This is the fatal flaw with the proposed rate framework. The WSIB wrongly assumes that claims costs are a useful measure of health and safety. This is pure fantasy, there is no evidence that claims costs equate to health and safety.

In fact, there is substantial evidence to show that there is widespread injury claims suppression by employers and that statistical trends on lost time injury claims significantly mask the true rate of work-related injury.

Evidence of significant under-reporting of lost time injury claims first came to light in the *"Report on Accidents and Fatalities in Ontario Mines,"* 1988 by the Standing Committee on Resource Development. This report concludes on Page 14 that:

> ".... the mining companies, in an attempt to reduce the number of lost time accidents (and therefore lower their WCB assessment rates), are now reporting injuries of greater severity as 'health care only' (no lost time) claims instead of 'lost time' claims The committee further believes that it is this shift in recording accidents which has resulted in the declining lost time injury rates.... Not only is the declining lost time injury rate masking the true situation concerning serious injuries, but a 'declining' lost time injury rate could also distort the response of the industry in terms of setting priorities and establishing appropriate safety strategies."

Several studies undertaken by the former Workers' Compensation Board confirmed the findings of the Standing Committee in 1988. These studies show that experience rated employers misreport or under-report accidents or, otherwise, engage in more intensive claims control measures and early return to work:

(1) A survey and case study conducted by Peat Marwick Stevenson and Kellogg showed that experience rating resulted in firms relying more heavily on claims control measures and early return to work than on the implementation of preventive safety initiatives. The case study revealed that health care claims were simply not reported or short term claims were reported as health care only.

(2) Analysis of statistical trends of claims mix also provide support for under- reporting. With the extension of experience rating to most employers in 1990 when the "no-lost time"/"lost time" mix was approximately 50-50, we have seen a consistent and increasing divergent trend with lost time claims decreasing, lock step, with a constant rise in no lost time claims. This would seem to indicate that employers are reporting more serious lost time injuries as no lost time injuries (WCB, Monthly Monitor).

As well, there has been a consistent increase in the severity of injury claims as measured by the number of days off per claim. This would indicate that the more severe injuries are more readily reported as lost time claims than the mild or less severe claims which may not be reported at all or may be misreported as a no-lost time claims.

(3) A survey of 1,103 employers conducted by the WCB provides further evidence of misreporting or non-reporting practices in response to experience rating:

a. 20 percent of employers indicated that they allow their injured workers to use short-term sickness plans rather than report the injuries to the WCB;

b. 13.6 percent indicated that they encouraged workers with mild or less severe injuries to take time off with pay and only report to the WCB if the workers had not returned within a few days;

c. 26.8 percent indicated that they gave injured workers light duties or modified work. The WCB study also showed that experience rated employers were more likely to appeal injury claims and that the rate of employer appeals had increased significantly.

The Morneau Sobeco report of 2008 echoed our concerns and criticisms by suggesting that the experience rating programs can encourage bad employer behaviour such as claims suppression rather than investing in health and safety.

In 2010, Tony Dean headed the Expert Advisory Panel on Occupational Health and Safety. The panel was made up of an equal number of representatives from labour, employers and academia. There was consensus that the use of Lost Time Injury and frequency was not a reliable measure for health and safety. The report recommended moving away from the use of LTIs as a metric and use leading indicators instead.

The Ontario government has committed to implementing all the recommendations from the Tony Dean panel. The proposed rate framework is not in keeping with the spirit and intent of the Tony Dean panel recommendations, nor with the government's commitment to implement those recommendations.

Professor Harry Arthurs turned a critical eye to the experience rating programs in his report *Funding Fairness*. He considered the experience rating programs a "moral crisis" and stated that unless the board was prepared to;

"… prevent and punish claims suppression and unless it is able to vouch for the integrity and efficacy of its experience rating programs, it should not continue to operate them."

The WSIB has chosen to do neither. Instead it announces plans to expand this "moral crisis" through the proposed rate framework.

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The WSIB has made a conscious decision to ignore decades of evidence that too many employers are gaming the system by suppressing claims rather than investing in health and safety.

We can simply state that any claim that Ontario's experience rating programs result in a reduction of accidents is intellectually and scientifically dishonest. Any statement by the WSIB that the proposed rate framework will improve workplace health and safety is also intellectually and scientifically dishonest.

Cope343
October 2, 2015


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October 2, 2015

Consultation Secretariat
Workplace Safety and Insurance Board
200 Front Street West
Toronto, ON M5V 3J1

Submitted via e-mail: (consultation_sectretariat@wsib.on.ca)

Re: WSIB Consultation on Rate Framework Reform

We thank J S Bidal for meeting with the OGCA Safety Committee in June and September to explain the proposed application of Rate Framework.

Since the first meeting, we met with members of the actuarial department who provided a direct target rate comparison of rates 723 and 764. Recently, the WSIB released an analysis on all rate groups and created a Risk Disparity Analysis. We appreciate these opportunities to understand and discuss this very detailed proposal.

About the OGCA

The OGCA's membership of 182 firms includes all of the major ICI general contractors active in Ontario plus numerous medium and smaller companies with regional and specialized business focus.
On an annual basis, they collectively produce over $10 billion of GDP to the Ontario economy, pay approximately $100 million in premiums to the WSIB and contribute over 2.2 billion man-hours.

We are members of and active supporters of CEC and fully endorse their submission. In some cases, we will refer you to their comments rather than repeat them.

Preliminary Comment

Please do not take these comments to be in any way an endorsement of this proposal - they are not. If, we had but one recommendation for you, it would be to recognize the high level of risk associated with the proposal and instead update the current system and keep it in place until the UFL is eliminated.

If the WSIB insists on moving forward, we encourage you to take a detailed examination of the comments provided by OGCA and the CEC. We believe you are putting at risk much of the progress you have made over many years and will place new, unreasonable burdens on many who have performed well including our members.

Responsiveness of the System

As you know, for many years OGCA and our members have been focused on improving safety performance in our industry for the benefit of our workers and to influence lower WSIB costs. We were original members of the Safety Group Program and are now actively working to establish the **COR™** program in Ontario.

We have also been supporters of the WSIB's experience rating programs that have been in place for the last thirty years. We feel that it has had a significant influence on the long term reduction in injury rate that Ontario has enjoyed. The system must find a balance between providing insurance protection and recognizing effective prevention and return to work performance.

The Rate Restructuring Proposal as presented, is seriously flawed in that, it provides a reduced incentive for performance, particularly for medium and small employers. As a result, long term performance gains will be lost at the cost of potentially further injuries and higher WSIB costs. Construction is dominated by small firms who for the most part have responded well to experience rating and other incentive programs. Unfortunately, this proposal eliminates many and will send a message that safety performance is no longer a priority.

The WSIB must maintain or expand its leadership role in health and safety. As the workplace insurer, you have a unique opportunity to deliver incentives for employers to invest in health and safety. The proposed model could recognize excellence by rewarding companies that have achieved accreditation through **COR ™** or other standards of accreditation as done in many other provinces. Accredited employers could have their premiums adjusted according to a formula.

This will serve as the next level of performance after Safety Groups. Accredited employers tend to perform with greater than 50% lower accident rate and costs. It is a smart investment in health and safety excellence.

Many major buyers of construction have now announced that they will soon require **COR™**Certification to bid. **COR ™** is a very high standard and as a result, most contractors struggle to achieve it. It usually requires significant new resources that are not available to some. A WSIB incentive will help support new investment in health and safety, fewer claims and lower costs.

The October 1, 2015 Rate Framework Update suggested that adjustments may be made for employers with a 10 - 40% predictability level to move up to 4 bands a year rather than the originally proposed 2 band restriction. This will increase the responsiveness, but there are other opportunities as well to increase responsiveness.

It is proposed that the impact of costs will be applied equally over a six year period. It is our opinion that this is too long and doesn't reflect the tradition cost distribution experienced by the WSIB. The proposal should front load costs to reflect the traditional cost allocation experienced that will support greater responsiveness and improved employer accountability.

There are other adjustments that could be made to address this issue. We request that you model other applications that are more responsive to performance and make the appropriate adjustments. The WSIB must maintain a leadership role in health and safety. As the workplace insurer, you have a unique opportunity to create an incentive for employers to invest in effective health and safety.

NAICS as an Insurance Allocation System

The North American Industry Classification System (NAICS) was developed as an industrial classification system to compare and assess business for the purpose of economic development and trade, not as a method of allocating insurance risk.

The WSIB's long established practice has been to allocate employers into groups that reflect both commonality of business activity and risk. The Rate Framework Proposal to allocate rating groups solely on business activity results in some variations in risk profiles as seen in G3 construction sub trades and G1 buildings. We propose that the business activity be allocated through the initial class allocations in class (G) and that sub rates be developed independent of NAICS with a primary focus on risk and performance. Where possible, the existing rate groups should be the starting point.

The Risk Disparity document analysis acknowledges that in some cases the performance variations are too large and has considered alternatives by going to the NAICS level 2, 3 or 4. The problem is that the model is attempting to address performance allocation with a tool that is not designed to do so. The annual construction premium is greater than $900 million, large enough to accommodate 6 to 10 rates whose members will have a common business description (general contractors) and performance profile.

G-1 Performance Comparison

The performance data provided by the WSIB supports our concern that the construction industrial, commercial and institutional sector (ICI) and the homebuilding sectors are too dissimilar in business activity and performance to be placed in the same rate group.

The "*Discussion on the Published Rates vs Target Rates*" document sets the 2014 Target Rates for 723 (ICI) at $4.60 and 764 at $6.51. The $1.89 difference is a 41% variance, a sizeable gap with historical differences. ICI general contractors focus on managing projects and contracting out most of the work and risk to subcontractors. This and a broader safety culture in ICI provide a significant performance advantage over residential low-rise building.

The document did not examine variations in performance including changes in employment. Rate group reports for 764 records a stunning 25.5% increase in FTE's in 2013, primarily a result of Bill 119 registrations. Rate 723 was essentially unaffected by this change. As a result, much of the 764 data is not mature and full cost profiles of the group are unknown.

The Rate Framework Modernization Reports for each rate includes projections of the allocation of employers risk banded in G1 Building Construction. It projects that 97.43% of 764's members will be banned at a higher than the average rate and 85.69% of 723's members will be banded at a lower than the average rate. This proposal establishes a new rate of two groups with very different performance profiles. It is not reasonable and is not necessary.

Fortunately, both groups on their own are very large in terms of payroll and premiums. They each registered more than 2 billion man-hours in 2013 and they both continue to grow. Individually, they are actuarially creditable and sustainable under this model. It makes sense to maintain separate rates to better recognize performance and respond to performance changes. We are adamant in our belief that the G1 rate must be separated into Residential and ICI sectors.

We recommend that the proposal and the changes we have recommended be modeled with real employers comparing it to the existing funding model. This will test both the credibility of the proposal and expose unintended consequences.

Preserve the Second Injury Enhancement Fund

As presented in the CEC submission, it is vital for SIEF to be preserved in order to support labour mobility. It is common for construction workers as they age to have pre-existing conditions as a result of the aging process and wear and tear on their bodies. A perspective employer must be assured that they will not be financially liable for cost implications of a re-occurrence of a prior condition. This improves the workers' employability and supports the WSIB's work integration goals.

Single Rate based on Predominate Business Activity

Single rating of firms may be administratively convenient but it doesn't support business diversification. It will artificially inflate or deflate the premiums depending on the determination of predominance. We believe the current policy appropriately applies risk to multi rated firms.

We are concerned with the proposal to eliminate Rate # 755 Non- Exempt partners and Executive Officers in Construction. This rate was introduced to support the equitable application of Bill 119 to newly covered executive officers who do not work on the tools. Elimination of this will significantly undercut the credibility of mandatory coverage. We support the CEC's comments on this issue.

Consider Unintended Consequences

OGCA is very concerned that the flaws in this proposal will have financially negative implications on many general contractors. The model is very restrictive in recognizing and adjusting performance of medium and smaller employers. It is proposed that as members of G1 they will be in a higher cost group and will have little ability to move to a band that reflects their performance. They will endure higher WSIB assessments as a result of the Rate Framework.

Sincerely,
ONTARIO GENERAL CONTRACTORS ASSOCIATION

David Frame,
Director Government Relations

CC: OH&S Committee
CEC

OHA Response to the WSIB Rate Framework Modernization Consultation

Sept 30, 2015

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Introduction

The Ontario Hospital Association (OHA) appreciates the opportunity to provide feedback to the Workplace Safety and Insurance Board's (WSIB) proposed rate framework.

The OHA is the voice of Ontario's 147 publically funded hospitals. This discussion paper provides a response to the WSIB's proposed rate framework model (RFM), including both context and rationale for the positions taken.

Generally speaking, the OHA supports the proposed design of the WSIB's rate framework model. The sections that follow detail recommendations on specific design elements that are aimed at improving overall transparency, reasoned responsiveness, and fairness within the system.

The implementation of a new rate framework, with clear and consistent application across all employers, including the fair allocation of costs, is essential to the viability and sustainability of the WSIB. As both employers within Ontario and stewards of Ontario's health care system, Ontario's hospitals have a unique perspective on the fair cost allocation and provision of workers' compensation benefits through the WSIB. They are both participants in the WSIB's collective liability insurance plan and providers of health care services to millions of Ontarians

For these reason, the OHA strongly supports the WSIB's continued work on the development and implementation of this model, as well as its efforts working with employers to reduce the WSIB's Unfunded Liability.

As a foundation for the recommendations outlined in this submission, the OHA recommends that the WSIB conduct additional financial and operational modeling of the proposed changes before including them in the final design.

Proposed Rate Framework Structure

Recommendation: The OHA proposes a model whereby members of the same class (or subclass) would all be expected to perform similarly, based on similar risk profiles, NCC, and hazards within their work. However, the individual performance of each organization would be experience-rated, thus impacting the rates they pay.

In particular, we recommend the following three-step process:

- **Step one involves using the North American Industrial Classification System (NAICS) to determine business activities of each employer.**
- **Step two involves grouping employers based on both business activities and risk, such that employers in a group all have common risk profiles. This would create classes or subclasses where NCCs are all similar.**
- **Step three would see experience ratings differentiate between employers within the classes and subclasses. Costs are allocated based on the risk employers present to the system (i.e., stronger vs. weaker performers) and they would thus move between risk bands based on their performance.**

The OHA understands the WSIB's expectation that the proposed use of risk bands will correct for the actual differences in new claims cost (NCC) for employers in the same class (i.e., variances in the true NCC compared to the average NCC used to determine premiums).

However, the OHA believes that appropriate determination and allocation of NCCs is the most fundamental component of an insurance system. Therefore, grouping employers with significant rate disparity (i.e., differences in NCC) within the same class would create imbalance and inherent unfairness within the system. As such, the OHA suggests that the proposed second and third steps of the RFM, where employers are grouped into classes based on the NAICS hierarchy and subsequently placed in risk bands, are based on **both** their historical performance and business activities.

The OHA believes that experience rating should differentiate between stronger and weaker performers, such that costs are appropriately distributed between employers who have the same risks but are performing differently.

It is important to consider the wide scope of risk profiles and hazards that may be apparent within any given "branch" of the NAICS hierarchy. As a result of differences in work-related hazards, there may be significant differences in the NCC within a given class (i.e., significant rate disparity). Use of a single, average NCC within a large class of employers with a wide range of hazard types and risk profiles could significantly impact the fairness and sustainability of the system.

The OHA believes that expanding the model from 22 to 32 classes[1] is a step in the right direction. However, we still believe the risk disparity remains too significant and further analysis must be done to ensure the new classes appropriately group employers, such that NCCs are accurately reflected in individual premium rates.

The OHA also has some concerns about how these large classes of employers with significant rate disparities will impact employers of different sizes. Some of the proposed classes group together a wide range of employers with varying risk profiles due to close proximity within the NAICS hierarchy. In this scenario, if some small employers with high-risk operations are grouped with larger organizations with lower risk profiles they may pay significantly lower insurance rates than would be appropriate given their risk profile. And, even with significant volumes or severities of injuries, protections from rate volatility afforded to small employers (to be discussed in further detail below) would prevent appropriate allocation of costs.

While the activities of one employer may have minimal impact on the entire collective liability and insurance system, some of the proposed classes contain a significant proportion of small employers. If NCCs are not appropriately distributed, and premium rates are protected for small employers, this could result in significant costs accumulating within the collective liability. This would impact large employers and those small employers who have lower risk profiles. Ultimately, this would affect the sustainability of the workers' compensation insurance system.

The OHA is proposing a structure that is very similar in nature to the WSIB's current model, with the primary difference being the grouping of employers by hazard/risk profile instead of solely by the NAICS hierarchy. This could be done through a realignment of classes based on hazards/risk profile, or through the creation of sub-classes that group together organizations within the same class that have similar NCCs.

Specific Issues for Consideration

Per Claim Limit (PCL) and Cost Allocation

Recommendation: The OHA recommends that the WSIB reconsider the range of PCLs in the new rate framework, such that the minimum PCL should be at least the equivalent of maximum insurable earnings (IE), and the maximum PCL should be capped at four times Maximum IE.

In reviewing the recommended PCL range, OHA members identified imbalances within the proposed range that could create disadvantages for both small and large employers, and may also inadvertently have unintended consequences on return-to-work practices.

[1] As proposed in the WSIB's July 2015 Rate Framework Reform Consultation Update and Risk Disparity Analysis. For example, the proposed Class Q: Health and Social Services, has been split into two Classes. Q1: Nursing & Residential Care Facilities and Q2: Ambulatory Health Care & Social Assistance,

Considerations for Small Employers

In considering the protections in place to prevent small employers from large swings in cost, the WSIB has identified three mechanisms:

- An "actuarial predictability" scale, which balances an employer's claims experience with that of the class;
- A lower PCL, with the remainder of each claim cost being allocated to the class; and
- A maximum risk-band movement provision, such that no employer will move more than three risk bands in one year.

OHA members raised concerns with respect to these three factors being combined. Together, they may result in excessive protective measures for small employers. With too many protective measures in place, there is a risk that smaller employers would not be held duly accountable for the risk (i.e., costs) they generate within the system. Secondary to this, claims costs in excess of the PCL would be transferred to the entire class, where larger employers would be subsidizing these additional costs.

Because in the hospital class there are fewer employers, the overall impact of these costs may only be moderate. However, in larger classes with significant numbers of small employers, the cumulative total may be very significant, creating a system in which large employers are burdened with subsidizing the costs of smaller employers. In discussion with the Ontario Business Coalition, it has been noted that this issue has a potential impact on the sustainability of the new rate framework for all employers and, in the private sector, the competitiveness of Ontario in the global marketplace.

In addition, for small employers, the proposed model may create situations where the "cost" to reintegrate an injured worker (maximum IE or the worker's regular wages) is higher than the potential premium increase due to continued benefits provision (i.e. the proposed cost allocation of only 0.5 times maximum IE and capped movement between risk bands).

This unintended loop-hole may create an incentive for employers to maintain an employee on benefits instead of returning them to work, which conflicts with the WSIB's goal of facilitating an early and safe return to work for injured workers. This could, in turn, impact the costs to all Schedule 1 employers and the sustainability of the workers' compensation insurance system. Therefore, the opportunity to reduce the potential for unintended consequences should be considered.

Considerations for Large Employers

The proposed rate framework includes the use of a six-year claims experience window. This means the actual costs of any claims within the most recent six years will be considered in determining an employer's experience rating and premiums. When combined with the high PCL for large employers, currently proposed to be seven times the maximum IE, each claim has the potential to place a significant burden on a large employer. This greatly reduces the insurance-related benefits of a collective liability model for large employers within the hospital sector and more broadly within Ontario. From the perspective of ensuring sustainability of the framework, this structure may also have a significant effect on the WSIB's insurance system as it will impact on the business activities of large employers within the private sector and Ontario's competitiveness in the global market.

The use of four times the Maximum IE has been recommended, which is consistent with the level used in the current New Experimental Experience Rating (NEER) program. And, as the new RFM will only include actual claims costs without including predicted future costs, the use of four times the maximum IE should capture significant claims.

Employers, regardless of their size, must be motivated by the new RFM to improve Disability Management Practices and have a reasonable opportunity to influence their individual rate by managing their own claims. Even while accepting a group liability, the majority of an individual employer's premium rate must be within their control to influence and change.

Movement between Risk Bands/Graduated Risk Band Limits

Recommendation: The OHA recommends the WSIB maintain its current model, with risk band movement limited to +/- three bands per year. Additional analysis should be conducted if any change is to be considered, reviewing the effect of adjusting the risk band movement limitation

In line with the earlier discussion on PCL and cost allocation, the OHA has reservations about the approach proposed in the July 2015 RFM Consultation Update. These reservations are primarily due to the protections already in place for small employers and the burden of additional costs the protections may place on large employers.

If limitations for small employers were reduced to one to two risk bands, there would be an increased potential for exponential year-over-year costs in excess of premiums paid. In other words, decreasing the risk band limitations may lead to greater differences between an employer's actual premium and their target premium (i.e., the premium they should be paying). It is these costs that would increase the overall NCC of the class.

Other factors within the proposed rate framework will protect small employers from excessive cost changes. For example, use of the actuarial predictability scale which balances individual experience with that of the collective, and the proposed limitations on risk band movement. This renders the need for further limitations on risk band movement as unnecessary.

Regarding the proposal to increase risk band limitations for larger employers (e.g., +/- five risk bands), OHA members have raised concerns about the potential volatility this could create within the system. While unlikely, it may be possible for employers to have erratic movement patterns within the system. And, with an increase in the number of risk bands an employer can move within, these swings in costs could be significant. For instance, an employer could move up five bands one year, go down four risk bands the next, then up four risk bands the year after, etc. Such potentially wide swings, similar to current undesired patterns within the NEER system, could impact upon the funding of the class, and may also prove disruptive to employer budgeting and management of costs.

Employer Claims Experience: Weighting of the Experience Window

Recommendation: The claims experience window should be weighted, such that more recent years included in the window have a larger impact on determination of an employer's premiums than earlier years.

In the July RFM Update posted by the WSIB, it was noted that many employers have suggested that weighting the employer's claims experience may be appropriate. This means that the most recent years within the claims window are given more weight than earlier years. The OHA agrees this may be a logical and valuable modification to the current model, as improvements in claims experience will be recognized in a timelier manner.

Surcharges

Recommendations: The OHA recommends that in lieu of a surcharge mechanism, the WSIB consider implementing an audit program that reviews an employer's premium rates relative to the risks they present to the system.

The OHA recommends that this audit focuses on an organization's claims history and return-to-work practices and be based on performance over multiple years, not just a single year.

The OHA agrees that a mechanism should be put in place to ensure employers' premiums are in line with the risks they present to the system. However, application of a surcharge to only those employers at the top risk-band may not provide adequate control to appropriately allocate costs. Considerable risk exists when an employer's year-over-year claims costs are not adequately reflected in their premium increase due to limitations on risk band movement.

By conducting an audit, with clearly defined criteria, employers would be selected based primarily on excessive year-over-year costs that are not adequately captured through risk band movement.

This audit program could also consider sector-specific factors that are influencing claims cost, but are beyond employers' scope of control. An example would be claims related to enteric diseases and gastro-intestinal illnesses within the health care sector. By law, health care workers must not return to work until they have been symptom free for a period of time, which can range from 24 hours to 14 days, depending on the cause of the illness. These measures are preventative in nature and in place to protect patients and other workers from contracting the illness. However, these measures also increase the duration of a claim beyond what would be seen in the general workforce.

Multi-Rated Organizations

Recommendation: The OHA recommends that the new rate framework mandate the use of multi-rated firms in instances when the employer is conducting several business activities that are associated with different hazards and NCC.

As explained earlier, to fairly allocate costs, the most important aspect of the new rate framework will be the appropriate classification of organizations. And, this allocation of costs should be based on the recognized hazards within the workplace and not just the hierarchal industrial classification of the employer's primary business activity.

In line with this position, multi-rated firms should be incorporated into the new RFM to ensure costs are appropriately allocated, based on the hazards present in the workplace and not just the primary business activity as categorized under NAICS.

As an initial example, an organization may undertake several business activities with significantly different NCC and the payroll for each of these different business activities may only be minor. This creates situations where large, multi-faceted organizations are paying premiums based on one business activity that may be out-of-line with the NCC of several other business activities they conduct. These employers may then be deemed to be high-risk, when in reality, they are just misclassified.

Within the health care sector, classification based on a single business activity may be problematic for both large, academic hospitals with research facilities and a wide range of specialized services as well as smaller health care provider organizations that include both acute care services and long-term care facilities. In both these instances, the broad range of activities and the differences in how care is provided may skew the data on which the classification is based, and therefore, incorrectly classify a hospital as a long-term care home or other health care provider.

In addition, using only a primary business activity to classify an organization may impact upon public-sector organizations' purchasing and procurement practices, by inadvertently creating business advantages for larger, multi-disciplinary employers. This may occur as a large employer with a high-risk activity conducted by only one division/department may be paying a lower insurance rate than a smaller, specialist employer conducting the same, high-risk activity. As these insurance costs are often passed on to the end-user (e.g., an organization hiring a contractor), the large employer could offer lower prices and service rates, due to their lower WSIB premiums.

An example of this situation would be hiring a specialist for asbestos abatement or housekeeping in a health care environment, where infection control is paramount. Given hospitals abide by broader public sector procurement requirements, and the current economic environment, it would be challenging to procure services from a higher-cost independent or small contractor, even if the contractor is a specialist.

Given the potential for inadvertently creating business advantages for some employers by rating organizations based on their primary business activity, the OHA strongly encourages the WSIB conduct further analysis on this issue. Multi-rated firms may remove many of the potential risks and assist in providing clarity and transparency within the new framework.

Second Injury Enhancement Fund / Cost Relief

Recommendations: The OHA recommends that when contributing factors not related to the workplace incident increase the severity of a worker's injury, cost-relief measures should offset the employer's claims history.

The OHA recommends that the WSIB adopt a model of cost-relief that has already been applied and proven effective in another jurisdiction.

Taking into consideration the original, intended purpose of the Second Injury Enhancement Fund (SIEF) program and its current use, the OHA still believes there is a need for appropriate cost-relief mechanisms when the severity of the claim is influenced by factors outside the control of the employer.

There are many factors which may impact the "trigger event", duration, or severity of a claim such as the worker's health and personal health behaviours history, as well as pre-existing illnesses and injuries that may or may not be work-related. This has been recognized in several different jurisdictions, providing evidence of both its necessity with a workers compensation insurance system, and models for implementation. Examples include the WorkSafeBC model[2], with cost relief initiated after 12 weeks of claim duration; the WorkSafe NB policy (21-300)[3], with cost relief for costs incurred above expected healing time; and the Alberta Workers Compensation Board Policy (05-02 Part II).[4]

There are a many examples within hospitals of incidents that would not have led to injury in the general population, but have led to the severe disablement of an individual worker and subsequent long-term layoff. Examples of this which have been documented include:

- An individual who had a non-work related shoulder injury several years earlier was simply reaching for a small object on a nearby eye-level shelf, when their shoulder dislocated. The result of the incident was the worker requiring shoulder surgery and significant time away from work.
- A worker with a medical condition, such as Spina Bifida or Muscular Dystrophy, trips and falls. The resulting recovery period significantly exceeds the expected duration of recovery for a member of the general population.
- A young worker entering the workforce with a history of participating in video game competitions for several years before beginning their employment was diagnosed with a repetitive strain injury, requiring long-term treatment and accommodation, after only a few months of moderate keyboarding work.

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[2] WorkSafeBC Cost Relief Policy http://www.worksafebc.com/publications/policy_manuals/Rehabilitation_Services_and_Claims_Manual/volume_I/assets/pdf/RSCM17.PDF (accessed July 10, 2015)

[3] WorksafeNB http://www.worksafenb.ca/pdf/resources/policies/21-300.pdf (Accessed July 10, 2015)

[4] Alberta WCB Cost Relief Policy http://www.wcb.ab.ca/public/policy/manual/0502p2a1.asp (Accessed July 10, 2015)

- Workers in some areas of the province are employed in heavy industry, mining, or forestry and move into the hospital sector later in their careers. Some injuries sustained by these workers are excessively severe, disproportionate to the activities they undertake at the hospital. However, the hospital, as the current employer, is allocated all costs for the duration of the claim.

It is clear that there is a pre-existing condition in all of these examples, that treatment of these conditions is necessary, and that the workers described deserve the same health care benefits available to all people of Ontario. However, it is also important to ensure that the cost of workers compensation for employers is in-line with the risks they present to the system. This position aligns with the WSIB's Preliminary Rate Framework Key Goal of fairly allocated premiums. Additionally, the removal of cost relief may increase appeals to ongoing entitlement based on whether the severity of an injury has been impacted by a pre-existing condition. This could create additional, costly administrative burden to all parties involved.

Pre-Existing Conditions and Cost Relief

Recommendations: The OHA recommends that the factors set out in the WSIB's Pre-Existing Conditions benefits policy should be considered when determining whether the ongoing costs related to impairment should be applied to an employer's claims experience.

The OHA recommends that application of the pre-existing conditions benefits policy should also trigger a review of claims cost allocation, and a potential need for cost-relief.

In 2014, the WSIB created a Pre-Existing Conditions policy[5] to adjust benefits in instances where a work-related injury is no longer significantly contributing to the reason for a worker's inability to work.

The OHA recommends that the WSIB apply these considerations when determining if cost-relief should be available to the employer. These factors used when determining the ongoing work-relatedness of impairment, include whether:

- the impairment affects the same body part or system as the pre-existing condition;
- the impairment continues beyond the expected recovery period, given the work-related injury/disease;
- the impairment is unexpectedly severe given the work-related accident; and,
- there is a change in the worker's ability to perform the pre-accident work, beyond what was expected given the work-related injury/disease.

[5] WSIB Operational Policy 15-03-02: Pre-Existing Conditions http://www.wsib.on.ca/WSIBPortal/faces/WSIBManualPage?cGUID=15-02-03&fGUID=835502100635000497&_afrLoop=10988553445587050&_afrWindowMode=0&_afrWindowId=null#%40%3FcGUID%3D15-02-03%26_afrWindowId%3Dnull%26_afrLoop%3D10988553445587050%26_afrWindowMode%3D0%26fGUID%3D835502100635000497%26_adf.ctrl-state%3Dw22rr75x_47 (Accessed July 10, 2015)

If a determination is made that a significant portion of the "trigger", severity, or duration of a claim may be attributed to factors outside the workplace or employer's control, employer cost relief should be applied.

Allocation of Remaining Costs

Recommendation: The OHA recommends costs removed from an individual employer's claims history, due to cost relief, be allocated to the entire Schedule 1 collective liability pool.

This recommendation is based on the changing nature of employment in Ontario, with an increased proportion of workers changing jobs frequently over the course of their working-life; an increased proportion of workers with multiple part-time jobs; and an aging workforce, with a corresponding increase in injuries caused by cumulative workloads over a long period of time with multiple employers.

Long Latency Occupational Diseases (LLOD)

Recommendation: The OHA recommends that a tiered approach be considered, with an assessment conducted for each LLOD claim as part of the Claims Adjudication process. Cost allocation would then occur at the individual employer, class, or Schedule 1 level, as determined by the findings of the assessment.

The OHA acknowledges that, in some cases, it may be inappropriate to allocate the costs of all LLOD to all employers at the Schedule 1 level. This may be the case when there is a recognized risk of exposure in a given sector or with a given employer.

However, it may also be inappropriate to allocate the costs of an LLOD claim to one employer or one sector/class, as many workers are employed part-time for two or more different organizations, and workers also move between organizations throughout their career, both within and outside any given sector.

For example:

- Where a single employer is identifiable (i.e., one employer over the course of a worker's career) and potential causal factors for the LLOD exist, it would be appropriate to allocate the costs to the individual employer identified.
- Where multiple employers are identified over the course of an individual's working life, but the employers are all within the same sector and/or class, it would be appropriate to allocate the costs of the LLOD claim at the class level (e.g., a nurse who moves between organizations over the course of her career, but has always worked at hospitals).
- Where a worker's career has seen several changes in employers, including movement between sectors and classes, it would be appropriate allocate the costs of the LLOD claim at the Schedule 1 level.

In all cases, it will be important to ensure that the LLOD claims are, in fact, the result of condition in the workplace and arose of out the course of the work. Due consideration must be given to ensure that an individual's health, hygiene, and personal life choices and activities are not the cause of the LLOD.

Identifiable Workplace Exposures

Recommendation: The OHA also recommends that the WSIB consider any known workplace hazards and potential exposures in the worker's work history.

As an example, the Ministry of Labour is currently undertaking a review of the Designated Substances Regulation[6] including the development of a Code for Medical Surveillance (*the Code*). If an LLOD claimant has a history that includes medical surveillance, as applicable under the Code, this information should be taken into consideration when determining cost allocation.

Additional Recommendations

Consideration for Premiums Already Paid

Recommendation: The OHA recommends transition planning considers premiums paid by employers as part of the NEER system, including previous allocation of funds for future costs.

In addition to these issues, the OHA requests that the WSIB consider the impact of the experience rating claims window during the transition period to the new rate framework. Under the New Experimental Experience Rating (NEER) system currently in place, employers are paying projected future costs for all claims. Further, if these costs are included in an employer's claims history during and following the transition to the new rate framework, employers would effectively be paying twice for the same claim.

72-Month Lock-In Clause

Recommendation: The OHA recommends the WSIB repeal or amend the *Workplace Safety and Insurance Act*, Section 44(2) (i.e. the 72-month lock-in clause) before implementation of the new rate framework.

OHA members have also noted that within the WSIB an imbalance currently exists between the provision of benefits and allocation of costs, since the level of benefits provided to an injured worker is "locked-in" after 72 months. This imbalance will continue to exist under the new system unless the 72-month lock-in clause is repealed.

As active claims management ceases after 72-months, once the level of benefits provided is locked-in, there is no longer an ability for the WSIB to regularly reviews and assess claims to ensure fair and

[6] O. Reg. 490/09 – Designated Substances

appropriate level of benefits provision for every injured worker. The appropriate management of all claims, for the life of the claim, should be a core function of the WSIB.

Subsequent Consultations

Recommendation: Additional opportunity for consultation should be provided to all stakeholders after amendments are made to this preliminary model, before finalization of the new RFM.

Information used in analyses of the amended RFM should be shared with stakeholders, to allow for validation and additional feedback.

As the final design of the RFM is still unknown and is likely to undergo changes to the proposed model, the OHA requests additional consultation(s) on the re-modeled version of the proposed rate framework. This consultation should occur before discussions begin on the transition from the current system to the new RFM.

Additionally, as the only proposed sector to move directly from a Rate Group (853) to a class (P), the OHA suggests modelling the hospital sector to determine the effect of all recommended changes on both the sector and individual employer levels.

List of Recommendations

In summary, the OHA recommends the following approaches be taken within the new rate framework.

1. Application of a business activity and risk-based classification system that would group together organizations with similar risk profiles. This could be accomplished through the realignment of classes, based on risks (with business activities used as identifiers) or with the creation of sub-classes that group employers based on risk (reflected in new claims costs). Experience rating (through risk banding) would then differentiate between employers with similar risk profiles.

2. Amend the proposed Per Claim Limit range, such that the minimum PCL should be at least the equivalent of maximum IE and the maximum PCL should be capped at four times Maximum IE.

3. Maintain the current model's proposal for risk band movement limited to +/- three bands per year. Additional analysis should be conducted if any change is to be considered, reviewing the impact of adjusting the risk band movement limitation on year-over-year costs.

4. The Claims Experience window should be weighted, such that more recent years included in the window have a larger impact on determination of an employer's premiums than earlier years.

5. The OHA recommends that in lieu of a surcharge mechanism, the WSIB consider implementing an audit program that reviews an employer's premium rates relative to the risks they present to the system.
    - The OHA recommends that this audit focuses on an organization's claims history and return-to-work practices and be based on performance over multiple years, not just a single year.

6. The OHA recommends that the new rate framework mandate the use of multi-rated firms in instances when the employer is conducting several business activities that are associated with different hazards and NCC.

7. Maintain a cost-relief program to appropriately allocate costs in instances where the injury is not solely attributable to the current work or workplace, such as when pre-existing conditions impact the trigger, severity, or duration of an injury.

8. The OHA recommends that the WSIB adopt a model of cost-relief that has already been applied and proven effective in another jurisdiction.

9. The OHA believes the factors set out in the WSIB's Pre-Existing Conditions benefits policy should be considered when determining whether the ongoing costs related to impairment should be applied to an employer's claims experience.
    - Application of the pre-existing conditions benefits policy should also trigger a review of claims cost allocation, and a potential need for cost-relief.

10. Additional costs associated with a cost-relief program should be allocated at the Schedule 1 collective liability pool.

11. Long latency occupational diseases should be assessed, prior to determining appropriate cost allocation. Cost allocation may then occur at the employer, class, or Schedule 1 level.
    - The WSIB consider any known workplace hazards and potential exposures in the worker's work history, when allocating costs for LLOD.

12. For claims initiated under the NEER program, consider the premiums already paid by employers under the "predicted future costs" component of experience rating. These costs should not be charged a second time, as part of the new rate framework experience rating program.

13. Repeal or amend the *Workplace Safety and Insurance Act* Section 44(2) (i.e. the 72-month lock-in clause) before implementation of the new rate framework.

14. Provide additional opportunity for consultation to all stakeholders after amendments are made to this preliminary model, before finalization of the new RFM.

15. Share information used in analyses of the amended RFM with stakeholders, to allow for validation and additional feedback.

Ontario Home Builders' Association

WSIB RATE FRAMEWORK REFORM

BILD
Bluewater
Brantford
Chatham-Kent
Cornwall
Greater Dufferin
Durham Region
Grey-Bruce
Guelph & District
Haldimand-Norfolk
Haliburton County
Hamilton-Halton
Kingston-Frontenac
Lanark-Leeds
London
Niagara
North Bay & District
Greater Ottawa
Oxford County
Peterborough & the Kawarthas
Quinte
Renfrew
Sarnia-Lambton
Saugeen County
Simcoe County
St. Thomas-Elgin
Stratford & Area
Sudbury & District
Thunder Bay
Waterloo Region
Windsor Essex

Submitted to: **WORKPLACE SAFETY AND INSURANCE BOARD**
October 2, 2015

ABOUT OHBA

The Ontario Home Builders' Association is the voice of the building, land development and professional renovation industry in Ontario representing 4,000 member companies organized into 30 local associations across the province. Our members have built over 700,000 homes in the last ten years in over 500 Ontario communities. The industry contributes over $45 billion to Ontario's economy, employing over 300,000 people across the province.

OHBA is committed to improving new housing affordability and choice for Ontario's new home purchasers and renovation consumers by positively impacting provincial legislation, regulation and policy that affect the industry. Our comprehensive examination of issues and recommendations are guided by the recognition that choice and affordability must be balanced with broader social, economic and environmental issues.

INTRODUCTION

OHBA is pleased to comment on the Rate Framework Reform Analysis. OHBA is enthusiastically supportive of the main policy recommendation described in the proposal – the consolidation of rate groups based on predominant business activity. This change would settle a significant inequity found in the construction sector. Currently homebuilders pay around twice as much compared to builders of industrial, commercial and institutional (ICI) buildings even though the building process, building code, and tradespeople can be identical. In many cases, the only differentiating factor between our sectors is the end user. Because of this, merging similar rate groups makes conceptual sense and we are not surprised that WSIB's own statistical analysis comparing homebuilding with ICI work shows the safety records between these sectors is almost identical.

POLICY ENVIRONMENT

Over the past five years, OHBA has put forward three resolutions at our Annual Meeting of Members (AMM) related to WSIB. As seen by two of the more recent AMM resolutions, OHBA and our 30 local home builder associations have been at odds with certain WSIB policy changes that relate to independent operators in construction.

- ***2009 – Resolution 8, "Mandatory Coverage, WSIB:*** *Requested the Ministry of Labour withdraw regulations as established in Bill 119, Workplace Safety and Insurance Amendment Act, 2008.*

- ***2013 – Resolution 8, "Proposed Changes to WSIB Rate Groups in Response to Mandatory WSIB Coverage:*** *Requested that the WSIB create a separate rate group for independent operators and executive officers 'on the tools' that takes into consideration market realities prior to Bill 119 and creates market-competitive rates that is established at one-third of the current rate group.*

For OHBA members, the government's decision to pass Bill 119, *Workplace Safety and Insurance Amendment Act, 2008* and the subsequent WSIB implementation policies created significant problems for residential construction. Across Ontario, our members that operated small business argued that this new policy was unduly costly to their business, adding a duplicative insurance system that was more expensive and less comprehensive than their private insurance coverage which covered them 24 hours a day, 7 days a week, both

on and off the jobsite. The type of work performed by owners 'on the tools' along with WSIB's return to work and claims policies would also make it far less likely that an independent operator would ever file a claim compared to their workers.

We continue to believe that this new policy created new incentives for small business to enter the underground economy, sometimes adding an $8,000 additional cost to a small business. OHBA continues to hold our position from 2009 – that this policy did nothing to improve health and safety in construction and may actually push some independent operators off the grid completely. In fact, this change might actually make more contractors and their consumers more vulnerable to some of the negative consequences of the underground 'cash' economy.

DEFENDING FAIRNESS IN BILL 119

RECOMMENDATION: RESPECTING THE HOME RENOVATION EXEMPTION

The new rate framework reform's potential legislative and regulatory changes to merge rate groups might pressure the WSIB to advocate to government that the home renovation exemption found in Bill 119 should be eliminated.

While OHBA continues to oppose Bill 119, we support the exemptions in place for independent operators and sole proprietors who perform home renovation work. This important legislated exemption recognizes the unique characteristics of the home renovation contractor and should be respected should there be any changes to WSIB related legislative statutes.

RECOMMENDATION: MAINTAINING RATE GROUP 755: NON-EXEMPT PARTNERS AND EXECUTIVE OFFICER IN CONSTRUCTION

With the consolidation of rate groups, it is anticipated that Rate Group 755 will be eliminated and merged into the new construction rate groups. RG 755 was created in 2012 during the Bill 119 implementation period. OHBA views the creation of this rate group as a compromise position by WSIB to satisfy stakeholders supportive of Bill 119, but not supportive of elements that impacted their membership. While this group undoubtedly has a different risk relative to their workers, so to do all employers that were captured by Bill 119.

The potential elimination of this group provides an opportunity for a new dialogue around the merits, successes and potential changes around Bill 119. OHBA proposes re-examining how WSIB policies relate to *all* those affected by Bill 119 and would welcome a new conversation.

STANLEY REPORT DEMONSTRATES 'THE CASE FOR CHANGE'

While OHBA member experience with WSIB has been focused on Bill 119 over the past few years, we have fully participated in the discussion around rate group changes to industry. We were pleased that Douglas Stanley, who was tasked with making improvements to the rate system, listened to our comments around rate group consolidation and the unfairness embedded in the current system. OHBA formally endorsed his main recommendation around consolidation at the 2014 AMM.

- ***2014: Resolution 10, WSIB Rate Group Modernization:*** *Requested that the WSIB expeditiously create a targeted plan on merging rate groups over the short term with clear timelines as per the recommendations by the Douglas Stanley's The Case For Change report.*

The Need to Expedite the Process:

It is worth noting the significant amount of time WSIB has been consulting rate group reform. For more than five years there have been two policy papers on this topic. The first, issued by Harry Arthurs, who along with John Tory and Buzz Hargrove began meeting with stakeholders, industry representatives, and workers beginning September 2010. Based on those numerous public stakeholder submissions, Mr. Arthurs issued "Funding Fairness" in 2012 that concluded our current WSIB system "rests on a foundation of anachronisms and ambiguities" and recommended further study for change.

Douglas Stanley picked up on some of the themes and launched into a more focused consultation, resulting in his "Case For Change" report in early 2014. That paper called for a "consolidation of rate groups from the current 155 down to 20 or 25 groups". This new consultation launched by WSIB in March 2015 now (hopefully) concludes an over 5 year process that likely cumulatively incorporates hundreds of hours of stakeholder discussion and debate and hundreds of stakeholder submissions.

Any additional delay in moving towards a modern system is hurting Ontario's economic competitiveness and the credibility of the WSIB to be viewed as a modern and responsive workplace safety and insurance system. According to WSIB's data, under the new system approximately 74% of employers would be projected to see premium rate decreases and 26% would be projected to see premium rate increases. WSIB should not continue a system where poor performing employers are being subsidized by companies and sectors that are investing in workplace health and safety. It is not in the public interest or the economic competitiveness of the province to keep delaying these recommendations.

The WSIB through its extensive consultative processes has clearly demonstrated that the current system is not working and WSIB has created workable alternative. WSIB should move forward as soon as practicable to implement these changes.

CONTINUING INEQUITIES THROUGH 'RATE FREEZES'

The current practice at WSIB to issue no rate changes over the past few years has been to the detriment of positive performing rate groups across WSIB. While WSIB did issue an across-the-board rate increase in 2012, the board has held the line on rates from 2013-2016. This means there will be 5 years of rates with no actuarial consideration whether some rate groups should be paying more or less based on the injury claims within their sectors.

This policy of across-the-board rate changes might be easy for WSIB to administer, but it has been unfair to certain sectors, like home building, that have made significant improvements to their health and safety record. Since 2002, home builders (RG 764) have lowered their lost time injury rate by 64.3% If the WSIB policy continues to maintain the system with no changes, it is not only unfair to home building based on our comparative record, but also new home owners.

Our industry is cost sensitive to any new government imposed fees and charges, since it is ultimately the families that are buying new homes in communities across Ontario that end up paying. For other construction employers, their customer is predominantly municipal, provincial or federal governments that have no alternative but to pay for infrastructure with a higher WSIB rate embedded in the cost. Due to home builders' significant improvements in safety, a growing proportion of the 764 rate group now goes towards the UFL compared to injury claims. Therefore it is the new home buyer that is disproportionately paying down the WSIB's unfunded liability and cross-subsidizing poorer performing sectors.

This continued inequity and burden on new home buyers adds to the importance of implementing this new rate framework proposal as soon as practicable.

THE PATH FORWARD

RECOMMENDATION: BEGIN NEW CONSOLIDATED SYSTEM IN 2017

WSIB has prepared stakeholders and employers for these changes through a lengthy consultative process over the past several years. According to presentations by WSIB staff, the earliest any changes could occur is in 2018. In addition, WSIB has suggested that an individual company's premium rate could only move 15% positively or negatively before they reach their 'target' rate. This means that for some employers in our sector that are paying a rate of $9.10, this move towards their 'actual' target rate of $5.22 for G1 Building Construction would not occur for 5 years – or 2023. Based on the actuarial freezing of rates established in 2012, this would mean a decade of business activity in our sector with outdated and inaccurate rates.

The slower the implementation process, the more beneficial this is to the minority of poorly performing companies in the system that are being subsidized by the 74% of companies who deserve a premium rate decrease. Therefore the WSIB should switch to a new consolidated system as soon as possible, migrating employers to their designated risk band within their new rate group. This migration should only be considering the companies associated 'risk'. No weighting should be given towards the current rate paid by the employer considering the arbitrary and unfair nature of the current rate group structure.

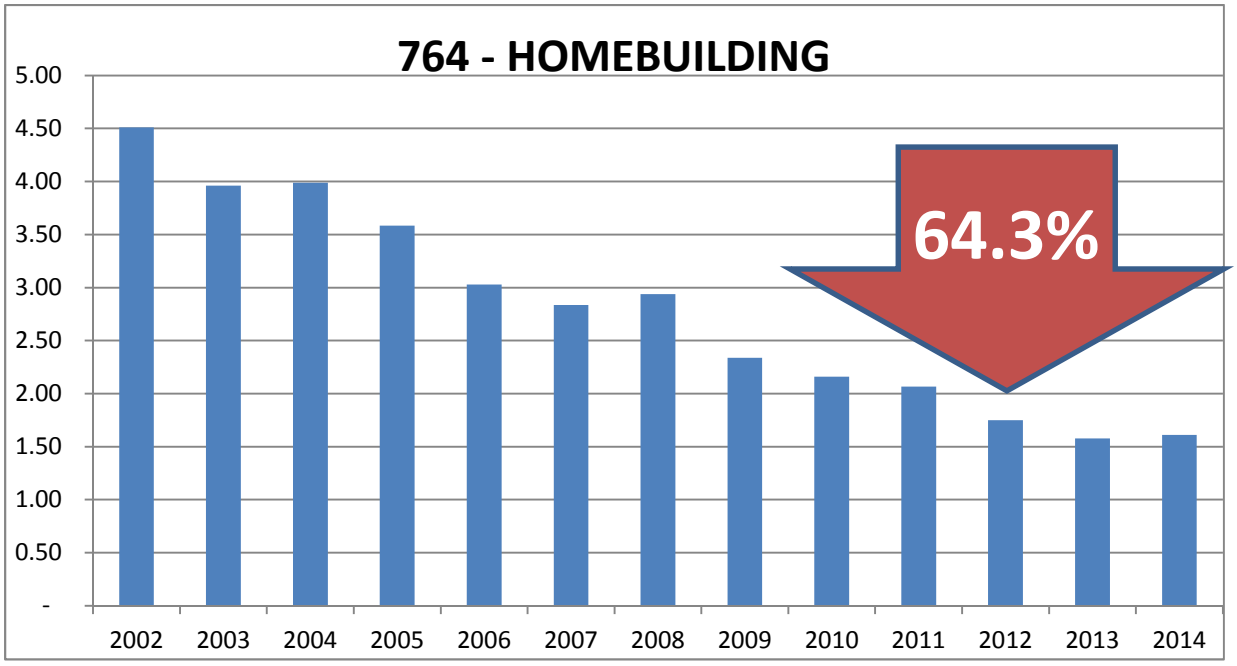
RECOMMENDATION: SEPARATE UNFUNDED LIABILITY COMPONENT OF PREMIUM RATE

Employers paying WSIB are likely unaware that a significant component of the premiums they pay go towards the unfunded liability (UFL). According to WSIB, the UFL can make up about 40% of a premium rate for some employers. WSIB estimates that the UFL may be eliminated as soon as 2021. OHBA recommends that separating the UFL component would add transparency to employers to better understand what their premiums go towards. More importantly, it would allow WSIB to eliminate the UFL portion of the premium rate immediately when the UFL is eliminated.

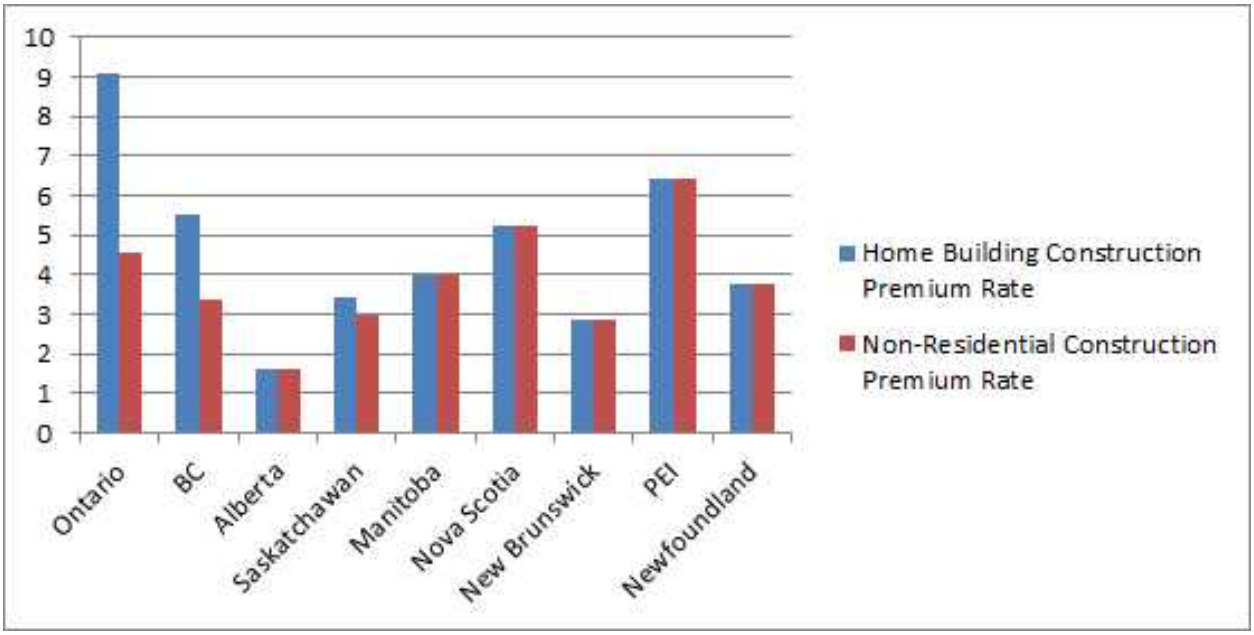
CONCLUSION

OHBA looks forward to assisting WSIB in the implementation of the policy and would be pleased to extend any opportunities for dialogue and communication with our network of 30 local home building associations and 4000 member companies involved in all aspects of the home building and renovation industries. We appreciate the openness, hard work and transparency by WSIB staff and we look forward to continuing our positive working relationship on this file.

WSIB LOST TIME INJURY RATE



ONTARIO HOME BUILDERS HAVE HIGHEST PREMIUM RATES IN CANADA



Source: Association of Workers' Compensation Boards of Canada

RESOLUTION # 8 (External)

Submitted to:	Chair WSIB Ministry of Labour
Submitted by:	OHBA Health and Safety Committee
Date:	September 21, 2009
Subject:	Mandatory Coverage, WSIB

Whereas: OHBA has consistently stated its objections regarding mandatory coverage of WSIB for those currently exempted; and

Whereas: this legislation will only increase underground activity in the renovation industry as it adds a significant cost to operate legitimately; and

Whereas: OHBA supports the principle that all workers on a construction site should have a minimum level of insurance coverage, be it WSIB or private insurance. OHBA supports a 'named insured' regulatory system where all workers would be required to carry some form of insurance coverage; and

Whereas: many OHBA members prefer to keep their private insurance as it covers them 24 hours a day, 7 days a week at more competitive pricing; and

Whereas: moving to a named-insured system would provide the constructor with an accurate list of all workers on the construction site with WSIB coverage; and

Whereas: Bill 119, Workplace Safety and Insurance Amendment Act, 2008, proposes to make workers' compensation coverage mandatory for independent operators, sole proprietors, partners in partnership and executive officers of corporations working in construction; and

Whereas: the exemptions created under the act for Executive Officers, currently defined under *Ontario Regulation 47/09* as "One partner in a partnership carrying on business in construction or one executive officer of a corporation carrying on business in construction is exempt from compulsory coverage if the partner or EO does not perform any construction work" is completely inadequate and represents a cash grab for white collar workers that encounter a significantly less risk of injury than those on-site;

Therefore be it resolved that: the Ministry of Labour withdraw the new regulations as established in Bill 119, Workplace Safety and Insurance Amendment Act, 2008 which are to go into effect January 1, 2012 and institute a more flexible 'named insured' system of regulating the construction industry.

MOVED: J. Westgate SECONDED: M. Pryce

CARRIED

DRAFT RESOLUTION # 8 (External)

Submitted to: Ministry of Labour
Workplace Safety and Insurance Board

Submitted by: OHBA Board of Directors

Date: September 23, 2013

Subject: Proposed Changes to WSIB Rate Groups In Response to Mandatory WSIB Coverage

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Whereas: Unlike other industry associations, OHBA has been and continues to be opposed to mandatory WSIB coverage for independent operators (IOs), partners in partnership and executive officers (EOs); and

Whereas: Policies from Bill 119 will not make workplaces safer and instead may increase the size of the underground economy activity due to these costly new legislated requirements; and

Whereas: Mandatory WSIB coverage is an unnecessary significant new cost burden on entrepreneurs and job creators that work on the tools; and

Whereas: Prior to mandatory coverage IOs and EOs had 24/7 coverage in private insurance that was significantly less expensive; and

Whereas: Through the operationalization and creation of policies around Bill 119, the WSIB wrongly worked under the assumption that owners "on the tools" have the same risk profile as their employees as owners are currently paying the same premium rate; and

Whereas: This assumption is wrong as return-to-work policies and sensitivity to experience rating as well as the type of work owners perform lends itself to less risk than construction employees; and

Whereas: OHBA continues to believe that mandatory coverage should be abolished; and

Whereas: OHBA is an association that provides government with pragmatic, practical advice that recognizes the political realities of the day.

Therefore be it resolved that: The WSIB create a separate rate group for independent operators and executive officers 'on the tools' that takes into consideration market realities prior to Bill 119 and creates market-competitive rates that is established at one-third of the current rate group. All newly captured IOs and EOs should pay a premium rate equal to one-third of the construction rate group they fall into. This should act as the standard for a five year period. After this time, WSIB should have the data to determine the true experience rating of IOs and EOs in construction. The chart illustrates what the rate group structure would look like based on the 2014 Premium Rates.

	Rate Group	2014 Premium Rate	OHBA Proposal For IOs, and EOs "performing construction"
704	Electrical And Incidental Construction Services	3.69	1.23
707	Mechanical And Sheet Metal Work	4.16	1.39
711	Roadbuilding And Excavating	5.29	1.76
719	Inside Finishing	7.51	2.5
723	Industrial, Commercial & Institutional Construction	4.55	1.52
728	Roofing	14.80	4.93
732	Heavy Civil Construction	7.03	2.34
737	Millwrighting And Welding	6.90	2.3
741	Masonry	12.70	4.23
748	Form Work And Demolition	18.31	6.1
751	Siding And Outside Finishing	10.25	3.42
755	Non-Exempt Partners and Executive Officers in Construction	0.21	0.21
764	Homebuilding	9.10	3.33

MOVED: James Bazely SECONDED: Larry Otten

CARRIED

RESOLUTION #10 (External)

Submitted to:	Ministry of Labour Workplace Safety and Insurance Board
Submitted by:	OHBA Health and Safety Committee
Date:	September 22, 2014
Subject:	WSIB Rate Group Modernization

Whereas: the WSIB Premium Rate for residential construction is more than twice as high as the Canadian average workplace safety compensation premium rate and 4.5 times higher than workplace insurance rates in Alberta; and

Whereas: WSIB Premiums in the home building and renovation sector are at such a high rate that they incent many consumers to purchase construction services with firms that operate in the underground economy. These contractors work for 'cash' deals and do not pay WSIB Premiums or other federal, provincial and municipal taxes and levies; and

Whereas: Ontario WSIB rate groups operate under an antiquated and outdated system to separate 'risk' categories for different industries into an unwieldy and confusing structure of 155 rate groups and over 800 classification units; and

Whereas: The WSIB has already consulted extensively on rate group reforms for over four years, beginning with the establishment of the *Harry Arthurs Panel* in September 2010 which issued a report, *Funding Fairness* in 2012 and a more focused stakeholder consultation throughout 2013, chaired by Douglas Stanley, which published *The Case For Change* report in early in 2014; and

Whereas the *Arthurs Report* concluded that the present system "rests on a foundation of anachronisms and ambiguities" and Stanley argued for the "consolidation of rate groups from the current 155 down to 20 or 25 groups"; and

Whereas: the majority of provinces have consolidated rate groups and have merged the home building rate group with the institutional, commercial and industrial rate group; and

Whereas: Ontario home builders pay twice as much in WSIB premiums compared to institutional, commercial, industrial rate groups despite the fact that the building process, trades, and building code often are often identical for both sectors; and

Whereas: the WSIB needs to show leadership and tackle the fairness issue that negatively impacts housing affordability, the underground economy, and business fairness in Ontario.

Therefore be it resolved that: WSIB expeditiously create a targeted plan on merging rate groups over the short term with clear timelines as per the recommendations by the Douglas Stanley's *The Case For Change* report.

MOVED: D. Murray SECONDED: D. VanMoorsel

CARRIED

ONTARIO
LONG TERM CARE
ASSOCIATION

Ontario Long Term Care Association Recommendations on WSIB Rate Framework Reform Papers 3 and 4

October 1, 2015

ONTARIO
LONG TERM CARE
ASSOCIATION

About Us

The Ontario Long Term Care Association is the largest association of long-term care providers in Ontario and the only association that represents the full mix of long-term care operators — private, not-for-profit, charitable, and municipal. Our member homes are regulated by the Ontario Ministry of Health and Long-Term Care, providing care and accommodation services to over 70,000 residents annually in 437 long-term care homes in communities throughout Ontario. We represent approximately 70% of the total long-term care homes in the province and our members include approximately 250 organizations that serve the long-term care market.

The Association works to promote safe, quality, long-term care to Ontario's seniors. We strive to lead the sector in innovation and quality care and services and build excellence in long-term care through leadership, analysis, advocacy and member services. Over the course of its history, the Association has developed a strong tradition of using a solutions-oriented approach to advance the delivery of the care and services to meet the changing needs of Ontario's long-term care residents.

It is very important to the long-term care sector that the system for setting WSIB premium rates be both predictable and include reasonable limits on annual premium increases. The revenue the sector receives, whether from residents or the Ministry of Health and Long-Term Care, is completely regulated by the province of Ontario. This results in long-term care homes having no ability to pass increased costs along to the residents, or to mitigate expenses that exceed annual increases in funding from the Ministry. This puts the care of residents in long-term care homes at risk, as operators are forced to reduce staffing and other care-related expenses. Clearly this is an unacceptable outcome at a time when the complexity and fragility of those needing long-term care in Ontario continues to increase dramatically.

Summary of Recommendations

1. Employers with distinct business activities should continue to have those activities classified separately.

2. The importance of promoting the reemployment of injured workers must be retained, and the elements of an effective SIEF program that incents rather than disincents employers from doing so must be included as part of any new premium rate setting program.

3. Claims resulting from catastrophic events should be dealt with as a system-wide responsibility (Schedule 1). The establishment of a reserve fund should be considered to provide for any catastrophic claims that may arise.

4. The Board should provide a weighting system to the six-year claim costs in determining an individual employer's rates, to provide more responsiveness and support the employer's efforts with regard to health and safety initiatives.

5. The method for allocating the unfunded liability should be consistent with the intent that "each class would be responsible for its own costs." Recognizing that this may result in significant cost increases for some classes, an alternative that provides a cap on cost increases, such as Method 2, provides a balanced approach.

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The Ontario Long Term Care Association supports the Workplace Safety and Insurance Board's key goals for its development of a new premium rate approach:

- Clear and consistent
- Fairly allocated premiums
- Balanced rate responsiveness
- Transparent and understandable
- Collective liability
- Ease of administration

We believe that there will be challenges in achieving all of these goals, as they may conflict with each other. In the end, it is essential that a new premium rate setting approach provide a competitive insurance program that is predictable with reasonable limits on annual increases in premiums. In doing so, it should encourage both employers and employees to continue making progress in the prevention of injuries and illnesses in the workplace.

Working with operators of long-term care homes, the Association has reviewed the various Rate Framework Reform "Papers" and has a number of recommendations in response to the proposals and questions in the documents.

We appreciate the Board consulting with stakeholders, sharing information on the rate framework approaches and allowing stakeholders the opportunity to provide feedback on these approaches. This will help in developing a successful rate framework that will benefit both stakeholders and the Board, and create a sustainable insurance system going forward.

Employer Classification

The Association does not have concerns with regard to the use of the North American Industry Classification System ("NAICS"). We do have concerns that have been raised with regard to the extent of the risk disparity in some of the proposed classes. Risk disparity and actuarial predictability must both be addressed in the final classifications. Until these classifications are finalized, our recommendations are subject to change.

Multiple Business Activities

The Association believes that employers with distinct business activities should continue to have those activities classified separately. While this may be a "burdensome classification structure and process" it is nevertheless essential to ensuring that Ontario employers remain competitive across all business lines – something that should not be put at risk for purely administrative reasons. If different business activities are classified together, the proposed approach could result in putting the business activity with a lower risk profile at a competitive disadvantage. Alternatively, having multiple business activities in the same class could result in the class of the predominate business being negatively affected by its

other, possibly riskier businesses. Processes and rules that are already in existence to ensure that appropriate classifications are in place should be reviewed with the intent of minimizing the administrative process, while protecting the ability of Ontario's employers to operate and grow in a competitive environment.

Recommendation
Employers with distinct business activities should continue to have those activities classified separately.

Second Injury and Enhancement Fund ("SIEF")

The long-term care sector believes in the importance of promoting the reemployment of injured workers. Additionally it sees the need for an effective SIEF program that incents rather than disincents employers in advancing this as a premise of any new premium rate setting program. The comments provided in Paper 3 as to why the program is not appropriate show that the use of the current SEIF program is either not fully understood, or needs to be enhanced.

In the long-term care sector, many SEIF claims relate to employees who suffer from chronic or degenerative conditions. The Rate Framework Proposal (the "Proposal") says the SIEF has only one objective, to create an incentive to employ injured workers. The Policy itself states that the SIEF has two objectives: 1) to provide employers with financial relief when a pre-existing condition enhances or prolongs a work-related disability; and 2) to thereby encourage employers to hire workers with disabilities. Providing financial relief to employers where some portion of the employer's claim costs arise from conditions unrelated to the workplace injury is expressly part of the SIEF's policy objectives.

The Proposal also says that the justification for SIEF will be removed by the predictability of premiums and the limitation on annual movement between risk bands in the proposed system. While these are laudable objectives, they are unrelated to SIEF. Employers apply to SIEF to lower their costs, not to make them more predictable or consistent. Maintaining SIEF in the proposed framework will serve the same purposes it always has. It will reduce employers' costs of claims which are prolonged for reasons unrelated to the accidents, giving rise to the associated WSIB claims and providing an incentive to employ injured workers.

Operators understand that just because the claim costs are shifted to the class level does not mean there is no cost to them. Most long-term care home employers' premium rates will be based mainly on the class rate, with individual experience only representing 2.5% to 40%. While the SIEF may have shortcomings, eliminating it without providing other tools or means to address the cost of these claims and incent the promotion of returning to work is, at best, a step backwards for injured workers.

Recommendation
The importance of promoting the reemployment of injured workers must be retained, and the elements of an effective SIEF program that incents rather than disincents employers from doing so must be included as part of any new premium rate setting program.

Catastrophic Claims

The Association believes catastrophic events should be limited to events that affect a whole class. In the long-term care sector, this could be a pandemic outbreak. An example of this is the severe acute respiratory syndrome ("SARS") outbreak which occurred in 2003. Fortunately, this outbreak was identified early on and was limited to 251 reported cases and 44 deaths in Canada. However, it could have been far worse with significant impacts to those working in health care sectors.

Work-related health issues, including claims resulting from the stress of working in such situations, should not be limited to a class but should be dealt with across all classes. One potential approach to address such costs would be to set up a reserve fund to handle such claims with employers contributing to the funding.

Recommendation
Claims resulting from catastrophic events should be dealt with as a system-wide (Schedule 1) responsibility. The establishment of a reserve fund should be considered to provide for any catastrophic claims that may arise.

Balancing Premium Rate Stability and Responsiveness

The Association believes the proposed six years of total claims costs, where all years are treated equally, does not provide sufficient responsiveness to prevention program successes by employers. If an employer is investing resources to improve its health and safety record, it could take a minimum of three years for this to be significantly recognized under the proposal.

The Association believes the Board should consider a weighting system for the six years, with more recent years representing a higher proportion of the experience weighting. A weighting approach would provide an employer with more responsiveness and provide an employer more of an incentive to maintain an effective health and safety program.

Recommendation
The Board should provide a weighting system to the six-year claim costs in determining an individual employer's rates, to provide more responsiveness and support the employer's efforts with regard to health and safety initiatives.

Unfunded Liability

One of the fundamental principles in the "Proposed Preliminary Rate Framework" is that "each class would be responsible for its own costs" (Pg. 26 of Paper 3) and that there should be no subsidization of one class by other classes. In the Board's proposal for the unfunded liability, this position is entirely reversed, setting out an allocation based on the anticipated current claim and administrative costs ("NCC method"), and not having the class where the unfunded cost arose be responsible for the liability. While the Board looked at each class paying for its share of the unfunded liability, this approach was rejected by the Board because some classes would see significant increases from how much they currently pay.

The Board's alternative method (Method 2) placed a cap on the increases to address this concern. The recommended choice of the Board, of using new cost claims, results in a significantly different allocation of the unfunded liability. The Board concluded that "while the NCC method does not consider past responsibility for the UFL, it is directionally consistent with Method 2." An analysis comparing the NCC method to Method 2 shows that it is only directionally consistent in half of the proposed 22 new classes.

While the Board concluded that it was unacceptable to have classes have to pay as much as 190% under Method 1 to address the UFL – and as a result rejected this method in favour of the proposed NCC method, under which other classes would pay as much as 315% more – we find little to support the Board's reasons to use the NCC approach. The proposed approach is not appropriate for the following reasons:

- It conflicts with the stated intent that each class pay for their own costs.
- It results in larger percentage increases for some classes than other methods considered.
- It is not "directionally" consistent with any other methods considered.

Recommendation
The method for allocating the unfunded liability should be consistent with the intent that "each class would be responsible for its own costs." Recognizing that this may result in significant cost increases for some classes, an alternative that provides a cap on cost increases, such as Method 2, provides a balanced approach.

Conclusion

The Ontario Long Term Care Association believes that the Board is moving in the right direction with the Rate Framework Reform Proposal, however the Proposals need to be modified to ensure they meet the stated goals.

Even when the Board is successful in finalizing a new Rate Framework, it cannot achieve its goals as set out unless it also amends its claims management practices and procedures to ensure they are consistent with achieving these same goals.

October 2, 2015

Mrs. Elizabeth Witmer, Chair
Mr. David Marshall, President and CEO
Workplace Safety and Insurance Board (WSIB)
200 Front St. West, 17th Floor
Toronto, On M5V 3J1

Email: consultation_secretariat@wsib.on.ca

RE: WSIB Proposed Preliminary Rate Framework

Thank you for the opportunity to provide input to the WSIB's consultation on Rate Framework Reform. Your office and senior managers have been very helpful throughout this process and the OMA hopes that the following comments will be of assistance to you as the WSIB considers potential reforms to the current approaches for employer classification and premium rate setting.

Background on mining in Ontario

The Ontario Mining Association and our members have a strong interest in ensuring that the workers' compensation system is both responsive to labour market needs and fiscally sustainable. WSIB premiums are among the factors considered by our member companies when they make decisions about current and future investments. Mining operations in Ontario compete for capital in a global setting. In addition to WSIB premiums, Ontario-based operations face rising energy costs, and uncertainty regarding taxation and regulations. Globally, the mining sector is facing low commodity prices which are forcing decisions about cost cutting and, in some cases, shutdowns.

In this context, the recent WSIB announcement that 2016 premium rates will be maintained at current levels is welcome; however, Ontario employers continue to pay high rates in order to reduce the Unfunded Liability. As the OMA has stated to the Ontario government, high premium rates are a competitive disadvantage; as the UFL is reduced, government should be setting targets to reduce premium rates as well. While there can be benefits to improving the premium rate framework, our current, and paramount concern is the cost of the system to our member companies. The OMA supports the development of a new rate framework, provided that rate groups do not see an increase in premium rates as a result of the change.

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Ontario Mining Association comments

Reference: Proposed Preliminary Rate Framework Paper 3: Questions for Consideration

Page|13

1. Is the proposed structure adapted from the North American Industry Classification System (NAICS) an appropriate grouping of employers?
2. Do the proposed 22 classes appropriately reflect the industry categories in Ontario's economy today?

- The OMA supports the adoption of a NAICS-based structure as an appropriate grouping of employers; however, the diversity of business activities within Class A Primary Resource Industries warrants further breakdown.
- Under NAICS, Mining is in its own class separated from other primary resource industries (e.g., Forestry) and includes 29 sub-classes. The Proposed Preliminary Rate Framework expands Construction into multiple classes and the same should be done for Mining to meet the stated key goal of consistency.

Page|20

1. The WSIB is proposing to classify employers according to their predominant class, where the predominant class would generally be defined based on the class representing the largest share of an employer's annual insurable earnings. Should the WSIB consider factors other than just insurable earnings? For example, should the WSIB also consider the risk involved in the business activity when determining the appropriate classification? Or a mix of both insurable earnings and risk?

- The OMA supports the classification of employers according to their predominant class defined by the largest share of an employer's annual insurable earnings.
- One of the key goals of the proposed preliminary Rate Framework is to be "transparent and understandable." Insurable earnings is the most transparent measure for all employers. Risk has not been defined; therefore, it is not clear how risk would be measured. Furthermore, under the proposed preliminary Rate Framework, risk is already factored into the premium rate via employers' claims experience.

2. Is a three year window for determining an existing employer's predominant class appropriate? Is a longer window (e.g., four years) more appropriate or is a single year enough?

- The OMA agrees that a three year window is appropriate; however, employers should be given the option to request to have their predominant business activity reviewed annually. This would allow premium rates to be more responsive for employers whose predominant business activity changes significantly.
- There is concern regarding the cost implications of lagging years for contractors. E.g., a mining company may hire a contractor whose previous predominant business activity was construction. The higher premium rate for construction would be passed onto the mining company, which does not support the key goal of "fairly allocated premiums."

Page|22 Temporary Employment Agencies (TEAs)

1. Should TEAs be treated differently from other employers under a new Rate Framework to address the premium cost avoidance issue (e.g., be allowed to have multiple premium rates)?

- TEAs should pay the rate of the predominant business activity for which they are providing services.
- If TEAs are permitted to have multiple premium rates, the OMA recommends that the WSIB treat all employers in this manner. Employers should be able to pay more than one premium rate if they have insurable earnings attributed to more than one business activity.

2. How should the claims cost avoidance issue be addressed under a new Rate Framework?

- The OMA is not aligned with Schedule 5. It is up to the TEA to ensure that the work environment is safe before sending a worker to that site. It is incumbent on the TEA to provide training for employees to make them aware of their rights under the Occupational Health and Safety Act.

Page|30

1. Should the WSIB use the current Rate Group (RG) approach of a fixed per claim limit of 2.5 times the annual insurable earnings at the employer level, or should the WSIB use the graduated per claim limit approach outlined above?
2. Should the WSIB consider using a different graduated per claim limit than the one proposed above? If so, what features should it have?

- The WSIB should use the current RG approach of a fixed per claim limit that is the same for all employers.
- Currently the maximum is 5 times insurable earnings. OMA members are concerned about the potentially significant cost burden of increasing the maximum to 7 times insurable earnings.
- Under a graduated per claim limit approach, large/predictable employers would be required to pay their full claim amount plus costs that are spread over the class from small employer claims. A graduated scale does not put pressure on small/less predictable employers to manage their claims costs or focus on health and safety, which is a goal of the Rate Framework.
- WSIB intends that the new Rate Framework will be revenue neutral; however, this should not be achieved by increasing costs for larger / more predictable employers.

3. Should the WSIB continue with its current allocation of administration costs?

- Yes, the OMA supports the current allocation of administration costs.

Page|31 Long Latency Occupational Disease (LLOD)

1. Should LLOD claim costs be shared equally by all employers as a collective cost or should these costs be charged directly to the individual employer?

- LLOD claims costs should be shared equally by all employers as a collective. If changes to the treatment of LLOD claim costs are considered, the OMA recommends that the WSIB consult employers first.
- LLOD claims costs should not be included in the calculation of Class Target Premium Rates. They should not adversely impact an employer's statistical record and premiums.
- Employers may be doing everything they can to follow occupational health and safety standards, yet standards can change over time with new science. E.g., changes to noise-induced hearing loss (NIHL) standards. There may be LLODs that industry and government are not currently aware of and without that knowledge, employers don't have the opportunity to mitigate the risk.

Page|34 Second Injury and Enhancement Fund (SIEF)

1. Given the design elements of the proposed preliminary Rate Framework that promote greater stability in premium rates, as well as the current legal landscape on disability issues, is the SIEF policy as it is currently designed still relevant?

- OMA recommends that the WSIB retain the SIEF, or some form of it, due to the transient nature of the workforce. The SIEF allows the system to be fair and equitable without negatively impacting employees. The hiring process precludes employers from knowing new employees' health/claims history; therefore, the SIEF protects employers from unknowns while promoting the reemployment of injured workers.

Page|37

1. How should the WSIB handle catastrophic new claim costs situations that occur in a particular class?
a) Should the WSIB include these claim costs in the year that they occur, which may result in a higher premium rate being charged to employers?
b) Or, should the WSIB reduce the premium rate increase and add the remainder as an amount for future premium rate consideration?
c) How should catastrophic situations be defined? Should the WSIB consider pooling these costs at the class level or Schedule 1 level?

- Catastrophic new claims costs should be spread collectively across the system at the Schedule 1 level to minimize the impact felt by individual employers and classes and to promote premium rate stability.

Page|49

1. In setting employer level premium rates, what are the factors that the WSIB should consider in assessing the level of protection an employer needs from large rate fluctuations?
a) Should the WSIB include in the assessment of actuarial predictability, insurable earnings, claims costs, number of claims, lost time injuries or some other factor?

b) Should the WSIB use different mixes of insurable earnings, number of claims?
c) Are the percentages of assignment between individual and collective experience appropriate?
d) Should a new employer be treated the same as an existing employer?

- The factors that the WSIB should include in the assessment of actuarial predictability are insurable earnings and claims costs. The OMA agrees with the responsiveness enabled by these factors.
- An employer's number of claims should not be included in the assessment. Including the number of claims would not make the new Rate Framework revenue neutral.
- Mining is a mature industry with an experience rating. The OMA would like the WSIB to give credit to industries and employers who have an established experience rating, as opposed to new organizations without experience to consider.
- Large employers often have more rigorous health and safety training programs; therefore, their employees are better informed of their rights and the process to make claims. Large employers should not be disadvantaged for having effective health and safety programs.

2. Does the introduction of experience adjusted premium rates for small employers, currently excluded from WSIB experience rating programs, introduce too much premium rate sensitivity?

- The proposed preliminary Rate Framework introduces premium rate sensitivity for employers of all sizes.

Page|61

1. Is using the average of the last 3 years net premium rate for experience rated employers or the premium rate of the RG for those employers who are not experience rated, a reasonable starting point for employers to transition to a new Rate Framework?

- Yes, the OMA agrees that this is a reasonable starting point subject to our comments above regarding the setting of rates.

Page|64

2. Should the proposed preliminary Rate Framework use the most recent six prior years for determining employer level premium rates? Or three or four years?

- The transition to the proposed preliminary Rate Framework should be consistent with the NEER program.

3. Does a three risk band limitation, relative to the experience of the class, provide suitable stability? Considering that this limitation itself leads to greater collective liability, should the limitation be higher? Should it be lower?

- A three risk band limitation provides suitable stability; however, as stated above, the mining industry is cyclical and companies are currently experiencing economic difficulties due to falling metal prices which are making premium rate changes difficult to bear.The limitation should not be higher than three risk bands.

4. Should we consider forgiving employers who increase/decrease one or two risk bands? If so, would there be a need to increase the risk band limitation to four or five risk bands to appropriately balance premium rate stability and responsiveness?

- In our view, the WSIB should not consider forgiving employers who increase/decrease one or two risk bands and the risk band limitation should not be increased.

5. Do risk bands generally provide a positive support and a level of stability in setting rates for employers, or would individualized rates for each employer capped at a specific %, plus or minus, relative to the experience of the class, be preferred?

- Capping the number of risk bands would not limit an adjustment to the underlying Class Target Premium Rate or the number of risk bands within each class.
- At this time, OMA members do not have enough data to make an informed comment, but we would like the opportunity to review this going forward.

Page|73

1. Should the WSIB charge new employers with less than 12 months of experience the Class Target Premium Rate? Or should they be risk banded?

- Yes, new employers should be charged the Class Target Premium Rate; however,the WSIB should define what constitutes a "new employer." For example, if a company closes for a period of time and re-opens, are they a new employer?

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1. What factors should the WSIB consider when determining if an employer should be surcharged?
2. Should the WSIB not surcharge employers at all and include all the claim costs above a certain level as a collective cost in setting the Class Target Premium Rate?

- The WSIB should define what is meant by "poor behaviour."
- The WSIB should not surcharge employers. There are already penalties in place for employers who manage claims poorly and fail to return an employee to work in a timely manner. A surcharge is not an effective tool for mitigating poor employer behavior, especially for small employers who are financially limited. Instead, the WSIB should provide resources to help employers improve their claims management and occupational health and safety programs.
- Most mining companies have mature health and safety programs in place and are devoting considerable effort to ensure a safe work environment. Incidents that may occur are not necessarily the result of poor employer behaviour.

Additional Comments

- In the current system, the New Experimental Experience Rating (NEER) and adjustments give companies an incentive to manage claims well and get employees back to work in a timely manner. The proposed preliminary Rate Framework should seek to do the same and at this time, it's not clear that it does.

- The proposed Preliminary Rate Framework appears to prioritize the perspective of small employers. Large employers could be carrying considerable cost for small employers, yet large employers do not have unlimited financial resources. The OMA cautions that, if the cost burden to large employers increases, companies' budgets will be constrained and Ontario will be less competitive in attracting capital.

In conclusion, the OMA wishes to thank the WSIB for this opportunity to provide comments on the proposed Preliminary Rate Framework. We are available to answer any questions regarding this submission.

Sincerely,

Philip Bousquet
Manager, Industrial and Government Relations
Ontario Mining Association

CC:

Chris Hodgson
President
Ontario Mining Association

ONTARIO MASONRY
CONTRACTORS' ASSOCIATION

Canadian Masonry Contractors Association

October 2, 2015

Consultation Secretariat
Workplace Safety and Insurance Board
200 Front St.
Toronto, Ontario
M5V 3J1

This submission on the WSIB Consultation on Rate Framework is being submitted on behalf of the members of the Ontario Masonry Association and its affiliated groups. The following comments reflect items of concern and clarification

Unfunded Liability

The WSIB has for years outlined financial constraints caused by the carrying of an Unfunded Liability. Over the years, there have been many proposals and a few programs initiated within the WSIB to control and eliminate the existence of the Unfunded Liability (UFL). For the first time, the program in place seems to be making great strides at both controlling, reducing and in the near future, eliminating this UFL.

In the WSIB Rate Framework, it outlines the costs of potential assessment rates both with and without an UFL. The implementation of a new strategy leaves open for questioning on whether the WSIB will incorporate UFL figures into each Rate Classification or will the WSIB show the new rate amounts and then add in a separate surcharge for debt retirement, whether it be a specific dollar value to each rate or a percentage amount of the base rate. Clarity is not provided on how the WSIB will deal with the UFL and whether it keeps the same timeline currently in place for the UFL to be eliminated.

Noting the UFL seems to be paying down at an expedited timeline, it would seem to be more prudent to pay down the UFL, spend more time developing the new rate system and implement it with everyone moving forward from zero UFL as opposed to having this albatross being carried forward, increasing the need for funding through assessment revenues. Given the approximate timeline for implementing the new framework - 2018? -And the retirement of the UFL – 2021? That 3 year gap would provide an excellent opportunity to run a pilot program and compare results with the existing system.

Clarity around current costs and UFL

An analysis performed in 2008 for the period January 1, 2002 to December 31, 2007, showed that Rate Group 741 incurred $ 114,507,608.00 in total claim costs. This included claims costs for employers still in business and employers who ceased operations. This included all claims costs charged in this time frame, regardless of their age or year of initiation. Total revenues collected through assessment from Rate 741 totaled $ 246,689,665.00 Thus the WSIB collected in this time frame $ 132,000,000.00 more than paid out in claim costs. Allowing 35% administrative cost to process the claims, this would equal $ 40,077,688.00. Therefore the cost of claims, both current and historical plus WSIB Administrative cost to administer is $166,036,136.00 for a net excess of assessment versus costs of $ 80,653,529.00

Assuming the same performance over the 2008 – 2014 timeframe, the statistical information would likely show this same imbalance, if not more. If true, then the WSIB would have collected from Rate Group 741 over $160,000,000.00 in excess premiums versus all claims costs, regardless of historical age, including administrative costs. Rate 741, would request the WSIB provide supporting documentation that there is in fact an UFL relative to their rate Group 741 as a whole. This analysis has been requested in the past, but never addressed.

For the WSIB to be speaking of significant UFL dollars to be affixed to assessment rates in the new formula, the WSIB needs to be able to actually validate the UFL within the Construction Sector. It would appear there is an earnest need to delay any application of a new plan until the UFL is explained and more importantly properly assigned to specific rates groups. This is a large burden to carry forward into a new system and it is thought to be prudent to have laid the UFL issue to bed, both philosophically as well financially before proceeding.

Second Injury Fund Relief

The intent of the Second Injury and Enhancement fund was to provide financial relief to an employer when an underlying or pre-existing condition impacted a worker's ability to recover, length of time to recover or played a part in the onset of the disability in the first place. The idea was not to unfairly burden an employer due to factors external to the actual accident or incident injuries sustained.

The use of Second Injury Fund Relief (SIEF) was to also assist injured workers to reenter the workplace with either current or new employers. In the new Framework there appears to be a desire to have this removed from an employer's right to reduce costs for external or pre-existing injuries. The WSIB believes current reemployment legislation and RTW obligations have achieved what the SIEF was intended to do with respect to making an injured worker employable in the workforce following and injury.

The masonry trade is a well-established with an older demographic of worker than some other industries. These workers have had previous injuries, accidents or gradual onset type

problems develop as they get older. Masonry Contractors do carry core personnel for lengthy periods of time, but rely on Unions to supply workers as required from their list of members seeking work. Employers are not allowed the luxury of interviewing and selecting worker's, nor are they able to designate the need for levels of fitness to the Union for work required to be perform. In most cases, Masonry workers, as many of the trades, are somewhat transient in that their employment history having worked for many different Contractors over the course of their career. The removal of SIEF from the WSIB as an ability to control employer costs, creates a situation where the last employer of record or the employer which causes the last exacerbation is held 100% accountable for injuries and disabilities that may have been slowly developed or recurring and have now come to fruition.

Without SIEF there can be an unfair accountability to one specific employer for a condition which developed over time with many employers. SIEF does not cause an increase in the WSIB cost of the claim. The cost relief monies are charged to the rate group as a whole and accounted for by WSIB Actuarial when determining future Assessment Rates. The WSIB needs to allow this administrative program to remain in place to ensure employers are charged only for injuries sustained in their employ and not conditions which pre-existed, co-existed or conditions which obviously developed over a significant time span as opposed to being caused by one employer. The unintended result of eliminating this program would be a discrimination of the older worker, or onerous requirements to prove good health.

Occupational Disease Claims

The Framework calls for the inclusion of all Occupational Disease Claims into the formula when assessing a company's record. Historically occupational disease claims were not included with the claims used when assessing rebates/surcharges through Experience Rating. The inclusion of these claims and their costs moving forward would have an unfair burden on an employer.

Firstly most occupational disease type claims have quite a prolonged period of time of exposure versus development and can span a worker's employment history for several years or decades. Additionally there would have been numerous employers over the time period to simply hold one employer responsible.

Even the cost proportioning historically saw the last employer of record or the employer at the time the diagnosis made, charged on a ratio of years in an industry vs. years with the deemed accident employer. This practice would have ended with the end of SIEF (see above discussion) and leave the deemed accident employer responsible for all costs for a problem which may not be applicable to them but rather an Industry as a whole.

Rate Framework

The WSIB has historically set assessment rates based on actuarial data to support the risk factors for any given employer group or rate group. In using this data, the WSIB established expected injury frequency and expected claim cost indexes for each rate group. Obviously the lesser the assessment rate the less was assigned to expected claims cost and claims frequency. By collapsing the Construction trade into 5 distinct groups and assigning assessment rates significantly lower than what Masonry 741 pays, the WSIB itself has recognized a majority of the employer's in higher risk rate groups now, will not achieve an ability to meet or remain at "Average Risk Band" rates.

We need to know where current members will enter the new model. Will they be placed in accordance with the data from their current rate group or will this data from their current rate group be messaged to meet expectations of the new module and rate group? Will members in a current small rebate situation be placed at favourable rates from 741 or could they still be placed at above "Average Risk Band" as those number exceed expectations of the new Module Rate Group?

The WSIB needs to be able to show a 3 and 5 year working model for a Masonry Contractor. We would seek the WSIB to use an actual members record who is currently in a small surcharge situation, assume nothing changes for them in the next 3 -5 years and show a working model on how this new Framework will actually affect them and for how long they would remain in a penalty situation of not achieving "Average Risk Band"

We would also seek the same with a Masonry Contractor currently in a small rebate situation to determine if they achieve and maintain "Average Risk Band" rates and can these be maintained over a 3 and 5 year period if their record of claim frequencies and claims costs remain unchanged.

We believe an actual working model needs to be evaluated and documented to truly determine the pros and cons of the new system proposed. Concern exists that the targets and expectations for higher risk employers such as 741 members are not achievable even for Masonry Contractors who have good Safety Programs and Accident Prevention Programs in place.

As change is inevitable by the WSIB the implementation and timelines are of significant concern. To get into a program that on paper achieves what is expected but in reality does not, can create significant financial disaster and competitiveness for some Contractors. We believe the time needed to lay the UFL to rest would be a good time to leave the current programs in place but run a mock trial of the new program on a selected basis for a sampling of Masonry Contractors to see if the model works and if so does it work to everyone's expectations.

Review

- Review the UFL to determine and show there actually is an UFL in Rate 741, noting 2002-2007 statistics
- Have transparent data as to what is the actual UFL from the construction industry as a whole, noting 2002 to 2007 statistics
- Delay full application until the UFL is eliminated and run a 3 year pilot project to prove the performance of the new program
- Allow SIEF to remain in place to avoid unfairly burdening an employer with costs for injuries not solely their responsibility
- Continue to not allow for Occupational Disease Claims to be used in determining risk factors and meeting targets. These are normally multiple employer related and employers would get no cot relief.

There is still a lot of "unknowns" when it comes to the new rate framework. Although there are a lot of positives in what has been proposed, it is difficult to assess without knowing how an employer will be rated, how will his record affect any movement among the risk bands, what will be considered in the rate setting formulas (for example what about NLT claims). We look forward to continue working with the WSIB and urge patience and real time data as you move forward.

Sandra Skivsky

Director of Business Development & Marketing
on Behalf of the Ontario Masonry Contractors' Association.

Ontario Shores
Centre for Mental Health Sciences

October 1, 2015

WSIB Ontario Consultation Secretariat
Toronto, Ontario
Consultation_secretariat@wsib.on.ca

Dear WSIB Rate Framework Modernization Team Members:

RE: Response to WSIB Proposed Preliminary Rate Framework

Introduction

Ontario Shores Centre for Mental Health Science ("Ontario Shores") is grateful for the opportunity to provide submissions in response to the Workplace Safety and Insurance Board's (WSIB) Proposed Preliminary Rate Framework consultation paper released in February of 2015.

While the Proposed Preliminary Rate Framework includes positive changes from the existing rate setting process, there are elements of the proposal that are of concern to Ontario Shores. As such, we provide below the following four submissions in response to the Proposed Preliminary Rate Framework. We hope these submissions will aid in the process of reforming the current system to ensure that Ontario has a fair and effective worker's compensation system for years to come.

Proposed Changes to the Experience "Window"

The WSIB proposes to extend the number of years of experience used to determine an employer's rate setting and experience rating from four up to six years. Ontario Shores opposes this change. The proposed increase could lead to employers being charged for risks that are no longer a feature of their workplace. The extension of the experience "window" to six years could serve to penalize employers for historic claims costs that no longer reflect the current risks of their workplace, which may have lessened due to improvements to health and safety.

Additionally, the proposed "window" is much higher than other jurisdictions in Canada. In Alberta and British Columbia, premium rates are set by the Workers' Compensation Board and Work Safe BC respectively, using the three preceding years of claims experience. A three year window is much more reflective of the actual risks of the employer and the WSIB should consider adopting a three year experience "window" rather than the proposed six year "window."

Further Information About Prospective Risk Banding

While Ontario Shores supports the WSIB's attempts to create a system whereby premium rates are set in a fair and reasonable manner, we have deep concerns about the extent to which the premium rate for employers will change if the proposed prospective system is implemented.

As of yet, Ontario Shores does not have enough information about the timing and financial impact of the proposed changes to properly plan for the future. In order to properly budget for the future, Ontario Shores must begin to plan now for the costs associated with WSIB premiums, CPP and EI, in preparation for the end of the fiscal year in March. Additionally, a significant increase in WSIB premiums could necessitate human resources changes for Ontario Shores' employees and must be planned for well in advance.

As such, if Ontario Shores will see an increase in premiums in the proposed system over the current system, then Ontario Shores reasonably requires that information as soon as possible in order to effectively plan for the year in which the proposed new framework will be implemented. The lack of information regarding the amount of change to premiums and timing of that change is deeply troubling for Ontario Shores. While the Rate Group Analysis recently released by the WSIB was somewhat helpful, we suggest the WSIB increase the amount and detail of information about the impact of any proposed changes that is available to stakeholders. Further, Ontario Shores requests that the WSIB provide all employers with its actual premium rate under the proposed framework one year prior to implementing the proposed framework.

Apportionment of the Unfunded Liability

There is no question that the unfunded liability (UFL) - the shortfall between the money needed to pay the future benefits to workers for all established claims, and the money that is in the insurance fund – is of deep concern to all stakeholders.

The WSIB has proposed a method of apportioning the UFL that includes a:

- Fixed charge that is applied equally to all employers that recognizes collective responsibility for the UFL; and
- Variable charge (based on the Past Responsibility method), that is applied to each class that recognizes its past responsibility for the UFL and apportioned to employers based on their share of the class new claim costs.

Ontario Shores has not concluded whether the WSIB's proposed apportionment or another apportionment model is preferable. However, Ontario Shores submits that any approach to tackling the UFL must be reasonable and take into account the fact that employers in Ontario already pay some of the highest premium rates

in the country. Tackling the UFL should not be done solely through increased premiums, but should also include better oversight of the WSIB itself.

Elimination of the Second Injury and Enhancement Fund

Ontario Shores opposes the WSIB's proposal to eliminate the Second Injury and Enhancement Fund (SIEF). Ontario Shores believes the WSIB should retain the SIEF to encourage employment of injured workers. Currently employers can transfer the compensation and healthcare costs incurred as a result of a worker's pre-existing condition to the SIEF. This reduces the actual claim costs and greater usage of the SIEF encourages higher rebates or lower surcharges.

The SIEF is important, not only because it contributes to the fairness of the WSIB's structure, but because it provides re-employment opportunities for injured workers. The success of second injury policies in British Columbia and Alberta, where the workplace insurance boards administer surpluses, demonstrates that these policies do not undermine the financial stability of the system. As such, we believe the WSIB should retain the SIEF to encourage employment of injured workers and enhance the fairness of the WSIB system.

Conclusion

The above submissions have outlined some of Ontario Shores' key concerns with the Proposed Preliminary Rate Framework. These submissions are not meant to be exhaustive and Ontario Shores believes that any change to the rate framework should be coupled with a commitment to increased cost containment from the WSIB. Nonetheless, Ontario Shores supports the WSIB in its efforts to improve the current system and ensure that Ontario benefits from an effective and fair workers' compensation system.

Sincerely,

Karim Mamdani

Karim Mamdani
President & CEO

ONTARIO POWER GENERATION

Greg Jackson B.Sc (Kin), CRSP
Director, Corporate Health and Safety
Health, Safety, Employee and Labour Relations

People & Culture
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1600 Champlain Avenue, Whitby, ON L1N 9B2

October 2, 2015

Workplace Safety & Insurance Board
Consultation Secretariat
200 Front Street West, 17th floor
Toronto, Ontario M5V 3J1

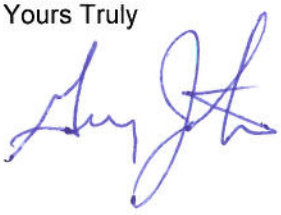
Ontario Power Generation appreciates the opportunity to provide input into the WSIB's Rate Framework Modernization Consultation. We agree that fundamental reform to the employer classification structure and premium rate setting processes is necessary in order to bring stability, fairness and equity to the system. We wish to commend the WSIB for initiating a very thoughtful and thorough consultation process. The detailed data that was provided to employers was extremely helpful as we developed our submission. Attached you will find OPG's submission as well as our group submission that was developed together with several other utility employers.

Employers who are committed to finding ways to improve the system know that the roots of this specific reform process go back many years and that they are designed to fix long standing problems. We urge the Board to take the time necessary to get this right. We look forward to working with the WSIB in the next round of consultation in 2016.

OPG is a member of several employer groups who share perspectives on a wide variety of workplace issues. Workplace accident insurance is a topic that frequently comes up in our discussions. We all agree that classification and premium rate reform is necessary. But, we also know that further reform is necessary, namely in the area of insurance product innovation. In our submission, we make reference to the WSIB's interest in being seen as a - *provider of workplace insurance* rather than just another collector of payroll tax. We believe that best way to achieve that objective is for the WSIB to develop and offer a range of more innovative insurance products and incentives to employers. OPG and the employers we meet with to discuss our common interests all have ideas about how this objective can be achieved. We urge the WSIB to be open to these concepts. We would be pleased to share our thoughts with WSIB staff.

We look forward to reviewing the results of this round of consultation.

Yours Truly



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ntario o er eneration S bmission

October 2, 2015

or lace Safet ns rance Board
Consultation Secretariat
200 Front Street West, 17th floor
Toronto, Ontario M5V 3J1
Attention: consultation_secretariat@wsib.on.ca

Thank you for the opportunity to provide feedback on the WSIB's Preliminary Rate Framework Proposal.

Ontario Power Generation (OPG) joined together with Bruce Power, Enbridge Gas Distribution, Hydro One and Union Gas ("The Group") to provide a group submission on this matter. The group submission captures OPG's views on most all of the technical issues. We will take this additional opportunity to expand further on some of the other important issues.

We also wish to offer suggestions on legislative, policy and administrative considerations that will help the WSIB build on its mission to provide employers with no-fault collective liability insurance and access to industry-specific health and safety information.

OPG wishes to commend Board staff, particularly J.S. Bidal and Earl Glyn-Williams for the dedication that they have brought to considering The Group's views. They both generously made themselves available to meet with our group and others on several occasions and provided thoughtful and detailed responses to questions. It was clear that both J.S. and Earl were genuinely interested in the views and opinions of employers. This gives us confidence that the WSIB's final product will offer a fairer and more equitable process to set employer premium rates and more effectively reflect individual employer claims experience.

bo t ntario o er eneration

Ontario Power Generation is Ontario's clean energy provider, producing more than half of the electricity that Ontario homes, schools, hospitals and businesses rely on each day. We are committed to ensuring our energy production is reliable, safe and environmentally sustainable for Ontarians today and for the future. OPG has a long-standing commitment to employee health and safety with an ultimate goal of zero injuries. To achieve this goal, OPG relies on a managed approach to health and safety, and on maintaining a strong safety culture with the support of workers and union partners. This commitment has resulted in OPG's safety performance being consistently in the top quartile of comparable Canadian utilities

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e m ortance of S B tonom

The need for this rate reform process has its origins in the 2009 Annual Report of the Auditor General of Ontario. This report challenged the WSIB's funding policies and performance. The Auditor General's report expressed concern about the long-term financial viability of the WSIB given its apparent inability to reduce or eliminate its unfunded liability.

Professor Harry Arthurs in turn pointed out that while the WSIB shared some of the responsibility by failing to adequately price new claims costs, the primary responsibility rested with the governments of the day. Arthurs stated that successive governments made a significant contribution to the UFL by legislating a standard of "*sufficient rather than full funding and by interfering in the rate setting process to keep rates below the level needed to achieve full or even sufficient funding".*

It is OPG's view that governments should not take a leading role in the affairs of the WSIB, except in the most urgent and exceptional of circumstances.

A common feature of well-managed public organizations is the presence of governance structures which allow the Board and senior management the freedom to make decisions in the best interest of the organization. OPG recommends that WSIB look to the appropriate professional body to undertake a review of the adequacy of the WSIB's existing corporate governance structure. It may be that changes are required to support the WSIB's ability to better carry out its related functions and responsibilities.

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By removing much of the WSIB's Safety functions and transferring these responsibilities to the Ministry of Labour, the government took an important step towards positioning the WSIB as a true insurance company. The government can continue down this path by transferring oversight for the WSIA and the WSIB from the Ministry of Labour to the Ministry of Finance. In our view the Ministry of Finance is more appropriately skilled to monitor a large and complex group insurance plan. The Ministry of Finance is likely better equipped with the competencies, experience and natural interest in the regulatory oversight of a large financial organization like the WSIB.

e eed for ate eform

OPG agrees with the need for premium rate and employer classification reform. The move to freeze premium rates over the past several years has resulted in some employers paying less than they would otherwise be required to pay, while leaving other employers paying more than the costs they were responsible for. This is clearly not a fair and sustainable funding model. This approach also hampers the ability of the Board to pay off the unfunded liability in a fair and equitable manner.

S nd str ate ories

The WSIB is considering an expansion from the initially proposed 22 Class structure to a larger 32 Class structure. OPG supports the expansion to the 32 class structure but we urge the WSIB to review the feasibility to expand the number of classes even further to minimize risk disparity.

Additionally, we suggest that the WSIB review the appropriate class financial thresholds i.e. the level of insurable earnings in a class to achieve the required level of predictability. It may be that the proposed standard of $1B is too high.

lass e el remi m ate Settin

The Group provided detailed comments on - *Employer Level Premium Rate Adjustments.* This is an important aspect of the reform process and on the whole, OPG has no additional formal comments on the mechanics underlying these processes. But, OPG does wish to comment and raise questions on several points related to Class B Level Premium Rate Setting. This in our view is the most critical and important aspect of this endeavour.

alc lation of era e is Band ates

We note that the July *Rate Group Analysis Document,* that detailed the Class B constituent rate groups 833, 835, 838 yielded what appears to be an unusual risk profile. A small number of employers moving to class B from these rate groups were placed above the average risk band rate of $1.27. But a significant majority of employers from these three rate groups were placed below the average risk band rate. *And, in the case of employers in rate group 833 – each employer was placed below the average.*

On this same theme, we also note an analysis document from the CME. It included figures for - *Billed 2014 Premium Rates,* and *New Structure Rates.* For rate groups 833, 835 and 838, the NCC component for 2014 billed premium rates are: $0.24, $0.39, and $0.30 respectively. But when these figures are mapped over to Class B the NCC figure is $0.41.

The questions we have are as follows:

- How was the average risk band rate calculated for Class B?
- What accounts for an average NCC rate that is higher than what appears to be the constituent components that make up the rate?
- Are there other rate group employers moving to class B?
- Are there employers in rate groups 833,835 and 838 moving out of class B?

alc lation of dministrati e osts

Currently this is calculated on the basis of 50% Insurable Earnings and 50% New Claim Costs - for both the WSIB's Legislative Obligations and for the WSIB's General Administration Costs.

Arguably the WSIB's obligation to fund legislative obligations are not connected to claim performance, whereas the WSIB's administrative expenses are highly influenced by the level of claim activity. The WSIB should consider the feasibility of calculating the Legislative Obligations fee based on insurable earnings, and the WSIB administration fee based on 50% I.E. and 50% NCC? This method would be more consistent with the principle of assigning costs based on individual employer performance.

on atenc cc ational Diseases D

In our Group submission we proposed that the cost of LLOD claims be shared equally by all employers across Schedule 1. This is a point that OPG wishes to emphasize.

The adjudication of occupational diseases poses particular challenges to WSIB staff. The WSIB regards the last exposure employer as the employer of record. But it is also evident in many cases that the last exposure employer is not necessarily the responsible employer. Many workers are exposed in many different workplaces across multiple rate groups and classes.

One approach in these cases, when the worker was employed in exposure employment with more than one Schedule 1 employer across different classes, would be for the WSIB to apportion the costs between the various classes. But as a practical matter, and given the evidentiary challenges posed in the adjudication of occupational disease claims, it may be more fair and cost effective to simply allocate the cost across the whole of Schedule 1. This is OPG's position.

Additionally, the group suggested that a different process is required to consider entitlement for new and/or emerging occupational diseases. OPG recommends that the WSIB review the recommendation from the 2005 Occupational Disease Advisory Panel (ODAP) report. Employer groups raised concerns with respect to setting up any kind of a permanent body, but OPG is of the view that an appropriately constituted nonpartisan, no-stakeholder and professional/ scientific body, with no permanent staff or budget would prove beneficial in this regard this regard. OPG would be pleased to offer further details on how this might be implemented.

on artisan Bod to onsider e reas of Entitlement

The rate reform paper acknowledges the significant impact that presumptive legislation has had on the finances of the system.

The 2005 Final Report of the Chair of the Occupational Disease Advisory Panel made the following recommendation with respect to considering adding disease processes to schedule 3: *"Where the disease outcome is common in the general population and is often attributable to non-occupational factors and the work-relatedness of individual claims is often rebutted, it is preferable* ***not to use Schedule 3"*** *(our emphasis).* The recommended standard for listing in schedule 3 was "Strong and consistent epidemiological evidence supporting a multi-causal association with the disease, one cause being occupation.

OPG is concerned that that appropriate standard of review for adding or removing disease processes to Schedule 3 is not in place in Ontario. As an example, presumptive legislation for firefighter was introduced in 2007 and again in 2014. But, we note that the link between cancers and firefighter remains controversial. As recently as 2013, a study published in the Occupational and Environmental Medicine journal found a correlation but no direct causal link between firefighting and cancer. The study's authors concluded that while firefighter exposures were possibly carcinogenic, no direct causative link was conclusively established.

OPG recommends that an independent and suitably qualified arms length organization be appointed to consider any future move to add disease processes to schedule 3. A suitably appointed expert body will bring greater confidence to both workers and employers that a decision to add disease processes to schedule 3 is based on sound scientific and epidemiological principles.

S E

It is probably not an exaggeration to say that - no employer in Ontario knows how much they pay, in their annual premium, for SIEF coverage. And, it is probably also true that some employers would be surprised to know that they pay anything at all. In our group submission we suggested that the WSIB consider the feasibility of allowing individual employers to opt out of SIEF coverage. But, more generally the WSIB should provide employers with details of the premium cost with respect to how much they pay for SIEF coverage. Such information would result in a more consider debate about the value effectiveness of SIEF coverage.

On this same theme, the WSIB should consider developing an annual premium statement for employers that detail how much of their premium dollars are allocated to different claim cost types and program categories.

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We expect that the WSIB's current fatality policy will be rescinded in the new rate reform scheme. The revised prospective experience rating program will not pay out rebates to employers so the foundation for the Fatality policy will no longer exist. During the consultation process the WSIB asked for input with respect to options to replace this policy with new measures. OPG agrees that the existing policy should be repealed, but we question the need for developing any type of new policy at all.

OPG agrees that there is a place for reasoned debate on the adequacy of the Provincial and Federal sanctions that are brought to bear on employers whose actions, or inaction, contribute to a workplace fatality. But we do not believe that it is appropriate for the WSIB to play a role in delivering these sanctions. Employers can look forward to due process in both the provincial and federal forums. But, the WSIB is not equipped, *nor should it seek to be able*, to provide the same level of consideration to employers. And in the absence of any such consideration, the imposed penalties become arbitrary and do not contribute to improvements in Safety measures necessary to prevent fatalities.

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Finally, OPG agrees with the opinion expressed in paper 2 at page 4 that the Ontario's Workers' Compensation System should be considered an insurance scheme and not a payroll tax. But, we are less inclined to agree with the statement that "worker's compensation is based on principles similar to those of insurance products in the private market."

The WSIB may wish to consider that the sentiment among some stakeholders that WSIB premiums are a payroll tax - comes from the absence of the structures and operating principles that distinguish payroll tax program from insurance based operations. A number of other stakeholders, over the years, including CME, COCA and the Ontario Chamber of commerce have voiced these concerns in different forums. OPG echoes those same comments.

OPG agrees that reform is necessary to bring more innovation into the WSIB's insurance products. But we are not taking a particular position on the best way to achieve these objectives. We urge the WSIB to make available a wide range of data and information about claim rates, duration and costs. This information would enable employers to formulate suggestion on these matters. OPG would certainly be willing to contribute towards those objectives.

Response from the Ontario Public Service Employees' Union on WSIB Rate Modernization

Warren (Smokey) Thomas
President
Ontario Public Service Employees Union
100 Lesmill Road
Toronto, ON M3B 3P8

October 1, 2015

Foreword

The Ontario Public Service Employees Union (OPSEU) represents approximately 130,000 workers across Ontario. They are full and part-time workers, men and women, younger and older. They work for the Ontario government, for community colleges, for the Ontario Liquor Board, and for a wide range of community agencies in the broader public service.

Employers fall into two Schedules for the purposes of premium and funding under the *Workplace Safety and Insurance Act* (WSIA). OPSEU has a number of direct Ontario Government workers that fall under Schedule 2 and are not part of the Rate Modernization Strategy. However, many of our employers do fall under Schedule 1 because they are an included industry that requires compulsory coverage, due to the language negotiated in their Collective Agreement or as a result of Schedule 1 Application provisions. Thus, OPSEU is concerned about the issues as it affects our Schedule 1 employers and employees.

OPSEU's submissions wish to highlight the following topics:

1. Moving to the North American Industrial Classification System (NAICS)
2. Risk Disparity and Expanding the Number of Industry Classes
3. Long Latency Occupational Disease (LLOD)
4. Certification and Non-Compliance
5. Claims Suppression
6. Secondary Injury Enhancement Fund (SIEF)

1. Funding – Moving to the NAICS

OPSEU supports the move to the proposed Rate Modernization system using the North American Industrial Classification System called “NAICS”.

It is important to move to a national system which shifts the premium distribution to a more realistic claims experience system based on the predominant business activity.

This system will be able to take advantage of large pooling, will create stability and provide actuarial predictability. Rate groups will move from the current number of 154 to 32 classes.

The actual Class rate allocation will be based on 75% of the shared costs of the employers in the Class with the remaining 25% of the allocation based on actual employer experience. The method will include the use of risk bands for positive and negative premium adjustments to the individual employer premium.

The principle of revenue neutrality would shift the premium distribution based on class and individual employer claim experience.

However, the proposed system should not encourage employers to focus on cost reduction by claims reporting suppression, reducing appropriate Occupational Health and Safety practices and non-compliance with the *Occupational Health and Safety* and the *Workplace Safety and Insurance Acts*.

Discussions with the stakeholders and monitoring by the WSIB should take place while the NAICS is being implemented with regard to these issues.

The inclusion of all claims experience and costs whether or not there is lost time is appropriate.

2. Risk Disparity/Expanding the Number of Industry Classes

OPSEU is not opposed to the expansion of the number of the industry classes from the proposed original 22 Classes to 32 Classes. However, there are concerns about expanding the Classes beyond that number.

It is important that Occupational Health and Safety training and practices for the workplace for these Classes be reviewed and strengthened.

3. Long Latency Occupational Disease (LLOD)

The issue of how to allocate premium charges for LLOD claims has not been determined and input was requested.

OPSEU would support that, if the employer is not in business at the time of the claim cost allocation, that the cost should be assigned to the shared cost of a particular Class.

If the employer is still in business, 75% of the cost should be allocated to the Class with some methodology for the remaining 25% of the costs. The WSIB should consider using the Class average for LLOD claims and apply a risk band penalty. However, if the employer experiences extraordinary LLOD claim experience beyond the Class average, greater direct costs should be borne by the individual employer.

4. Certification and Non-Compliance

Occupational Health and Safety training for every worksite is vital. The Certification process for employers requires that all certified workers complete, at minimum, Part One Occupational Health and Safety training and depending on the industry, the relevant Part Two training.

The WSIB maintains the records of Part One and Part Two training for each employer.

OPSEU is concerned that employers are not complying with the necessary training. There is little enforcement with respect to employers' non-compliance. It is within the WSIB's ability to check their own records to see if employers have completed the required training. If an employer is not found in compliance, their premiums rates using risk bands should increase accordingly for that year. Once the employer has complied, the premium rate would be adjusted downward the following year, if in compliance.

OPSEU believes that the implementation of the process would be easily achievable as the WSIB is the keeper of such records.

OPSEU would submit that this process is in keeping with the early warning concept of risk banding for non-compliant employers and promotes best Occupational Health and Safety practices and required training at the workplace.

5. Claims Suppression

OPSEU is concerned with any financial incentives that might encourage employers to practice claims suppression. Given that the proposed Rate Modernization system would be based on claims costs, and not solely the number of lost time claims, should help to avoid claims suppression. Allowing workers to report injuries without fear of reprisals leads to the necessary treatment, compensation, and if needed, return to work assistance. It also provides a real focus on improving Occupational Health and Safety objectives at the workplace.

Employers were attempting to discourage workers from making WSIB claims under the current premium system. The NAICS system will be based on the real cost of the claims. However, best practices with regards to Occupational Health and Safety should be required at all worksites. Reporting accidents and improving health and safety at the workplace should be encouraged and rewarded.

6. SIEF

The previous SIEF policy resulted in distortions among individual employers' premium costs in a Class.

Unfortunately, the employers often appealed for SIEF relief as a way to reduce the costs of the claims and thus reduce premiums. This is causing undue stress on injured workers, creating uncertainty and increasing significant pressure on an already overburdened appeals system.

The proposed rate modernization policy indicates that the combination of appropriately considering the contributing nature of pre-existing conditions and rate stability measures within removes justification for SIEF. Therefore, the SIEF policy will become obsolete and would be eliminated under the proposed NAICS system.

OPSEU supports the discontinuance of any employer rebate systems such as SIEF, NEER, MAP and CAD7.

ONTARIO ROAD BUILDERS' ASSOCIATION

ORBA Submission to the
Consultation Secretariat
Re: Workplace Safety and Insurance Board
Rate Framework Reform Consultation
October 2, 2015

INTRODUCTION

The Ontario Road Builders' Association ("ORBA") is the voice of the road building sector in Ontario. Our members build the majority of provincial and municipal roads, bridges and transportation infrastructure across the province, and employ in excess of 30,000 workers at peak season.

On behalf of our members, ORBA is pleased to comment on the Workplace Safety and Insurance Board's ("WSIB") proposed preliminary Rate Framework.

SUMMARY

The WSIB has indicated that its objective is to consider reforms to the current rate framework which would ensure that each employer pays its fair share for workplace coverage, establish a reasonable balance between premium rate stability and responsiveness, and to make it easier for stakeholders to understand and engage in the process. To that end, it has published material which discusses the proposed employer classification system, premium rate settings and adjustments (the "Proposed Rate Framework").

ORBA is committed to working with the WSIB to ensure that the Proposed Rate Framework not only reflects the WSIB's stated objectives, but that it is also in keeping with the WSIB's mandate, principles of reasonableness and assists the WSIB in managing its unfunded liability.

ORBA's submission, which is set out below, focuses on the following issues:

1. The WSIB should provide additional information to allow stakeholders to properly determine how the Proposed Rate Framework will impact employers.

2. The Proposed Rate Framework should be amended to include a shorter window to determine an employer's risk band. The suggested six year window is longer than what currently exists and may not properly consider the realities of the changing workplace.

3. The WSIB should continue to allow for multiple classifications for multiple business activities.

4. Second Injury Enhancement Fund ("SIEF") relief continues to be relevant and must not be discontinued.

5. Consideration for current incentive programs must be given.

THE PROPOSED RATE FRAMEWORK

Current System

Under the current system, an employer is first classified into nine classes. Then, the employer's primary business activity is classified into one of 155 rate groups (or multiple rate groups if the employer has multiple business activities). The employer pays premiums in accordance with its rate group(s). Premium rates are set in accordance with the business activity's associated "risk".

Most of ORBA's members have business activities that fall into the current construction class and related rate groups. As such, a yearly rebate or surcharge is calculated based on the costs associated with any workplace injuries within the last five years.

Proposed System

Under the current Proposed Rate Framework, the existing nine classes and 155 rate groups will be reorganized into a number of classes. Recently, the WSIB has indicated that based on stakeholder feedback, it may be appropriate to increase the number of proposed classes from 22 to 32.

The WSIB then proposes a target premium level for each class. The selected rate would reflect the collective experience of all employers within each class, such that each class can stand on its own without pooling costs from other classes. The calculations include an apportionment for the unfunded liability (the "Class Target Premium Rate").

Lastly, each employer's premium would be adjusted depending on the employer's claims experience and insurance earnings. The employer would be placed in a "risk band" that is either higher or lower than the Class Target Premium Rate (the "Employer Actual Premium Rate").

ORBA's Response

While ORBA generally supports a prospective system, it is ORBA's position that the WSIB has not provided sufficient information to allow for stakeholders to properly comment and give meaningful input into the specifics of the Proposed Rate Framework.

Further, ORBA understands that based on WSIB calculations, 56% of employers are overpaying by approximately $369,000,000 and 31% of employers are underpaying by approximately $363,000,000. The construction class and related rate groups have historically overpaid.

The WSIB has not provided a methodology for how the Proposed Rate Framework will correct the issue of underpayment and whether such methodology will take into consideration previous inequities.

In addition, ORBA requests that the WSIB provide more information on the transition period.

Many of ORBA members have applied for or have commenced long-term construction contracts that can span for a number of years and in most cases, long than three years. As the Proposed Rate Framework has the ability to impact members from year-to-year, a member's long-term viability may be challenged despite its best efforts to maintain a strong claim record.

ORBA agrees that the last three years of an employer's average net premium rates (including an employer's premium rate and refunds and surcharges) would be a reasonable way to introduce employers to the Proposed Rate Framework plan.

It disagrees, however, with respect to whether a six year window to determine an employer's risk band is appropriate. Such a period of time unjustly focuses on prior workplace accidents, many of which may not have been the result of employer fault and/or negligence or which may have been the result of an issue that has been long-since corrected. ORBA is in favour of a shorter window and also suggests applying a weighting factor.

ORBA submits that the WSIB should provide additional information to allow stakeholders to properly determine how the Proposed Rate Framework will impact employers.

Upon the release of additional information, ORBA requests that it be given the opportunity to make additional submissions for the WSIB's consideration.

MULTIPLE BUSINESS ACTIVITIES

Current System

Currently, the WSIB recognizes that Schedule 1 employers may have multiple business activities and an employer with multiple business activities may be classified in more than one classification unit. Although ORBA recognizes that there are some nuances to the current classification of multiple business activities, for the most part, employers with multiple business activities are able to remit the appropriate premium for the corresponding business activity.

Proposed System

The proposed changes would group employers with multiple business activities in a single class according to the predominant class (or the largest percentage of the employer's annual insurable earnings"). The only proposed exception is temporary employment agencies.

ORBA's Response

ORBA's members feel strongly that a blanket refusal to recognize multiple business activities is not fair or reasonable and should be reconsidered. A system that allows for multiple business activities recognizes the unique nature of various businesses, like the temporary employment agencies. ORBA members would likely predominantly fit within the proposed G2 (Infrastructure Construction) and G3 (Specialty Trades Construction) classes but do have other

business activities that would be classified elsewhere. The inability to treat separate and distinct businesses differently will significantly impact the viability of the business that would otherwise be classified in a lower class but for issues of ownership.

ORBA submits that the WSIB should continue to allow for multiple classifications for multiple business activities.

SECOND INJURY ENHANCEMENT FUND

Current System

The stated purpose of SIEF relief is to encourage employers to hire workers with disabilities.

SIEF relief applies to claims wherein the WSIB finds that a worker's pre-existing injury caused or contributed to a worker's new workplace injury. Alternatively, SIEF applies to claims wherein the WSIB finds that a worker's pre-existing injury has prolonged the worker's recovery following a new workplace injury. The pre-existing condition may be as a result of a workplace accident or not.

The WSIB has outlined in what circumstances SIEF is appropriate in its Operational Policy Manual ("OPM") Document No. 14-05-03 (the "SIEF Policy").

Recent Changes

In November of 2014, the WSIB introduced a new OPM document for pre-existing conditions. Specifically, OPM Document No. 15-02-03 (the "Pre-Existing Condition Policy") recognizes that a worker may have a pre-existing condition which may have impacted the worker's current work-related condition.

According to the Pre-Existing Condition Policy, if there is a pre-existing condition and the WSIB decides that it is not impacting the worker's current impairment, there is no effect on the worker's benefits. However, if the pre-existing condition is impacting the worker's impairment, benefits will generally continue only as long as the work-related injury continues to significantly contribute to the worker's impairment.

There has been some discussion that as a result of the new Pre-Existing Condition Policy, SIEF is no longer relevant and all pre-existing conditions have been adequately dealt with.

Proposed System

The Proposed Rate Framework seeks to discontinue SIEF. In addition to the Pre-Existing Condition Policy, the Proposal relies on the following comments to support its suggestion:

- SIEF decreases an employer's incentive to meaningfully participate in the work reintegration process
- Employers may be investing more into SIEF than in prevention
- The intent of SIEF is not to save employers money

The Proposal also suggests that a prospective system using previous claims history only as a guide to determine risk, reduces the effect of a high claim cost and may be offset by other low cost years and the limitation of annual movement of the risk bands.

ORBA's Response

ORBA states that while the stated purpose of SIEF may be to encourage employers to hire employees with disabilities, it actually serves to ensure that employers are not disproportionately disadvantaged for doing so. In fact, many employers do not know of an employee's pre-existing condition upon hire. Even if an employer did, various obligations pursuant to the Ontario *Human Rights Code* prohibit an employer from discriminating against an employee as a result of a disability.

In any event, the Pre-Existing Condition Policy does not account for situations in which the worker's entire injury is a result of a pre-existing condition (i.e. a worker who suffers from epilepsy and is injured as a result of a seizure). Further, an analysis of claim costs under the current retrospective experience rating system demonstrates that depending on the seriousness of the injury, SIEF may not significantly impact the employer's rebate or surcharge at the end of the year. Similarly, it can be expected that similar results will become apparent under the proposed prospective system.

Further, it must be noted that ORBA members often rely on union halls for workers and it is the nature of the industry, generally, that workers are provided by union halls for a finite periods of time. Workers spend their career working for many employers and to discontinue SIEF unjustly leaves the most recent employer in a succession of many employers to bear the full cost of an employee's pre-existing condition.

ORBA states that SIEF relief continues to be relevant and must not be discontinued.

OTHER ISSUES

ORBA states the Proposed Rate Framework does not appear to take into consideration current incentive programs. Incentive programs, such as small business health and safety programs and safety group programs have been established to help employers meet prevention responsibilities and build a healthy and safe workplace. **ORBA requests that the Proposed Rate Framework continue to apply such incentive programs.**

Likewise, ORBA states that as a result of the elimination of the rebate and surcharge mechanism the existing Fatal Claims Policy ought to also be eliminated. As it stands, an employer who experiences a fatality in the workplace are often disentitled to a rebate that it would have

otherwise received. In some ORBA member cases, this is the result even if the fatality was caused by a member of the public who was otherwise found to be careless or negligent. ORBA submits that the risk banding proposals could adequately deal with concerns of health and safety in the workplace and further penalties do not reconcile with a "no-fault" system. **The Fatal Claims Policy should be removed.**

In the alternative, should the WSIB believe that additional penalties are necessary and appropriate, ORBA suggests that the Poor Performance Surcharge, as it exists in Alberta be considered. Such measures should only be taken against employers with a consistently poor claim record and to encourage immediate improvement. This would ensure that any related costs would not be a strain on the Class Target Premium Rate.

ORBA appreciates the opportunity to provide feedback on this important topic and is looking forward to working with the government as it continues to develop the Proposed Rate Framework.

Ontario Sewer and Watermain Construction Association

OSWCA Submission to the WSIB Consultation on its Initial Rate Framework Reform Proposal

October 2, 2015

OSWCA
Ontario Sewer & Watermain Construction Association

October 2, 2015

Submitted via e-mail: (consultation_secretariat@wsib.on.ca)

Consultation Secretariat
Workplace Safety & Insurance Board
200 Front Street West
Toronto ON M5V 3J1

Re: WSIB Consultation on its Initial Rate Framework Reform Proposal

The OSWCA has been representing the sewer and watermain construction industry across the province since 1971. We currently serve over 750 member companies, including contractors, manufacturers, and distributors who build, supply, and service the sewer and watermain construction sector. Our membership is made up of ten local Heavy Construction Associations, two Pipe Producers, and one Independent Association.

We maintain a number of organizational goals, but our central objective is to enhance and protect the interests and welfare of the sewers and watermains sector of the construction industry. We work towards this objective through different avenues, including advocating to improve the operating environment for our member companies, working to reduce administrative burden on the construction industry, and addressing long-term labour force sustainability issues. It is for these reasons that we are providing our feedback into this review process.

As one of the founding members of the Construction Employers Coalition (CEC), OSWCA confirms its support for the CEC and its submission to the *WSIB Rate Framework Review (RFR) Consultation*. Specifically, the OSWCA supports the CEC's 10 recommendations noted below, as necessary reforms to the proposed Rate Framework Reform and its consultation process moving forward (for a detailed explanation of why these recommendations are being made, please refer to the CEC submissions):

- Recommendation #1 – Delink the RFR proposal from the WSIB messaging on lower premium rates;
- Recommendation #2 – Take an appropriate amount of time to carefully design and fully consult on a new Rate Framework;

- Recommendation #3 – Provide stakeholders with the necessary statistical data to inform them of the company-specific impacts before moving any further along in the current design process;
- Recommendation #4 – Preserve the Second Injury Enhancement Fund as presently constituted under the new Rate Framework;
- Recommendation #5 – Abandon the proposal to assess a company a single rate based on their "predominant business activity;"
- Recommendation #6 – Start all employers at their new Class Target Premium Rate to smooth the transition towards company-specific rates;
- Recommendation #7 – Expand the number of rate classes and consider maintaining existing rate groups under new model;
- Recommendation #8 – Base per claim limits on a set percentage of insurable earnings, rather than on a graduated scale based on predictability;
- Recommendation #9 – Review and adjust the technical limits for rate calculations as appropriate over the first five years; and,
- Recommendation #10 – Pilot the RFR model on a control group and perform a sunset review after five years to determine whether it is reasonable to expand across all rate classes and predictability levels

We believe that this reform proposal needs proceed with a significant degree of caution, particularly as the WSIB continues to aggressively pay down its unfunded liability (UFL). The WSIB needs to remain focussed on eliminating the UFL as job number one, as it is a significant legacy piece for the current administration and forging ahead with the RFR design and implementation at this point will most certainly pull attention away from this primary organizational goal. As the CEC submission notes, eliminating the UFL will be an achievement that no other WSIB administration has been able to realize over the previous three decades. Its elimination will have a much more profound impact on the provincial workplace insurance scheme, and labour market more broadly, than a new rate framework will have.

Waiting also allows for a number of additional benefits around financial flexibility and system design. With no UFL, the WSIB will have the benefit of enough financial flexibility to better deal with any problems in the technical limits set for rate calculations over the first few years of the new system. It will also allow for more time to

OSWCA
Ontario Sewer & Watermain Construction Association

appropriately consider and design the intricacies of a new system with full stakeholder participation. Taking more time to consider and design the RFR will eliminate the urgency that presently surrounds the RFR consultation process and will ensure that stakeholders are much more comfortable with the system being put in place.

There is a lot of unease within our membership at the speed at which this new system is being designed and some of the things being proposed (most of which has been outlined in the CEC submission). The elimination of the executive officer rate (RG 755) and the Second Injury Enhancement Fund, as well as the reforming of the Rate Groups into Rate Classes, are all items we feel we do not have enough information on to truly understand the long-term impacts of. As a stakeholder organization with primarily small- and medium-sized employers, we would like to have detailed statistical information related to company-specific impacts of these major program changes so that we can better understand how a companies in the 10-40% predictability range (the vast majority of contractors in the construction industry) would be impacted by this new rate framework proposal. Until we have this information and can really dig into the potential impacts, it is very difficult for us to provide any sort of significant comment on this process or to lend our support to it.

As always, we appreciate having the opportunity to make the above noted comments. Please feel free to contact Patrick McManus in our office (patrick.mcmanus@oswca.org or 905-629-7766 ext. 222) at any time if you have any questions related to this submission or our membership.

Sincerely,

Giovanni Cautillo
Executive Director

Peel Injured Workers

c/o 24 Enmount Drive, Brampton, ON L6T 4C8
PeelInjuredWorkers@gmail.com

October 1, 2015

Consultation Secretariat
200 Front St. West, 17th Floor
Toronto, On M5V 3J1

Submission to Rate Framework Modernization Consultation

Peel Injured Workers is a newly formed injured worker group providing support and information to injured workers living in Peel Region. Although our group only recently formed, our membership includes both new and more experienced injured workers, who are committed to improving the workers' compensation system in Ontario and improving the outcomes for all workers injured or made ill by their work.

We won't spend time going into an in-depth analysis of the proposed rate framework because we feel there is no need. This proposed rate framework just further entrenches experience rating and is fraught with all of the problems of the current system. In fact, it may actually be worse. Regardless of what you call it, it is still experience rating. It rates employers based on their claims costs so it encourages employers to engage in questionable behaviour to keep those costs down. This behaviour includes suppressing claims and vigorously disputing claims to limit entitlement to injured workers, thus keeping claims costs down. It does not promote health and safety, it only hurts injured workers and in many cases makes injuries worse. It provides a powerful incentive for employers to suppress claims. Claims suppression is already a real problem in Ontario, as reported in the Workplace Safety and Insurance Board (WSIB) commissioned 2013 study by Prism Economics and Analysis.

We are not sure what the WSIB was thinking with this proposal. In his final report, entitled *Funding Fairness*: *A Report on Ontario's Workplace Safety and Insurance System,* Professor Harry Arthurs warned:

"In my view, the WSIB is confronting something of a moral crisis. It maintains an experience rating system under which some employers have almost certainly been suppressing claims; it has been warned — not only by workers but by consultants and researchers — that abuses are likely occurring. But, despite these warnings, the WSIB has failed to take adequate steps to forestall or punish illegal claims suppression practices. In order to rectify the situation, the WSIB must now commit itself to remedial measures that might otherwise require more compelling justification. Unless the WSIB is prepared to aggressively use its existing powers — and hopefully new ones as well — to

prevent and punish claims suppression, and unless it is able to vouch for the integrity and efficacy of its experience rating programs, it should not continue to operate them."

It seems that the WSIB continues to ignore Professor Arthurs and others, including the late Professor Terry Ison, who warned about the perils of experience rating. How can experience rating be a measure of safe workplaces when workplaces that had fatalities still qualified for rebates the following year? Of course when you rate experience solely on claims cost, you don't get a true measure of safety, as it is cheaper to kill a worker than to maim one. Experience rating does not measure safe workplaces nor does it promote safety. We suggest that WSIB would do better to measure workplace safety by using a system of leading health and safety indicators.

Our members have experienced firsthand the devastating effects of experience rating whether being told not to report injuries or being forced back to work too soon in unsuitable or made up jobs, to having employer reps. aggressively fight their claims stopping at nothing including subjecting them to surveillance and other intrusions in their lives. Injured workers are further injured and victimized by experience rating. This is not in keeping with the Meredith Principles that are the foundation of this system. Instead of a non-adversarial system, experience rating creates an increasingly adversarial system and has spurned a whole industry of employer representatives.

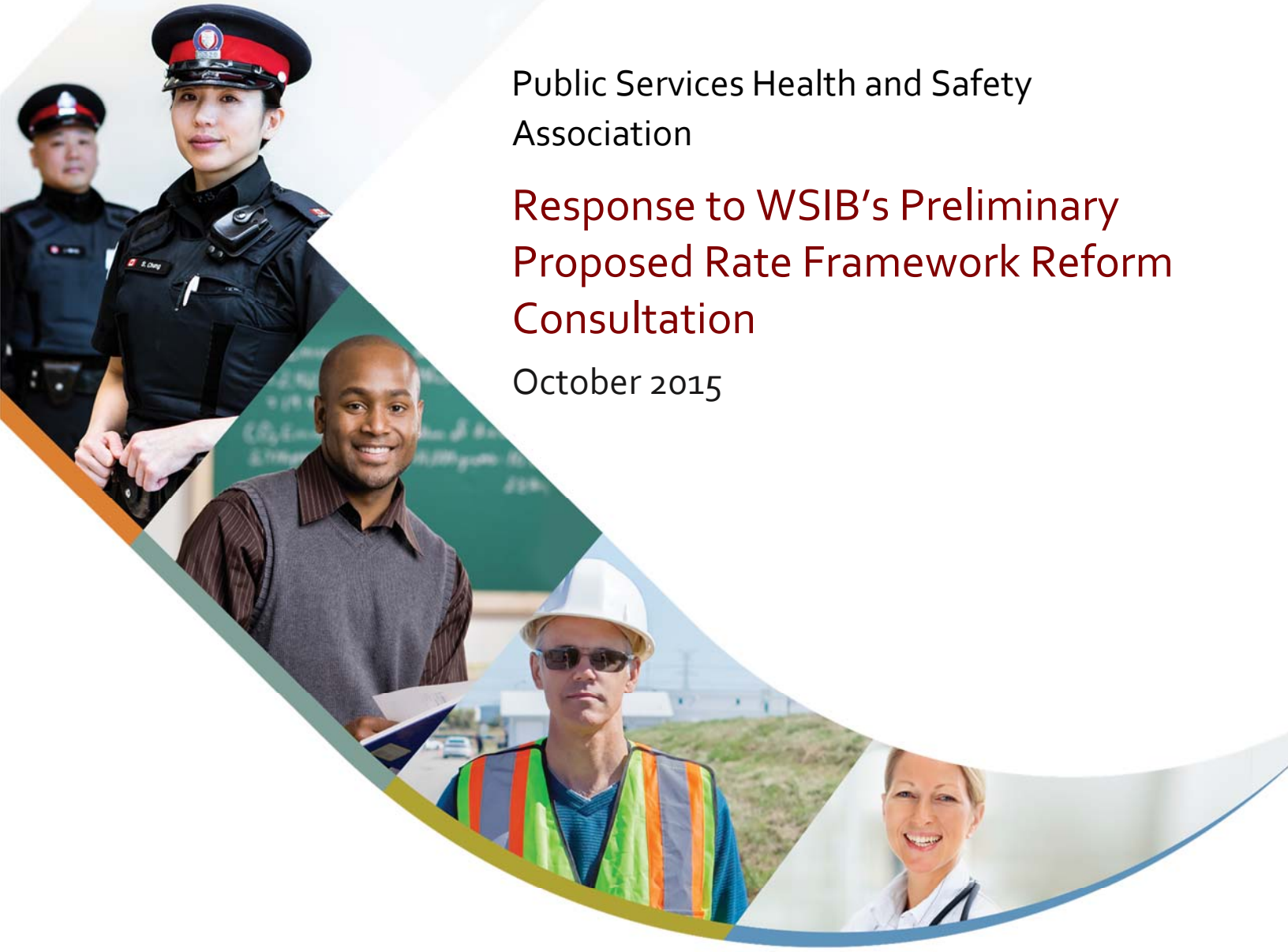
The premise of experience rating programs is that money drives behaviour. We do not disagree with that. Unfortunately, it drives negative behaviour. Everyday in our society, we see the race to the bottom with the exploitation of Temporary Foreign Workers, part-time and contract workers and the contracting out of dangerous work to temporary agencies. Many employers take the cheapest option to maximize profits. Do you think employers are going to invest money in health and safety when the cheaper option is to suppress claims or dispute claims when they don't succeed in suppressing them? Unfortunately, those injured workers who are the victims of this ill employer behaviour, tend to be those who are most in need of workers' compensation. Experience rating drives the bad employer behaviour in our compensation system.

There is no proof that experience rating works; however, there is however plenty of evidence that is does not work. A similar system introduced in Manitoba has shown that claims suppression continues to be a big problem there. If it didn't work in Manitoba, why do you think it would work in Ontario where claims suppression is already a problem?

We ask you to reconsider this option.

Respectfully submitted,

Peel Injured Workers



Public Services Health and Safety Association

Response to WSIB's Preliminary Proposed Rate Framework Reform Consultation

October 2015

Public Services Health & Safety Association™

Your Health. Your Safety. Our Commitment.

PSHSA's Response to WSIB Preliminary Proposed Rate Framework Reformation Consultations

The Preliminary Proposed Rate Framework developed by the Workers Safety and Insurance Board (WSIB) represents a shift which extends beyond technical mechanisms to set premium rates – it is a move towards a prevention-influenced system.

Executive Summary

Public Services Health and Safety Association (PSHSA) collaborates with Ontario's Public and Broader Public Sector communities to provide consulting, training, resources and scalable solutions to reduce workplace risks and prevent occupational injuries and illnesses. PSHSA is committed to serving its market of 10,000 firms and 1.67 million workers in health and community care, education and culture, municipal and provincial government, public safety and emergency services and First Nations communities. We deliver sustainable and impactful health and safety solutions based on evidence and informed by leading practices to affect positive change.

PSHSA has paid close attention to the WSIB Rate Framework Reformation and related consultation process. Under the Proposed Rate Framework, the prevention of occupational injuries and illness will play a significant role in the calculation of insurance premiums paid by Schedule 1 Firms across all sectors, including the Ontario's Public and Broader Public Sectors (OPS/BPS). As such, our organization seeks to understand the implications as related to the Prevention System, and similarly want to ensure the firms we serve are prepared for the eventual transition to the final Rate Framework from a prevention perspective.

WSIB's consultation materials were extensive and informative. Within these documents, over 20 questions were posed around the Proposed Preliminary Rate Framework, the Unfunded Liability, and A Path Forward. Herein, PSHSA provides general feedback on the proposal WSIB has put forth. These focus mainly on the transition and future state, including:

- Impact of changes on the Prevention System
- Role of Prevention System partners in future consultations and the transition;
- Additional support for employers – our clients – to understand and prepare for change;

Our approach participating in the consultation process has been focused on disseminating information. We worked with WSIB to offer technical sessions our Advisory Council, as well as present to stakeholders at our Annual General Meeting on the progress of the consultations. We further disseminated information to our market through emails to partners and newsletters to our distribution audience.

Contained in this report are the questions and comments that we heard raised by some of our stakeholders through the sessions, or gathered via survey. We trust that all firms, associations and other interested parties will provide feedback, and highlight some of the main themes shared with us, many of which have already been captured by the WSIB.

PSHSA looks forward to continuing our partnership with WSIB, and appreciate the opportunity to participate in this and future consultation processes.

Observations and Response

The resounding message that came through the Preliminary Proposed Rate Framework consultations was that there will be a strengthened linkage between occupational health and safety performance and premiums for all Schedule 1 employers. For PSHSA, this represents a tremendous shift as injury and illness prevention will be brought to the forefront. Thus, it is critical for PSHSA to understand the proposed framework as well as implication this has on the Prevention System as we enable a healthier and safer tomorrow for Ontario's Public Sector Community.

PSHSA is particularly interested in the relationship between the implementation of the proposed rate framework and the Prevention System. We understand that the Proposed Rate Framework is preliminary in nature, and thus it is difficult for WSIB to suggest linkages between services of Health and Safety Associations and the proposed structure. Should the Ministry of Labour and Chief Prevention Officer seek to examine this relationship, with participation of the WSIB, the following sections review some of the areas where implications on the current system may arise for such discussions.

Employer Classification - North American Industry Classification System

NAICS is a fairly understood system of business classification which, in part, is used to capture and report on economic statistics. Through adoption of this system, there would be some benefits from the perspective of correlating information from an occupational injury and illness perspective with readily available market information through Statistics Canada.

In terms of the impact on our market structure, we made some observations based on the information materials provided by the WSIB, specifically the Rate Group Analysis. Our organization currently provides occupational health and safety solutions and services to firms in Schedule 1 Rate Groups including:

- 590: Ambulance Services
- 810: School Boards
- 817: Educational Facilities
- 845: Local Government Services
- 851: Homes for Nursing Care
- 852: Homes for Residential Care
- 853: Hospitals
- 857: Nursing Services
- 858: Group Homes
- 861: Treatment Clinics and Specialized Services
- 875: Professional Offices and Agencies

Our market includes Ontario's Public and Broader Public Sector in health and community care, education and culture, municipal and provincial government, public safety and emergency services and First Nations communities. On a NAICS basis, our perspective is that this would include firms in codes:

- 61: Educational Services (in WSIB Classification T)
- 62: Health care and social assistance (in WSIB Classification Q)
- 91: Public Administration (in WSIB Classification C)

The preliminary analysis shared by WSIB in August 2015 showed that there would be some shifts for organizations, where they would move into classifications with firms other than those in their current rate group (See Table 1). For example, firms in the current Rate Group 817: Educational Facilities, will join three classification groups: T-Education (67%), R-Leisure and Hospitality (18%), and L-Information & Culture (15%). There are similar splits in Rate Group 845: Local Government Services which will join: C – Public Administration (96%) and N – Professional, Scientific and Technical (4%), as well as Rate Group 875: Professional Offices and Agencies which will join: Q – Health and Social Services (85%), S – Other Services (13%) and N

– Professional, Scientific and Technical (1%). Furthermore, Rate Group 590: Ambulance Services is moving from the municipal sector to Q-Health & Social Services completely.

We recognize that these reports were developed for illustrative purposes based on if the Rate Framework had been implemented in 2014, and are interested to understand shifts and implications as the Framework is finalized.

Furthermore, and perhaps more critically from an injury and illness prevention perspective, it is imperative that there is sufficient categorization in the information gathered which supports analysis and reflects the diversity of risks and contexts to create and implement mitigation strategies and deliver solutions. Or within the classification systems, the subsequent levels should be supportive of eliciting crucial insights to support such efforts.

The Risk Disparity Analysis to NAICS released in the summer by WSIB shows an expanded Classification Group, which extend the original Q – Health and Social Services into:

- Q1: Nursing & Residential Care Facilities
- Q2: Ambulatory Health Care & Social Assistance

Our organization will be interested in continuing to learn more about the finalized classification structure, as well as its impact on our clients and the Prevention System.

Risk Adjusted and Class Level Premium Rate Setting

There are many considerations related to setting the premium rate under the Proposed Rate Framework. Without delving into each of those, there are two areas that we want to understand as we move forward, including the impact on new premium rates and implications for the Prevention System, and ensuring that our stakeholders understand the changes.

From the Rate Group Analysis WSIB provided in August as part of the update on the consultation process, it is clear that most organizations will experience some degree of change in their premium level (See Table 2).

As consultations come to a conclusion and input is reviewed and considered, we will likewise shift our attention to the transition, and continue to ensure that our clients have solutions needed to improve their occupational health and safety. There is significant opportunity for alignment in messaging on the changes – WSIB from a technical, premium-related perspective, and PSHSA from a prevention perspective.

Our stakeholders have already been asking for information on the Proposed Rate Framework. Though the Rate Framework consultations focused on the principles of the proposed changes, many of the questions we heard were around where firms may find themselves in terms of their class and along the risk band. In fact, a number of stakeholders had indicated that it was difficult to respond to some questions without understanding the implications.

The Rate Group Analysis and Risk Disparity Analysis tables provided needed comprehensive support to begin the process of understanding the potential, real impact of implementing the Proposed Rate Framework. PSHSA is interested in the additional support to address some of the overarching questions, and are interested to know what additional supports will be developed as part of the transition consultations and eventual model implementation.

Comprehensive Information

Relatedly, as part of our role in understanding risks of our market, and providing targeted support for priority areas and for impactful issues, it will be important to assess the effect on

information captured and available to the Prevention System Partners for analysis. It is important to have access to statistical data, as well as sufficient information to enable evaluation in terms of outcomes and effectiveness.

From a structural perspective, it is our understanding that the reforms focus on Schedule 1 employers, and those who elect to be Schedule 1 employers. This is particularly important regarding grouping of information. PSHSA takes the view that all employers in the OPS and BPS fall under our mandate. Thus, we are particularly concerned about how we can continue to receive the essential and critical information, as well as receiving such in ways that can be easily analysed, and appropriate to guide our systemic approaches to large-scale issues, or working with clients to improve their internal responsibility systems and understanding hazards which may impact them.

Conclusion: A Path Forward – Transition Plan

To summarize from the points above, the following should be considered when developing the transition plan:

- Impact of the changes in classification on:
  - The Prevention market structure, funding and mandate, as to be discussed between WSIB, the Ministry of Labour and Chief Prevention Officer as the Framework is finalized;;
  - Organizational relationships and support;
  - Injury and illness information.
- Shared messaging around the case for prevention and preparation; and
- Additional tools HSAs can use to when working with clients, and self-assessment tools which firms can use to assess the impact as the Rate Framework is finalized.

We look forward to continued engagement as WSIB moves forward.

Consultation Approach: Building Awareness

From the time that Public Services Health and Safety Association (PSHSA) learned of the WSIB's Preliminary Proposed Rate Framework Reformation consultations, we have connected with our stakeholders to encourage them to read that materials and participate in the consultations, as they so choose. To support their engagement, we worked with WSIB to bring their Executive Director, Strategic Revenue Policy Jean-Serge (JS) Bidal, to share information directly with our stakeholders:

- Technical Session to PSHSA's Healthcare and Community Services Advisory Council (May 13, 2015)
- Technical Session to PSHSA's Municipal Advisory Council (July 8, 2015)
- Rate Framework Reform Update at PSHSA's Annual General Meeting (September 10, 2015)

Independently, we shared an overview with our Education Advisory Councils along with information on accessing WSIB's consultation documents and engaging through their consultation process.

At the onset of the consultations, we similarly distributed information broadly to our Advisory Councils, and our Affiliate Partners, who represent a number of organizations. Additionally, information on the Rate Framework Reform was included in our Health & Safety eNewsletter which has a distribution of 16,000 across Ontario's Public and Broader Public Sector communities.

What We Also Heard: Stakeholder Questions and Comments

It is anticipated that our stakeholders, if so inclined, will submit feedback to WSIB through the formal consultation channels. In conversation with our sectoral partners, there are still areas where greater clarity is sought, and where careful consideration is required when implementing the model and during the transitional phase.

Below are some of the questions and concerns shared with us or during technical sessions by stakeholders, and are provided herein to ensure that the WSIB receives any and all feedback that may be important to finalizing the framework. Much of this aligns with themes shared by WSIB in both the July and September updates.

Risk, Claims and Costs

During technical sessions WSIB held with PSHSA Advisory Council groups and other stakeholders, the idea of risk had been brought up. Stakeholders asked about the frequency which is not considered as part of the model for assessing the class target premium, or moving firms within a risk band. Specifically, the inquiry was whether number of claims and claims costs will represent risk in instances where the claims had no associated cost resulting from a practice, by some, of declining reimbursement in certain instances and keeping the wage whole. This would have implications under the new model which calculates premiums using factors such as insurable earnings, number of claims and claims costs.

It was suggested that the existence of such instances, and their relationship to the future model, should be reviewed and considered. Relatedly, other stakeholders raised the idea of using claims filed versus claims paid as a means to address such a concern. WSIB had sought additional feedback on these topics, and we anticipate such will be received.

Claims Categorization
It has been suggested by some stakeholders that claims be categorized by injury time, beyond no lost time, for additional analysis and understanding.

Multi-rating
Various stakeholders discussed this point, as under the new model multi-rating will be eliminated and firms classified based on their predominant business activity. Currently, there are various large firms in Ontario's Public and Broader Public Sectors who have upwards of 4 or 5 rate groups currently assigned, such as many large hospitals.

Second Injury and Enhancement Fund (SIEF)
Through the consultations, WSIB had asked about whether the SIEF policy today is still relevant. It was shared with us that there were concerns around removing such a fund particularly where injuries had been reported and underlying injuries had been present.

Revenue Neutrality
In the consultation documentation, it was clearly stated that the new model will be revenue neutral. There have still be questions around how the new model will impact the Unfunded Liability (UFL).

Access to Information
The following question had been asked which WSIB has indicated they will follow-up on as an answer was unavailable at the time of the technical session. The question was: How will the shift to premium setting based on claims information, linking data directly to the premium, impact the right to access the data and information? This was raised as there will be a direct correlation between increase in premiums if increases in injury occurrences and costs. As PSHSA works with employers to prevent workplace injuries and illnesses, we are likewise interested in assurances that such information will be available as without it would be difficult to assess and address needs.

WSIB had indicated there will be lots of complexity about how information is collected, sharing agreements for compliance, and related. PSHSA anticipates continued use of information in order to fulfil our prevention mandate, and looks forward to further discussion with WSIB and other parties on this.

Appendix

Table 1: Rate Group Analysis – Summary by PSHSA Rate Groups

Current Rate Group	# RG Employers	Proposed Classification Structure	NAICS Equivalent	# Employers	2013 Insurable Earnings ($B)	% of Insurable Earnings	% of Employers
RG 810 School Boards	129	T-Education	61	129	$0.72	100.0%	100.0%
RG 817 Educational Facilities	894	T-Education	61	596	$5.71	96.5%	66.7%
		R-Leisure & Hospitality	71-72	163	$0.09	1.5%	18.2%
		L-Information & Culture	51	135	$0.12	2.0%	15.1%
RG 845 Local Government Services	612	C-Public Administration	91	589	$2.09	96%	96%
		N-Professional, Scientific & Technical	54	23	$0.08	4%	4%
RG 853 Hospitals	208	P-Hospitals	622	208	$12.11	100%	100%
RG 851 Homes for Nursing Care	321	Q-Health & Social Services	621-623-624	321	$2.70	100%	100%
RG 852 Homes for Residential Care	221	Q-Health & Social Services	621-623-624	221	$0.28	100%	100%
RG 857 Nursing Services	1,149	Q-Health & Social Services	621-623-624	1,149	$1.32	100%	100%
RG 858 Group Homes	253	Q-Health & Social Services	621-623-624	253	$0.85	100%	100%
RG 861 Treatment Clinics and Specialized Services	1,598	Q-Health & Social Services	621-623-624	1,598	$2.78	100%	100%
RG 590 Ambulance Services	17	Q-Health & Social Services	621-623-624	17	$0.16	100%	100%
RG 875 Professional Offices and Agencies	2,015	Q-Health & Social Services	621-623-624	1,721	$0.17	81%	85%
		S-Other Services	81	266	$0.27	13%	13%
		N-Professional, Scientific & Technical	54	28	$0.14	7%	1%

Source: Adopted from WSIB Rate Group Analysis

Table 2: Rate Group Analysis – Examples of Class Target Premium Rates and Firms Above, Below and At Class Averages for PSHSA Rate Groups

Current Rate Group	# RG Employers	2014 Premium Rate ($)	Proposed Classification Structure	# Employers	Class Target Premium Rate	Class Average	Comparison to Class Average		
							% Below	% At Average	% Above
RG 810 School Boards	129	$ 0.81	T-Education	129	$ 0.43	$ 0.46	0.00%	0.00%	100.00%
RG 817 Educational Facilities	894	$ 0.36	T-Education	596	$ 0.43	$ 0.46	91.30%	1.50%	7.20%
			R-Leisure & Hospitality	163	$ 1.90	$ 1.94	100.00%		0.00%
			L-Information & Culture	135	$ 0.61	$ 0.76	98.52%	0.74%	0.74%
RG 845 Local Government Services	612	$ 2.24	C-Public Administration	589	$ 3.86	$ 6.39	100.00%	0.00%	0.00%
			N-Professional, Scientific & Technical	23					
RG 853 Hospitals	208	$ 1.10	P-Hospitals	208	$ 1.13	$ 1.18	51.92%	5.29%	42.79%
RG 851 Homes for Nursing Care	321	$ 3.29	Q-Health & Social Services	321	$ 2.28	$ 2.47	1.25%	0.00%	98.75%
RG 852 Homes for Residential Care	221	$ 3.30	Q-Health & Social Services	221	$ 2.28	$ 2.47	0.00%	0.00%	100.00%
RG 857 Nursing Services	1,149	$ 3.31	Q-Health & Social Services	1,149	$ 2.28	$ 2.47	0.44%	0.00%	99.56%
RG 858 Group Homes	253	$ 3.14	Q-Health & Social Services	253	$ 2.28	$ 2.47	15.81%	0.00%	84.19%
RG 861 Treatment Clinics and Specialized Services	1,598	$ 1.10	Q-Health & Social Services	1,598	$ 2.28	$ 2.47	99.62%	0.00%	0.38%
RG 590 Ambulance Services	17	$ 6.64	Q-Health & Social Services	17	$ 2.28	$ 2.47	0.00%	0.00%	100.00%
RG 875 Professional Offices and Agencies	2,015	$ 0.73	Q-Health & Social Services	1,721	$ 2.28	$ 2.47	99.94%	0.00%	0.06%
			S-Other Services	266	$ 2.43	$ 2.87	99.25%	0.00%	0.75%
			N-Professional, Scientific & Technical	28					

Source: Adopted from WSIB Rate Group Analysis, as if Proposed Rate Framework implemented as at 2014. Premium rates from WSIB website from 2014 to align with other information. We understand firms currently may have multiple rate groups.

Carpenters' District Council of Ontario

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October 2, 2015

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To Whom It May Concern:

Re: SUBMISSION TO THE RATE FRAMEWORK CONSULTATION
From Michael Farago, B.A., LL.B.
Workers' Compensation Representative
Carpenters' District Council of Ontario

Below, I provide some background information about the Carpenters' District Council of Ontario and my own experience in the workers' compensation field. I then provide some comments regarding the Rate Framework Consultation.

Background

The Carpenters' District Council of Ontario represents approximately 22,000 members across Ontario. They are members of one of several locals with offices across the province.

The union bargains for all carpenters in the industrial, commercial and institutional sector of the construction industry. The trades represented by all the locals include carpenters, drywallers, shinglers, resilient floor layers and siders.

I, Michael Farago, graduated from the Faculty of Law, University of Toronto in 1995 and articled at the Workers' Compensation Appeals Tribunal (WCAT), as it was known at the time. I held various positions at the Appeals Tribunal up to 2004, including those of mediator, lawyer in the Tribunal Counsel Office and lawyer in the Office of the Counsel to the Chair. From 1999 to 2001, I was a Vice-Chair of the Tribunal and I conducted hearings and wrote decisions in a variety of cases.

Since June 2005 I have worked as a Workers' Compensation Representative at the Carpenters' District Council of Ontario.

Comments on Rate Framework Reform

I am aware of the submissions being made by the "Experience Rating Working Group" and I wish to add some comments from a construction industry perspective.

I agree with the general principle that employers with poor health and safety records should be asked to pay higher premiums than those with good health and safety practices. However, I share some of the concerns of the Experience Rating Working Group that the proposed Rate Framework changes may not result in improved health and safety outcomes for workers.

Many WSIB claims in the construction sector result from workers performing heavy physical work over the course of many years. These workers may also be employed by many different employers. To earn a living, many workers will continue pushing themselves as long as they are physically able, to the point that they cannot work anymore.

The worker's employer at the time that they stop working becomes responsible for the cost of the WSIB claim. Currently, although an accident employer can apply for cost relief under the Second Injury and Enhancement Fund, they are still disadvantaged by the claim.

Due to the heavy physical nature of the trades, injuries may not result from poor health and safety practices, but from the nature of the actual work performed (such as lifting heavy sheets of drywall repeatedly for many years).

Even if a construction employer invests in health and safety measures, there are many inherent dangers on construction sites that are difficult to control. These include:

- A constantly changing work environment as a building or other infrastructure is constructed
- Constantly changing weather and sometimes harsh weather conditions
- Uneven ground
- The use of heavy material such as forms and drywall
- The use of heavy equipment
- Many trades having to co-ordinate work in a small area

The nature of the construction industry also makes it difficult for employers to identify suitable modified work for injured workers. Most jobs on a construction site are very physical in nature and are not easy to modify. Employers will try hard to accommodate workers in order to avoid claims costs but the work being offered is not always meaningful or productive.

Due to the project-based nature of construction, it can also be very difficult for an employer to offer permanent modified work. As a project ends, there is no guarantee that another one is available for the accommodated injured worker. Many workers then end up being retrained by the WSIB, at significant cost to the workers' compensation system.

I share the concerns of the Experience Rating Working Group that the use of experience rating in the proposed Rate Framework Reform may not actually result in a reduction in claims or an improvement in health and safety. Instead, there is likely to be ongoing pressure on employers to suppress or minimize claims.

The Experience Rating Working Group makes some valuable comments and suggestions regarding Rate Framework Reform and I urge the WSIB to consider these in implementing any changes.

Thank you for taking the time to consider the above submission.

Yours truly,

Michael Farago, B.A., LL.B.
Workers' Compensation Representative

Eugene Lefrancois
President

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ONTARIO NETWORK of INJURED WORKERS GROUPS

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October 1, 2015

From Experience Rating to Rating Experience

A submission to the Rate Framework Consultation from the Ontario Network of Injured Workers' Groups (ONIWG)

The Ontario Network of Injured Workers' Groups (ONIWG) is the largest democratically run network of injured worker groups in Ontario. Despite having few resources and no paid staff, we are committed to advancing the cause of those who have been injured or made ill on the job. Our advocacy is rooted in a solid understanding of the foundations of our compensation system and is informed by both daily knowledge of the experience of injured workers and through regular analysis and discussion.

ONIWG was founded in 1991 and since then has actively advocated on behalf of injured workers to defend and improve our workers' compensation system. ONIWG has intervened in three Supreme Court of Canada cases that affected the rights of injured workers including *Martin & Laseur v Nova Scotia*. ONIWG routinely meets with senior officials at the Ministry of Labour, including the Minister, and also with senior management at the Workplace Safety & Insurance Board (WSIB) to advocate for systemic change to benefit all injured workers.

Our member groups have spent many years trying to convince the WSIB and the province that experience rating is damaging to injured workers. We were heartened when we were told a new system was being created to replace this outdated and discredited program.

Imagine our disappointment when we learned that the Board would be moving from a one type of experience rating to another – in a way that entrenches employer incentives for claim suppression even further.

In this submission, we will explain the effects of any kind of experience rating system from the perspective of injured workers. We are, after all, the only people with lived experience in this matter. We are also the group that the system is supposed to be designed to benefit. As you will see below, the current and proposed rate setting systems only hurt workers.

While our personal experiences with the WSIB and our employers provides us with ample evidence that the proposed rate framework is dangerous, we have, where appropriate, referred to published studies and reports.

The Problem with Experience Rating

There is, of course, some appeal to what Paul Weiler's 1983 report to the WCB called the "intuitively plausible assumption" that rating employer experience based on claims cost would improve their safety behaviour. But even from the beginning, Weiler himself noted that "we have no irrefutable scientific proof of its efficacy," and that we "should not have inflated expectations about the promise of this instrument."[1]

In his 2012 review of WSIB's experience rating system, Harry Arthurs notes that "Several analyses of experience rating undertaken for the WSIB have suggested that the present system of financial incentives is likely to tempt employers to suppress claims."[2] He also tells us that there is *at most* modest evidence to support the fact that experience rating reduces accident occurrences, while noting that all any existing evidence of such a reduction is found within studies that also observe the systems' tendency towards employer abuse. Mr. Arthurs, as you know, concluded that the "WSIB is confronting something of a moral crisis."[3]

The WCB/WSIB's *own reports* from the 1980s onwards have cast doubt on the ability of experience rating systems to create safe workplaces. The experience of our workers is consistent with these conclusions.

It is not just injured workers who suffer when claims are suppressed and managed. A 2007 editorial in the Canadian Medical Association Journal suggested that between 40% and 54% of work-related injuries go unreported, which shifts the healthcare and social assistance costs of these accidents from employers – who are supposed to be funding the system – to the general population of taxpayers (including, of course, the very injured workers who have been discouraged from making a claim or forced back to work).[4] Seen through this lens, the kind of claim suppression encouraged by experience rating systems seems to treat everyone unfairly *except* the misbehaving employer.

From "Experience Rating" to "Rating Experience"

The new system applies the same principles as the old: Injured workers are treated as "risk factors" to WSIB sustainability. The board tries to minimize this risk by offering financial incentives to employers. However, these incentives are not based on their actual safety record, but on their total claims costs. Total claims costs, as anyone who has been injured and had to fight their employer for benefits could tell you, are not and never have been an accurate representation of actual workplace safety.

The proposed rate framework remains a system of *general deterrence*, relying on indirect claims-cost data and incentivizing perceived success, rather than an one of *specific deterrence*, that would rely on actually inspecting and enforcing health and safety law, and punishing violation. A

[1] Paul C. Weiler. "Protecting The Worker From Disability: Challenges for the Eighties," 1983. 115-116.
[2] Harry Arthurs, "Funding Fairness – A Report on Ontario's Workplace Safety and Insurance System," 2012. 81
[3] Arthurs, 81
[4] Aaron Thompson, "The consequences of underreporting workers' compensation claims," Canadian Medical Association Journal, January 30 2007 176 (3). 343-4.

2007 review of health and safety literature in a peer reviewed journal revealed that "general deterrence is less effective in reducing injuries, whereas specific deterrence with regard to citations and penalties does have an impact."[5] Why not spend the substantial amount of money it takes to run an experience rating program on actually enforcing the law, which evidence suggests is simply *more effective* than an indirect financial incentive program? If the objective is to create safer workplaces, what could possibly motivate the Board to choose the system that has been proven less effective?

A study in 1995 offered evidence that experience rating contributes to claim suppression by concluding that experience rated employers are "significantly more likely to appeal workers' compensation board decisions" than their non experience rated counterparts.[6] Unfortunately, the new proposed rate framework subjects every WSIB-covered workplace to a rated premium. So rather than reduce the harmfulness of the current rate setting program, the proposed plan will actually expose *more* workers to its negative effects.

Further, the new system also makes the rebates and surcharges that are currently issued to employers based on their claims costs largely invisible. This will make it difficult for observers and advocates to keep an eye on the system, increasing the potential for abuse without public oversight.[7] As far as we can tell, it also eliminates the current 'death surcharge.' This means that as long as claims costs are kept low, employers whose negligence causes the death of their workers could receive rate reductions. A death, after all, may potentially be "cheaper" than crippling long term conditions such as back injury, amputation, chronic pain, severe depression, or industrial disease.

In the eyes of injured workers, there is nothing in this proposed system that will temper the negative effects of experience rating. And if there is, our community requires answers: How will the new system protect injured workers more than the old?

A System for Injured Workers

The provincial government recently passed Bill 109, which drastically increases fines to employers who are caught suppressing claims. While we applaud the increase in fines that the Labour Ministry introduced to employers who break the law, we also see this as a sign that even the provincial legislature fails to see how the new proposal will help discourage claim suppression. In addition, even increased penalties still put the responsibility and consequence of reporting onto the worker. Many of our workers report being treated as a "traitor" for coming to the Board with an injury or a report of claim suppression. Others tell us they have had trouble getting references for a new job after making a claim or complaint.

As you know, Manitoba recently instituted a rate framework similar to the one that is now being proposed in Ontario. They also increased fines for deviant employers. While a Manitoba WCB-

[5] Topma et. al. "Systematic review of the prevention incentives of insurance and regulatory mechanism for occupational health and safety," Scandanavian Journal of Work and Environmental Health, 2007 33(2). 92.
[6] Douglas E. Hyatt and Boris Kralj, "The Impact of Workers' Compensation Experience Rating on Employer Appeals Activity," Industrial Relations, January 1995 34 (1). 104.
[7] e.g. Arthurs states that a "prospective approach to experience rating may mute its undesirable side effects." 88-89.

commissioned study published last year found significant problems in reporting and claim suppression, to the best of our knowledge, not a single fine has been levied on an employer.[8] Why create difficult to enforce fines for claims suppression instead of simply enforcing existing health and safety legislation?

Workers simply want a compensation system that honours the principles it was constructed on.

Shifting Principles

In 1915, when Ontario's innovative compensation system was launched, workers' were promised a system that was non-adversarial. This system would not pit the accident employer against the person affected by the injury. The current WSIB still touts this as a virtue of the system.[9] How the Board could consider the previous and proposed experience rating systems as non-adversarial is beyond our understanding. A program that offers financial incentives to employers who reduce the total cost of their claims is, simply put, a program that encourages employers to supress claims.

Under both the current experience rating system and the proposed rate framework, a company with numerous health and safety violations, but a thorough "claims management" strategy, (such as a pattern of discouraging injury reporting, challenging workers' claims, rushed return to work, 'fake' modified duties, use of sick time, intimidation, etc.) could see their premiums lowered year after year. On the flip side, a company with a clean health and safety record and strong investments in employee well-being that follows the law when it comes to reporting work injury could see their premiums go up. What employer would not be tempted to supress claims in an environment like this? How is this system non-adversarial?

Another important part of a non-adversarial system is collective liability. When costs are shared equally across a system, there is less incentive for each individual employer to supress claims. For example, within the thriving (and troubling) industry of "claims management" firms, advertisements tell businesses that they can achieve a "competitive advantage" in their field by engaging a firm that will help reduce claims costs. What happens when hiring a "claims management" firm to reduce costs is cheaper than investing in safety?[10] Many of our injured are or have been employed by workplaces that have retained claims management firms. In large part, we have found that these firms are reducing claims costs not by helping to create safe workplaces, but by aggressively challenging and supressing claims, encouraging use of sick time, pushing workers to return to work before they are ready, and other irresponsible and illegal tactics. All of these things can – an do – lead to further physical and psychological injury. One repairable short-term injury then becomes two or more long term health concerns, all because of the apparent "competitive advantage" offered to employers who keep claims costs down.

The proposed system takes the retrenchment of collective liability even one step further by creating different "pools" of money across different industry classes. This introduces incentives

[8] Kelly Putter. "Under The Carpet," OHS Magazine, 1 July 2014.
[9] e.g. WSIB Flyer: The Facts About Injured Worker Stigma.
[10] Hyatt and Kralj, 99.

for different industries to compete against each other, potentially creating a further "race to the bottom" of the claims costs pile.

Conclusion

Injured workers are constantly faced with a form of institutional and social stigma based on the assumption that giving us more money will only encourage laziness. Or that a better financial life for injured workers would act as a disincentive for productive participation in the labour market. Why, then, is it assumed that giving employers more money will make *them* behave better. Employers should not be financially rewarded for following the law. They should not receive a bonus for simply fulfilling their responsibility to keep us safe, *especially* when that bonus is tied to a measuring stick known to give an inaccurate representation of *actual* workplace safety.

As workers, we gave up our right to sue our employer in exchange for a guarantee that – in the case of injury – we would be looked after by a system that helped us regardless of the cause of our injury, in an environment that discouraged worker/employer hostility, out of a fund that collectively shared the burden of costs more or less evenly across the system. The system proposed here does none of those things.

Our end of the bargain (forfeiting our right to sue) is upheld and enforced. It is time for the Board to build a compensation system that upholds theirs. Replacing any type of experience rating with a system that truly measures and controls the health and safety of workers in this province is an essential step.

We are already injured. Please do not entrench a system which injures us further.

Thank you for your consideration on this matter. We trust that you will take our input seriously and work towards a just system of compensation that is built to benefit workers.

Sincerely,

The Ontario Network of Injured Workers' Groups

Cc:
Premier's Office
Minister of Labour
WSIB Board of Directors
Cindy Forster, NDP Labour Critic
Jennifer French, NDP Pensions Critic
Peter Tabuns, NDP Energy Critic
Prof. Harry Arthurs, Osgoode Law School
Sid Ryan, Ontario Federation of Labour
Jerry Dias and Kathy Fortier, UNIFOR
Barbara Finlay, Acting Ontario Ombudsman
Tom Irvine, Fair Practices Commission

RESCON®
RESIDENTIAL CONSTRUCTION COUNCIL OF ONTARIO

October 2nd, 2015

Consultation Secretariat
Workplace Safety & Insurance Board
200 Front Street West
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RE: Rate Framework Review Submission

RESCON is an association which represents the construction interests of high-rise and low-rise residential builders in Ontario, with more than 100 union and non-union member companies. As a founding member of the Construction Employers Coalition (CEC), RESCON reconfirms its support for the CEC position and is taking the opportunity to provide further comments.

RESCON supports the CEC's submissions and 10 recommendations as outlined below:

1. **Delink the RFR proposal from the WSIB messaging on lower premium rates**
2. **Take an appropriate amount of time to carefully design and fully consult on a new Rate Framework**
3. **Provide stakeholders with the necessary statistical data to inform them of the company-specific impacts before moving any further along in the current design process**
4. **Preserve the Second Injury Enhancement Fund as presently constituted under the new Rate Framework**
5. **Abandon the proposal to assess a company a single rate based on their "predominant business activity"**
6. **Start all employers at their new Class Target Premium Rate to smooth the transition towards company-specific rates**
7. **Expand the number of rate classes; consider maintaining existing rate groups under new model**

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8. **Base per claim limits on a set percentage of insurable earnings, rather than on a graduated scale based on predictability**

9. **Review and adjust the technical limits for rate calculations as appropriate over the first five years**

10. **Pilot the RFR model on a control group and perform a sunset review after five years to determine whether it is reasonable to expand across all rate classes and predictability levels**

In addition to the recommendations outlined above, RESCON re-emphasizes the need to:

- **Decouple rate reduction and rate framework review discussions**: The WSIB under the leadership of Elizabeth Witmer and David Marshall have made leaps and bounds in tackling the unfunded liability (UFL) and they, as well as the WSIB as a whole, should be commended for their efforts. Part of this good news story has been a reduction in lost time injury (LTI) rates within construction, which have declined by 42 per cent over the last 10 years. These two points were highlighted in a recent CEC submission to the WSIB which called for a 10 percent reduction in all Class G Construction premium rates. CEC clearly highlights that, due to a reduction in LTIs, premiums should be reduced to lower overpayments by construction employers.

- **Maintain the Executive Rate**: As outlined in the recommendations above, the WSIB has not proposed to continue the executive premium rate which currently stands at $0.21. This rate which was recently established eased the transition to mandatory coverage. However, the new system creates a blended premium rate which would replace the current multiple rating system. This means any employer engaged in multiple business activities – for example, property rentals, home builder and restaurants – will now be rated as only a property rental, home builder or restaurant. This is potentially dangerous as the rates can vary widely between groups and large percentages of an employer's workforce could be misclassified (please see the CEC example). It would also remove the executive rate which, for employers classified as home builders, would increase the rate by approximately $4.39 to the $4.60 group average.

- **Predictability**: The WSIB has proposed to give each employer a predictability score. While this creates incentives for very large builders, it also reduces incentives for very small builders who will be unable to control more than five to 10 percent of their individual rate. It also highlights a major concern in the removal of the executive rate and move to blended rates. For example, a small builder will be reliant on the premium group average for more than 95 per cent of their individual rate and therefore will be forced to overpay for the executive positions. Despite above average performance, they will not be able to move away substantially from the average.

On behalf of RESCON members, I request that the WSIB accept and give each recommendation its due consideration. As pointed out in recommendation 2, this is a fundamental shift that will require additional consultations and an appropriate amount of time in the consultation phase. It also should be decoupled from the elimination of the UFL and rate reductions which are good news stories based on a drastic reductions in LTIs and excellent

work by the WSIB. Moving forward, RESCON will continue to work as a partner with the WSIB and will dedicate resources necessary to provide meaningful input and feedback in future consultation phases. We appreciate having the opportunity to make the above noted comments and are open to discuss any questions the WSIB has.

As always, feel free to contact me via email at pariser@rescon.com or at (905) 760-7777.

Andrew Pariser
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Re-Rate Framework Reform

Dear Sirs,

On behalf of my client's & Associations of Employers who I represent I have the following Submissions to make in respect of the Rate Framework Reform,

Under the heading "Contacts for Change – why now" it is stated as follows:

- policy and legislation that was implemented arising from the Meredith Report was result of compromise between social contract and ability such social contract to be sustainable as long as stakeholder groups except the system continues to work in our best interest and is the most secure and efficient means of

compensating injured workers for losses they suffered in workplace accidents. No reference is made to the value of unfunded liability as of March 31, 2015. No reference is made to Professor Weiler's paper entitled "Protecting the Worker from Disability".

- Douglas Stanley was asked to be a special advisor to assess a fair system for scheduling employers for the cost of workers the compensation system being those costs which are the benefits which injured workers are entitled under the Workplace Safety Insurance Act 1997 (WSIA).

- Mr. Stanley states he is talking about fairness to employer's vis-à-vis the other employer is not fairness of employers at the expense of fairness of injured workers. Professor Weiler's Report a part of which is attached as Schedule One.

- Professor Weiler states on page 94 of his Report: "size and adequacy of risk premium is artificial as it ignores the existence of workers compensation".

- Professor Weiler states at page 88 "Worker's compensation is a form of government intervention to deal with the problems of workplace injuries....and at page 94- the debate about the size and adequacy of risk premiums is artificial as it ignores the existence of worker's compensation."

Mr. Stanley then references his request of being asked to provide the Board a Report that identified areas of consensus or classification and rate setting for Schedule I employers as well as being asked to identify the areas that required further research and analysis and provide recommendations on a new rate framework.

- In this paper Mr. Stanley then proposes to abolish all forms of Experience Rating and Second Injury Fund Relief which is implemented to facilitate the Employer of Record being able to accommodate injured workers in a Return to Work scenario supported by the Employer of Record.

- Studies conducted by the WSIB have proven that the Employer of Record is the best opportunity for injured workers to obtain reemployment.

- Mr. Stanley then goes on to say at page 9 of his Report entitled "Class Level Premium Setting" that rate groups do not fairly reflect the reality of industry and that current classification systems contributes to an unfair distribution of cost to today's employers and undermines employer's confidence. Professor Weiler states at page 89 of his Report "the object of government intervention is to add sufficient incentive on the firm's side of the scale to right the balance i.e. impose Experience Rating". Professor Weiler also states at page 90 of his Report "to the extent that the employer can eliminate some of the hazards in its operations, and thus reduce the risk of injury anticipated by its employees. The risk premium will drop according".

- Mr. Stanley fails to state that the pricing system applied through use of SIC codes is determined actuarially be the best means to price the cost of wage assessment payable by employers, as compiled in Board of Director Minute #14 attached as Schedule Five. Business activity and Risk are the keystones of Rate Group Classification.

- What Mr. Stanley does not state and what is apparent from the nature of the reforms proposed is that is Mr. Stanley is trying to accomplish having employers pay to the WSIB the $2 billion lost under Chair Mahoney's guidance in 2004 and 2005 by improper use of Board funds in questionable investments.

The financial statements for 2004-2005 reflect the Board net asset value decrease from $6.5 billion to $4.5 billion dollars due to Chair Mahoney's negligence. One should determine what other senior WSIB Officers were supportive of this financial fiasco.

Mr. Stanley's reference to Experience Rating is as follows:

- Mr. Stanley states it is of great concern to number of stakeholders who responded to his discussion paper. However, a system of poor experience rating is where cost of claims exceed the insured's expected claim cost and related medical expenses. This is claimed to be a form of Insurance Equity which the author describes as being a term used in California Legislation. British Columbia WCB uses a sliding scale of wage assessment (Schedule Two) to impose penalty for excessive cost of claims.

What Mr. Stanley does not state in reference to California Legislation is the Criminal Worker's Compensation Act of California which allows for prosecution of employers who engage in unsafe practices and resulting increase in the cost of wage assessment. The Insurance Equity aspect of California Legislation must be tempered by the ability of the California Worker's Compensation Board to take such steps and charge employers who do not adequately provide safe working facilities for workers. The term Insurance Equity

is not an appropriate term to consider with respect to replacing current experience rating programs.

- It is of importance that the Ontario Business Coalition spoke of Experience Rating as a program to be maintained. Ted Nixon, Actuary for the Ontario Business Coalition, was also the Actuary who wrote the final NEER program for the WSIB in 1986. His opinion is that Experience Rating must be a cost-based activity. He stated that "the purpose for this is to enhance pricing equity whether or not it has any measurable impact on accident prevention or return to work. If the legislation needs to be changed then it should be changed".
- This is not the focus taken by Mr. Stanley and his proposal as in the present form it is claimed that Experience Rating fails due to intrinsic design flaws which lead to underreporting of claims which is not proven. Moreover Mr. Stanley states that there is the need to have risk factors to be a consideration in the premium process that the WSIB needs to refocus on the insurance fairness aspect of experience rating.

- Risk introduced into the system and the fairness of allocating the associate cost is his premise. But going forward Mr. Stanley states he refers to this concept as "risk-adjusted premiums". The reason for recommending that focus is to restore and maintain employer confidence in the system which in turn is essential to the achievement of funding requirements mandated for the WSIB Legislation.
- What Mr. Stanley does not say is that as a consequence of experience rating including retrospective application of the cost of claims in NEER and the CAD seven program instead of prospective rate adjustment used by eight of the Jurisdictions in Canada. In other provinces employers are rated on experience relevant to their cohorts in the Rate Group risk band. The 4 western provinces use experience rating to reduce standard cost of wage assessment by up to 30% depending upon how well the Employer scores in a Risk Assessment including cost of claims. Why is Mr. Stanley ignoring this successful structure?

- Therefore by having appropriate health and safety practices which the Board will review and assess the credibility of such programs and if such credibility determines the sufficiency of worker protection the employer receives an immediate 30% discount from Standard Rate. There is no discussion by Mr. Stanley about this concept whatsoever.

- At page 18 of Mr. Stanley's Report the issue of Second Injury Fund states that Second Injury Fund Relief should be abolished.
- Mr. Stanley states that this practice undermines the risk focusing intent of experience rating programs. Professor Arthurs who recommended that "abolish SIEF or replace it with the program of wage subsidies for injured workers seeking to return to work with their original or another employer".

- Mr. Stanley then goes on to state that the WSIB should consider my recommendations to abandon current experience rating program and adopt the

adjusted premium rate setting and should consider whether to continue SIEF in its place.

- Mr. Stanley states that the Board might consider what if any measures are necessary to support return to work efforts in a manner that does not impact the fair attribution of cost to employers.

- Mr. Stanley goes on to reference the off-balance issue. What Mr. Stanley fails to address is the responsibility of both employers and workers to affect early & safe return to work as per OPD 19-02-02 & 19-02-03. Where the worker's pre-existing conditions are a contributing cause to the worker's disablement as described in WSIAT # 239/09 (Schedule Three) at pages 15-18, the obligations are well defined as to who is responsible in the joint effort for Early & Safe Return to Modified Duties at full wages.

The Employer by having an immediate understanding of the worker's Functional Abilities can usually fulfill the worker's need for modified duties until the worker is capable of returning to regular duties. This mandates early intervention with a WSIB

RTW Mediator-now possible in 10 business days and having the worker return a FAF form on a timely basis.

Where a worker wants to take advantage of refusal of modified duties the existing Policy will shut down payment of benefits at the WSIB Operations Branch, and the Employer is not at risk.

I attach as Schedule Four a copy of a decision of ARO Palmieri dated May 15, 2015 which confirms how Policy OPD 19-02-02 is used to shut down a worker's entitlement to LOE benefits when the worker refuses to cooperate according to the wording of the Policy to keep in touch with the Employer and work together to effect Early & Safe Return to Work.

- It is my submission that the WSIB can cost the cost of coverage for SIEF relief by taking the cost of claims for which relief of cost is been granted and determine of value for ensuring that the employer has access to the relief of cost under the present policy. As well, the Ontario Board can look to Boards in the four western

provinces who have limited SIEF relief to 50% of the Cost of Claims and utilize this limit to reduce part of unfunded liability.

I submit that one can determine from the cost attributed to SIEF Relief over the last five years that the WSIB through its actuarial staff can determine what cost per claim such Second Injury Fund Relief incurred and accordingly determine the insurance issue of the cost of overhead of the value of what SIEF claims would represent across all rate groups. This value can then be offered as an additional premium to those employers who will pay for having SIEF relief available as a source of reduction of the cost of claim, especially if full funding of the cost of claims is allowed through use of Insurance coverage as in 44 states of the United States where Insurers govern the cost of wage assessment.

- SIEF Relief has been promoted to serve as the basis for which injured workers are able to be reemployed by the original accident employer. By taking away SIEF Relief and eliminating it will cause the accident employer of record to pay

for the cost of claim. Whether the injury which has resulted due to the workplace or due to underlying conditions resulting from a number of causes, pre-existing non-work injuries, motor vehicle accident, or any such other form of disability which becomes aggravated as a consequence of the workplace duties. This is not mentioned whatsoever by Mr. Stanley as factors contributing to the concept of disablement for non-work related reasons.

- At page 41 of his Report Mr. Stanley states "the WSIB goals and objectives in rate setting or to raise money it needs in accordance with the Funding Policy and to fairly assess employers for those costs. That raises the question about "prevention". Although it is outside the scope of this Report, clearly it is an issue that must be addressed given the WSIB's "funding of existing prevention programs".

- Professor Weiler's comments at page 90 of his Report, "the accident itself can cause certain direct costs on the employer".

I submit that the cost of funding such prevention programs can be determine as a dollar per hundred value which can be paid for as part of the charges for cost of wage assessment as part of the overhead value subsequently proposed.

- At page 40 of this Report there is a discussion about the fairness of the pricing system and quite clearly Mr. Stanley states he makes an assumption that employers for this new code will have similar risks and begins regrouping the new codes together into statistically credible rate groups.
- Mr. Stanley then talks about a risk band, which I submit is totally inappropriate. At page 91 of Professor Weiler's Report, Weiler states "There is not any Econometric Study to obtain data about wage rates and fringe benefits to match up with wage rates"

- A Risk Band is fraught with assumptions which are not proven actuarially to be correct. There has been no analysis what cost the Cost of Claims on an individual Rate Group basis will result in.

I was party to the review of rate groups in 1992 and I was party to discussions regarding the importance of SIC codes and allocating risk as a factor in the cost of wage assessment. BOD Minute #14- attached as Schedule Five sets out the 4 factors necessary to cost wage assessment.

- Mr. Stanley has made numerous assumptions about the consideration of risk. At page 6 of his report he states collective liability as adopted by Chief Justice Meredith in his Report was that collective liability can be remedied by ensuring that employers in classes or subclasses do not pay a uniform rate but a rate that takes relative risk into consideration. He then goes on under the heading the "road to full funding". That "This is what the system faces when it is not fully funded the benefits of injured workers are at risk". This is a false assumption.

- Mr. Stanley then goes on at page 7 paragraph 2 the introduction of Ontario Regulation 141/12 is a clear Signal that the WSIB's unfunded liability (UFL) is of public concern. Mr. Stanley states "There is now legislative accountability for the WSIB to obtain full Funding in the insurance fund within a specific timeframe where previously there was none". To fulfill this requirement, the WSIB has developed a plan to achieve full funding which includes a funding policy as well as efficiency plan".
- Mr. Stanley then goes on to state which is an assumption which is not proven by any statistical analysis by Morneau Shepell or any other Actuary that the implementation of the new proposed funding policy using any NAICS code numbers will include principles that support the attainment of regulated funding requirements leading to the goal of achieving full funding by 2027.
- In order to ensure transparency Mr. Stanley states that the Policy includes principal of governance of the premium rate setting process and the rules and responsibilities of the Board of Directors etc.

- This is more smoke and mirrors given what the Board had proposed in 1986 that they would have elimination of the unfunded liability by 2014.

- Nowhere in this paper is there set out the basis of the cost of unfunded liability by either Mr. Stanley or Morneau Shepell nor is there any explanation given by Mr. Stanley or by Morneau Shepell as to why the unfunded liability was not eliminated in 2014 as had been promised by the various Chairs of the Board from Dr. Elge to Chair Whitmer.

- Limitation of the unfunded liability can only be achieved if all employers under the Ontario WSIB scheme contribute to the cost of wage assessment on a pay as you go basis as is in place in Schedule Two. Schedule Two employers pay for the cost of claims they incur and they pay a cost of overhead for the WSIB.

- Second injury fund relief can be part of board overhead once it is properly valued as a expense to be incurred by the employer.

- Presently, Schedule Two employers in Ontario pay 30% for the cost of overhead and yet the cost of overhead in Mr. Stanley's papers is significantly less (the a premium for administration is 18% includes legislative obligations and overhead, the funding cost of Schedule Two claims is 30% for Schedule Two employers at this time)-why is this allowed to happen if equity is the result of funding the cost of claims.

- Moreover, at page 46, Mr. Stanley talks about that rate setting is not an exact science but by going to a Schedule Two structure there is no question of the full funding which the WSIB will achieve. One need not get into the issue of rate setting as the employer will pay for the full cost of claim plus WSIB overhead. Insurance can provide the necessary means to fund the Employer's obligations.

- The employer can purchase both primary insurance and reinsurance on the open market to cover the effect of catastrophic injury or to cover such risk as the insurer will provide to fund the cost of claims. This concept of reinsurance is

throughout the Boards of the United States that are not monopolistic as the Ontario board is with respect to control of the cost of wage assessment and determination of entitlement for claims.

- Liberty Mutual, AIG Insurance, Old Kentucky Insurance are but a few insurers who can provide primary coverage. Charles Taylor a fund manager for Great Lakes Shipping Companies can provide reinsurance at fair market value and does so for Shipping Companies around the world. This company is publicly traded on the London Stock Exchange and manages "SCALA" for shipping companies in Canada, and 'SIGNAL' in the United States for ships and stevedores. I was Counsel for this insurer for 35 years and I know how to fund the risk of the cost of assessment.

- Since Mr. Stanley looks to California as an example, one can look at other jurisdictions in the United States and see the effect that reinsurance has in controlling the risk profile

and eliminating the need for actuary predictability for the cost of claims and eliminate the need for prediction scales graduated per claim limit risk band or all such other features which cannot be properly costed as provided for in Board of Director Minute #14.

- Risk is a factor of Rate Group structuring. Risk can be reinsured. The ability to pay is relegated to the insurer who will experience rate the employer who has purchased coverage.

By eliminating the number of rate groups which now exists, the risk factor will significantly impact employers as a whole and create an unjust cost of wage assessment because the cost of such claims which the Board has calculated to be in the model are based on assumptions. There is no factual evidence to support the type of proposal created by Mr. Stanley which is adverse to the interests of maintaining growth of industry in Ontario. The costs of claims from my calculation will at least double the cost of wage assessment to employers under the new funding model. This is totally unacceptable in a Society where the intention is to maintain full funding for the cost of

benefits of workers and yet provide an established framework for employers to conduct business. By allowing insurers to enter the market where a bottom line for small employers is relegated to the WSIB to collect premium.

- Industry must re-employ its injured workers or pay.

By using Schedule Two to model funding the Board can calculate the cost of overhead, the cost of Second Injury Fund relief, and such other costs as employers may require to achieve a level playing field. Until moving to Schedule Two for all industry is completed by the WSIB Actuary as to extra costs to be paid for SIEF relief coverage the effect of moving to the type of funding requirements proposed by Mr. Stanley is significantly prejudicial to industry in Ontario.

- Mr. Marshall is the President & CEO of the WSIB. Mr. Marshall must be replaced with a competent President who understands the balancing act of the funding for the cost of workers claims including the cost of locking in benefits after 5 years to

the age of 65 which drives the unfunded liability issue because as of now the WSIB cannot capture this cost under existing Experience Rating programs.

- Professor Weiler at page 126 (Schedule Six) of his proposal states: "Experience Rating gives the employer self-interest in helping the WSIB police the occasional abuse of the program". Where such abuse is evident, pursuant to S. 149 the WSIB's Regulatory Service can lay charges under the Provincial Offences Act and has done so where warranted. Mr. Johnston Vice President of Regulatory Services can confirm the foregoing. Thereby Employers become the partner of the WSIB to curb abuse.

- In paragraph 2 page 126 Professor Weiler states "Schedule Two firms are self-insurers under the Act and there is no evidence that Schedule Two firms contest any more of their employee claims than do Schedule One employers who are now governed by the Collective Insurance Regime.

By allowing existing Schedule One employers, except that class as defined in British Columbia Policy as small employers which the Ontario WSIB must fund as a collective Insurance scheme-small to be less than 20 employees as defined in the Occupational Health & Safety Act, to obtain insurance for funding worker's claims, the market place can set the premium as is done in 44 of the 50 states of the United States.

- In 1994 the Chair of the Worker's Compensation Board of the state of Victoria spoke at a WSIB conference at the Park Plaza Hotel how Victoria WCB eliminated $11 Billion dollars of unfunded liability by allowing private insurers to fund WSIB premiums.

Self-insurance through the use of existing Insurers of worker's compensation will pay the cost of worker's claims for employers who employ more than 20 workers.

Overhead of the WSIB can include a cost to fund SIEF relief and to create a type of Sinking Fund Structure to retire the Unfunded Liability by charging a cost to fund "unfunded liability" as overhead and a cost for SIEF relief to be available to those employers who request such coverage. Mr. Marshall by failing to state the value of unfunded liability as of March 30, 2015 is asking employers to wear a blindfold and pay a price which is unknown. It is akin to Mr. Marshall putting his hand into an Employer's Bank Account and taking whatever amount he wishes-not a good practice to encourage industry to invest in Ontario.

Given the "smoke & mirrors" in this proposal, it is far from Revenue Neutrality (page 5 of Report) as no values for the cost of unfunded liability have been declared. The cost of coverage for SIEF is not declared, the cost of Rate Groups under NAICS criteria is not disclosed.

- It is time for honesty to be provided to the Employer & Worker community which this Funding Proposal fails to do so.

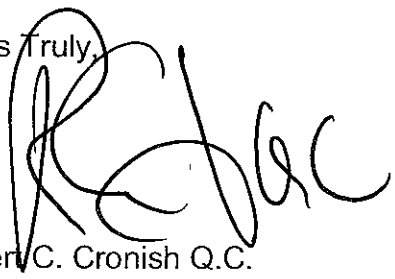
- The cost of coverage of all but small employers can be funded by the market place as it done in 44 states of the United States who use the NAICS criteria for cost of wage assessment. Employers then know the cost of coverage and the Insurer provides Experience Rating to its insured. The WSIB need not concern itself whether employers are paying their fair share of workplace coverage as all claims will be fully funded by Insurance structures. The cost of SIEF and funding the Unfunded Liability will be part of the overhead factor for the cost of claims.

In this Funding Proposal the lack of transparency is apparent. Employers should through their Associations have the right to know the existing value of unfunded liability and the means which the WSIB proposes to retire this debt. The Funding Proposal is silent on this critical issue.

By adopting the proposal described in this Submission there will be equity restored. Employers as Professor Weiler states at page 139 of his Report (Schedule Seven) the role which worker's compensation can play in preventing industrial injuries must be emphasized much more. This will result because Insurer's will monitor performance of its insured and return to work programs will normalize the cost of down time, and make restoring loss of earnings to injured workers a necessary criteria for employers.

Please confirm receipt of this Submission. I await further notice to discuss this proposal.

Yours Truly,



Robert C. Cronish Q.C.

SCHEDULE ONE

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CAMBRIDGE · MASSACHUSETTS · 02138

The Honourable Russell H. Ramsay
Minister of Labour
Province of Ontario
Toronto, Ontario

Dear Mr. Minister:

I am pleased to deliver to you the second Report of my Inquiry into workers' compensation in Ontario. My first Report dealt with a range of immediate concerns regarding the level and administration of benefits within the existing system. In this Report I address the longer-range issues of how industrial disease should be handled within workers' compensation, and the relationship of this program to others involved in the compensation and prevention of disabling injuries to Ontario workers. Later this year I shall report to you on the subject of the Accident Prevention Associations.

I look forward to speaking with you personally about my findings and recommendations in this Report.

Respectfully,

Paul Weiler

Paul C. Weiler
Professor of Law

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While the income-earner should have the ultimate responsibility to / for this social insurance, certainly there should be no legal bar to employer agreeing to pay all or part of these premiums on behalf .ts employees. Just as they did with Medicare, I suspect that many le unions would negotiate such an agreement on behalf of their mbers, and that non-union employers would follow suit. Indeed, ecognition of the fact that employers currently do pay a con-rable part of the cost of the present array of disability programs l of workers' compensation, half of the UIC and CPP programs, ring degrees of group disability and life insurance packages – one ld reasonably defend an additional transitional measure. Until expiry of existing collective agreements, or for a fixed period of : in the case of non-union employees, the law could require loyers to expend the same amount of "disability money" in the pensation of their employees. One way employers might harge this obligation is by providing private short-term sickness cident protection for the less serious disabilities which are not ided in the mandatory disability program. This would insure the introduction of a general plan, with its reshuffling of ex-g programs and costs, would not produce an unfair redistribu-of income from workers to business. But to the extent that such gram does provide more and better disability insurance to On-workers than they now enjoy, it is economically sounder and cally more honest to charge the additional premiums needed to eople who get the benefit of the added protection.*

ired. On the one hand, these people suffer real physical impairment. On the hand, they do not have a present income which gives a measurable index of d of loss for which this program gives redress. That fact notwithstanding, eople have a powerful case to be included in a comprehensive plan, lly if one feature of the program is elimination of the right to sue in tort. eans that some kind of notional income levels will have to be set for each of ifferent categories. In turn, this raises the question of how these "non-" benefits should be financed. In principle, the answer is that there should esponding increments in the premiums paid by the spouse and/or parent income is supporting this family, all of whose members would be insured disability.

ast conclusion, together with the discussion in this entire Chapter, stems analysis of this issue solely from the point of view of *compensation*. Quite nt judgment might be made from the point of view of *prevention*. We ell want to require employers to pay for all the costs of specifically occupa-juries in order to give them an incentive to make their operations safer. different kind of concern often expressed about social insurance against g injuries, one I shall take up in the next Chapter. In the final Chapter, I clude that even if we do adopt a general plan for purposes of compen-e victims of injuries, we should finance the program at least in part out of to those enterprises which are involved in especially risky activities, and are tion to do something about the level of disabling injuries. Assessments of rs for workplace injuries would be retained, then, in an integrated plan es beyond pure social insurance.

4
Reducing Injuries through Workers' Compensation

A—Introduction

When people debate the question of whether there should be a general disability insurance scheme–one which would incorporate specific programs such as workers' compensation–they tend to focus on the issue of *compensation*: what types of injuries need protection? what is an affordable level of benefits? from whose pockets should the program be financed? and so on. From this perspective a single, comprehensive plan is undoubtedly more equitable and economical than a variety of categorical programs. And, as I argued in the previous chapter, Ontario can afford a decent program of long-term disability insurance.

We must not overlook another vital dimension to the disability problem: *prevention*. Surely avoiding the injuries in the first place is preferable to merely guaranteeing compensation after the fact; money can never make up for the pain and trauma of a serious injury, nor undo a fatality. Compensation is valuable and essential in its own right. We can never prevent all disabilities and must therefore have in place a system for redressing the financial losses they cause. But it is equally important that we design our compensation programs so that they do not interfere with, indeed so that they positively assist in, reducing the injury toll itself.

This is one of the perennial arguments made against a general plan: that by guaranteeing compensation for all disabling injuries out of a broad social fund, we dilute the incentive to avoid the injury-causing action. One tends to encounter this objection more frequently in debate about no-fault automobile plans which would seem to dispense with the personal responsibility of the careless driver (although under the current system it is the driver's liability insurer which actually pays the award). Workers' compensation is already a no-fault scheme, under which injured workers are compensated from a public fund. However, the money for this fund is raised through a payroll levy on employers. This means that the amount of money extracted from an Ontario business will drop if the injury toll in its operations is reduced. Many expressed the concern to me in my Inquiry that if workers' compensation were to be submerged in a general plan, this would eliminate that important financial incentive now faced by employers in charge of the

useful to probe why this is so, and to learn from the explanation about the nature of our problem.

From a common sense point of view, the explanation might seem simple enough. Injuries are suffered by the employees. The cost of preventing these injuries is borne by the employer. There is no implication, of course, that employers want or deliberately bring about injuries to their employees. The real problem is the unintentional injury which is produced by a risky feature of the job, but a risk which only occasionally materializes in an injury. To reduce the risk costs money. Supervisors may have to spend more time on safety training and control. Work practices may have to be altered so that employees become less fatigued. New technology may have to be purchased and installed. Any of these steps requires the firm to make a definite and immediate investment of part of its limited resources. What is the hoped-for return on this investment? That the level of injuries may be reduced to some extent at some future time; a benefit which will accrue to those employees who are preserved from workplace injury. In the eyes of many, this distribution of the benefits and burdens of safety investment is inherently likely to tilt at least some employers away from a fully adequate effort to protect their employees. The object of government intervention is to add sufficient incentive on the firm's side of the scale to right the balance.

This intuitive, common sense explanation is a little too facile. It assumes that the firm itself suffers no cost from injuries in its workplace and thus has no monetary self-interest in taking the steps necessary to limit their occurrence. This assumption is incorrect in two respects.

In the first place, while the pain, physical impairment, and loss of

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all or even most workplace accidents. After all, workers' compensation itself is a no-fault system of liability. But the issue is not who is to be held morally responsible for injuries which have occurred in the past, but rather who can practically control this problem in the future. There are specialists in accident prevention who believe that human error is the prime culprit in the majority of cases; who find upon investigation of most accidents that some worker was momentarily careless and inattentive and thus injured himself and someone else. I do not intend to enter this hotly-contested domain of accident causation theory. It suffices for my purposes to note that even human error when it occurs is harmful only because it is taking place in an environment with some hazards. After all, mining produces some fifty times the injury toll that banks do, not because miners tend to be fifty times as careless as do bank clerks, but simply because the mining environment is much less forgiving to the inevitable human error as and when it occurs. And it is the employer which has control over this environment. The firm owns the property, invests the capital, selects the supervisors and defines their priorities, hires, trains, and disciplines the work force. Management is given the prerogative to decide whether the prevention of accidents is to be emphasized at each and all of these levels. It is for this reason that governments, when they do intervene, have focused their sights on the employer who is in charge of the workplace, and left it to the latter to carry the message to the employees who work for it.

income are borne by the employee who suffers the injury, the accident itself can impose certain direct costs on the employer. Its equipment may be damaged. An assembly line may have to be shut down, leaving the machines and people idle for a time. Supervisors and fellow workers will be diverted from their normal tasks to see to the victim and investigate the incident. New employees may have to be recruited and trained to replace valuable and experienced workers who are permanently disabled. This is not to suggest that these production costs to the employer evoke the same degree of social concern as does the injury to the victim. They are real, financial costs nonetheless.

Economic theory goes further to predict that a substantial part of the financial harm immediately felt by injured employees will eventually be transmitted to and borne by the employer. After all, the employer and the injured worker are not strangers to each other (unlike an automobile driver and a pedestrian who meet for the first time in a collision). They are already in an economic relationship in which money is exchanged for services. There is ample room in the employment contract for some payment for workplace hazards and injuries.

This is true, in particular, of occupations in which accidents and injuries are a regular and apparent feature which can be expected to continue in the foreseeable future — in industries like mining, logging, or hydro construction projects. To the extent that these jobs are performed in remote locations, in cold, dirty and otherwise unpleasant conditions, the employer has to pay a premium to recruit workers for these sites, over and above what it would pay them to work in a clean, comfortable environment close to home. The risk of injury or death is an equally undesirable feature of a job for which employers have to pay additional risk premiums. Such a "compensating wage differential", as it is called, is part of the labour cost which the employer must bear. To the extent that the employer can eliminate some of the hazard in its operations, and thus reduce the risk of injury anticipated by its employees, the risk premium will drop accordingly. The prospective financial gain to employers provides an economic incentive to investment in safety even in the absence of government intervention.

In any event, this is the implication of economic theory. Is there any empirical evidence of its validity? One does find in collective agreements the occasional premium paid for more hazardous work: e.g., "height pay" under construction agreements. On the other hand, more dangerous jobs are, on average, paid less than white collar, administrative and technical positions in safe (and clean) environments. This fact does not undercut the theory, which does not imply that risk is the *only* variable affecting employee compensation.

Quite to the contrary! The primary focus of the wage bargain is the value of the employee's work to the firm, which in turn is dependent on both the degree of human capital embodied in the employee (e.g., education, training, skills, and experience), and the profitability of the business and industry in which different types of workers are needed. To the extent the market puts a higher overall valuation on certain occupations — professional, managerial, or technical — which are also intrinsically safer, the larger total wage which the latter jobs command masks the presence of a hazard premium built into the wage for the more dangerous jobs. All that economic theory implies is that any one worker, given his own skill and ability, working in a particular job in an industry with a certain level of growth and profitability, will be paid more if he must work in a high-risk rather than a low-risk occupation.

Unfortunately, when the economic hypothesis is phrased in this carefully qualified fashion, it is much more difficult to test. Econometric studies must first of all obtain data about individual wage rates (ideally, also about fringe benefits which are often more closely dependent on relative risks) and match these up with some measure of the hazard in the individual's job. Then they must find and be able to control for the variety of other wage-determining variables in order to isolate and measure the component of the compensation package which is attributable to the hazard itself. With the recent interest in occupational health and safety and the controversy over the market vs. regulation as alternative policy instruments, a dozen or so studies of this subject (only one of which analyzes Canadian data)[2] have appeared in the last decade.

What do these studies tell us? First of all, there is a broad consensus that a positive and statistically significant wage differential does exist for the risk of *death* on the job. Unfortunately there is a sharp divergence in the estimates of the amount of this premium. One group of studies[3] calculated that an employee in a job in which there is a one-in-one-thousand chance of a fatal injury would receive additional earnings in the range of $1500 to $3500 annually (in the early Seventies). Another group of studies[4] estimates that this fatality premium is much lower — in the range of $200 to $600 a year. Another way to express these findings is from the point of view of the employer. For a firm employing 1000 workers, each additional fatality adds $200,000 to $600,000 to the annual wage bill under the second group of studies, and $1.5 to $3.5 million under the first group.*

*In the normal course of events one would expect to find some range in the calculations from studies which analyze different data bases according to different statistical techniques (e.g., the kind of range in each of these two respective

Several studies[5] have probed for the existence of wage premiums paid for the far larger category of non-fatal injuries. The results here are mixed as well. While there is some evidence of a wage differential for temporary disabilities and a slightly greater premium for permanent disabilities, these are nowhere near the size of the fatality premium and often not large enough to satisfy strong tests of statistical significance. The one Canadian study[6] of this genre focused on temporary total disabilities (TTD's) in Ontario. It found that Ontario firms which experienced the average accident frequency in the province (44 TTD's per million man-hours of work) paid an additional average wage of $750 (± $300) per year; or about 4% of the average industrial earnings in the mid-Seventies (the period studied). This meant that a firm with 500 employees (or 1 million man-hours worked, assuming an average 2000 hours a year) would pay an additional $8500 (± $3500) in its total annual wage bill for each additional TTD injury which it experienced a year. This finding was surprisingly close to an American study[7] which looked at the same type of injuries in the United States in 1969, and found that the premium paid to the individual employee was between $325 and $420 in 1969 U.S. dollars, and the annual wage cost to the 500-employee firm for the risk of each such injury amounted to $550 (± $1500).*

My reading of this econometric literature convinces me that hazard premiums exist in the wage structure. A number of studies done by different people, using different data bases, even in dif-

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groups). But the stark ten-fold difference between these two sets is startling. What might account for it? The smaller estimates come in studies which measure the risk of the specific occupation of the employee rather than the broader industry, and thus probably give a more precise estimate of the risk actually experienced for which the premium has to be paid. On the other hand, these studies focused only on particularly dangerous jobs, which likely would be accepted only by employees prepared to face a considerable degree of risk. Thus they do not give us a fair appraisal of the premium which would have to be paid to attract more risk-averse people now in comparatively safer occupations.

*If one compares these findings with those reported earlier for fatalities, each additional *injury* for 1,000 man-years worked will cost a firm $2500 in additional wages (in 1969 U.S. dollars) while each additional death is estimated to cost, most conservatively, $200,000, and most generously, $3.5 million (again in U.S. dollars around 1970). Clearly the risk of death is a much more salient event for purposes of wage determination than the chance of a temporarily disabling injury. As well, workers' compensation is available to reimburse the injured worker for much of his lost earnings whereas only the survivors of the deceased workers will collect from the WCB. Needless to say, the latter is not that much consolation to the worker in an industry where there is a definite chance of being killed at work. The wage premium for temporary injuries seems to compensate employees largely for the risk of non-economic loses. Olson[8] found that the anticipated income loss (net of workers' compensation) from the typical disabling injury amounted to only .2% of average yearly earnings while the risk premium was several times as large (7%).

ferent countries, have confirmed the payment of this additional compensation to workers who face added dangers in their jobs. Sharp empirical differences remain about the *size* of these premiums, helping to fuel the controversy about their *adequacy*. Of course, a judgment about the adequacy of risk premiums turns largely on the policy uses to which these empirical findings are to be put.

A number of economists[9] appeal to these risk premiums to buttress their case for greater reliance on the market as the instrument for achieving a safer workplace. It is one thing, of course, to assert that the wage structure provides some financial incentive to employers to reduce the hazards to which their employees are exposed; and thence to try to harness and channel this economic motive to make it more effective. It is considerably more ambitious to claim that these wage premiums reflect the true value which workers put on avoiding the risk of injury or death at work; and thus that we can rely on a self-regulating market as a sufficient spur to the firm to make the optimal investment in workplace safety ("optimal" being defined as the minimization of the sum total of the cost of accidents and the cost of avoiding these accidents). Those economists who are dubious on that score argue vigorously that the market for workplace health and safety is inherently likely to malfunction.[10]

Two distinct types of imperfection are perceived in the operation of the labour market for compensating wage differentials. First, it is asserted, the typical worker does not have sufficient awareness of the injury risk to know the size of the hazard premium which should be demanded. Second, even if he did know, he does not have the economic power to obtain the appropriate premium.

The basic assumption of any competitive market is that people are aware of what it is they are buying or selling. But the *risk* of injuries is quite a different feature of a job than the *fact* that it may be remote or unpleasant. Fatalities, even serious injuries, are comparatively infrequent in almost any job. Thus employees, especially new employees whom the employer would be trying to attract, are largely unaware of the dimensions of the hazard to be encountered. Even long-term employees are often entirely unaware of the risk of long-latency diseases from exposure to toxic substances in the workplace. Nor does the employer have any incentive to disclose the true facts. And even if the employee does learn the actual statistics — e.g., that one employee in 10,000 gets killed on the job — the human tendency is to discount such a remote and unpleasant prospect (irrespective of how serious it is if it actually materializes). For these reasons the size of the hazard premium actually needed to attract new workers to a dangerous job will likely be artificially low in relation to the true dimensions of the risk (by contrast with the kinds

workplace and in the best position to do something about occupational injuries. Others took exactly the opposite position. They argued that the task of compensation should be handled through its own program with its own philosophy and administration; and that the job of prevention should have another statute and agency. Prior to the Seventies, workers' compensation was the major actor in Ontario in the areas of both compensation and prevention. But in the last decade, broad ranging legislation enacted across North America has been specifically designed to prevent workplace injuries. Ontario's major effort in this direction was Bill 70, the Occupational Health and Safety Act (OHSA). Proponents of a general compensation scheme tell us that we can safely rely on this kind of instrument to achieve an adequate level of prevention.

To a considerable extent, this difference of view reflects a broader ideological debate about the best way to prevent workplace injuries.[1] The financing of workers' compensation exerts a discreet market inducement while leaving to the private firm the leeway about how it will respond. This is appealing to those with a bent for free enterprise. It is less attractive to those who feel we need direct regulation of business decisions, and who prefer stiffer enforcement of mandatory standards to enhancing the financial incentive of workers' compensation. Personally, I prefer neither of these polar positions. Legal regulation and market incentives should be viewed not as either-or alternatives, but as complementary tools for grappling with the problem of industrial injuries. Each instrument has its own nature, uses, and limitations. Ideally each should be matched with that segment of the overall injury problem for which it is best suited. The focus of this Chapter, then, is on the question of whether workers' compensation still has a useful role to play in injury prevention, and whether this potential contribution is significant enough to warrant preserving a distinct program for occupational disabilities.

B—Pure Market Control

In a broader sense, of course, both workers' compensation and occupational safety programs are forms of government intervention to deal with the problem of workplace injuries. They are designed to prod employers to take steps to reduce the hazards in their operations. Each assumes that the pure unregulated labour market would not suffice to secure the desired level of employer action.* It is

*Both types of legislation are focused on the *employer* and its actions, and so also will be my discussion. This is not because I assume that employers are to *blame* for

of bonuses or amenities which employers must offer to attract new workers to a remote job location whose actual character is readily apparent).

True, unlike the new and mobile worker whom the employer hires regularly, the career employee in an industry or a firm may eventually appreciate the real risks. Seeing what has happened to friends and colleagues is the best antidote to an undue dismissal of the dangers. He will have a much better idea of the size of hazard premium which should be paid. But too often these employees may not have the bargaining power to obtain the wage differential they seek. This kind of employee is likely to be older, to have invested a good part of a working career in this job, to have seniority and other long-service benefits, to have his home and friends close to this job. He is not really able to give up this job in favour of a safer one (and, in a period of persistent unemployment, such jobs become less and less available to the older worker in any event). Thus, the employer does not have to pay the higher hazard premium to keep the very employees who are in the best position to know what the true dangers should be worth.

There are ways of ameliorating these imperfections in the labour market — in particular, collective bargaining.[11] Trade unions can act as collectors and disseminators of information about the nature and degree of industrial hazards. They can act as the voice of the average long-term employee in wielding the bargaining power of the group to establish a more prominent role for hazard pay in the overall compensation package. The empirical studies have confirmed that unions are one of the crucial factors in achieving meaningful wage differentials for dangerous jobs. Indeed Olson[12] found that the fatal accident premium for unionized workers averaged 9.6% of weekly earnings for firms of average risk, compared to 1.6% of earnings in comparable non-union firms. This implies that the market has "valued" the life of union workers at $8 million compared to $1.5 million for the non-union worker. No better testimonial can be found to the way in which these premiums are dependent on the vagaries of information and power.

C — Workers' Compensation as a Compensating Wage Differential

This debate about the size and adequacy of risk premiums is artificial insofar as it ignores the existence of workers' compensation. Indeed the economist might well picture workers' compensation itself as a governmental substitute for market-determined wage differentials for job dangers (whereas the lawyer typically sees this pro-

In summary, then, workers' compensation serves as a public antidote to the imperfections in the private labour market. It avoids the chance that some employers might impose upon their employees the financial risk of occupational injuries, thus diluting the market incentive faced by that firm to invest the resources needed to enhance the safety of its plant.*

An important question remains: what financing mechanism should the compensation program use to implement this objective of reducing the level of industrial injuries.

One possibility would be a tax on business profits. If the only reason for requiring employers to pay for workers' compensation was the fact that this system was the trade-off for immunity from traditional, fault-based tort liability, this would seem to be the appropriate mechanism. It does, after all, best reflect the firm's ability to pay. Instead, workers' compensation has always been financed through a levy on the employer's payroll, something which seems natural when one appreciates that this is a form of disability insurance and that the risk insured against is a function of the size of the payroll (the number of employees who might be injured at work and the amount of wages they might lose as a result).**

But the level of insured risk is not just a function of the size of an employer's payroll. It also varies with the hazardousness of its work. It is for this reason that Ontario employers do not all pay compensation premiums based on a single flat-rate percentage of payroll. Instead, the relatively dangerous mining, logging, or construction industries pay assessment rates which are 50 times as large as the safe white-collar industries such as insurance or accounting. Each year the WCB calculates assessment rates which are based on the actual cost of compensating the injuries

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which are clearly part of the compensation package paid for and received by labour. For this reason, to the extent that the program pays for a greater share of the actual cost of workplace injuries, it leaves less room for private compensating wage differentials. This is why economists reason that workers' compensation is ultimately "paid for" by the workers themselves; since it functions as a substitute for a premium which otherwise would have to be included in the wage rate.[14]

*This argument implies that workers' compensation should fully compensate injured employees for the losses which they suffer. To the extent that some of the burden is left on injured victims, and the labour market is not adequate to build this end of the wage structure, this legal shortfall in workers' compensation means that the firm will not receive the correct market signals about the "optimal" level of investment in safety.

**One implication of the use of the payroll assessment instead of a business profit tax is that under the former, but not the latter, firms can reduce the size of their contribution to the program by reducing the amount of labour which they employ, perhaps through capital investment and labour-saving technology.

SCHEDULE TWO

OCCUPATIONAL SAFETY AND HEALTH DIVISION POLICY AND PROCEDURE MANUAL

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published by the
WORKERS' COMPENSATION BOARD
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WORKERS' COMPENSATION BOARD OF BRITISH COLUMBIA

Workers and Workplaces
Safe and Secure from Injury and Disease

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O. S. & H.	NO: 1.4.1
APPLICATION OF SANCTIONS	PAGE 2 OF 2
	ISSUED/REVISED: JULY 1993

RECOMMENDED SCHEDULE OF SANCTIONS

EMPLOYERS' PAYROLL

Violation Category	Description	Less Than 230,000	231,000 to 575,000	576,000 to 2,300,000	2,301,000 to 5,750,000	5,751,000 to 11,444,000	Over 11,440,000
Type I	Risk of injury or disease is moderate. There was no accident requiring Board notification. Injuries are of a minor nature. Exposure to chemical substances can cause temporary, reversible injury or illness requiring medical treatment. There has been repeated non-compliance with Board orders. Non compliance with regulations due more to neglect than wilful and deliberate.	$1,500	$2,000	$2,500	$3,000	$3,500	$4,000
Type II	Type I violation repeated within three years of last sanction.	$3,000	$4,000	$5,000	$6,000	$7,000	$8,000
Type III	Risk of injury or disease is high. There has been a fatality or serious injury. Exposure to chemical substances could result in permanent, irreversible injury, illness or death (includes high exposure to carcinogens, teratogens, mutagens).	$3,500	$4,500	$5,500	$7,500	$10,000	$15,000
Type IV	Type III violation repeated within five years of last sanction.	$7,000	$9,000	$11,000	$15,000	$20,000	$30,000

O. S. & H. PROCEDURE	NO: 1.4.1-1
PENALTY ASSESSMENT PROCEDURES	PAGE 1 OF 2
	ISSUED/REVISED: AUGUST 1995

Policy No. 1.4.1 sets out the guidelines followed in considering whether a penalty assessment should be imposed.

1. Proposal to consider a penalty assessment

A proposal to consider a penalty assessment will normally be made by a Board officer after an inspection and endorsement by the officer's manager. A proposal may also be made by the Vice-President, Occupational Safety and Health Division or any officer, manager or director assigned that authority in writing by the Vice-President.

The penalty assessment process is currently administered by the variance and sanction review section.

A letter will be sent to the employer advising that a penalty is being considered and the reasons. The letter will be accompanied by copies of any documents submitted in support of the proposal, including any relevant inspection reports, photographs and memoranda by Board officers. The letter will give the employer 21 days to reply or request a meeting.

If no reply is received, the officer making the decision (See Policy No. 1.4.2.) will decide, on the basis of the available information, whether to levy the penalty.

2. Notification of worker representative

Notice of the penalty proposal will be given to the trade union representing the workers affected and the Chair and Secretary of the Industrial Health and Safety Committee at the worksite. If there is no trade union or committee, notice will, where practicable, be given to a worker representative. If a person notified advises that they wish to participate, they will receive copies of any supporting documents, be given the opportunity to provide written submissions and participate in any meeting, and receive a copy of the decision.

3. Written submissions

Any written submissions may be distributed for comment to the Board officer or other staff member involved in proposing consideration of the penalty.

Where required by the rules of natural justice, written submissions or comments provided by the employer, a Board officer or other person participating in the process will be disclosed to other persons participating and an opportunity given for response.

4. Meetings

A meeting will be arranged if the employer requests one. The meeting will be chaired by the Board officer who is to make the decision on the assessment. The meeting will normally be attended by the Board officer or other staff member proposing consideration of the penalty.

SCHEDULE THREE

Law Office of Robert C. Cronish, Q.C.

Ontario

WORKPLACE SAFETY AND INSURANCE APPEALS TRIBUNAL

DECISION NO. 239/09

BEFORE: S. Ryan: Vice-Chair

HEARING: January 26, 2009 at Toronto
(Oral)
August 10, 2009
(Teleconference)

POST-HEARING COMPLETED: September 21, 2009

DATE OF DECISION: January 29, 2010

NEUTRAL CITATION: 2010 ONWSIAT 271

DECISION(S) UNDER APPEAL: P. Prummel, Appeals Resolution Officer, June 16, 2005; and M. Evans, Appeals Resolution Officer, March 19, 2008.

APPEARANCES:

For the worker: P. Sacco, a paralegal

For the employer: R. Cronish, a lawyer

Interpreter: E. Vago (Spanish)

REASONS

(i) Introduction

[1] On June 8, 2002, the worker suffered an injury to his left arm at work. Initially, he did not lose time from work. There is a dispute between the parties with respect to the precise nature of duties he performed over the weeks following the compensable accident. The Board accepted the claim and ultimately granted him an 11% Non-Economic Loss (NEL) award for a rotator cuff tear and decompression surgery.

[2] On September 24, 2002, the worker produced a medical note from his treating orthopaedic surgeon indicating that he was unable to work until further notice and he stopped working shortly thereafter. At that time, surgery was booked for November 21, 2002. The worker did not return to work until February 3, 2003, following his recovery from surgery.

[3] In the decision of June 16, 2005, the Appeals Resolution Officer (ARO) upheld the Board's Operating Branch determination that the worker was not entitled to Loss of Earning (LOE) benefits for the period of September 25, 2002 to November 21, 2002 (the date of his surgery), on the grounds that the accident employer was able to provide him with suitable modified duties during that period.

[4] The Board's Operating Branch granted the worker entitlement to 100% LOE benefits for the period of his post-surgery recovery from November 21, 2002 to February 3, 2003.

[5] On February 3, 2003, the worker returned to modified duties at reduced hours performing clerical duties. He was then assigned duties in a Tool Crib. The Board's Operating Branch granted the worker partial LOE benefits after February 3, 2003, commensurate with his graduated hours at work.

[6] On March 3, 2003, the worker returned to full-time, pre-accident hours in modified work in the Tool Crib at no wage loss. As of that date, partial LOE benefits were discontinued because the worker no longer suffered a wage loss.

[7] On March 26, 2004, the worker was laid off work due to a "corporate reorganization", but was given a recall date of June 28, 2004. The worker did not return to work on June 28, 2004 and the accident employer concluded that he had resigned.

[8] In the decision of March 19, 2008, the ARO upheld the Board's Operating Branch determinations that the worker was not entitled to LOE benefits from March 27, 2004 and ongoing on the grounds that he had "severed" his employment relationship with the accident employer.

[9] The worker appeals the ARO decisions of June 16, 2005 and March 19, 2008 to the Tribunal.

[10] At the outset of the hearing, I discussed the issue agenda with the representatives. It was agreed that the Tribunal will decide: 1) whether the worker has entitlement to LOE benefits from September 25, 2002 to November 21, 2002; and 2) whether the worker has entitlement to

LOE benefits from March 27, 2004 and ongoing. The representatives did not agree on the end date for the second period of entitlement. I determined that the end date would be a matter of adjudication following the representatives submissions on that question.

(ii) Background and testimony of the worker

[11] The worker testified that he was born in El Salvador. He completed high school as well as three years of an accounting program qualifying him as a public accountant. He immigrated to Canada in 1972 and worked in a number of jobs including carpenter, chauffeur, "garbage man" and welder. The worker confirmed that while working for a municipality, he injured his right knee which required surgical repair. The Board sponsored him in Vocational Rehabilitation Services (VRS) and he successfully completed a welding program. He was granted an 11% Non-Economic Loss (NEL) award for the residual impairment in his right knee.

[12] The worker confirmed that he was hired by the accident employer in January 2000 as a welder. Although he worked as a welder, he also obtained a license to operate a forklift and a crane.

[13] The worker confirmed that on June 8, 2002, he sustained an injury to his left shoulder while attempting to adjust the forks on a forklift. He recalled that he received emergency medical treatment at a local hospital. In a report dated June 8, 2002, it was noted that the worker presented with complaints of pain in his left shoulder. An x-ray of his left shoulder conducted on that date did not indicate any abnormalities. The worker was diagnosed with a pulled muscle in his left shoulder. At the time of the compensable accident, the worker was 51 years old and earned $14.45 per hour in a 40 hour work week.

[14] The worker testified that he experienced considerable pain in his left shoulder and could not use his left arm for many activities such as getting dressed and brushing his hair. When initially questioned, the worker did not recall returning to work the day after the accident. However, the worker was shown timesheets which indicated that he clocked in and out of work for full shifts with frequent overtime between June 9, 2002 and the fall of 2002. The worker then recalled that he spent a long period of time in the lunchroom performing no work whatsoever. He stated that he was told by several supervisors or managers that he did not have to work. He was told that he could simply sit in the lunchroom and do nothing all day.

[15] The worker testified that after spending a period of time at work sitting in the lunchroom, he was asked to perform small tasks. He recalled that he was asked to drive a pick-up truck to deliver welding supplies to welders who were working offsite. He stated that the overtime hours logged in the time sheets between June and September 2002 likely reflected the fact that on many delivery duties, he did not return to the plant until after his regular shift ended.

[16] In a report dated July 2, 2002, Dr. A. Tountas, orthopaedic surgeon, noted the worker's complaints of recurring pain and a popping sensation in the left shoulder. Dr. Tountas advised that an ultrasound conducted on the date of his assessment did not indicate any abnormalities. However, he made arrangements for an MRI scan.

[17] Starting on July 17, 2002, the worker participated in physiotherapy to increase the strength and mobility in his left shoulder. In an assessment report dated July 17, 2002, the

physiotherapist advised that the worker was scheduled for an MRI scan and should avoid repetitive use and overhead activities involving his left arm.

[18] On a Functional Abilities Form for Timely Return to Work (FAF) dated July 19, 2002, the physiotherapist advised that the worker should avoid lifting, strenuous use of his left arm and overhead lifting with the left arm.

[19] On September 17, 2002, the worker underwent an MRI scan of his left shoulder. The ensuing report indicated:

> There is some degree of high signal within the infraspinatus tendon in keeping with tendinopathy. No focal tear is identified.
>
> Within the supraspinatus tendon, there was also some degree of increased signal intensity in keeping with tendinopathy. Furthermore, anteriorly near the insertion of the supraspinatus tendon, there is a more focal area of high signal intensity. It is possible that this could represent a subchondral cyst, the [sic] appears to lie outside the humeral head and could represent a focal partial tear of the undersurface of the supraspinatus tendon.
>
> There is a small amount of fluid in the subacromial bursa.
>
> There is a subchondral cyst seen in the humeral head posteriorly.
>
> The remainder of the muscles and tendons of the rotator cuff are intact.

[20] In a medical note dated September 24, 2002, Dr. Tountas advised that the worker "will be unable to return to work as of...September 25 until further notice".

[21] In a memorandum dated November 12, 2002, the accident employer indicated the following:

> **September 25, 2002** – worked 9 hours on modified duties as a cleaner, the duties involved wiping the machines with a cloth using only his right arm, not his sore arm, taking frequent breaks. [The worker] was told that if there was any problem to let his supervisor know...
>
> **September 26, 2002** – worked 1.25 hrs and left

[22] In a report dated October 2, 2002, Dr. Tountas diagnosed, "pain L[eft] shoulder". He queried whether the worker would completely recover.

[23] In Memorandum #3 dated October 4, 2002, a Board Claims Adjudicator (CA) documented a telephone conversations with the worker and his supervisor. The CA noted:

> Worker said that he has been off work since Sept 25/02. He said that his doctor has told him to remain off work until he has surgery on his shoulder which is in a month's time.
>
> . . .
>
> I called A/E [accident employer] and spoke to SG. SG said that they gave the worker a FAF to fill out and he has yet to return it. He said that they have modified work and will offer it to him once they know exactly what his restrictions are.
>
> I called worker back to find out why FAF has not been completed. Person who answered said that I/W [injured worker] was out and will get him to call me back.

[24] In a discharge report dated October 9, 2002, the physiotherapist advised that the worker did not think his left shoulder condition had improved. In addition to experiencing pain in his left shoulder, the worker also complained of pain in his right knee.

[25] In a FAF dated October 10, 2002, the physiotherapist recommended the following restrictions:

> No lifting or strenuous use of the [left] arm
>
> No squatting
>
> Limit stairs
>
> No kneeling on right knee
>
> No over chest level work with [left] arm

[26] In a memorandum dated October 11, 2002, SG, the worker's supervisor, advised:

> DUTIES FOR [THE WORKER]
>
> 1. Polishing
>
> 2. Driving
>
> 3. Helping to keep the shop clean without any heavy lifting, pulling and pushing above shoulder
>
> 4. Die cleaning and washing parts
>
> 5. Help in tool crib

[27] At the hearing, the worker confirmed that these modified duties were offered to him. He testified, however, that he was not able to perform all of these duties. He stated that he could polish moulds, but could not secure loads onto flatbeds with only one arm. Similarly, he stated, he could not perform cleaning duties with just one arm. The worker stated that all duties in the plant were heavy and that there was no job that could have been performed with one arm only.

[28] On October 14, 2002, Dr. Tountas advised on a FAF of that date that the worker was "unable to work until undergoing surgery booked [for] 21/11/02".

[29] In Memorandum #4, dated October 17, 2002, a CA documented his telephone conversation with the worker and SG:

> Worker called. I asked him why he did not complete the FAF that his A/E gave him. He said that he was told he couldn't work at all. Worker said that he didn't think it had to be filled out. Regardless, worker feels that he cannot work. His Dr. has completed the FAF now and it supports total disability.
>
> ...I asked worker if he told Dr. Tountas that his employer offered light duties. He said that he did not.
>
> . . .
>
> SG again verbally confirmed that they can have worker go into a tool crib and use only one hand. He can do light cleaning as well, again using only one hand. SG says he cannot understand why worker is not able to work.

[30] On October 21, 2002, the CA spoke to the worker again and documented their telephone conversation in Memorandum #6:

> I/W called and wanted to know when he would be paid. I/W left work on Sept 25/02 and was given a FAF. He did not get the FAF filled out and this prevented the A/E from providing modified work. The FAF has finally come in and worker has knee restrictions...from prior claim and his only arm restrictions are no lifting or strenuous use of left arm and no overhead work with the left arm. Employer has stated all along that they could accommodate these restrictions.
>
> I called worker back after reviewing file, and explained that his restrictions are only no lifting or strenuous use of left arm. He should be able to work. Worker said that he refuses to go back to work until he has surgery. Surgery is scheduled for Nov 21/02.
>
> Worker then said his medications are preventing him from RTW [returning to work]. I asked what he was taking and he said Tylenol #3 and Gabapentin. I discussed this with the NCM [Nurse Case Manager] who stated that worker should not operate machinery. This is consistent with modified work offer.

[31] According to the accident employer's memorandum of November 12, 2002, the worker returned to work during week of October 22, 2002. The accident employer advised that the worker continued working as a light duty cleaner using only his right arm.

[32] In a letter addressed to Dr. Tountas dated October 28, 2002, the accident employer advised that it takes an active role in rehabilitating injured employees by offering modified duties. The letter indicated that the worker was offered duties as a "Filing Clerk" which required him to match invoices with packing slips and file documents. The letter posed specific questions which the orthopaedic answered. Dr. Tountas advised that the worker was "unable to use L[eft] arm" and was scheduled for surgery. Dr. Toutas advised that the prognosis for full recovery was "guarded".

[33] On a FAF dated October 28, 2002, Dr. Tountas advised that the worker was unable to work until further notice. He noted again that surgery was booked for November 21, 2002.

[34] According to the accident employer's memorandum of November 12, 2002, the worker was assigned to filing/clerical duties during the week of October 28, 2002. The memorandum indicated:

> ...he was asked to use his right arm and take as many frequent breaks as he required. [The worker] was told that if there was any problem to let his supervisor know. He said he had no problem doing this job.

[35] At the hearing, the worker recalled that he did not perform any clerical duties until after his surgery.

[36] In a Physician's First Report (Form 8) dated October 29, 2002, Dr. Tountas advised that the worker should avoid lifting and repetitive use of his left shoulder. In another Form 8 also dated October 29, 2002, Dr. Tountas advised that the worker was "unable to work except..."—the remainder of the sentence is not entirely legible, but appears to state "unable to work except for very light work".

[37] According to the accident employer's memorandum of November 12, 2002, a supervisor noted:

> [The worker] has not been honest with his doctor, [the worker] told Dr. Tountas that [the accident employer] was not providing him with modified work but a machine operator job instead. [The CA] spoke to Dr. Tountas and explained to him that the duties were within the restrictions and no lifting was involved. The doctor then approved [the worker] returning to work.

[38] However, in Memorandum #9 dated November 15, 2002, the CA advised that he did not speak to Dr. Tountas. He advised that he spoke to the worker's treating physiotherapist who indicated that the "worker had not mentioned...the type of work offered by the employer".

[39] Meanwhile, on November 12, 2002, the accident employer contacted the CA who documented their telephone conversation in Memorandum #8. The CA noted that the worker stopped working again at the end of October. The CA noted:

> She said that worker was given light cleaning work (all one handed) but worker didn't want to do it. [The accident employer] then gave the worker the job of filing. This job entailed matching monthly invoices with packing slips. Worker said he couldn't do it and just stopped working.

[40] On November 19, 2002, the CA contacted the worker and documented their telephone conversation in Memorandum #10. The CA noted:

> Worker acknowledged that he was offered the [light cleaning and filing] jobs, but kept stating Dr. Tountas told him to stay off work so he did.

[41] On November 21, 2002, the worker underwent surgery to his left shoulder.

[42] The worker participated in conservative health care treatment following his surgery. In a report dated January 30, 2003, Dr. Tountas recommended that the worker return to light duties on February 3, 2003, avoiding heavy, above-the-shoulder tasks and repetitive movements. In a report of the same date to the worker's family doctor, Dr. Tountas advised that on clinical examination he detected "a degree of magnification of the problem".

[43] The worker returned to work on February 3, 2003. According to a Functional Abilities Evaluation (FAE) report dated April 29, 2003, the worker was assigned filing duties at reduced hours. In March 2003, he was given the job of "Tool Crib Attendant". A job description prepared on June 28, 2002, indicates that the job entailed receiving and distributing tools. A Physical Demands Analysis (PDA) indicated that the job could be performed with one arm only, lifting would not exceed 10 lbs. and vertical reaching would occur at a height of 25 cms with "minor" frequency.

[44] Medical reporting from Dr. Tountas in early 2003, indicated that the worker continued to complain of pain and limitation in his left shoulder.

[45] On February 17, 2003, the worker attended the Board's office and met with the CA who documented their conversation in Memorandum #14. The CA noted that the worker wanted to see another specialist because he was not happy with Dr. Tountas. The CA noted that the worker

would not elaborate on his concern. The CA recommended that the worker ask Dr. Tountas for a referral to another specialist.

[46] At the hearing, the worker explained that he had a disagreement with Dr. Tountas. He stated that the orthopaedic surgeon told him he could lift his hand. The worker recalled that Dr. Tountas took his hand and lifted it, but doing so caused pain and a "crunching noise" in his shoulder. The worker stated that he never returned to Dr. Tountas after that incident.

[47] At the hearing, the worker emphatically denied that any job in the workplace could be performed using just one arm including the job in the Tool Crib. The worker testified that he had difficulty performing the Tool Crib job and the employer's PDA of the job was not accurate. He stated that the physical demands of the job exceeded those that were described by the employer in the PDA. The worker testified that many tools were quite heavy and impossible to lift with one hand. The worker testified that co-workers insulted him whenever he asked for assistance and told him that it was his job to retrieve or return tools.

[48] The worker recalled that he worked from 3:00 PM to 11:00 PM in the Tool Crib and often worked over time. He stated that in addition to working in the Tool Crib, he was also responsible for collecting tools in the plant left behind by other workers after the completion of their shifts. He stated that he did not receive any assistance from co-workers.

[49] In answer to Mr. Cronish's questioning, the worker agreed that he could sit or stand as needed and work at his own pace in the Tool Crib. He testified that not all workers refused to help him obtain tools. Some workers agreed to help the worker obtain tools. However, the worker stated that he had considerable difficulty accessing tools stored on shelves that were positioned between floor height and five feet above the ground. Some tools, for example drills, weighed as much as 100 lbs.

[50] The worker testified that be complained to CB, a supervisor, that co-workers were not helping him. The worker testified that CB just "laughed", and said that there was nothing he could do. The worker testified that, on occasion, he asked DS, Purchasing Manager who worked in an office adjacent to the Tool Crib, for help in carrying out his duties. The worker testified that DS did not help him because he was too busy with his own work.

[51] On April 28, 2003, the worker attended the Toronto Western Hospital and participated in a FAE. The ensuing report indicated the following:

> 1. Bilateral dynamic lifting from floor to bench height of 25 lbs. maximum on an occasional basis (1 lift every 15 minutes of an 8-hour work day).
>
> 2. No bilateral dynamic lifting from floor to shelf height.
>
> 3. Bilateral dynamic carrying abilities up to a maximum of 25 lbs. at or below bench height based on an Occasional basis (1 carry of 20 feet every 15 minutes of an 8-hour work day).
>
> 4. Bilateral static sustained pushing/pulling abilities at bench and shoulder heights should be limited to 11-23 lbs. of force.
>
> . . .

> 5. Reaching abilities: Forward reaching would be tolerated for 8 hrs on an occasional basis. Overhead and bended reach was not tolerated during this assessment.

[52] In a report dated May 6, 2003, Dr. Tountas advised that the worker was managing "okay" in light duties, but at times experienced pain that he could not tolerate. Dr. Tountas noted that the worker also complained of right knee pain for the first time. He opined that the worker should continue in light duties.

[53] In a report addressed to the CA dated June 8, 2003, Dr. Tountas advised that in 2002, he was not aware that there was a light-duty cleaning job available to the worker that did not require use of his left arm.

[54] In a report dated October 1, 2003, Dr. Tountas advised that he examined the worker again on that date. He noted that the worker complained of pain in the left shoulder and an "inability to use it to work". He noted that the worker complained that his modified job was "heavy", but on "paper" it was described as "light". On clinical examination, Dr. Tountas observed:

> ...conscious mobility of the left arm and shoulder was limited, but if the patient was not aware of the movement the mobility was quite a bit better, though not 100%.

[55] Dr. Tountas also added that the worker "perceives himself totally incapable of returning to any type of work".

[56] Information in the Case Record (Exhibit #11) indicates that between March 2003 and March 2004, the worker typically worked eight hours per day. On many occasions, he worked over-time hours. When questioned about this by Mr. Cronish, the worker advised that his over-time hours were necessary when he was responsible for closing the Tool Crib.

[57] In correspondence addressed to the worker from RB, Human Resources (HR) Manager, dated March 31, 2004, the worker was advised that he was being temporarily laid off as "we reorganize operations effective March 26, 2004". The letter advised the worker that his recall date was June 28, 2004 and that the worker would continue to be enrolled in the company benefit program during the layoff. A Record of Employment (ROE) was attached to the letter.

[58] The worker testified, however, that he stopped working after he spoke to Z, the owner of the accident employer and before the layoff date of March 26, 2004. The worker stated that he told Z that he could no longer work in the Tool Crib because of his left shoulder condition. The worker testified that on his last day of work, he assured Z that he would not claim Employment Insurance (EI) benefits. The worker stated that the next day, Z gave his wife "$1,000". The worker stated that he then decided to take a vacation to El Salvadore because he was agitated and depressed and thought he needed a vacation.

[59] The worker was questioned about correspondence addressed to him from the accident employer dated June 14, 2004 (Exhibit #11). This correspondence reminded the worker of his recall date of June 28, 2004. The worker was given a deadline of June 25, 2004, to confirm that he accepts or rejects the return-to-work offer.

[60] At the hearing, the worker testified that he was in El Salvadore at the time this letter was received by his wife. He stated that his wife communicated the contents of the letter to him over

the telephone. The worker stated that he did not return to work because he knew he "could not do the jobs" that were offered to him. The worker testified that he was fully aware he was asked to return to work immediately and stated that he told his wife to talk to the owner and explain that he was not coming back to work.

[61] The worker confirmed information in the Case Record that he returned to Canada on February 15, 2005. He stated that he could not find a job, so he applied for Canada Pension Plan (CPP) disability benefits. On appeal, his application was accepted.

[62] The worker testified that in 2005, he injured his right knee when a public transit bus he was standing in came to an abrupt halt. He stated that he lost consciousness and injured his eye. The worker stated that he did not injure his left shoulder in this non-compensable accident.

[63] In a psychiatric assessment report dated June 7, 2005, Dr. Elliott advised that the worker was in the process of divorce with his wife of 30 years. She noted that the worker was referred to her by Dr. Pritchard for "depression and psychotherapy for trauma". She advised:

> [The worker] reports that his depression started in 1998 after he sustained an injury at work on his knee while working as a garbage collector at [a municipality]. He returned to work in 2000 at [the accident employer] as a welder and truck driver. He sustained an injury at work on his shoulder in 2003 and had surgery. He returned to work on a modified job after healing from surgery. These events [render] him unable him perform his works adequately [sic], which prompted him to leave his job in March 2003. According to the patient he was also going through relationship conflicts with his wife. He decided to leave his wife and his three children because the stress of the relationship made him angry, argumentative, and he increased his alcohol intake. These events affected him financially. The patient relates that he left his house only with the clothes he was wearing, leaving all his possessions to his children and wife. He states that he lost economic independence...

[64] Dr. Elliott offered the following DSM-IV diagnoses:

> Axis I 1. Dysthymia, superimposed by Major Depressive episode
>
> 2. Alcohol dependence. In recent treatment.
>
> Axis II Deferred
>
> Axis III Work injuries on right knee and left shoulder – chronic pain
>
> Axis IV Financial difficulties, unemployment, marriage and separation
>
> Axis V GAF <60

[65] On January 23, 2006, the worker was assessed for the purpose of a NEL award. He was granted a 14% NEL award for the residual impairment in his left shoulder.

[66] Presently, the worker's treatment consists of consuming Tylenol #3 pain medication and psychological counselling every three months for depression. The worker stated that in 2004, when he vacationed in El Salvadore, he and his wife separated.

(iii) Testimony of RB, Human Resources Manager

[67] RB testified that he became Human Resources Manager (HR) in January 2004. He confirmed that the worker was employed at that time in the Tool Crib and was responsible for

handing out tools and "consumables" to workers in the plant. He estimated that in 2004, there were about 120 workers in the plant. Workers in the plant exchanged metal chips for tools and consumables handed to them by the worker. The metal chips were used to keep track of the location of tools. The worker was responsible for items given out to workers such as polishing stones. Tools consisted of a number of items including drills, bits and eyebolts and consumables consisted of a number of items such as polishes and polishing stones. RB estimated that most items weighed less than 5 kilograms.

[68] RB testified that the worker was permitted to sit or stand in the modified job and was provided with a stool. He recalled that another worker, HV, also worked in the Tool Crib and was available to help the worker with anything he needed. General labourers in the plant were also instructed to provide the worker assistance whenever it was requested. Additionally, the Purchasing Manager, DS, was available to help the worker as his office was adjacent to the Tool Crib. He stated that the worker could work at his own pace and that typically the worker would be responsible for handing out a tool or consumable three times per hour.

[69] RB testified that he never heard the worker complain about his compensable left shoulder condition. On one occasion, he heard the worker complain about his knee. However, the worker never indicated that he was not capable of carrying his duties in the Tool Crib.

[70] The HR Manager confirmed that the worker, along with two other workers, were issued temporary lay-off notices in correspondence dated March 31, 2004 (Exhibit 2). He explained that workers were laid off in accordance with seniority and department. RB confirmed that a recall date of June 28, 2004 was also indicated on the letter giving notice of the temporary lay-off. He explained that the accident employer would have to re-hire the worker or terminate his employment altogether by the recall date.

[71] RB confirmed that a letter was sent to the worker to remind him of the recall date. However, the worker did not respond by June 28, 2004. RB recalled that after the worker was sent a ROE, he approached the accident employer for a letter of reference. He did not recall the worker asking for his Tool Crib job back.

[72] In answer to Mr. Sacco's questioning, RB stated that it was not the practice of the accident employer to issue job descriptions of pre-lay-off jobs to workers awaiting a recall date. He explained that, unless otherwise indicated by the accident employer, workers returned to their pre-lay-off jobs after the lay-off. In this case, RB had no reason to believe that the Tool Crib job would not have been available to the worker as of June 28, 2004.

(iv) Testimony of DS, Purchasing Manager

[73] DS testified that he was hired by the accident employer in 1989. Between January 2002 and June 2004, he held the position of Purchasing Manager and his office allowed him a complete view of the Tool Crib area. Although he interacted with the worker on a regular basis, their shifts did not always coincide and the worker reported directly to the shop foreman, CB. He stated that CB is no longer employed by the accident employer.

[74] DS estimated that in a typical day shift the worker may have handled as many as 200 requests for tools or consumables. The number of requests would have been less during the

evening shift because there were fewer workers in the plant. He testified that most of the tools and consumables handled by the worker weighed between 1 and 5 lbs. He stated that magnetic drills might have weighed between 20 and 25 lbs. and some eyebolts up to 50 lbs. However, he emphasised, the worker had access to co-worker assistance for any task he felt unable to perform himself.

[75] DS testified that he never heard the worker complain about his shoulder condition or inability to perform his duties in the Tool Crib area. He could not recall any complaints from the worker about not getting help from co-workers. He could not recall the worker ever asking him for help. However, he recalled that he might have helped the worker on one or two occasions.

[76] DS confirmed that some workers did not return borrowed tools to the Tool Crib despite the responsibility to do so. He stated that on some occasions, it might have been necessary for the worker to collect unreturned tools from the plant area. However, this duty would not have occurred more than once or twice per week and the worker was provided with a cart to use if necessary.

[77] DS was asked whether it was a practice of the accident employer to send injured workers to a lunch room where they could rest and do nothing for entire shifts over days or even weeks. He stated that it was the practice of the accident employer to reintegrate injured workers back into the plant as soon as possible. He recalled that some injured workers were allowed to rest in the lunch room on occasion, but never for periods greater than a shift. He did not recall the worker ever resting in the lunchroom for a complete shift.

(v) Post-hearing investigation

[78] After the hearing on January 26, 2009, I determined that the adjudication of this appeal might benefit from additional information. In a memorandum dated January 26, 2009, I asked the Tribunal Counsel Office (TCO) to write to Dr. J. Pritchard for a copy of her clinical notes respecting this worker from January 2000 to December 2005.

a) Dr. Pritchard's clinical notes

[79] Dr. Pritchard's clinical notes begin on December 19, 2003. On that date, Dr. Pritchard noted that the worker was seen as an "urgent referral" because he was very depressed due to chronic pain. The worker's major problem was severe osteoarthritis of the right knee which resulted from a work-related injury in 1998. The worker's second complaint was left shoulder pain and an inability to elevate that shoulder in abduction beyond 50 degrees. The worker also complained of right lateral thigh pain and low back pain. Dr. Pritchard noted:

> Currently on "light duties"; tool crib; storage; has to give out tools to workers; some walking; they object if he does job sitting down; he is always pressured to help with heavy lifting when on night shift and there is none to enforce "light duties".
>
> Meds:
>
> "taking too much Tyl[enol #3]; reduced to Tyl[enol] 32".
>
> Vioxx 25 mg
>
> He does not want to take any pills but must to control pain well enough to work.

> FP [Family Practitioner] Dr. Goldstein: cannot do anything more for him; told him he must keep working.
>
> He does not want any remuneration from WSIB; simply wants better function [in left] shoulder...

[80] Dr. Pritchard noted that she would make a referral to a local pain clinic.

[81] On February 2, 2004, Dr. Pritchard noted that the worker was seen for a number of non-compensable medical matters. However, she noted:

> Showed me a letter Human Resources head and foreman had him sign form stating he had lifted with L[eft] shoulder when this was against his restrictions. The boss told him to do it; he did not tell them this...

[82] Dr. Pritchard's clinical notes indicate that the worker missed his appointment on February 11, 2004, but attended on March 8, 2004. With respect to that appointment, Dr. Pritchard noted:

> [The worker advised] "I am going to leave the country" after our next appt, Mar 22; he does not know where.

[83] The family doctor also noted some test results for non-compensable problems.

[84] On March 22, 2004, Dr. Pritchard noted that the worker was going to El Salvadore for four months and that he was "completely frustrated by leg pain". She noted she interviewed and examined the worker on other medical concerns none of which related to his left shoulder.

[85] On April 24, 2004, Dr. Pritchard noted that the worker's wife came to her office with two insurance forms to complete.

[86] On July 28, 2004, Dr. Pritchard noted that the worker's wife attended her office requesting an "extension of leave" as the worker was in the United States. Dr. Pritchard noted that she could not extend the leave without seeing the worker.

[87] On August 14, 2004, Dr. Pritchard noted that the worker was in New Jersey with his daughter whose house was easier to access because it "has no steps". She noted that the worker returned to Canada upon her insistence to deal with insurance forms. Dr. Pritchard noted that the worker complained of pain after 30 minutes of walking and experienced numbness in his right lateral thigh. With respect to the worker's left shoulder, she noted:

> Less pain, but when he tried to sit at a table working with both hands he must stop due to pain [in left] shoulder.

[88] Dr. Pritchard noted that on examination, the worker was exquisitely tender over the right knee and complained of severe pain upon partial internal rotation. He noted that the worker's left shoulder was very tender anteriorly and that abduction was limited to 30 degrees due to pain. She noted that the worker was "permanently disabled effectively [because of a] lack of sustained use of [right lower extremity] and [left upper extremity] and would have to find work sitting using only his [right upper extremity].

[89] On February 17, 2005, Dr. Pritchard noted that the worker was seen on an urgent basis because his "knee gave away" and he slipped on ice striking his chest hard. She did not examine or comment upon the worker's left shoulder condition.

[90] On February 24, 2005, Dr. Pritchard noted that she did not charge for completing insurance forms and Employment Insurance (EI) forms. She noted that the worker was depressed and felt worthless as he could not work. She advised that she had a long discussion with the worker about ethanol abuse. The worker advised that he received treatment including psychological treatment while staying with his daughter in New York. Dr. Pritchard noted that the worker suffered from a contusion of the chest wall, chronic pain and instability of the right knee, chronic pain and lack of mobility of the left shoulder, chronic depression related to disability with familial component, ethanol abuse, obesity and thrombocytopenia (low level of platelets in the blood).

[91] On March 23, 2005, Dr. Pritchard advised that the worker had abstained from ethanol since the last visit and was determined to continue to stay off ethanol. She noted that the worker suffered from "chronic pain syndrome", but did not specifically mention the worker's left shoulder.

[92] The worker saw Dr. Pritchard again on April 13, 2005, and she noted that the worker was frustrated about his inability to work. She noted that the worker would be assessed at an addiction facility the next day.

[93] On April 20, 2005, Dr. Pritchard noted that the worker complained of an inability to sleep and forgetfulness.

[94] On April 27, 2005, Dr. Pritchard completed Canada Pension Plan (CPP) disability forms on behalf of the worker.

[95] On May 23, 2005, Dr. Pritchard noted that the worker was attending the addiction program and found it helpful. He was maintaining sobriety.

[96] The next significant clinical note is dated October 24, 2005. On that date Dr. Pritchard noted that the worker injured the left side of his head when a bus he was commuting in came to an abrupt stop. Subsequent clinical notes indicate that the worker's primary complaints were headaches, memory loss and confusion.

b) Information from Dr. Elliott

[97] In my memorandum dated January 26, 2009, I also asked TCO to write to Dr. Elliot to provide a brief report answering the following:

1. The date she first began to treat the worker and the reason for the referral.
2. The frequency of her treatment of the worker since her first consultation with him.
3. The worker's primary complaints from January 2000 to December 2005 (i.e. stressors)

4. The worker's psychological condition throughout 2004. Did his stressors change in 2004? If so, how?

5. The worker's primary complaints at the present time.

[98] In a report addressed to the Tribunal dated March 13, 2009, Dr. Eliiott advised that she had treated the worker since June 7, 2005. She advised:

> [The worker] is being treated for a depressive disorder due to chronic pain, sleep problems and psychosocial stressors. He was initially seen in 2005 with regular appointments approximately twice per month. After that, he continued to followed sporadically every 3-4 months up to the present time.
>
> [The worker] was last seen on March 4, 2009, and at that time it was noted that the major component of the treatment he has received has involved pharmacology management. According to [the worker], with medication treatment, he has been able to tolerate the intensity of his chronic pain. He also reports that with this treatment has helped him to deal with his psychosocial problems.
>
> In terms of his current medication, [the worker] has been prescribed Effexor XR 75 mg and Seroquel 150 mg.
>
> Unfortunately, I am unable to answer some of your questions as I did not have [the worker] under my care at that time.

(vi) Post-hearing submissions

[99] After information from Drs. Pritchard and Elliott was obtained and distributed to the representatives, they were invited to offer closing arguments in writing.

a) The worker

[100] On behalf of the worker, Mr. Sacco offered submissions in correspondence dated August 21, 2009. He reviewed the history of this case and acknowledged that the worker was "apparently capable of performing the accommodated work from February 2003 to the end of March 2004". However, he submitted that the worker aggravated his left shoulder condition during this period and was not able to continue working in the Tool Crib after the spring of 2004.

[101] Mr. Sacco submitted that during the period of February 2003 and March 2004, the accident employer came under new ownership and that the new ownership "did not fully appreciate the worker's modified work needs" and was "not prepared to provide accommodation for the worker's significant impairment".

[102] With respect to the worker's temporary layoff and recall letter, Mr. Sacco submitted:

> The worker thought he would be recalled back to the regular job of welding that he could not do. The employer did not provide any communication in writing that there would be ANY MODIFIED WORK AVAILABLE...
>
> The worker further felt that this was a permanent layoff situation and looked for other work but failed to find such lighter work.

[103] Mr. Sacco asked that the Tribunal grant the worker entitlement to 100% LOE benefits during the periods under review, offsetting any benefits received through the CPP.

b) The employer

[104] On behalf of the accident employer, Mr. Cronish submitted that the modified duties offered to the worker were within the worker's functional abilities based upon the medical information in the Case Record.

[105] Mr. Cronish emphasised the clinical notes of Dr. Pritchard and submitted that the worker's "family break-up" resulted in the worker being absent from Canada after the layoff in March 2004. He emphasised the indications in these notes that the worker suffered from other non-compensable problems and on March 22, 2004, was "completely frustrated by leg pain".

[106] The employer's representative emphasised the testimony of the employer witnesses that the worker did not complain of any difficulty performing the Tool Crib job.

(vii) Analysis and conclusions

[107] I have carefully considered all of the available evidence in the Case Record, testimony of the worker and employer witnesses as well as the submissions of the representatives.

[108] The compensable accident in this case occurred on June 8, 2002. Accordingly, the *Workplace Safety and Insurance Act* (WSIA) applies. Entitlement to Loss of Earnings (LOE) benefits is governed under the provisions of section 43, which states, in part:

> 43. (1) A worker who has a loss of earnings as a result of the injury is entitled to payments under this section beginning when the loss of earnings begins. The payments continue until the earliest of,
>
> (a) the day on which the worker's loss of earnings ceases;
>
> (b) the day on which the worker reaches 65 years of age, if the worker was less than 63 years of age on the date of injury;
>
> (c) two years after the date of the injury, if the worker was 63 years of age or older on the date of the injury;
>
> (d) the day on which the worker is no longer impaired as a result of the injury.

[109] Payment of benefits is contingent upon specific requirements described in section 43(3) and (4):

> (3) The amount of the payment is 85 percent of the difference between his or her net average earnings before the injury and any net average earnings the worker earns after the injury, if the worker is co-operating in health care measures, and
>
> (a) his or her early and safe return to work; or
>
> (b) all aspects of a labour market re-entry assessment or plan
>
> (4) The Board shall deem the worker's earnings after the injury to be the earnings that the worker is able to earn from employment or business that is suitable for the worker under section 42...

[110] Additionally, subsection 43(7) states:

> 43(7) The Board may reduce or suspend payments to the worker during any period when the worker is not co-operating,

(a) in health care measures;

(b) in his or her early and safe return to work; or

(c) in all aspects of a labour market re-entry assessment or plan provided to the worker.

[111] The employer's obligations during the Early and Safe Return to Work (ESRTW) phase is described under subsection 40(1) of the Act which reads:

> 40(1) The employer of an injured worker shall co-operate in the early and safe return to work of the worker by,
>
> (a) contacting the worker as soon as possible after the injury occurs and maintaining communication throughout the period of the worker's recovery and impairment;
>
> (b) attempting to provide suitable employment that is available and consistent with the worker's functional abilities and that, when possible, restores the worker's pre-injury earnings;
>
> (c) giving the Board such information as the Board may request concerning the worker's return to work; and
>
> (d) doing such other thins as may be prescribed.

[112] The worker's obligations during the ESRTW phase is descried under subsection 40(2) of the Act which reads:

> 40(2) The worker shall co-operate in his or her early and safe return to work by,
>
> (e) contacting his or her employer as soon as possible after the injury occurs and maintaining communication throughout the period of the worker's recovery and impairment,
>
> (f) assisting the employer, as may be required or requested, to identify suitable employment that is available and consistent with the worker's functional abilities and that, when possible, restores his or her pre-injury earnings;
>
> (g) giving the Board such information as the Board may request concerning the worker's return to work; and
>
> (h) doing such other things as may be prescribed.

[113] Under subsection 126 of the WSIA, the Board has identified a number of policies that apply to this case. The Board identified *Operational Policy Manual* (OPM) Document #19-02-03, "Early and Safe Return to Work (ESRTW) – Workplace Party Co-operation" which states:

> **Employer co-operation**
> The Act sets out minimum requirements for employers of workers regarding co-operation in the ESRTW process. Employers are required to
>
> contact the worker as soon as possible after the injury occurs and maintain communication throughout the period of the worker's recovery or impairment
>
> attempt to provide suitable employment that is available, consistent with the worker's functional abilities, and when possible restores the worker's pre-injury earnings, and
>
> give the WSIB any information requested concerning the worker's return to work
>
> **Worker Co-operation**

> The Act sets out minimum requirements for workers regarding co-operation in the ESRTW process. Workers are required to
>
> - contact the accident employer as soon as possible after the injury occurs and maintain communication throughout the period of recovery or impairment
> - assist the employer as required or requested to identify suitable work that is available, consistent with the worker's functional abilities, and when possible restores the worker's pre-injury earnings, and
> - give the WSIB any information requested concerning the return to work.

[114] OPM Document #19-02-02, "Early and Safe Return to Work (ESRTW) – The goal of ESRTW and the Roles of the Parties" defines suitable work as work that:

- is within the worker's functional abilities
- the worker has, or is capable to acquire, the necessary skills to perform
- does not pose a health or safety risk to the worker or co-workers, and
- if possible, restores the worker's earnings.

[115] OPM Document No. 18-03-02, "Loss of Earnings (LOE) – Payment of LOE benefits", indicates that:

> **Treatment with no return to work**
> If the nature or seriousness of the injury completely prevents a worker from returning to any type of work, the worker is entitled to full LOE benefits, providing the worker co-operates in health care measures as recommended by the attending health care practitioner and approved by the WSIB. If the worker does not co-operate, the WSIB may reduce or suspend the worker's LOE benefits
>
> **Early and safe return to work (ESRTW) activities**
> Workers are entitled to full LOE benefits if they
>
> - co-operate in ESRTW activities, and
> - continue to have a full loss of earnings

a) Is the worker entitled to LOE benefits from September 25, 2002 to November 21, 2002?

[116] The preponderance of evidence before me indicates that the accident employer was willing and able to provide the worker with suitable modified work during this period.

[117] In reaching this conclusion, I note that the worker suffered an injury to his left shoulder which was ultimately diagnosed as a torn rotator cuff. His injury was significant in that it required surgical repair on November 21, 2002 and the worker was subsequently granted a 14% NEL award for the residual impairment in his left shoulder. I have also taken into consideration the limitations stemming from his compensable right knee injury which occurred while employed by a previous employer. The worker was granted an 11% NEL award for a meniscal tear.

[118] I note that prior to the compensable accident of June 8, 2002, the worker's right knee disability did not prevent him from performing the duties of a welder with the accident employer

from January 2000, when he was hired, to June 8, 2002. He was also able to operate a forklift and crane during that period.

[119] After the compensable accident of June 8, 2002, the worker was able to continue working in modified duties with virtually no lost time until September 26, 2002. An Employee Time Report (Exhibit #11) indicates that the worker also logged frequent overtime shifts during this period. The worker testified that he spent a lot of time just sitting in a lunchroom not performing any duties for a period of time after the compensable accident. He could not recall the length of this period. He acknowledged, however, that he then began to perform light duties driving a pick-up truck to deliver welding supplies to co-workers who were working offsite. He recalled that he might have logged overtime hours while performing these duties. Although there is no evidence to corroborate the worker's testimony that he spent a period of days or weeks in the lunch room doing nothing, the fact that the worker was offered and performed light duties as a delivery driver for several weeks without lost time and with occasional overtime supports the conclusion that the employer was willing and capable of providing suitable modified work.

[120] In July 2002, the worker's treating physiotherapist recommended on an FAF that the worker avoid lifting, strenuous use of his left arm and overhead lifting with left arm. The employer offered him modified duties as a cleaner. In the memorandum of November 12, 2002, the employer advised that on September 25, 2002, the worker worked nine hours in modified duties as a cleaner. The employer also advised:

> [T]he duties involved wiping the machines with a cloth using only his right arm, not his sore arm, taking frequent breaks. [The worker] was told that if there was any problem to let his supervisor know...

[121] The worker testified that in his view the cleaning job was not suitable and could not be performed using only one arm. Even if this were the case, the uncontested evidence indicates that the accident employer was capable of providing other duties such as delivery driver duties and clerical work.

[122] I acknowledge that Dr. Tountas recommended in a medical note dated September 24, 2002, that the worker "will be unable to return to work as of...September 25 until further notice". He repeated this recommendation in subsequent reports.

[123] I cannot accept Dr. Tountas' recommendation to stop working altogether as of September 25, 2002, because of the incontrovertible evidence that indicates the orthopaedic surgeon was unaware of the fact that the accident employer was willing and capable of offering modified work. The accident employer also demonstrated diligence in consulting with treating medical professionals to determine the worker's restrictions.

[124] In Memorandum #4, dated October 17, 2002, a CA documented his telephone conversation with the worker who acknowledged that he did not advise Dr. Tountas that his employer offered light duties. In his report of June 8, 2003, Dr. Tountas advised that in 2002, he was not aware that there was a light-duty cleaning job available to the worker that did not require use of his left arm.

[125] The recommendation from Dr. Tountas that the worker stop working as of September 25, 2002, was based upon an incomplete understanding of the work that was available to the worker at that time. In subsequent reports, Dr. Tountas recommended that the worker avoid using his left arm. The job of cleaner did not require the worker to use his left arm.

[126] In addition to cleaning duties, the evidence indicates that other duties were available to the worker. As noted above, in the memorandum dated October 11, 2002, SG, the worker's supervisor, advised:

> DUTIES FOR [THE WORKER]
>
> 1. Polishing
>
> 2. Driving
>
> 3. Helping to keep the shop clean without any heavy lifting, pulling and pushing above shoulder
>
> 4. Die cleaning and washing parts
>
> 5. Help in tool crib

[127] Under oath, the worker confirmed that these modified duties were offered to him. He testified, however, that he was not able to perform all of these duties. He stated that he could polish moulds, but could not secure loads onto flatbeds with only one arm. Similarly, he stated, he could not perform cleaning duties with just one arm. The worker stated that all duties in the plant were heavy and that there was no job that could have been performed with one arm only.

[128] There is insufficient evidence to support the worker's view that there was no suitable work with the accident employer. It is clear that he performed a number of modified jobs between the date of accident and November 21, 2002. There was very little lost time from work during this period and employer records indicate that he worked many overtime shifts. Even if some of these duties exceeded his medical precautions, such as securing loads onto flatbeds, the available evidence indicates that the accident employer was able to provide the worker with other suitable duties including filing, cleaning and work in the Tool Crib. Accordingly, there is no basis to grant LOE benefits from September 25, 2002 to November 21, 2002.

b) Is the worker entitled to LOE benefits after March 24, 2004?

[129] Following the worker's recovery from surgery on November 21, 2002, he returned to work on February 3, 2003. Information in the Case Record indicates that he performed filing duties for a few weeks and was then assigned to the Tool Crib Attendant position.

[130] As noted above, the worker's functional abilities were measured in the FAE of April 28, 2003. That report indicated that the worker was capable of bilateral dynamic lifting from floor to bench height of 25 lbs. maximum on an occasional basis (1 lift every 15 minutes of an 8-hour work day), bilateral dynamic carrying abilities up to a maximum of 25 lbs. at or below bench height based on an occasional basis (1 carry of 20 feet every 15 minutes of an 8-hour work day), bilateral static sustained pushing/pulling abilities at bench and shoulder heights should be limited to 11-23 lbs. of force and forward reaching would be tolerated for 8 hrs on an occasional basis. He was not capable of bilateral dynamic lifting from floor to shelf height or overhead and bended reaching.

[131] As noted above, a PDA of that job indicated that the job could be performed with one arm only, lifting would not exceed 10 lbs. and vertical reaching would occur at a height of 25 cms with "minor" frequency.

[132] The PDA does not appear to be entirely accurate given the testimony of DS. DS testified that some of the tools in the Crib (i.e. eyebolts) might have weighted up to 50 lbs. However, the worker acknowledged in his testimony that some workers were amenable to helping him obtain tools.

[133] I find that while some aspects of the Tool Crib job might have exceeded the worker's functional abilities, it is more likely than not that the worker was not required to perform any duties in the Tool Crib that he did not feel capable of doing. I note that the worker was actually admonished for doing so. In her clinical note dated February 2, 2004, Dr. Pritchard noted that the worker was sent a letter of reprimand from a foreman for exceeding his restrictions on one occasions. I note that the worker acknowledged under oath that while not all co-workers helped him, some co-workers did help him.

[134] I note that there is insufficient evidence to support the worker's inability to work in the Tool Crib job. There is insufficient medical evidence of an acute exacerbation or aggravation of the worker's left shoulder condition while performing the Tool Crib job.

[135] In his report of May 6, 2003, Dr. Tountas advised that the worker was complaining of "some pain in his left shoulder and limitation of movement". In the same report, Dr. Tountas opined that the worker should "continue with his light duties". In his report of October 1, 2003, Dr. Tountas documented the worker's complaints of left shoulder pain and his complaint that the duties assigned to him were heavy, not light as indicated "on paper". On physical examination, Dr. Tountas noted:

> ...conscious mobility of the left arm and shoulder was limited, but if the patient was not aware of the movement the mobility was quite a bit better, though not 100%.

[136] I acknowledge the report of December 19, 2003, in which Dr. Pritchard noted that the worker suffered from severe osteoarthritis of the right knee and left shoulder pain. She noted that the worker complained of difficulty performing his job in the Tool Crib and that no one was available to enforce his restrictions on the night shift. Subsequent clinical notes from the family doctor indicate that the worker experienced significant right knee pain and marital issues.

[137] However, I am persuaded by the fact that the worker worked in the Tool Crib from February 3, 2003 to March 26, 2004 (the date of the layoff due to corporate reorganising) with virtually no lost time from work (Exhibit #11). During this period, he also worked overtime on many shifts.

[138] Following his layoff, the worker vacationed in El Salvadore and spent time with his daughter in New Jersey. He confirmed, under oath, that he was aware of his recall to return to work with the accident employer and chose not to reply to the letter or return to work. In his submissions, Mr. Sacco argued that the worker thought that he was asked to return to his pre-accident duties. There is simply no evidence to support that the worker was asked to return to his pre-accident duties or that he harboured that understanding. Although the employer's

correspondence of March 31, 2004, which reminded the worker of his recall date of June 28, 2004, does not specify what job he was expected to return to, I find that it is more probable than not, the worker was expected to return to the Tool Crib job—the job that he performed for approximately one year prior to the layoff.

[139] The worker does not have entitlement to LOE benefits beyond March 26, 2004, under the claim established for his compensable left shoulder injury.

DISPOSITION

[140] The worker's appeal is denied. The worker is not entitled to LOE benefits from September 25, 2002 to November 22, 2002 or LOE benefits after March 27, 2004, under the claim established for the compensable accident of June 8, 2002.

DATED: January 29, 2010

SIGNED: S. Ryan

SCHEDULE FOUR

Law Office of Robert C. Cronish, Q.C.

wsib cspaat ONTARIO

Workplace Safety & Insurance Board

Commission de la sécurité professionnelle et de l'assurance contre les accidents du travail

200 Front Street West
Toronto ON M5V 3J1

(416) 344-1014
1-800-387-0773

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May 15, 2015

MR. ROBERT CRONISH, Q.C.
SUITE 210 - 29 GERVAIS DRIVE
TORONTO, ONTARIO M3C 1Z1

Claim 24989663

RECEIVED MAY 2 5 2015

When writing the WSIB please quote the above file number.

Indiquez le numéro de dossier dans toute correspondance avec la CSPAAT.

Dear Mr. Cronish:

Enclosed for your information and records is a copy of the correspondence

Yours sincerely,

M Palmieri
Appeals Resolution Officer
Appeals Services Division

Enclosure

wsib cspaat ONTARIO

Workplace Safety & Insurance Board

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May 15, 2015

Claim 24989663

When writing the WSIB please quote the above file number.

Indiquez le numéro de dossier dans toute correspondance avec la CSPAAT.

Enclosed is my decision concerning your objection.

You have the right to appeal this decision to the Workplace Safety and Insurance Appeals Tribunal under Section 125(1) of the *Workplace Safety and Insurance Act*. Please note the following limitation:

> Section 125(2) - "The person shall file a notice of appeal with the Appeals Tribunal within six months after the decision or within such longer period as the Tribunal may permit. The notice of appeal must be in writing and must indicate why the decision is incorrect or why it should be changed."

If you decide to pursue the objection further, please contact the:

Workplace Safety and Insurance Appeals Tribunal
505 University Avenue, 7TH Floor
Toronto, Ontario, M5G 2P2

Telephone: (416) 314-8800
Fax: (416) 326-5164
Toll free within Ontario 1-888-618-8846

As well, you can get further information on the Tribunal website at www.wsiat.on.ca.

The Appeals Services Division publishes some decisions on the Canadian Legal Information Institute website at. Should this decision be published, the names and other identifying information are not included in the decision.

If your decision is allowed or allowed in part, the Case Manager will undertake to implement the decision within 30 days, but this will depend on the circumstances in your case. If you have any

questions about the status of your claim, you can call the general enquiry number at 1-800-387-0750.

Yours sincerely,

M Palmieri
Appeals Resolution Officer
Appeals Services Division

SCHEDULE FIVE

Law Office of Robert C. Cronish, Q.C.

"Changing the Conversation: A Response to the Workplace Safety and Insurance Board's Proposed Rate Framework"

SEIU Healthcare, October 2nd, 2015

Overview

The Workplace Safety and Insurance Board (WSIB) is proposing a reformed rate framework model, designed to address shortfalls in the current system.

The model is largely informed by Dr. Douglas Stanley's report, entitled "Pricing Fairness: A Deliverable Framework for Fairly Allocating WSIB Insurance Costs" which recommends an integrated rate framework to alter the method in which employers are classified and how premium rates are calculated. The current model uses the Standard Industry Classification (SIC) method and it seems commonly accepted by stakeholders and the WSIB that the system is an outdated and inequitable one. Developed in 1937 and popular in the 1970s and 1980s, the SIC model coded businesses based on their description but has been criticized as it categorized more traditional sectors such as manufacturing and service industries, and could not capture burgeoning industries.

New Model: Step 1

The new model employs the North American Industrial Classification System (NAICS) which is used by statistical agencies in Mexico, Canada and the U.S., designed to capture new industries and is updated every 5 years. It is a hierarchical industry classification system which categorizes workplaces based on the business' primary business activity (defined in O. Reg. 175/98). In applying this model to the WSIB system, it means that the business is classified by determining the bulk of a company's operations (i.e. resources and time). The WSIB suggests that this model will address premium rate shopping and stop the practice of multi-rating, estimating that only 5% of employers will fall under two classes.[1] As opposed to having 155 rate groups, the new system would use somewhere between 22-32 rate groups and 1500 risk bands.[2] The practice of classifying the business is the first of three steps in the proposed framework. From there, an average premium rate based on the collective claims experience and the required premium revenue for each sectoral group would be determined.

[1] *WSIB Rate Framework Modernization*, WSIB (22 Apr. 2015) 24.
[2] *Rate Framework Modernization: Risk Disparity Analysis*, WSIB (August 2015) 2-5.

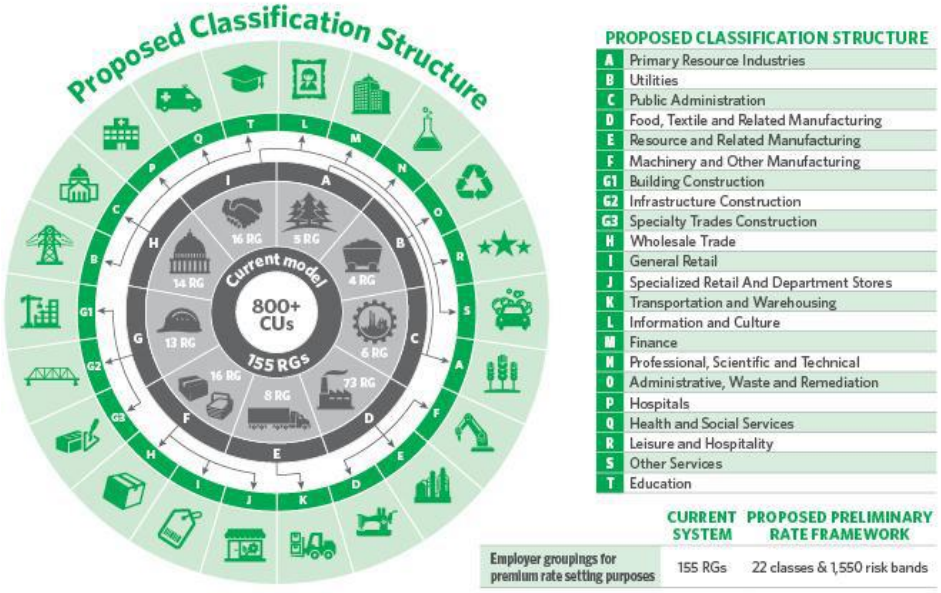

Figure 1: WSIB Proposed Classification Structure

Source: *Rate Framework Modernization: Technical Session Update,* WSIB, June 2015, 3.

Step 2: Class Level Premium Rate Setting

The proposed aim of step two is to quantify a target premium rate within each class to reflect the collective claims experience of all employers in each class. The components considered would be similar to the ones used in the current system: administration, past claims costs (includes UFL cost) and new claim costs (total expected future claims cost for "x" Injury Year). However, there would be a change in how the new claim costs are calculated, where the graduated per claim limit is applied at the class and employer level with the apparent intention of insurance protection for smaller employers.

The WSIB notes that they have not determined whether or not the Unfunded Liability (UFL) – the difference between payments for future benefits to workers and funding received from business – will be paid off by the time the new model is implemented, due to timing. This issue will be addressed in our response and recommendations.

There are also open-ended questions about the application of the long latency occupational disease claims. The current proposal is predicated on the status quo, where long latency claims are a collectively pooled cost within class levels. However, the WSIB suggests that similar to the current system, employers may feel it is unfair to pay for a portion of the premium rate for other employers.[3] Therefore, the WSIB is looking for input on whether these

[3] Ibid, 23.

costs should continue to be covered by all employers or directly by the individual employer responsible.

The Second Injury and Enhancement Fund was designed to create a financial incentive to employ injured workers when a pre-existing condition prolongs their work-related disability. The current system shares the cost among all employers in the group, whereas the proposed framework would stop this practice based on input by stakeholders that the fund does not increase re-employment and "causes distortions among employers in a group".[4] This too will be addressed in our response.

Overall, the proposed framework is founded on the concept that each class will be self-sufficient, meaning there will be no pooling of costs between classes or Schedule 1 employers. This concept complements the class target premium rate which is based on the collective experience of all employers within a respective class, their allocation of administrative costs and distribution of past claims cost for each Schedule 1 class. Any shifts in class cost experience would lead to an updated premium rate, according to the proposal.[5]

Step 3: Employer Level Premium Rate Adjustments

Under the proposed model, an employer's risk profile would be determined by its claims cost and insurable earnings, situating them on the risk band continuum. The WSIB notes that this model is based on the concept of actuarial predictability, a graduated approach intended to address the current rate group level per claim limit which puts small employers at a disadvantage. The premium rate discrepancy between each risk band is 5% and employers who share a similar individual risk profile are grouped relative to the class target premium rate. The WSIB estimates that each class would have between 40 and 83 risk bands (with a total of 1500 risk bands overall) to provide employers with a significant range of premium rates based on their claims experience.[6]

In their reports, the WSIB opens up this aspect to many questions such as: Should the 5% increments be larger? What are the factors that the WSIB should consider in assessing the level of protection an employer needs from large rate fluctuations? Does the experience adjusted premium rates for small employers introduce too much premium rate sensitivity? Does a three risk band limitation relative to the experience of the class provide suitable stability – should it be lower or higher?

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[4] *Rate Framework Modernization: Technical Session Update,* WSIB (June 2015) 24.

[5] Ibid, 26.

[6] *Overview: Proposed Preliminary Rate Framework*, WSIB (March 2015) 11.

Another question, which we will certainly address in our consultation below, is whether or not the WSIB should consider a surcharge mechanism for certain employers. Since the risk band limitation is designed to protect the employer from unexpected claim costs in a specific year, the WSIB suggests that there should be some additional accountability measures, such as a surcharge for consistently poor behaviour.

SEIU Healthcare Position

We commend the staff at WSIB for their thorough consultation sessions and the in depth resources provided on the new model. Along with other stakeholders and the WSIB, SEIU Healthcare agrees that the current model is antiquated and inequitable. Therefore, in our response, we will address the questions raised above and within the report. We will also address gaps in this model as well as the WSIB system in general as this is a prime opportunity to address overall systemic shortcomings which disadvantage workers.

Overall, we want to shift the conversation from the commonly asked "What will this mean for employers?" to "What will this mean for *employees*?" The cost of workers' health and lives must be the central consideration, as opposed to on the periphery of cost-savings for employers, while still recognizing the need for a fair system.

Topics we will address regarding the framework will be:

- Expansion of coverage (i.e. mandatory, universal)
- Implications for temporary workers and agencies
- Surcharges and surcharge refund programs
- Positive incentives for good health and safety records
- Internal and third party review of new WSIB model
- Implications for incident report dynamics
- Rates between non-union and unionized workplaces
- Specifics of new rate classifications for healthcare employers
- Corporate penalties for convicted WSIA offence
- Physical monitoring (audits) of workplaces and internal staffing levels

Many of the recommendations will be guided by the following questions:

- Should the Unfunded Liability (UFL) costs be settled before a new model is in place?
- Should the long latency occupational disease claims continue to be covered by all employers or directly by the individual employer?
- Should the Second Injury and Enhancement Fund be a continued practice? Does the Fund increase re-employment?
- As far as proposed risk bands, should risk or claim experience of sub-industries be considered at this stage?

- Should the 5% increments be larger? What are the factors that the WSIB should consider in assessing the level of protection an employer needs from large rate fluctuations? Does the experience adjusted premium rates for small employers introduce too much premium rate sensitivity? Does a three risk band limitation relative to the experience of the class provide suitable stability – should it be lower or higher?
- Should the WSIB consider a surcharge mechanism for certain employers? Does the risk band limitation provide undue protection for employers with consistently poor behaviour? How would we define poor behaviour (i.e. amount of claims and years)?

More general recommendations will cover:

- Psychological injury coverage
- Certification of Joint Health and Safety (JHSC) members
- Worker education programs
- Appeals process
- Asymptomatic pre-existing conditions
- Non-Economic Loss (NEL) awards
- AMA definition of impairment
- Office of the Worker Adviser (OWA) Funding Levels
- Workplace Safety and Insurance Appeals Tribunal (WSIAT) backlog

Expansion of Coverage

According to an article by the Injured Workers Group, Ontario has one of Canada's lowest workplace insurance coverage rates, at 71.7% in 2013, leaving nearly 2 million workers still unprotected and vulnerable even today.[7] The Injured Workers Group compared workers' compensation benefits paid in 2008 by province using data from the Association of Workers Compensation Boards of Canada (AWCBC) Key Statistical Measures in 2008. The data revealed Ontario is significantly behind as far as the extent of their coverage for workers.

Figure 2: The percent of workforce covered by province, using AWCBC statistical measures.

Coverage according to AWCBC:						
NWT	NL, YK, PE, BC, QC, NB	Albert	SK	MB	NS	ON
100%	92% - 97.7%	85.5%	74.5%	73.5%	73%	71%
According to the Harry Arthur's funding review coverage in Ontario is at 70%						

[7] "Universal Coverage," *Injured Workers Online,* Injured Workers Group (22 June 2015).

Source: Harry Goslin, "Universal WSIB Coverage - It's Time," Ontario Compensation Employees Union, 14 Nov. 2013.

The estimates of workforce coverage range between 70-72% in Ontario where many workers within banking and insurance, healthcare, social assistance and professional, scientific and technical services do not receive coverage.[8] Within the healthcare sector, retirement home and group home employees are *not* covered, many of whom SEIU Healthcare represents.

In addition to providing workers with the coverage they deserve, universal coverage would also be beneficial for employers and the WSIB system in general as the system is financed by employer contributions. As an insurance system, it is only logical that the more employers involved and employees covered, the cheaper the cost for employers. Otherwise, the public ends up paying for occupational support such as rehabilitation, training, etc. Also, for unjustly denied claims, many workers end up on welfare or unemployment insurance when they really should be on workers' compensation – once again holding the public financially liable as opposed to employers. As a result, the Injured Workers Group has led an exceptional campaign called "Cover Me" which SEIU Healthcare supports wholeheartedly.

***Recommendation #1*:** Taking into consideration all of the arguments laid out above, SEIU Healthcare recommends that the WSIB lobby the provincial government to revise the Workplace Safety and Insurance Act to include all employers, ensuring a mandatory, universal workplace insurance system. This expansion would mean eliminating the Schedule 2 classification for employers so that all employers are considered Schedule 1 employers. Such a change would benefit not only workers, such as our retirement and group home members, but also employers and the WSIB system in general, and would reflect one of the original intentions of Ontario's workers' compensation: a system founded on collective liability.

Experience Rating Assessment

Before we go any further, we want to preface our thoughts by outlining our position on experience rating models. While we will offer insight on the proposed model, it is our position that experience rating models in general are not suitable for the equitable treatment of compensation claims, as we believe the foundation of the model inherently disadvantages workers. In our view, experience rating places the emphasis on the cost of claims as opposed to the safety of the workers. Not only does the system fail to provide incentives for employers to maintain a good health and safety record but, in fact, *de-incentivizes* the practice of reporting claims. This view is reinforced by compensation scholars such as professor and

[8] Harry Goslin, "Universal WSIB Coverage - It's Time," Ontario Compensation Employees Union (14 Nov. 2013).

former lawyer Terence G. Ison, who asserts that the nature of the experience rating system provides incentive for employers to suppress claims instead of reporting injuries.[9]

The experience rating concept dates back to the 1950s but was given new vigour when Professor Paul Weiler was appointed by the Ministry of Labour to provide recommendations to improve the compensation system in Ontario.[10] Weiler recommended the system for its potential to improve health and safety and return to work practices.[11] However, it is important to note that Weiler's recommendation was based on the *assumption* that the system would potentially incentivize health and safety practices. Weiler acknowledged the lack of scientific proof of the effectiveness of experience rating and instead posited that there was "an intuitively plausible assumption" that this system would promote health and safety investments.[12] Even Weiler himself noted the potential dynamic where employers would focus on claims costs as opposed to accidents and that "…we should not have inflated expectations about the promise of this instrument."[13] Weiler goes on to posit:

> If experience rating were to generate only minimal changes in annual compensation premiums – on the order of one, two or three hundred dollars – it would make little difference in the firm's behaviour, especially given that the employer already suffers some direct economic cost when an accident occurs in its operation. Inevitably, for many employers such minor variations in workers' compensation are the most we can expect from experience rating. For these firms, we will have to rely on regulation and/or participation as the spur to greater safety efforts. Ultimately the potential of experience rating is inherently limited because the outer boundaries of its incentive effect are set by the amount of compensation which has to be paid to injured employees. This is a function of the size of the employer's payroll, the number of injuries produced in its operation and the level of statutory benefits.[14]

This inherent dynamic is particularly concerning for SEIU Healthcare as experience rating is a fundamental deterrent for reporting, especially if there are no positive, direct incentives for reporting. While it can be argued that there are indirect incentives to creating a safer work environment, the lack of positive, non-disciplinary programs for impacting premiums means that employers would discourage claims – in some cases, resulting in practices such as "pizza

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[9] Terence G. Ison, *A Commentary by Terence G. Ison on the Report Entitled "Reshaping Workers' Compensation in Ontario" by Paul C. Weiler* (Feb. 1981) 68-75.

[10] *Experience Rating: An addition looking for a rational?: Submission to the WSIB Funding Review Experience Rating Working Group*, Injured Workers Group (5 Apr 2011) 4.

[11] *Rewarding Offenders: Report on how Ontario's Workplace Safety System Rewards Employers despite Workplace Deaths and Injuries,* Ontario Federation of Labour (24 Nov. 2014) 10.

[12] Paul C. Weiler, *Protecting the Worker from Disability: Challenges for the Eighties* (April 1983) 115.

[13] Ibid.

[14] Ibid, 115-116.

parties" thrown by employers for keeping a claim-free work environment for a certain amount of time.

Healthcare workers are some of the most vulnerable employees for occupational hazards such as workplace violence. SEIU Healthcare has initiated a campaign called "Break the Silence on Workplace Violence" to encourage workers to report workplace violence incidents. We are currently conducting a survey to collect data on the prevalence of workplace violence. Of the respondents so far, a shocking 85% responded that they have experienced workplace violence.[15] Other unions, the OHA and various stakeholders are also prioritizing this issue, resulting in a provincial roundtable discussion on workplace violence.

We want to ensure these efforts are not threatened and that employers are encouraging their workers to report workplace violence incidents in order to provide a safe work environment for patients, workers, the public and employers. This approach would likely mean an initial spike in the amount of incidents reported and an eventual downturn, when the proper safety measures are taken. If there are no incentive programs for employers to create such an environment through the WSIB experience rating system, workers will simply not be encouraged to report and therefore, will not be protected. Moreover, this disadvantages unionized workplaces compared to non-unionized workplaces as there would be more encouragement to report incidents in a unionized environment.

The proposed model is indeed a much softer version of the previous one and we commend the WSIB for certain moves (e.g. scrapping the rebate system and opening up discussions about temporary agencies). We will provide recommendations on the new model but it is still our opinion that the experience rating system inherently disadvantages the worker.

Unfunded Liability (UFL)

The earlier recommendation for universal coverage directly relates to the insurmountable Unfunded Liability (UFL), which is currently 8.3 billion dollars according to the WSIB's 2015 Q1 Sufficiency Report.[16] In another report by the WSIB in 2010, the WSIB assessed that the fund was only large enough to cover about half of the projected costs in the system which the report identified as a contributing factor to Ontario's high compensation premium rates (highest in Canada).[17] At the time, the WSIB posited that the UFL rose due to low premiums, rising claims, healthcare costs and declining investment returns following the economic downturn.[18]

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[15] "Break the Silence: Workplace Violence Survey (Anonymous)," SEIU Healthcare (30 Sept. 2015).

[16] *2012 - 2016 Strategic Plan Measuring Results: Q1 2015 Report,* WSIB (18 June 2015) 4.

[17] "Media Backgrounder: WSIB Funding Review, Premium Rates and Value-for-Money Audit," WSIB (2010) 1.

[18] Ibid.

The question the WSIB is now asking is whether or not the UFL should or can be paid off before the new system is introduced. Since the WSIB system is based on one of longevity and owns profitable assets, the UFL is not a huge concern in our opinion. That being said, the question of *how* it could partially be paid off is a more pertinent one. As mentioned above, the WSIB claims that the UFL is a large contributor to why WSIB premium rates are the highest in Canada. In 2009, the Auditor General recommended 4 "levers" to increase WSIB funding level: reduce injured worker benefits, increase employer rates, change WSIB investments and expand coverage of the workforce.[19]

Recommendation #2: As a follow-up to Recommendation #1, although this would only be part of the equation (or one "lever"), the expansion of insurance coverage to all employers/employees would contribute to off-setting a portion of the UFL in the future, while also lowering average premium rates. By instituting universal coverage, the burden of the UFL would not be borne on the backs of injured workers but instead, would rest on the historically intended concept of collective liability between all employers.

The Second Injury and Enhancement Fund

We would agree that the Fund has had minimal impact, despite its intention to incentivize the re-employment of injured workers.

Recommendation #3: Abandon the Second Injury and Enhancement Fund.

Long Latency Occupational Disease Claims

Since one of the founding principles of the compensation system is supposed to be collective liability, it should follow that the cost of long latency occupational disease claims remains covered by all employers. Also, if the cost fell on a single employer, the employer would use members' money to fight appeals. It is important to note that Terence G. Ison identifies the experience rating system as an agitator of occupational disease, specifically those with long latency periods and argues that employers are provided with incentive to reduce claims costs as opposed to preventing disease.[20]

Recommendation #4: We recommend long latency occupational disease claims should remain a collective cost pooled at the class level.

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[19] Jim McCarter, "Ontario Auditor General's 2009 Annual Report - WSIB Unfunded Liability Section," Office of the Auditor General, Chapter 3 Section 1.14 (9 Dec. 2009) 315.

[20] Terence G. Ison, *A Commentary by Terence G. Ison on the Report Entitled "Reshaping Workers' Compensation in Ontario" by Paul C. Weiler* (Feb 1981) 68-75.

Surcharges

SEIU Healthcare favours the use of surcharges as a mechanism for disciplining employers with a bad health and safety record. The question of how to define poor behaviour is a more complicated one and should be determined by examining models in other provinces. As raised in the response by the Chamber of Commerce, Alberta's compensation system offers one example of how an *additional* surcharge can be applied to encourage swift safety measures.[21]

The Alberta compensation board developed a Poor Performance Surcharge (PPS) which applies to large employers with very poor accident records who meet the following criteria: 1) Employers who have the maximum experience rating surcharge for their size for two or more consecutive years and 2) Employers who have four or more claims for at least two consecutive experience periods.[22] The model provides employers with a chance to repair their record, by issuing a warning letter with recommendations to improve health and safety programs. From there, if no action is taken, the surcharge rates increase progressively each year: up to 25% the second year, 50% the third year, 100% the fourth year, with a maximum surcharge of 200% after five years or more.[23]

Nova Scotia's compensation board has a similar model, where surcharges begin at up to 20% the first year, up to 40% in the second year, 60% in the third year and with a similar threshold of 200%.[24] The Nova Scotia board also created the Conditional Surcharge Refund Program in 2013 which allows employers to use the premium dollars associated with their surcharge to invest in health and safety.[25]

In a round-about way, the conditional surcharge refund program provides a positive association with improving health and safety. However, in addition to adopting a version of the surcharge model of either province, there needs to be direct, non-disciplinary rewards for employers who excel in health and safety initiatives. In its current form, the proposal only suggests programs which indirectly influence health and safety behaviour but there must be a program which rewards employers for initiatives such as better safety technology, increased OHS education, increased OHS funding (e.g. for Personal Protective Equipment), etc.

Recommendation #5: We recommend the use of an additional surcharge system to indirectly encourage employers to improve their health and safety record. Either provincial model discussed would be sufficient, or a combination of the two, although we strongly recommend

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[21] *Response to the Workplace Safety and Insurance Board's Proposed Preliminary Rate Framework: Submission to the WSIB Consultation Secretariat,* Ontario Chamber of Commerce (Sept. 2015) 4.

[22] "Pricing Workers' Compensation Insurance," Workers' Compensation Board (WCB) Alberta (2015) 7.

[23] Ibid.

[24] "Surcharge Program," Workers' Compensation Board of Nova Scotia (2014).

[25] Ibid.

the creation of the Conditional Surcharge Refund Program based on the Nova Scotian model to allow for re-investment in health and safety. We also recommend the creation of a genuine award system, which impacts an employer's premiums positively when they implement genuine, intensive and measurable health and safety initiatives (e.g. training by certain organization, new safety infrastructure, PPE). In the case of healthcare settings, this could include widespread safety measures such as personal alarm devices, enhanced code white training, integrating flagging system, etc. Such examples are modelled after some of the remarkable changes implemented in the Toronto East General Hospital as part of their zero tolerance to workplace violence program.

Risk Band Consideration

In conjunction with the surcharge proposal above, SEIU Healthcare does not support a risk band limitation for employers with consistently poor behaviour as it provides them with unwarranted protection; a potential consequence the WSIB outlined. Our solution is to implement the above recommendations regarding a combination of disciplinary surcharges and non-disciplinary awards to address the definition of poor behaviour and its consequences.

The multitude of risk bands and the proposed 5% increments between the bands should theoretically provide more incentive to move from one risk band to the other. However, there is a real concern, as outlined by the WSIB, for the 5% discrepancy to impact small employers disproportionately.

Recommendation #6: Abandon the consideration for a risk band limitation and instead, focus on initiatives outlined above (i.e. disciplinary surcharges and reward mechanisms). We also strongly suggest the WSIB consult with small employers to assess how the 5% discrepancy might impact them as they have historically been disadvantaged by the experience rating system as well (compared to large employers).

Corporate Penalties

The provincial government introduced legislation to amend the WSIA in 2015 to implement the following changes[26]:

- Allow Workplace Safety & Insurance Board survivor benefits to be calculated based on the average earnings, at the time of diagnosis, of the deceased worker's occupation rather than

[26] Canada, Ministry of Labour, *Ontario Proposing Changes to Legislation for Injured Workers, Broader Public Sector and Firefighters*: *Province Strengthening Employee Rights*, News Release (28 May 2015).

the current legislated minimum, which will potentially increase the amount of support families receive

- Prohibit employers from trying to prevent workers reporting workplace injury or illness to the Workplace Safety & Insurance Board by ensuring that they are protected from retribution
- Increase maximum corporate penalties from $100,000 to $500,000 for conviction of an offence under the Workplace Safety & Insurance Act, such as knowingly making a false or misleading statement to the Board or willfully failing to inform the Board of a material change in circumstance within 10 days

Recommendation #7: SEIU Healthcare supports the above amendments to the WSIA and strongly advocates for the increase of corporate penalties for a convicted offence, in addition to the surcharges proposed in Recommendation #5. Employers *must* be accountable for their actions and the current model does not provide this culpability but rather, allows for employers to evade financial responsibility at the expense of the injured worker.

Classifications

It is important to outline the implications the proposed classification model will have on the healthcare system. Currently, there are six main categories which our members would fall under: Nursing Services (Rate Group 857), Group Homes (Rate Group 858), Homes for Residential Care (Rate Group 852), Homes for Nursing Care (Rate Group 851), Treatment Clinics and Specialized Services (Rate Group 861) and Hospitals (Rate Group 853).[27] Under the proposed model, hospitals would be categorized as one classification ("Class P – Hospitals") and the rest of the rate groups would fall under another classification ("Class Q – Health and Social Services).[28]

Part of the WSIB proposal suggests that widening the categories would address rate shopping and multi-rating (and that only 5% of employers would fall under two categories). Although this would be ideal and could be possible, there is still the potential that employers could manipulate their business activities according to the preferred (cheaper) category and that by broadening the categories, it might be easier to rate shop. Also, there could be more appeals by employers regarding their classification placement. That being said, working within this model, the ICS system is antiquated and this system does seem to offer more potential perks, such as the re-assessment of the classifications every 5 years.

***Recommendation #8*:** Annually assess the new classification model to ensure rate shopping practices have stopped and monitor the amount of employers' appeals in a transparent manner. Also, we would like to see an assessment conducted of whether or not 22 or 32 categories should be created, with the issues raised above in mind.

[27] *Rate Framework Reform – Rate Group Analysis*, WSIB (2015).
[28] Ibid.

Review of Model and Internal Staffing Levels

The WSIB proposal raises the question of how often the new model should be reviewed. There should also be a discussion of how *workplaces* are monitored. SEIU Healthcare believes that in order to thoroughly assess and monitor any model, there needs to be more physical monitoring of workplaces which are followed up with audits, when necessary. In 2013, the WSIB's Annual Report stated that their internal full-time staff level decreased from 3870 full time equivalents in 2012 to 3844 full time equivalents in 2013.[29] We would like to see an increase in current staffing levels on all fronts, particularly for case workers and auditors. Moreover, we would like to see case workers follow through with individual workers' claims, as opposed to shifting workers around to different case managers due to budgetary restraints or other dynamics.

Recommendation #9: Assess the new model after the first year and subsequently, every second year to ensure employers (especially large employers) are not disproportionately benefitting from the model. Also, to ensure comprehensive monitoring, we recommend increased internal WSIB staffing levels to assist workers with their files and hold employers responsible through physical monitoring and auditing, when necessary.

Third Party Review

In recent years, the WSIB has been under investigation for alleged internal activities. For example, an article in 2014 featured a former Personal Support Worker who claims she was followed by a private investigator hired by the WSIB due to suspicions around fabricated psychological illness.[30] Just this week, on September 26th, *The Toronto Star* featured an article which alleges that Dr. Brenda Steinnagel, a former medical consultant to WSIB, is suing the WSIB and her former employer for pressuring her to change her opinion on the case of an injured hospital worker.[31] The worker said he suffered a number of injuries, including one to his head, when restraining a patient in the hospital's psychiatric intensive care unit. McCabe claims the physical injuries led to mental health injuries and that after being denied by the WSIB, he has been living off Unemployment Insurance as he is finding it difficult to find employment with his mental health issues.[32] Both of these alleged cases bring up important themes: workplace violence in healthcare settings, doubt placed on psychological injuries and shifting the burden from workers' compensation to Unemployment Insurance, which does not hold the employer responsible and which transfers the financial burden onto the public.

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[29] *Workplace Safety and Insurance Board: 2013 Annual Report*, WSIB (2013) 13.

[30] Patty Winsa, "Workplace Safety Insurance Board Steps up Spying on Clients, Documents Show," *The Toronto Star* (16 June 2014).

[31] Jacques Gallant, "WSIB Lawsuit: Fired Hospital Worker Details Struggles after Losing his Claim," *The Toronto Star* (26 Sept 2015).

[32] Ibid.

Recommendation #10: In addition to the legal routes taken by individuals, there must be a third party review of both the proposed WSIB model and internal affairs relating to the treatment of injured workers' claims.

Temporary Workers and Agencies

As raised in the WSIB proposal, Temporary Employment Agencies (TEAs) are often classified differently from their client employers because their classification is based on their business activity as opposed to the activity of their clients, often resulting in lower premium rates.[33] Therefore, as outlined by the WSIB, this could create an incentive for client employers with higher rates to employ TEA workers (i.e. premium cost avoidance).[34] We commend the WSIB for acknowledging this dynamic and seeking insight on how to address the issue.

In Terence G. Ison's analysis of the experience rating system, Ison argues that one of the problematic aspects of the system is that it creates an incentive for employers to contract out dangerous work to companies who may not be capable or willing to perform the work safely.[35] Therefore, the question remains as to how effectively the experience rating system can address or prevent premium cost avoidance strategies.

Recommendation #11: As part of the third party review recommendation #10, the body should investigate whether or not this system can sufficiently address the issue of premium cost avoidance strategies, particularly in regards to TEAs and if so, how the WSIB should go about classifying TEAs.

General Recommendations

Most of the general recommendations mirror those made by the G8 Group, who met with the Minister of Labour, Honourable Kevin Flynn, on June 25th 2015. The group consists of the following organizations:

1. Ontario Building Trades
2. Elementary Teachers Federation of Ontario (ETFO)
3. Ontario Nurses Association (ONA)
4. Ontario Public Service Employees Union (OPSEU)
5. Ontario Professional Fire Fighters Association (OPFFA)
6. Service Employees International Union (SEIU)

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[33] *Rate Framework Reform – Paper 3: The Proposed Preliminary Rate Framework*, WSIB (March 2015) 21.

[34] Ibid.

[35] Terence G. Ison, *A Commentary by Terence G. Ison on the Report Entitled "Reshaping Workers' Compensation in Ontario" by Paul C. Weiler*, (Feb 1981) 68-75.

7. Teamsters Canada Rail Conference
8. Society of Energy Professionals

The recommendations are divided into three categories: Immediate, short-term and ongoing.

Immediate

- Improved primary adjudication with less appeals
- Appeals
- Track the Intent to Object forms (ITOs)
- Provide better access to the Appeals Resolution Officer (ARO)
- Restore the independence of the ARO and dispute resolution role of the ARO
- Stop the Ping – Pong Effect on implementation of ARO and WSIAT decisions
- OWA
- Restore the OWA funding levels and respond to the WSIAT backlog
- Fund the Reprisal Representation separately
- Revise the OWA Mandate to match the OEA Mandate

Short Term

- Rewrite the pre-existing policy to explain the "Significant Contributing Factor"
- Do not allow asymptomatic pre-existing conditions to be off-set by benefits (i.e. NEL awards)
- Amend the policy to explicitly allow permanent aggravation of asymptomatic pre-existing conditions
- Acknowledge psychological injuries resulting from harassment of both a sexual and non-sexual nature
- The Board should follow the AMA definition of impairment and the plethora of Tribunal case law to the effect that a non-measureable condition shall not be deducted from a NEL award
- Exempt 10 year cap for the WSIAT at this time
- Enforce mandatory certification standards of individuals on Joint Health and Safety Committee by working with Ministry of Labour
- Expand worker education programs

Ongoing Recommendations

- Mandatory coverage for all Ontario industry
- Two year policy review (November 2016)
- Remove the restriction on chronic mental stress

Conclusion

For SEIU Healthcare, our main concern is the creation of a healthy and safe environment for Ontario workers. The conversation around compensation has historically focused on how the WSIB system works for the employer as opposed to how the system works for the employee and as a result, has disadvantaged injured workers. Workers deserve to be at the centre of this dialogue and it is our hope that through the above recommendations, we can work with the WSIB and other stakeholders to create a comprehensive, equitable and fair compensation system which reflects the needs of both employees and employers collectively.

Works Cited

2012 - 2016 Strategic Plan Measuring Results: Q1 2015 Report. WSIB. 18 June 2015.

"Break the Silence: Workplace Violence Survey (Anonymous)." SEIU Healthcare. 30 Sept. 2015.

Canada. Ministry of Labour. *Ontario Proposing Changes to Legislation for Injured Workers, Broader Public Sector and Firefighters: Province Strengthening Employee Rights*. News Release. 28 May 2015.

Experience Rating: An addition looking for a rational?: Submission to the WSIB Funding Review Experience Rating Working Group. Injured Workers Group (5 Apr 2011), 4.

"Fact Sheet: Universal Workers' Compensation Coverage." *Injured Workers Online.* Injured Workers Group, 2010.

Gallant, Jacques. "WSIB Lawsuit: Fired Hospital Worker Details Struggles after Losing his Claim." *The Toronto Star*. 26 Sept 2015.

Goslin, Harry. "Universal WSIB Coverage - It's Time." Ontario Compensation Employees Union. 14 Nov. 2013.

Ison, G. Terence. *A Commentary by Terence G. Ison on the Report Entitled "Reshaping Workers' Compensation in Ontario" by Paul C. Weiler*. February 1981.

Law and Policy Submission re: Committee hearings on Bill 119 - Workplace Safety and Insurance Amendment Act, 2008. Injured Workers' Consultants. 17 Nov. 2008.

McCarter, Jim. "Ontario Auditor General's 2009 Annual Report - WSIB Unfunded Liability Section." Office of the Auditor General. Chapter 3 Section 1.14. 9 Dec. 2009.

"Media Backgrounder: WSIB Funding Review, Premium Rates and Value-for-Money Audit." WSIB. 2010.

Overview: Proposed Preliminary Rate Framework. WSIB. March 2015.

"Pricing Workers' Compensation Insurance." Workers' Compensation Board (WCB) Alberta. 2015.

Rate Framework Modernization: Risk Disparity Analysis. WSIB. August 2015.

Rate Framework Modernization: Technical Session Update. WSIB. June 2015.

Rate Framework Reform – Rate Group Analysis. WSIB. 2015.

Response to the Workplace Safety and Insurance Board's Proposed Preliminary Rate Framework: Submission to the WSIB Consultation Secretariat. Ontario Chamber of Commerce. Sept. 2015.

Rewarding Offenders: Report on how Ontario's Workplace Safety System Rewards Employers despite Workplace Deaths and Injuries. Ontario Federation of Labour. 24 Nov. 2014.

Rate Framework Reform Paper 1: Executive Summary – An Overview of the Proposed Preliminary Rate Framework. WSIB. March 2015.

Rate Framework Reform Paper 2: Current State Analysis. WSIB. March 2015.

Rate Framework Reform Paper 3: The Proposed Preliminary Rate Framework. WSIB. March 2015.

Rate Framework Reform Paper 4: The Unfunded Liability. WSIB. March 2015.

Rate Framework Reform Paper 5: A Path Forward. WSIB. March 2015.

"Surcharge Program." Workers' Compensation Board of Nova Scotia. 2014.

"Universal Coverage." *Injured Workers Online.* Injured Workers Group. 22 June 2015.

Webcast of the Rate Framework Modernization Technical Session. WSIB. 22 Apr. 2015.

Weiler, Paul C. *Reshaping Workers' Compensation for Ontario.* November 1980.

Weiler, Paul C. *Protecting the Worker from Disability: Challenges for the Eighties.* April 1983.

Winsa, Patty. "Workplace Safety Insurance Board Steps up Spying on Clients, Documents Show." *The Toronto Star.* 16 June 2014.

"Workers' Compensation Benefits Paid for the Year 2008 (in Millions, Current $)." The Institute for Work and Health. 2008.

Workplace Safety and Insurance Board: 2013 Annual Report. WSIB. 2013.

WSIB Interim Work Reintegration Policy Consultation: Submissions of Injured Workers' Consultants Community Legal Clinic. Injured Workers Group. 15 Feb 2011.

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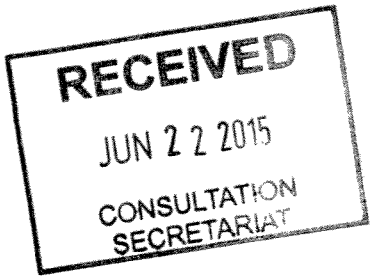

JUNE 16, 2015

Workplace Safety & Insurance Board
200 Front Street West, 17th Floor
Toronto, ON, M5V 3J1

Attn: Consultation Secretariat

RE: RATE FRAMEWORK REFORM:

Dear Sir / Madam:

On behalf of my clients and the Association of Employers who I represent, please find following our submission with respect to Rate Framework Reform.

This submission, all dealing with fairness to Ontario's Employer Community, is presented in two (2) parts:

1. Opinions and thoughts related to specific proposed changes identified by the Board
2. Specific thoughts related to actual questions posed by the Board

PART 1:

Fairness for the Employer

The WSIB's classification system has been based on several guiding principles; not the least of which is fairness to all employers.

It was formed on the basis of creating 'Statistically Sound' rate groups whose members shared a similar risk and injury profile. Each rate group was required to be financially sound enough to withstand periodic abnormally-high claims, the costs of which would be shared by the employer-members of the rate group.

Rates of assessment calculated at the rate group level, therefore, were based in part on the risk and cost profiles of the rate group itself; and would not be otherwise influenced by the injury and cost records of other rate groups. In short, each of the members of a rate group took comfort in the fairness of the structure; in the fact that all of the employer-members in their rate group had similar injury profiles – and that their assessment rates were based (in part) on the collective risk of the homogeneous group.

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This fairness and comfort will be lost to the employer community if the proposal to dramatically reduce the number of rate groups becomes fact.

Fewer rate groups, each with significantly larger number of employers; each with more varied risk profiles and injury propensity; cannot provide the procedural fairness previously enjoyed by employers.

With fewer and more populous rate groups, the rates of assessment of the 'safer' employers would be skewed upwards to cover the increased costs, frequency, and severity of the higher-risk employers within the larger rate group. The homogeneity would be lost and with that a very unfair and unjust levy would be placed on the safer employer. This would all be exacerbated of Experience Rating would be abolished.

Competitive Advantage

One critically-important element of the current classification scheme is the promise not to create a competitive advantage, or disadvantage, between competing employers.

This was ensured, through the homogeneity of smaller rate groups. Competitors within Ontario could be reasonable certain that they all had the same rate of assessment. This concept enshrined in Board of Directors minute #14 dealing with the factors to determine classification.

This fairness to employers will be lost, however, as follows:

- Allowing only one classification for the 'predominant' business activity will confer an unfair financial advantage on competitors. Consider a manufacturer of a certain product (the predominant product) will take one assessment rate; while another manufacturer whose non-predominant product competes with the first employer, has yet a different rate of assessment. Same competing product, different rates of assessment. Competitive advantage / disadvantage.

Second Injury and Enhancement Fund

The Second Injury and Enhancement Fund (SIEF) was conceived out of system fairness to the employer.

A small portion of the employer's periodic assessments was to be set aside by the Board to create a fund through which injury costs that were either created or prolonged by a pre-existing medical or otherwise condition were be quantified and not charged to the employer's account. Instead that portion of the claim cost would be 'charged to' the employer-funded pool (the SIEF).

The SIEF represents a significant vehicle of fairness and equity to the employer community in that it would protect the employer from paying claim costs over which it exercised no responsibility – lost time related to the condition that 'pre-existed' the injury.

This became all the more important when the Ontario Human Rights body removed from the employer the right to request a pre-employment physical examination. Previously the employer, through the use of a pre-employment physical, could determine the existence of pre-existing medical conditions and move to have claim costs associated with the pre-existing condition(s) removed from their WSIB injury file.

Cancelation of the SIEF would relegate the employer to a position of 'hiring in the dark' – a highly unacceptable position.

Further, abolishing the SIEF would frustrate injured workers' attempts to be hired by the employer of record – currently an obligation placed on the employer by the Board.

POTENTIAL RESULT OF BOARD PROPOSALS

The Board's current proposals suggest the desire to simplify and streamline its internal operations; and through this to reduce its current costs of operation. In broad terms this is a responsible activity for the Board to take; however as presented it represents only half of the equation. What remains unstated by the Board is the funding proposal on which it relies to justify the entire series of its proposals.

However, the actual proposals made by the Board could not only lead to the loss of interest of the current Ontario employer community, but could also cause those employers who are considering starting a business or moving a business to Ontario to think twice about choosing Ontario as the right place to be.

Generally, the Board's proposal removes to a great degree the employers' ability to exert control over the costs of WSIB coverage. Through fewer rate groups, generating non-homogeneous collections of employers, one of the very reasons that currently compels an employer to strive to prevent and to manage injury could be lost. That is the loss of control that results in a tangible return on its efforts.

As proposed, the employer could likely cede prevention and claim management entirely to the Board and occupy itself with its primary goal, the production of its products or the supply of its service. The Board's previous good work to elicit active employer involvement may be sacrificed.

PART 2:

Proposed Preliminary Rate Framework

Note: The writer's replies/comments are highlighted in Yellow.

Three Key Objectives

1. Ensure that employers pay their fair share for workplace coverage
2. Balance premium rate stability and responsiveness
    a. This is too vague a concept and needs further clarification.
3. Easier for stakeholders to understand and engage in the WSIB process.

Proposals:

a. Rate Framework to replace existing Standard Industry Classification (800+) with 22 class structure
    a. WSIB history dictates that this is the wrong direction. With Ontario's employer sector actively diversifying and innovating, we will require more classifications and not less. Recall the old classification system which had no room for the new-economy employers and the forced grouping of totally-non-related business activities into the same rate group. To shrink the number of classification would be a disservice to the system and the inaccuracy of classification would prejudice and financially harm employers. It would also mitigate employer investment in Ontario.

b. One classification per employer (predominance) regardless of the varied 'business activities' in which the employer is engaged.
    a. This 'over-simplification' would prejudice employers who diversify their business activities. It would confer competitive advantage on some and disadvantage others. One can see the emergence of a separate corporation for each business activity only to secure an accurate classification and rate of assessment – a costly and unjustified reaction to an erroneous Board action.

c. Establish 'class level premiums' and risk-adjust them based on each employer's injury-cost and premium history.
    a. While this is another form of experience rating, nothing has yet been said about the employer's rights to disagree, appeal, and challenge the Board's decisions. This may be a very significant loss of employer rights and is prejudicial because

there is no declaration of risk assessment procedures to allow pricing of the cost of wage assessment

Issues for Consideration:

- Is the NAICS grouping appropriate for employers
- Does 22 proposed classes reflect the industry categories in today's economy
    - Ontario's industry categories are diversifying and growing; not shrinking. For the sake of accuracy and the maintenance of a level playing field for competing employers, the employer community requires more category options, not less.
- How to determine a 'predominant' business activity
    - For fairness and accuracy, if it is a 'business activity' it should take its own unique classification. The Board's proposal is over-simplified and will do harm to the employer community and to competing employers.
- Long latency costs – how to share them – collectively or to the individual employer.
    - Let insurance rules prevail in this instance. Collective liability would suffice. Additionally, the WSIB may purchase third-party coverage that could be used in this narrow instance. The reinsurance market can provide stability to cost of such claims.
- Period of time to consider claims experience for class rate setting
- How rate bands should be established and claims history period to be used (how to set up and calculate the employer 'penalty')
    - The WSIB's proposal to create a few classes which, by definition, would include varied and diverse employers and business activities would imply that the new group would collectively be financially responsible for the poor records of the few within the group. This is unfair to the 'safe' members of the group.
- Factors used to determine the level of protection an employer needs from large rate fluctuations from year to year.
- Methodology to allocate unfunded liability.
    - Does this question imply that the Board does not trust or believe in its stated plan(s) for the reduction and retirement of the unfunded liability? Employers in Ontario already pay the country's highest assessment rates partly because of a Board-imposed surcharge that promises to pay down the unfunded liability.
    - Before allocation of the unfunded liability – the Board must place a current and accurate value to it.
- To surcharge or not surcharge employers.
    - Under this proposal an employer's rate of assessment would be influenced by their use of the system. If their rate goes up due to over-use is this not penalty

enough. This is a surcharge! From the Board's own history with experience rating (VER) the employer community and the Board learned that it had to make the rewards and penalties related to an employer's experience meaningful enough to solicit the attention and action of the employer. To simplify the experience rating process or to remove the employer's role in striving to prevent and to manage injury would result in the loss of the employer interest in same. WSIB assessments would simply be thought of as another Provincial payroll tax.

- How catastrophic new claims costs in a particular class should be handled.
    - This is a basic question that has long been solved by the insurance industry. That's what insurance is for.
- Whether the SIEF would still be relevant under the new framework.
    - SIEF is the one remaining vehicle by which the employer could receive fair and just relief from injuries caused or prolonged by a pre-existing medical (or other) condition. Recall that the employers' right to use a pre-employment physical no longer exists on Ontario. Doing away with SIEF would remove a significant employer right – the only remaining right when hiring a new employee or when returning an injured worker back to the workplace.

Respectfully submitted:

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May 9, 2015

Workplace Safety and Insurance Board

Attention Mr. Scott Bujeya
Attention Mr. Jean-Serge Bidal

I would like to thank you for taking the time to speak with me on May 6, 2015 and the information you provided on the proposed framework changes.
I reviewed the proposed framework information online and it appears that the changes will insure WSIB premiums are charged on a fair and consistent basis. This will allow companies like SparkleWash to tender work both in the government related and the private sector with the confidence that bidders are all on a level playing field in regards to the WSIB premiums we incorporate in our bid price. Since 2011 when the 2 services, graffiti removal and building washing that SparkleWash provides were re assigned to 748 SparkleWash has had to compete with the burden of higher cost than most if not all of the other bidders. This issue remains today on 90 % of the work we tender. Without going into specific names of competitors, this is the case with 90 to 100 % of the local firms providing the same services we do. At any time I can provide you with a list of our local competitors that we bid against and pay substantially lower rates.
Looking back at the communication with WSIB, the letters, and the presentation material my main issue was fairness in the rates we pay for the services we provide. The rates we pay today for these services have caused issues since 2011 and if not rectified other burdens going forward.
All that being said, the proposed changes are evidence that WSIB is moving in the right direction and if and when the changes are implemented the system will be fair and one that works.
In the past 4 years I have felt that the letters, comments and all the other correspondence were falling on deaf ears, now it appears I owe an apology to those I communicated with. I can see that WSIB did hear the concerns I and others expressed and has been working towards building a system that will be fair to those who pay premiums and recognize those who strive to maintain a claim free history. I understand that the consultations and process of these proposed changes are a major undertaking that take many years from start to finish.

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Since 2011 I have looked at the WSIB small employer rule and have not been able to see it as a viable option. SparkleWash provides services in 4 rate groups and these services can have volumes of work that vary from week to week. There are many of our customers that we provide all of our rate group services to on an as needed basis. If I were to attempt to direct my business in the direction of certain rate groups to fall into the small business rule I would potentially have to avoid certain services I provide and promote. With customers like my local city who we wash trucks for, clean downtown sidewalks, wash garbage bins, provide graffiti removal and do their building washing, if I decline to service one of these they will find another contractor who will service all their needs. From a sales, service, logistics and accounting point of view the small employer rule would not be a viable option we can utilize.

Going forward and looking forward to the proposed changes which may be in 2018, I have to request that SparkleWash be considered to be placed in one or more of our current lower cost rate groups until the proposed changes come into effect. I am not asking that we be given special treatment, only that our rate group reflects a premium that is fair and consistent with our competitors and markets. I am sure the intention of placing us in 748 in 2011 was not to place us in an unfair position in our market, but it did in 2011 and has since continued to.

At any time I am able to provide you with information that will show how the concerns I had in 2011 still remain and continue to grow today.

Another major concern that was expressed in the 2011 presentation was the issue that for companies like SparkleWash was that we do not have the pension plans that many large firms or government agencies have in place. Our pensions are usually the value we build in our businesses and how much the next owner of the business is willing to pay us for what we have to sell.

In the last few years I have had some heath issues and this has forced me to start looking ahead at preparing my business as a viable, profitable and one with growth potential to sell. Like WSIB this is a task that takes 2 to 3 years. SparkleWash is a franchise system and the business broker that handles the bulk of SparkleWash franchisees business sales is Sunbelt business brokers. In recent conversations with them SparkleWash franchises are very sellable if all the steps are taken 2 to 3 years ahead to prepare the business. In regards to my SparkleWash franchise, well his words to me were , Dave would you buy a business where you as a owner paid 17 or 18 % premiums on your personal income, paid the same high rates on your employees wages when providing some of your services. Or buy a business where 90 to 99% of your competitors don't pay the higher rates. Also as we all know insurance rates as well as other cost in owning a business usually go up every year, so will the 17 or 18 % be 19 or 22% in 2 or 4 or 5 years.

You may have a great business and great potential to grow, but this WSIB burden is a deal breaker. From a buyer's point of view, there are too many service type business's to choose

SparkleWash®
Division of 1405715 Ontario, Inc.
Safe, On-Site Cleaning & Restoration
"Independently owned and operated: a franchise of Sparkle International, Inc."

from. Or if the buyer really wants to provide the services SparkleWash provides, they can open a janitorial or cleaning company or property maintenance company and buy the equipment and avoid the WSIB rate issue.
At the end of our conversation his comments were, fix the WSIB issue or prepare to take a kicking, it really would probably not sell and I would not want to take the listing.
In 2011 this was one of many of the concerns that I included in the presentation material. In 2015 it is now a major issue that I must address.

The proposed changes that may come in 2018 will be well worth effort made by WSIB and be welcomed by those who pay the premiums into the system for many years going forward and I look forward to the changes. I also know that running a small business is hard and every day small business owners are faced with challenges they must deal with, and we do. That's we why we are doing what we do, we like the challenge.
The Issue with the WSIB rates I am faced with is one that on my own I cannot resolve. The short term effects have hurt us and continue to on a daily basis. Long term as I look at transitioning away from SparkleWash it's a killer.
I ask that you review the situation as it is today and understand that waiting until 2018 and then beyond that to start the selling process is beyond the high end of the challenge scale.
I ask that you sincerely consider the request to look at my rate groups and place SparkleWash in any or all 3 of the lower ones we currently have.
Your time and consideration in this matter is appreciated and I look forward to your reply.

Again as in the past I sincerely want to thank you and all the other WSIB personal that have taken the time to speak to me, even when I may have been a bit loud or straight forward with my words. .

Regards

David Trefethen

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SUBMISSION

TO THE WSIB

RATE FRAMEWORK

REFORM CONSULTATION

Toronto Workers' Health and Safety Legal Clinic
2000 - 180 Dundas Street West, Box 4
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02 October 2015

Who We Are

The Toronto Workers' Health and Safety Legal Clinic is a community legal clinic funded by Legal Aid Ontario. Unlike a neighbourhood clinic that is more general and geared towards the local community, our mandate is province wide and we have a very specific purpose - to provide legal advice and representation to non-unionised low wage workers who face health and safety problems at work. For over 25 years we have appeared before the Ontario Labour Relations Board on behalf of workers who were fired for raising occupational health and safety concerns. We also act for those injured on the job with respect to their workers compensation claims.

Introduction

Given our mandate, we participated with both the Expert Advisory Panel on Occupational Health and Safety ("the Dean Panel") and to Professor Arthurs' Funding Review ("the Arthurs Review"), through written submissions and oral presentations. We have strived to make the connection between health and safety and workers compensation. This is not a theoretical connection, the legislation, the *Workplace Safety and Insurance Act*[1] ("the Act") mandates the nexus between health and safety and experience rating programming.[2]

The Rate Framework Reform proposed ("the Proposal") by the Workplace Safety and Insurance Board ("the WSIB") fails to address the concerns raised by Dean and Arthurs. The Proposal fails to firmly establish the importance of health and safety in WSIB claims. Instead of eliminating experience rating the Proposal wrongly attempts to cement claims costs when determining premiums. In following this course of action the WSIB

[1] S. O. 1997, c. 16, Sch. A, as amended.
[2] Section 83, the Act

essentially ignores the advice of Dean and Arthurs and fails to address the core problem of experience rating.

Dean Panel: Making the Connection between Health and Safety and Premiums

The Dean Panel was appointed to conduct a review of the province's health and safety system. It heard from stakeholders across the province and made a number of recommendations.

It is submitted that the Proposal fails to accord due weight to Recommendation # 22[3]:

> The Workplace Safety and Insurance Board, in conjunction with the new prevention organization and stakeholders, should review and revise existing financial incentive programs with a particular focus on reducing their emphasis on claims costs and frequency.

With the shift of the prevention function out of the WSIB, it is clear that the Dean Panel meant for substantive change to take effect. Such change is more than reassigning responsibility. The Dean Panel called for an incentive program that took into account improvements in actual occupational health and safety practices at workplaces. The Dean Panel specifically rejected the reliance on claims experience.

Arthurs Review: Making the Connection between Legislation and Health and Safety

The review mentioned in the Dean Panel's report culminated in the Arthurs' Review. Titled *Funding Fairness*, Professor Arthurs' provided the Government and the WSIB with a number of recommendations to address the funding shortfall.

In this regard, I reiterate the concerns in the Arthurs Report. If the Proposal like NEER is "insurance equity and is only costs based" Arthurs suggested either s. 83 of the Act be amended or NEER should be discontinued.

[3] *Expert Advisory Panel on Occupational Health and Safety Report and Recommendations to the Minister of Labour*, December 2010, p. 41.

In Arthurs' view the WSIB confronts a "moral crisis". He found the WSIB to be operating an experience rating system which some employers have "almost certainly been suppressing claims." It is in this context that Arthurs identified the disconnect between NEER and s. 83. The health and safety improvement expected from experience rating was not being achieved. The Proposal does not appear to contemplate the need to prevent and punish claims suppression.

Exceed the Legislative Mandate

The failure of the WSIB that is perpetuated by the Proposal is the continued focus on claims costs. Notwithstanding the notion of "risk bands" the continued reliance on claims costs means continued reliance on flawed data. The use of claims costs does not result in reduced injures. Claims costs are managed not by incentivising costs but suppression. It would be instructive for the WSIB to be in keeping with its legislative mandate under s. 83(1):

> The Board may establish experience and merit rating programs **to encourage employers to reduce injuries** and occupational diseases and to encourage workers' return to work. [emphasis added]

As highlighted, the initial purpose of rating programs is to reduce injuries. This goal has essentially been subsumed in the return to work function. Claims costs are reduced with immediate return to work. The NEER program incentivises claims suppression.

Rather than using lagging indicators, an experience rating program should restore the health and safety focus of merit rating programs: reduce injuries. The WSIB has the opportunity to create a system to establish expectations from employers to put health and safety at the core of its responsibility. While flawed, the *Road to Zero* campaign was in keeping with this approach.

Merit rating programs should not be used to reward suppression. Instead, programs can be used to measure employers against leading indicators. Creating a system where the WSIB rewards employers who are doing more in service to the health and safety of workplaces would incentivise forward-thinking change rather than employers more concerned about strictly financial benefits.

Financial incentives need to have more than a cursory connection to health and safety. The problems found in NEER can be seen in the use of the Second Injury and Enhancement Fund ("SIEF") by employers. SIEF was theoretically to provide some protection to employers concerned about claims costs with respect to workers with pre-existing claims or conditions. Instead, it created a cottage industry of representatives who found employment solely by using SIEF claims to reduce payments to the WSIB. The fund had little to do with supporting workers

The Proposal will continue to reimburse employers for claims suppression rather than focus on accident prevention. The reduction of claims will serve to seek a better position on the risk band. As such, the problems well documented and espoused with NEER will continue.

Make Injury Reduction Encouragement the Focus of Experience Rating

The Proposal to incorporate risk banding into premium rates fails to address the concerns Arthurs had with the WSIB's legislative mandate. Experience rating programs essentially reward employers by reducing premiums. It is submitted that rather than wrongly reward reducing claims costs, the WSIB could create a system that rewards improved health and safety practices.

The first step in such a system is to end the discount aspect of experience rating. No employer should receive a reward for fulfilling its obligations under the law: take every reasonable precaution for the protection of workers.

The reward component of any experience rating system should turn on imposing expectations on employers. By examining leading indicators for injury reductions, the WSIB could mandate the use of technology, system practices, or codes that would be required in merit review. The merit portion of experience rating would be to earn a financial incentive for follow-through. Annually the WSIB could establish a regime of requirements from regular study that challenges employers to take steps to reduce accidents. In reaching those measurable goals employers would earn their discounts to apply to the next year's rates.

Such an approach would be in keeping with the Dean report, the Arthurs report, and the Act. This modest proposal will end the parasitic industry created by experience rating programs. It would also restore the WSIB to an organisation that is focused on injury reduction and the health and wellbeing of workers.

Summary

The Proposal currently suggested by the WSIB is disappointing given the clear warnings sounded by Professor Arthurs.

Expressed from multiple reports, studies, and stakeholders is the belief that claims costs should not be a factor in determining premium rates. There is sufficient evidence to give credence to the view that experience rating encourages claims suppression.

Rather than turn away from the claims costs focus, risk banding merely delay the adverse effects from claim costs. Doing so does not solve the problems with experience rating.

Doing so certainly does not address the concerns raised by Professor Arthurs with respect to NEER.

It is respectfully submitted that the Proposal be abandoned. The WSIB needs to restore its credibility with all stakeholders. In doing so, it should find its path to redemption through its legislative mandate: reduction of injuries. Merit rating programs should not be a financial reward for cost cutting. Instead, the WSIB should establish annual criteria for rewarding employers that focuses on leading indicators towards the improvement of workplace health and safety practices.

ALL OF WHICH IS RESPECTFULL SUBMITTED

02 October 2015

Union Gas
50 Keil Drive North
P.O. Box 2001
Chatham, Ontario
N7M 5M1

Oct. 1, 2015

Attention: Consultation Secretariat

Workplace Safety & Insurance Board
Consultation Secretariat
200 Front Street West, 17th floor
Toronto, Ontario M5V 3J1
Attention: consultation_secretariat@wsib.on.ca

Re: WSIB Preliminary Rate Framework Consultation

Please receive Union Gas' submission on the WSIB Preliminary Rate Framework. Union Gas has been an active participant throughout the Rate Framework consultation process, including attendance at the April 22, 2015 WSIB Technical Session with stakeholders and working with other Utility employers in various working group sessions, specifically two meetings with J.S. Bidal and Earl-Glyn Williams to gain additional insight into the proposed Framework. We appreciate the opportunity to provide input during this consultation process and look forward to reviewing the outcomes following the stakeholder submissions.

Introduction

Union Gas Limited, one of Canada's Top 100 Employer for 2015, is a major Canadian natural gas storage, transmission and distribution company based in Ontario with over 100 years of experience and service to customers.

The distribution business serves about 1.4 million residential, commercial and industrial customers in more than 400 communities across northern, southwestern and eastern Ontario.

Union Gas's Storage and transmission business offers a variety of storage and transportation services to customers at the Dawn Hub, the largest integrated underground storage facility in Canada and one of the largest in North America. The Dawn Hub offers customers an important link in the movement of natural gas from Western Canadian and US supply basins to markets in central Canada and the northeast U.S.

Our Submission:

Attached is a submission which was developed through working group sessions between Union Gas and representatives from four other Utilities who are identified in the submission.

The attached submission represents our collective perspective on the preliminary WSIB Rate Framework and the questions posed within the discussion papers.

It is Union Gas' understanding that the WSIB intends to release a September 2015 update addressing ongoing issues and topics identified by stakeholders for further discussion. However, at the time of this submission the update was not available on the WSIB website and as a result was not included in the attached collaborative submission.

It is also our understanding the Rate Framework Consultation process will have additional phases which provide ongoing opportunities for stakeholders to further comment on the preliminary Rate Framework.

Conclusion

We appreciate the opportunity to provide our comments on this very important preliminary WSIB Rate Framework and we look forward to reviewing the summary report on all the submissions provided by other stakeholders.

Sincerely,

Michele Finley
Manager, Health Services
Union Gas Limited, a Spectra Energy Company
mmfinley@spectraenergy.com

ctober

Workplace Safety & Insurance Board
Consultation Secretariat
200 Front Street West, 17th floor
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Attention: consultation_secretariat@wsib.on.ca

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Please receive the following collaborative submission in regards to the WSIB proposed Preliminary Rate Framework. The following employers have been meeting and discussing the consultation materials, updates, and analysis communicated by the WSIB Consultation group:

- Bruce Power
- Enbridge Gas Distribution
- Hydro One Networks Inc.
- Ontario Power Generation
- Union Gas

Since the release of the WSIB consultation materials in March 2015, the above mentioned group of employers ("*The Group"*) have continued to review and participate in WSIB-led Technical Sessions, as well as Working Group Sessions held in July, August, and September with J.S. Bidal, WSIB Executive Director and Earl Glyn-Williams, WSIB Lead. The Group appreciates the opportunity to continue in this consultation and we look forward to reviewing the outcomes following stakeholder input.

Introduction

The Group as a whole represents large employers with significant experience managing claims within the current NEER Experience Rating program under Schedule 1. Currently, The Group is represented in various Rate Groups (833, 835, and 838) under Class H: Government & Related Industries. Based on the current proposed changes, it would appear that the majority of the group will transition to the new "Class B: Utilities". The Group's familiarity with the current system, similar claims experience and similar industry trends led to discussions and shared interests with respect to the Rate Framework Consultation.

For the purposes of this submission The Group has focused primarily on Paper 3, but has also addressed questions raised in Paper 4 and 5. As a whole, The Group has taken into account the breadth of information provided by the information sessions, as well as the July Consultation Update, and the August Rate Group Analyses and

Risk Disparity Analyses documents. For clarity and continuity, the submission will focus on addressing the "Questions for Consideration", in the order they were posed within Papers 3, 4, and 5. Additional items/interests not addressed by the Papers will be included separately at the end of the submission.

PAPER 3: THE PROPOSED PRELIMINARY RATE FRAMEWORK

Step 1: Employer Classification

Employer Classification

Is the proposed structure adapted from NAICS an appropriate grouping of employers?

Yes, The Group supports the proposed adoption of the NAICS system, and believes it will provide a more appropriate grouping of employers. In contrast to the current SIC system, NAICS will provide an updated grouping of employers noting changes in industry, technology, and today's business climate.

Although the updated NAICS system is a move forward, the WSIB should endeavor to develop a Policy which specifically outlines a process for regular review of classifications similar to the NAICS review of every 5 years, in order to adapt to ongoing and future changes in business, industry, technology, etc. The prior SIC system was not reviewed regularly and eventually resulted in Employers applying in and out of rate groups in an effort to re-align themselves, as outlined by Mr. Douglas Stanley. Additionally, the policy and any periodic reviews should not only address changes in classifications, but undertake review and adjustment of classes based on the new make-up of classes to ensure self-sufficiency and credibility of classes based on risk profiles, claims costs, and insurable earnings.

Caution should also be undertaken noting that at the time the SIC system was implemented in 1993, a plan for review was also anticipated but was not followed. In the event the overseeing statistical agencies managing the NAICS structure disbands, or is modified, a plan for change/adaptation would have to be built into the governing Policy.

Do the proposed 22 classes appropriately reflect the industry categories in Ontario's economy today?

Yes, The Group support the change to the increased number of classes as outlined in the consultation materials. The Group understands the WSIB is reviewing a further expansion to 32 classes, as outlined in the July consultation update. Understandably, any expansion to additional classes will have to ensure that these additional classes can support the appropriate levels of risk, experience, and predictability for rate setting and liability. As mentioned above, if the WSIB establishes "classes" that differ from the true NAICS grouping, this

further emphasizes a need for a Board policy which outlines how the board will manage the classification system on a go-forward basis; including thresholds for when classes may be expanded and/or contracted further.

The WSIB is proposing to classify employers according to their predominant class, where the predominant class would generally be defined based on the class representing the largest share of an employer's annual insurable earnings.

- *Should the WSIB consider factors other than just insurable earnings?*
- *Should the WSIB also consider the risk involved in the business activity when determining the appropriate classification?*
- *Or a mix of both insurable earnings and risk?*

The Group supports the WSIBs plan for basing the rate and classification on the predominant class/business activity. The WSIB should endeavor to communicate the specific new Class that employer's will be assigned to well in advance of the 'go-live' date. Clear and early communication of anticipated class assignment, will provide employers the ability to review and evaluate the determination, and if concerned, employers will be afforded the opportunity to clarify/correct their assignment prior to "go-live". This process will limit confusion, further adjustments/movement, and reduce the possible financial impact that could result from an incorrect classification/rating.

Is a three year window for determining an existing employer's predominant class appropriate?

- *Is a longer window (e.g. four years) more appropriate or is a single year enough?*

Yes, 3 years should be sufficient for most employers and will limit the effect of changes in business activities.

<u>Temporary Employment Agencies (TEA)</u>

Should TEAs be treated differently from other employers under a new Rate Framework to address the premium cost avoidance issue (e.g. be allowed to have multiple premium rates)?

Within The Group providing this submission, these employers either do not utilize TEAs regularly, or where they are used, the temporary employees are hired for low risk labour (i.e. Clerical and Administrative workers). As a result, The Group does not have a definitive position on the issue, noting our limited experience.

How should the claims cost avoidance issue be addressed under a new Rate Framework?

The Group does support the proposed direction of incorporating increased "rates" by the TEAs allocated/billed to their "clients", whereby TEAs would have varying

rates dependent on the nature of the labour they are supplying, which they would bill/allocate to the "client employer". If a "Client Employer" knows they will be billed by the TEA for premium costs and risk associated with their temporary employees, this does have the potential of limiting the ability of employers to use TEAs to avoid high rates and premiums.

The Group does question how the WSIB is going to govern and monitor how TEAs allocate/assign costs to their 'clients', and whether the WSIB has the authority to monitor and audit the proposed changes. Will TEAs be required to provide Client Employers with a breakdown of the associated "rate" related to premium costs?

Step 2: Class Level Premium Rate Setting

New Claims Costs & Administration Cost:

Should the WSIB use the current RG approach of fixed per claim limit of 2.5 times the annual insurable earnings at the employer level, or should the WSIB use the graduated per claim limit approach outlined?

The Group's current understanding is that the size and experience of each employer participating in this submission would indicate we will be considered 90-100% predictable with respect to the predictability scale. Therefore, either approach is appropriate and would have limited impact even if the WSIB was to adopt a new Graduated Per Claim Limit approach.

Should the WSIB consider using a different graduated per claim limit than the one proposed? If so, what features should it have?

See above. Either approach would have minimal impact on employers who are 90-100% predictable under the over-arching proposed framework.

Should the WSIB continue with its current allocation of administration costs?

The Group supports the position to continue with the current allocation of administration costs and legislative obligations.

Long Latency Occupational Disease (LLOD)

Should LLOD (long-latency occupational disease) claim costs be shared equally by all employers as a collective cost or should these costs be charged directly to the individual employer?

The Group agrees that the LLOD claims should be shared equally by all employer's across Schedule 1. Today's employment climate has changed where workers' movement from occupation to occupation spans across multiple classes

and workers do not reside in one class/industry for the entirety of their working life.

Understandably, through years of claims experience and data collection, the WSIB has significant data on the number of LLOD claims, costs, pensions, etc. and the type of LLOD (NIHL, Silica, Asbestosis, etc.). It would be beneficial for this information to be shared and referenced in relation to further plans and direction related to the allocation of costs.

Additionally, as consideration is given for how the WSIB will issue "Claims Reports" (i.e. similar to the current Quarterly NEER Reports), it would be beneficial for the WSIB to include information related to LLODs to the appropriate 'exposure employers'. Including information related to the employer's Costs, awards, their percentage of accountability/responsibility, as well as the over-all cost to the system, would assist in driving prevention and improvement of safe work practices for employers. Knowledge of the 'true cost' to the collective system would assist employers in understanding the effect these claims have on their rates within the new framework, even if it is not impacting their own individual Employer Actual Premium Rate.

The Group recommends the WSIB endeavor to review and explore the Final Report of the Chair of the Occupational Disease Advisory Panel, issued in February 2005. The Group does recognize that the broader topic of Occupational Disease adjudication, and operational policy, is not within scope of the Rate Framework consultation, but has included some additional thoughts related to this topic, in the "Additional Comments" section below.

The WSIB should consider applying a threshold for entitlement to a NEL award for Noise Induced Hearing Loss claims, as done in other jurisdictions. By identifying a threshold for when a NEL is awarded, the board would reduce costs associated with administering and issuing the minimal-NEL benefits, where the cost outweighs the actual benefit itself. The entitlement to hearing aids and HC benefits would still apply, but a limit to the NEL award would ease the burden on the system.

SIEF

Given the design elements of the proposed preliminary Rate Framework that promote greater stability in premium rates, as well as the current legal landscape on disability issues, is the SIEF policy as it currently designed still relevant?

It has been expressed to The Group that the WSIBs implemented changes and improved adjudication related to the SIEF program has resulted in the New Claims Costs associated with SIEF being reduced from 30% of NCC to 5% of NCC over the last 5 years.

The Group believes that SIEF is still a relevant aspect of the WSIB process related to pre-existing conditions and their effect on claims and benefits. However, noting the strides made by the WSIB in recent years, and the recent Operational Policy changes related to pre-existing conditions, it may be warranted to continue to use SIEF, in a new/redesigned SIEF Policy, change in scope, and updated definition, and its applicability.

Discussion was also undertaken in regards to whether the WSIB would allow employers the option to opt out of SIEF Coverage, and what effect it would have on the Employer Premium Rate, and perhaps the Class Target Premium Rate.

Self-Sufficiency of Classes:

How should the WSIB handle catastrophic new claim costs situations that occur in a particular class?

a) *Include claim costs in the year that they occur, which may result in a higher premium rate being charged to employers?*
   OR
b) *Reduce the premium rate increase and add the remainder as an amount for future premium rate consideration?*

c) *How should catastrophic situations be defined? Should the WSIB consider pooling these costs at the class level or Schedule 1 level?*

The Group's understanding is that "catastrophic new claims costs" can be defined as either:

- A pandemic/wide-spread type illnesses that affect a specific group of employer's (i.e. Health Care industry affected by SARS, H1N1, etc.) burdening a specific class, or classes, which significant increased claims costs in a specific period, OR

- An unexpected event (i.e. plant explosion, mining disaster, plane crash, multiple homicides in the workplace) resulting in significant injuries/costs to a large number of employees for a particular employer, OR

- An unexpected change in a particular class (i.e. a number of employers suddenly leaving the marketplace) resulting in the class having to compensate for the disparity of future claims costs, no longer gathered through premiums.

Understandably, unique situations such as those described above (and perhaps other scenarios not yet identified) could arise and the employers, class, or classes, would be burdened with significantly high and unexpected costs that would not be considered through review of risk profiles and past claims experience. For situations where "catastrophic claims" occur and there is limited-

to-no control at the employer level, it would be The Group's position that the WSIB should consider some form of pooling for these costs. However, what level they are pooled could differ depending on the nature of the "catastrophe". Following a catastrophic event that affects one employer (i.e. plant explosion), or a limited number of employers, consideration should be given to pooling the costs at the class level, where a collective of similar employers can support the affected employer(s). Alternatively, a catastrophe that affects multiple, or the majority, of employers in a particular class (i.e. pandemic, or significant reduction in class insurable earnings), the costs could be pooled at the Schedule 1 level, noting that pooling at the class level would not be sufficient and would result in significant impacts to a multitude of employers.

The Group supports that in catastrophic scenarios, some level of pooling should occur in an effort to limit significant volatility in scenarios where employers have limited control and the event is significantly unpredictable. In order to better prepare and educate all employers of when this would apply, a clearly defined definition (or definitions) of "catastrophic claims" should be developed as part of an overarching Operational Policy. The policy would provide clarity of what will occur, how it will be applied, and how it will be communicated to employers, in the event these situations were to arise. Furthermore, consideration could be given to identifying an 'arms-length' entity to oversee these types of matters in an effort to eliminate political-based decisions, and ensure decisions are based on an objective review of the catastrophe itself and the effect it would have of employer, class, and Schedule 1 rates.

Step 3: Employer Level Premium Rate Adjustments

Actuarial Predictability

In setting employer level premium rates, what are the factors that the WSIB should consider in assessing the level of protection an employer needs from large rate fluctuations?

a) *Should the WSIB include in the assessment of actuarial predictability, insurable earnings, claim costs, number of claims, lost time injuries or some other factor?*
b) *Should the WSIB use different mixes of insurable earnings, number of claims?*
c) *Are the percentages of assignment between individual and collective experience appropriate?*
d) *Should a new employer be treated the same as an existing employer?*

The Group supports the proposed Framework's structure and the proposed process, and associated factors, for setting employer level premium rates, resulting in individualized Employer Premium Rates based on their own experience and predictability. Based on the data provided in Paper 3 (page 45), it would appear that the WSIB attempted numerous variations of weighted factors.

The resulting actuarial predictability appears appropriate based on the information provided.

Similarly, the Predictability Scale outlined (Paper 3, page 47) appears to provide a sufficient balance between individual experience and collective experience.

The proposed Framework offers challenges for new employers entering the system with no prior individual experience. Consideration could be given to introducing new employers to either; 1) the Class Target Premium Rate, or 2) the Class 'Average Premium Rate" initially. Thereafter, a formula could be established to apply a graduated/weighted "Employer Target Premium Rate" based on experience and total claims, year-over-year until sufficient experience is obtained to better establish a truer 'Employer Actual Premium Rate'. Consideration should be given to still allowing minor movement within the risk band, noting the Risk Band Limitations (discussed below) would afford protection from volatility, even to 'new' employers.

Does the introduction of experience adjusted premium rates for small employers, currently excluded from WSIB experience rating programs, introduce too much premium rate sensitivity?

No, the use of the predictability scale and collective liability will limit volatility in premium rate changes year over year. Small employers will be afforded the appropriate level of protection from large fluctuations, but also allow for an appropriate level of employer accountability.

Risk Banding:

Is using the average of the last 3 years net premium rate for experience rated employers or the premium rate of the RG for those employers who are not experience rated, a reasonable starting point for employers to transition to a new Rate Framework?

Yes, The Group supports the use of the last 3 years net premium rate. It would be beneficial for all Employers if the WSIB would provide (in written form) a breakdown of how the "net premium rate" is calculated. Understandably, the WSIB is reluctant to share the calculations/rates used in assessing the proposed framework, as the 'net rate' may change before final implementation. However, providing employers with a clear breakdown of the formula (and examples from mock NEER/CAD-7 statements) would allow employers to evaluate their own individual status as part of ongoing preparation.

Are the risk bands that are set at 5% increments to provide great sensitivity, and avoid large premium rate swings for employer with small changes in risk appropriate? Should the percentage increments be larger?

5% increments is appropriate and allows for adjustments based on experience, while also protecting against volatility.

Should the proposed preliminary Rate Framework use the most recent six prior years for determining employer level premium rates? Or three or four years?

The Group supports the use of six years for establishing Employer's Total Claims Costs. Six years would be more appropriate to support a truer picture of the actual costs of the claim. This would also increase predictability and make employers more accountable for their own costs.

The July Consultation Update outlines that some stakeholders are requesting/ recommending the use of a weighting scale, putting greater emphasis on recent data versus older data. The Group holds the position that the use of 6-years of unweighted costs is likely sufficient data to determine premium rates and question the level of benefit 'weighting' different years will provide.

Noting the WSIB has reviewed 'alternatives' and other models as part of the development of Paper 3, an updated Paper as part of the consultation process could include an alternative model **it ario s t es of ei tin** to outline the effect the weighting would have (if any), and offer discussion on the pros and cons of this proposition.

Does a three risk band limitation, relative to the experience of the class, provide suitable stability? Consider that this limitation itself leads to greater collective liability, should the limitation be higher? Should it be lower?

The Group supports the proposed limit on Risk Band movement of +/- 3 risk bands. However, the WSIB should provide clear analysis/reports annually (quarterly?) to employers allowing them to gauge where they are trending, and outline the Employer Target Rate to provide transparency to employers.

As discussed further below, improved online real-time information and accessibility to information would be strongly recommended as part of any proposed framework. The WSIB has made strides in improving eservices, but further improvement would offer increase service to stakeholders.

Should we consider forgiving employers who increase/decrease one or two risk bands? If so, would there be a need to increase the risk band limitation to four or five risk bands to appropriately balance premium rate stability and responsiveness?

The Group doesn't support the notion of forgiveness of 1 or 2 bands as it would result in confusion for employers. Additionally, forgiveness could potentially result in annual appeals by employers, and unnecessary administration and costs to the system. The simplicity within the +/- 3 band movement will benefit all employers and make it easier to understand. Movement of 4 to 5 bands would result in increased volatility and decrease stability for employers, which goes against the intent of the new framework.

Do risk bands generally provide a positive support and a level of stability in setting rates for employers, or would individualize rates for each employer capped at a specific %, plus or minus, relative to the experience of the class be preferred?

The Group supports the risk band approach, and the +/- 3 band movement. To a certain degree, the proposed framework already incorporates "individualized rates" for each employer, as well as a cap of "15%" movement from year to year. Additionally, the approach of having a broad range/number of "Risk Bands" dependent on the Class (and their risk/experience), allows for appropriate movement.

Furthermore, Paper 3 discusses that the maximum premium rate would be approx. three times the Class Target Premium Rate, and through the working group sessions, The Group understands that when/if needed maximum premium rate (i.e. highest risk bands) could potentially fluctuate from year to year as the class's collective liability changes. Similar to the recommendation to develop of policy on "Classification", the WSIB may consider outlining a specific policy on when, why, and how changes in Risk Band Ranges may change.

Overall, The Group believes the proposed framework appears to find a strong balance between collective accountability and individual employer accountability.

<u>New Employers:</u>

Should the WSIB charge new employers with less than 12 months of experience the Class Target Premium Rate? Or should they be risk banded?

The Group agrees that new employers should start at the Class Target Premium Rate, and as they gain experience/predictability over years in the system, they will move accordingly towards an individualized Employer Target Rate. A graduated approach based on year-by-year experience could be developed, similar to the predictability scale, but designed for new employers being as the employer begins to gain experience and

Similar to other topics outlined in this submission, a clear policy clarifying how new employer's will be treated should be established.

Surcharging Employers:

What factors should the WSIB consider when determining if an employer should be surcharged?

The Group supports the need for some type of surcharge mechanism for employers who fail to improve overall claims performance. Factors that should be evaluated would include; claims costs and rate increases (+3 risk bands) over a number of years, and/or employers continually residing in the maximum risk band for the class for a pre-determined number of years. Although collective/class liability is part of the new Framework for greater protection to rate volatility, the Framework does also incorporate increase employer accountability. In instances where employers are meeting the 'threshold' for penalties, mechanisms to hold employers accountable should be built into the new framework. The Group supports a graduated/tiered approach to reaching a surcharge threshold, whereby Employers are provided with escalating notifications in the event they are trending towards a surcharge scenario.

Additionally, the surcharge mechanism should be linked to overall claims/cost/experience performance over time (to-be defined), and should not be linked to individual claim types (i.e. fatality claims).

It would seem obvious to The Group that a well-defined policy would be required to outline processes, thresholds, level of accountability, maximum surcharges, support resources, etc. that would be required within the framework.

Should the WSIB not surcharge employers at all and include all the claim costs above a certain level as a collective cost in setting the Class Target Premium Rate?

As noted above, The Group supports that a surcharge approach should be included as part of the Framework. However, an integrated approach of surcharging continually 'poor' performing employers along with providing "collective accountability" within the class should be undertaken as well.

Noting the fact that the Maximum Risk Band is not a fixed amount and can increase over time, in relation to the class target rate, there is also the potential that employers at the maximum risk band may not be 'protected' by the collective group over the passage of time. Continually poor performance could lead to an increased maximum, resulting in increased rates for the 'poor' employer as well.

Paper 4: The Unfunded Liability

Should the WSIB use the NCC method or consider Method 2 of apportioning the UFL as described earlier in this paper?

The Group supports the ongoing use of the NCC method to assist in paying down the UFL. The WSIB should consider a graduated diminishment of the UFL portion of the 'rate' as we approach the full re-payment of the UFL. By gradually moving towards the "$0 UFL Rate" there may be some built in protection for employers and the board alike, and it would remove the 'perception' from other external parties/groups of an unwarranted sudden reduction in rates.

Paper 5: A Path Forward

Are there any other key considerations that could be considered in the development of a transition plan from the current system to a new Rate Framework?

The Group believes that a significant amount of communication to all employers, regardless of size and current experience rating program, will be required. The communication should be rolled out in multiple forums, including but not limited to:

- Direct Employer communications
- Communication to Employer Groups
- WSIB website & Social Media

With respect to employer-specific information, the WSIB should ensure significant advance notification (1 – 1.5 years notice) of each employer's anticipated *Class Target Rate*, *Employer Target*, and *Employer Actual Rates*.

Proper training and education on the new framework and any applicable electronic portals should be provided in advance in an effort to make the transition as seamless as possible for employers.

Where necessary, it would be appropriate to provide additional resources to employer groups (such as the Office of the Employer Advisor, OEA) in an effort to provide increased information to small employers who may not be equipped with internal resources to review and interpret information as it is conveyed. These enhanced resources should remain in place both during and after the transition, as it can be expected that many smaller employers won't react to the change until it has already taken place.

Additional Comments from The Group:

Operational Policies & Legislative Changes:

Throughout The Group's submission, we've outlined instances where we believe policies should be drafted and considered. The Group proposes that the WSIB

should draft an all-inclusive list of new policies and current policies that will require revisions/updates. Presumably, the Rate Framework Consultation itself will include drafts of these policies requesting employer/stakeholder feedback as part of the overall process.

Similarly, proposed changes in legislation and legislative language should also be shared with stakeholders for consideration and feedback.

Occupational Disease Advisory Panel (ODAP):

Noting the relation to questions on Long Latency Occupational Diseases and the way those claims fit into the Framework, the WSIB should also explore the previous recommendations made in the 2005 ODAP report. Given the overall intent of the new Framework is tied to the recommendations to provide Funding Fairness, it is The Group's position that there is opportunity within the scope of the framework to review how LLODs are reviewed and managed, and that there could be increased fairness obtained by having an arms-length panel to review how Occupational Diseases (new and historical) are assessed with regards to entitlement. A separate body that could evaluate objective occupational, epidemiological, and scientific evidence, in determining presumptive legislation and/or entitlement, would result in a more transparent and objective assessment and implementation of conditions, processes, entitlement, etc.

Fatalities

In the current experience rating programs for NEER and CAD-7, Operational Policy 14-02-17 Fatal Claim Premium Adjustment outlines when and how the WSIB applies a one-time premium increase in the year an employer incurs a traumatic fatality claim. It is The Group's position that the upon the transition to a new Rate Framework this policy will be become void and no longer be applicable, as NEER and CAD-7 will no longer exist. In addition, it is The Group's position that the new Framework would not revise/implement a new or similar version of the policy to penalize employers in a similar manner.

Currently, through discussions within working group sessions with the WSIB, The Group is aware of three possible considerations for how Fatality Claims could be addressed. In the event of a fatality, three possibilities include;

- Employers pay for the actual associated costs based on entitlements, related to funeral expenses and dependents, based on the worker's circumstances. These costs would be subject to a graduated per claim limit based on an employer's insurable earnings and the new Framework, whereby if the actual costs were greater than the maximum claim limit for that employer, the employers experience would be affected only by the maximum. Or,
- The employer is charged with the "average cost" of a fatality, and the amount would NOT be subject to the graduate per claim limit. The WSIB

would determine (and continually evaluate) the "average" cost that a 'fatality' costs the system based on claims data over a period of time (i.e. 6-years prior).

- The employer would be charged with the maximum graduated per claim limit outlined in the proposed Rate Framework. Whereby, the employer pays the per claim limit regardless of the worker's circumstances at the time of the fatality (i.e. funeral expenses, dependents, etc.).

The Group has undertaken various conversations surrounding how fatalities may be treated within the new Rate Framework, and prior to offering a position on the matter The Group feels more information, data, and modelling is required. The WSIB possess the necessary data related to costs and should endeavor to provide additional information to various scenarios.

The Group acknowledges the seriousness of any fatality claim, and the fact that it is likely the most significant claim any employer could experience, and as such additional information pertaining to the costs to employers and the system would be beneficial to all stakeholders evaluating how costs associated with fatalities should be administered.

Customer Service, Reporting, and Access to Information

The Group would be remiss not to express the need for ongoing improvements in services and availability of information to employers. Currently, for employers in the NEER Program, cost related information is issued on a quarterly basis but is typically not communicated to employers until 6 – 8 weeks after the closing of the "quarter". Improved electronic-based systems and portals providing real-time claims information, costs, decisions, etc. would benefit both Employers and WSIB Operations staff. Additionally, over time, improved systems and availability of information should reduce administrative costs.

Through working sessions related to the Framework, it has been shared that the WSIB is looking at the WorkSafeBC model and their online "Employer Safety Planning Tool Kit". The Tool Kit reportedly offers employers not only real-time claim information (costs, benefit types, decisions), but real time experience and premium rate information in the form of forecasting and other information which would benefit employers in reviewing what claim trends, risk profile projections, and premium rate projections are occurring, and where safety measures could be implemented to improve performance. Employers would benefit from additional presentations/slides/ screenshots related to the BC Tool Kit, or a mock Tool Kit, providing more specific examples of what would be provided to employers.

Additionally, employers continue to struggle with the limited electronic services provided by the WSIB with respect to claims management, and it is The Group's position that WSIB costs as well as indirect costs at the employer-level could be

reduced by expanding the e-services offered by the board, including but not limited to:

- Decision Letters
- Submission of Objection Letters
- Submission of Forms (WREO7E, Form 9s, etc.)
- WSIB Requests for Forms (i.e. Employer Progress Reports)
- Confirmation of Claim Numbers
- Appeals – Access to Claim Files
- Communication
    - WSIB could set minimum security/system requirements for email correspondence)

Movement to a more employer-centric model should include efforts to provide more timely information in an easy and accessible manner to all employers.

Self-Insurance

The Group understands that the notion of Self-Insurance and changing legislation is not within scope of the proposed Rate Framework Consultation. However, in an effort to review future opportunities and other avenues for improved funding fairness, The Group requests that the WSIB obtain and provide cost and claim data related to specific time-period data for claims. Specifically;

- Can the WSIB provide data to employers in relation to how many claims are closed within specific thresholds (5-days, 7-days, and/or 10-days of onset), along with associated claims costs and benefits paid?
- Can the WSIB review and analyze the data and determine the administrative and man-power costs associated with these "thresholds" to determine model what benefit (or detriment) a Self-Insurance model may provide to employers and the WSIB?

WSIB Autonomy

The Group believes that the WSIB's current policy and legislative approach which clearly outlines the WSIB's accountability and jurisdiction to oversee and apply funding and rate setting should continue. The efforts in recent years to ensure the UFL can be paid within the designated time frame, as well as the assurance afforded to employers that the premium dollars gathered are adequate to cover future benefits should remain in place.

Conclusion

Overall, based on the information included to-date The Group is of the position that the proposed Rate Framework will drive employer accountability and proper claims management which should drive decreased claims costs, reduced rates, proactive Health & Safety measures in the workplace and better prepare employers to visit true trends in costs, claim frequency, severity, etc.

Going forward, The Group would suggest that the WSIB should consider offer training/Web-Ex sessions to employers to become familiar with the new Rate Framework. This would assist in reaching as many employers (large and small) as possible and limit confusion and increase the knowledge base moving towards any new Framework.

We appreciate the opportunity to provide comments on this very important WSIB Rate Framework Consultation. We look forward to the next phase of the process and reviewing the report and submissions provided by all the stakeholders.

Yours Sincerely,

Bruce Power ***Enbridge Gas Distribution*** ***Hydro One***

Union Gas ***Ontario Power Generation***

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August 4/2015

Workplace Safety & Insurance Board

I've read Pricing Fairness: A Deliverable Framework for Fairly Allocating WSIB Insurance Costs (Stanley report) and your Rate Framework Reform document. It was quite a lot to digest, I'll try to summarize my thoughts as best I can. I will commence with a brief overview of our company.

Venshore Mechanical Ltd. is Northwestern Ontario's largest pipe fabricator and industrial contractor. We provide advanced fabrication and mechanical services for industries including forestry, petroleum, chemical, grain handling, power generation, mining and natural gas transmission across North America. Our website is www.venshore.com and I invite you to take a look at some of the jobs we've done in the past.

When I started working at Venshore Mechanical Ltd. in 1999 we were predominantly an industrial contractor. 90% of our jobs and revenues were from working in the pulp and paper industry. From 1999 to today the pulp and paper industry is struggling. Several mills went bankrupt and our volume of work at the pulp mills continues to evaporate.

To combat this erosion, we built a pipe fabrication shop. There is a picture of it on the website http://www.venshore.com/pf-facility.php. This is the area of our business that we'd like to grow in the future in order to make us less reliant on the dying pulp and paper business. The idea is to bring the boom out in the western provinces to Thunder Bay. We've done work at our fabrication shop for customers such as K+S Potash, Saskarc Industries and Co-operative Refineries all located in Saskatchewan. These jobs were for modules or piping skids that we'd manufacture and ship to Saskatchewan. All the work at the pipe fabrication facility is considered manufacturing. Our rate group for work at the fab shop is 375- Plate Work. Our experience rating program for our manufacturing is NEER.

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Our other three rate groups are all construction rate groups. They are as follows:

707- Plumbing and Heating, Install
723- Industrial, Comm/Construction
737- Millwright and Rigging Work

We are currently in refund status for the NEER rated group, but in surcharge for CAD-7. I would argue that 95% or more of our accidents occur at pulp and paper mills. If you were to check our accident cost statements you would see that rate group 707 and 737 bear almost 100% of the costs we generate.

Conversely, rate group 723 general contracting there are little to no costs and rate group 375 there are little to no costs as well. These rate groups do not have any pulp and paper work in them.

Our pulp and paper work is labour intensive (no subcontracting) as it's generally just maintenance work, but only represents about 30% of our total sales volume. General contracting (rate group 723) currently represents about 50% of our total sales volume. It is not very labour intensive as much of the revenue generated is sub-contractor work.

In paper 3 of the preliminary rate framework you propose to do away with multiple classifications and we would just have one rate, our predominant class which is currently 737 our highest rate of the four classes we are part of currently.

I would argue that puts us at a significant disadvantage when we bid projects that are currently part of rate groups 375, 707 or 723. When we bid a straight stand-alone fabrication shop project (rate group 375 currently) we are bidding against businesses that are manufacturers only. They will benefit from a lower rate as that type of work presents less risk of injury. When we bid a job as a general contractor (rate group 723) against other companies that are general contractors only we will be at a disadvantage as well.

This policy of one class only puts businesses that work within different sectors of the economy at a significant disadvantage when bidding work if their worst performing class happens to have the largest value of insurable earnings. When I look back at 2014 and 2013 and multiply our total insurable earnings times rate group 737 it equates to an additional $172,000.00 in additional

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premiums over a two year period. A nice 25% increase in premiums for the WSIB which more than offsets the elimination of our CAD-7 penalty if indeed the program ceases to exist.

Elimination of CAD-7 and NEER Programs

I don't like the CAD-7 program and never have. It is the most punitive, ridiculous experience rating program in all of Canada. I understand the math behind it and track our surcharge or refund each year.

It is currently weighted 2/3 costs and 1/3 frequency. That is a slight improvement over what it used to be which was ½ cost ½ frequency. I remember 15 years ago when we could have 4 or 5 frequencies and be at the expected number of frequencies and in essence break-even. That has been tightened up over the years and now 1 frequency equates to an increased surcharge or reduced refund to the tune of about $21,500.00 x 2 years= $43,000.00 for an accident of 8 days or more. This is for the frequency only. This is utterly ridiculous considering we already pay $300,000.00 to $400,000.00 per year in premiums, then if we have an accident we get raped again. Why pay premiums, when we can't have anyone draw benefits from the program without paying for the entire claim from start to finish, or an exorbitant penalty. Why was this not addressed in your paper?

I have no issues with eliminating these programs as I can't stand them but cost wise with this one classification system we'll pay more overall as every dollar of insurable earnings will be at 6.90/100 or perhaps more as our performance within the rate group is likely below industry average.

Difficulties/Issues we have with Experience Rating in Construction

Venshore Mechanical Ltd. is a unionized contractor. We employ unionized pipefitters, millwrights, ironworkers, boilermakers and operating engineers. These men are all temporary they work for the duration of the job, then they are laid off. Many of them we see for short, brief durations of time only.

These men consider the union their employer. Their loyalty is to the union, not the individual contractors. They may get dispatched to 8 or 10 different contractors within the same year. Once they are laid off, they sign the out of work list at the union hall and wait for their next dispatch

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call.

WSIB's current return-to-work policies treat the men like they are permanent employees the moment they get injured. If we have a modified work claim or lost time claim we have so called WSIB return-to-work specialists descend on us and attempt to pressure us into doing things that may or may not be in our best interest or the employees, and may contravene the collective agreements that are in place.

These collective agreements have not been updated with regards to policies that address WSIB's return-to work requirements ever. So we are stuck with arbitrary collective agreements that haven't been modernized in 20 years that are not in sync with the WSIB's return-to-work agenda.

The WSIB has this holier than thou attitude but everyone knows that their main objective is to not pay out anything. The goal at WSIB is to collect premiums, spend them on staff wages and excessive holidays, stupid promotional advertising telling us what a great job they are doing. Their studies (Morneau, Sobeco for example) vilify employers and don't address WSIB waste or employee fraud.

I'm not against the goals of return-to-work. It can work if all parties are working towards the same outcome. In construction though this is not always the case. The main issue is that there is no incentive for the men to get off of modified work. Reduced hours for full pay, they become permanent staff as long as they can stay on modified work. They are in essence treated better than the healthy workers that worked safely in the first place. We can lay-off the healthy men at any time, once you're on modified work you're treated as permanent so long as you can convince the doctors that you can't return to your regular duties. Are we forced to keep men on modified work employed, no, but if we don't we'll get hit with a $43,000.00 frequency and pay most of the costs of the claim through increased CAD-7 surcharges.

We all know what happens. Claims that are supposed to last 2 months doing modified work, become claims that take 9 months of doing modified work. We waste tons of taxpayer dollars sending these guys to doctor's to get another Functional Abilities Form done. There is absolutely no incentive for the worker to get well, if he or she is not regularly employed in the trade. They get dispatched to jobs by the hall so they don't have to worry about what the future effect of milking a claim for an extra 7 months is. Again, their loyalty is to the union, not individual contractors.

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I have a simple recommendation that will save the WSIB millions. At the time of injury send the man for a doctor's appointment. Have the doctor indicate an expected recovery time at the onset of the claim. If it's 3 months then that's it. No re-evaluation's once it's set at 3 months it stays at 3 months regardless of what the employee states at the end of the 3 month period. The employer's obligation is for 3 months of modified work, then it's layoff and back to the union for dispatch. It serves two goals, cost certainty for the employer or for WSIB if there is no return-to-work happening on the claim. The second goal is it stops all these men from tying up doctor's time unnecessarily, and allows them to focus on the people that legitimately need care.

So an employer's perspective on return-to-work is basically this. Is the injured party a character guy that will treat us fairly, or someone that will do anything, try anything to get on the system and or milk the claim to death. Sometimes, we know as the men have a history, sometimes we don't. If they are in the first category then generally it is to everyone's advantage to proceed with return to work. If they are in the second category, it becomes a more challenging call. There are some cases, that as an employer, we'd rather just pay the penalty and lay the guy off. Who needs a 9 or 10 month drama of stupidity where you will sink $70,000 or more in wages for an idiot that has no interest in getting well. Not to mention it takes other key people away from managing the business rather than babysitting the employee and the pests at the WSIB.

Occupational Disease Type Claims

Currently, the following occupational disease claims are exempted from experience rating:

Acquired Immune Deficiency Syndrome (AIDS)

carcinoma

chest diseases due to aluminum and cadmium exposure

chronic noise exposure

chronic obstructive lung disease

pneumoconiosis due to asbestos, silica, talc, hard metal (cobalt), and other mineral dust

scleroderma.

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I wouldn't know definitively, how much these diverted claims out of experience rating and into the general rate pool are as a percentage of total WSIB claim costs, but I would guess particularly in pulp and paper and mining it has to be a pretty high percentage. These claims even if they aren't that big in actual claim count are often the most expensive because the costs can go on for decades as they are chronic issues.

The WSIB's goal in rate setting, experience rating etc. is a safe workplace and to attempt to be fair to all employers with regards to premium rates. Subsidization is a problem but it's an issue that will always be there, because realistically you can never make it fair to everyone. Many of the costs created today are from workplace conditions that occurred 20 or 30 years ago. In the vast majority of cases the businesses that were responsible for the costs from conditions of 20 or 30 years ago are now bankrupt or there has been an ownership change etc.

If the condition is one of the exempted CAD-7 claim types such as asbestosis or chronic obstructive lung disease there are no issues. The costs of the claim are part of the general rate pool and no individual employer gets held responsible vis-a-vis experience rating.

However, currently there are some claims that are occupational disease type claims that are not exempt from experience rating. One that I've seen quite frequently is HAVS (Hand Arm Vibration Syndrome). We must have had 4 or 5 of these types of claims and the problem is always who do you pin the claim on. The men are often 50 years plus they've worked for 10 or 20 different contractors over a 30 year career. Often, there pre-dominant employer is now out of business. WSIB's practice is to charge the last employer with the costs of the claim for experience rating. We've been charged for costs of this type of claim for men that have worked for us for a month or two out of a 30 or 40 year career.

We always ask for SIEF (Secondary Injury Enhancement Fund) on these types of claims. I state that the man has only been with us for 2% of his entire career, how is it reasonable to charge us with 100% of the claim costs. In most cases SIEF is granted for 90-95% of the claim.

There is talk of discontinuing SIEF. There are complaints about employers abusing SIEF by asking for it for every single claim. I can see this from a few different perspectives. From WSIB's perspective they may feel it's inappropriate for employers to divert claims from experience rating to the general rate pool. This diversion makes all companies that are part of the rate group subject to higher premiums, some employers attempt to use SIEF to the max, while

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small employers may not realize the program exists. Venshore Mechanical Ltd. does not ask for SIEF for every single claim but we will ask for cost relief in the following situations:

1) HAVS claims already mentioned above or other occupational disease type claims that aren't excluded from CAD-7, when we were not the pre-dominant employer

2) Claims that just don't make any sense. Someone stumbles and there shoulder is ruined for life. We get a claims manager to check the file to see if he has previous claims of the same body part to determine whether it is a new claim, or just a reaggravation or re-occurrence of a previous claim. If we see that he had a previous claim or claims, we may ask for SIEF in that situation.

3) Tradesmen that have a long history of questionable WSIB claims. There are some bad apples in the construction industry, and while WSIB doesn't like to hear this I could go back and quote some claim numbers that were a flat out scam attempt by employees. There was no attempt to charge the men with fraud or penalize them in any way. Why?

I don't feel that is an abusive use of SIEF. Also, it should be pointed out that employer's can't abuse SIEF unless WSIB decides to grant cost relief. So why complain about SIEF, when WSIB's own employees have granted it in the first place. If SIEF is being granted too often, then that is an issue to blame the WSIB for, not employers.

I am against the elimination of SIEF unless the WSIB and the local trade unions agree to the following:

1) Employer gets full access to any and all tradesman's WSIB claim history and WSIB file prior to hiring.
2) The unions allows us to reject any tradesman based on their claim history, with no penalties.
3) We get full access to the tradesman's medical files from their family doctor prior to deciding whether to employ them.

It's only fair, we get our proposal/tenders rejected because of our safety record. Why should the employer not have some control over their safety record. Those three things would give us a fighting chance to avoid claims of men that are broken down before they even start working for us.

If WSIB is determined to end SIEF, then the list of occupational disease type claims that are

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excluded from experience rating need to be broadened substantially. After the fact claims, (claims that are started 10 years after the man has worked for us) should also be excluded as they aren't from a specific incident while working for us, they are a result of a 40 year career where they only worked for us for a short period of time.

If SIEF is eliminated what does WSIB propose to do with re-aggravations of previous claims with other employers? What should happen is a re-occurrence should occur and the costs should be charged under the original claim to the original employer. What usually happens though is WSIB says brand new incident, not related to a previous claim so they charge a 2nd employer for the same chronic issue. Is anything being done about that?

On pages 44-49 of Paper 3 of the Rate Framework Reform you speak of actuarial predictability and different mixes of collective vs. individual responsibility. My understanding of it is that as insurable earnings and total number of claims increase our rate will be based more on our individual experience than the collective experience of the group.

WSIB proposed measurement of Actuarial Predictability is 75% insurable earnings and 25% number of claims. I'd prefer it if you'd go with 75% insurable earnings and 25% claim costs as I feel that is fairer to all. NLT (No Loss Time) claims are not costly to the WSIB, lost time claims are. We have several claims that are simply men having a foreign body taken out of their eye. No lost time occurs, when I look at our performance cost wise in any one year I can usually pin 1-3 claims as 95-98% of our total costs. Those 1-3 claims are lost time or modified work claims they aren't NLT claims.

If the WSIB does stick with 75% insurable earnings and 25% number of claims I think the issue of not reporting claims (particularly claims with no lost time) would increase. If you were to use claim costs minor claims would get reported as they would have little to no effect on WSIB rates. It's pretty much impossible to not report a lost time claim, so if non-reporting of claims is an issue I'd suggest that the claims that aren't getting reported are the minor NLT claims as those are the ones where the employee is indifferent in some cases as to how the employer treats the incident reporting wise. Non-reporting of claims only occurs if the employee is willing to go along with it. I would argue that the only time employees are willing to go along with it is when there is no lost time in the equation.

One comment I'd have about this entire proposal is regarding the amount of double talk through

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the entire thing. There are a few common themes or biases throughout. On the one hand you talk about subsidization as a perverse thing, employers in the arts sector for example subsidizing the construction sector or the mining sector etc. Or in other cases it's smaller employers paying for the sins of larger employers etc. This is seen as problematic and WSIB is attempting to make premium rates fairer by having more individual responsibility and less collective responsibility placed on firms. (but only if your mid-sized or larger, if you're smaller you get a free pass)

Then on the other hand WSIB seems to place emphasis on rate stability and predictability. I would argue this works against your goal of less subsidization. As you put in more and more rules that limit changes to rates (such as you can only move up or down the risk bands to a maximum of three per year) you are in essence increasing the amount of subsidization that needs to take place.

Mid to large size firms rates will be determined largely by their individual claims performance. Small employers will receive the same collective rate whether they have excellent performance or consistently poor performance. Small employers get a pass from having to do anything about poor performance because they are small. Small employers will get subsidized from the gains and improvements made in claims prevention by middle and large sized employers.

My point is, with an insurance type product such as WSIB there will always be subsidization to some extent. The entire purpose of WSIB is to pool/share risk. Pooling and sharing risk equates to subsidization. If subsidization is a bad thing you could allow companies to opt out of WSIB and self-insure. That would save us a lot of grief and misery.

So reading between the lines what the report says is:

1) Subsidization is good if large is subsidizing small.
2) Subsidization is bad if small is subsidizing large.
3) If you are small WSIB has no expectation for you to make improvements regarding your safety performance. If you are small in essence you get a free ride. If you are small WSIB values rate stability and predictability.
4) If you are mid-sized or large it's improve your performance or pay higher rates. You don't get a free ride as the small companies do and you benefit less from the efforts of the collective group.

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That's a pretty inconsistent message don't you think?

I would be interested in seeing an impact of these changes with real numbers so we could see what our new rate would be and how it was arrived at.

I look forward to hearing your response.

Sincerely,

Tim Stevens
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WSIB

Consultation Secretariat, 17th Floor

200 Front Street West

Toronto, ON M5V 3J1

Date: September 28, 2015

On behalf of the Canadian Courier and Logistics Association (CCLA) and its stakeholders, we submit the following in response to the Workplace Safety and Insurance Board's (WSIB) invitation for input regarding the Proposed Preliminary Rate Framework.

By way of background, the CCLA is a non-profit organization with a broad-based membership of time sensitive delivery and logistics services providers operating in Canada. Our members include large enterprises with global delivery networks, such as DHL, FedEx, Purolator, TNT and UPS, as well as overnight transborder integration firms and mid-size local and regional delivery firms with strong area distribution networks. The association also includes smaller local firms such as same day and messenger companies maintaining an extensive stake in the time sensitive shipping business. In total, the CCLA's members employ or use the services of over 35,000 Canadians, maintain operations centres across Canada, and generate annual sales in excess of $10 billion per year. CCLA member companies operate dozens of aircraft both owned and chartered. The contribution to the Canadian economy is vital in a "just in time" world. Member companies provide both time-definite and day-definite services.

The CCLA has two primary points of feedback on the Proposed Preliminary Rate Framework, and four secondary points:

Risk Disparity

Our initial concern with the WSIB Technical Session presented in Toronto on April 28, 2015 was with present Rate Group 577 "Courier Services" being included in Industry Class K along with present Rate Group 570 "General Trucking". We believe the risk disparity is too significant. There are significant differences between work characteristics of the courier and general trucking industries which would warrant further breakdown of the industry groupings. A broad grouping of 22 classes is insufficient and would be unnecessarily detrimental to the Courier Industry. WSIB has satisfactorily

addressed our concern with the Risk Disparity Analysis Proposal dated August 2015, where the Board proposes 32 Industry Classes and where Courier Services is placed in Industry Class K2. While we do appreciate that the risk band approach within the new Rate Model would not dictate that Courier Services firms would all necessarily gravitate to the Industry Class K Target Rate of $4.26, we believe the risk disparity was too significant and our concerns are alleviated with the 32 Industry Class proposal. We strongly support the 32 Industry Class Proposal, namely, separation from present Rate Group 570.

We also recognize WSIB's approach in ensuring Industry Classes are of a minimum size threshold to ensure reliable and predictable industry classes and we agree that Industry Class premium rate stability from one year to the next is an important principle required of a new Rate Model.

Graduated Risk Band Limits

Noting the size range of firms in the Courier Industry, we support the proposed graduated risk band limits, where risk bands are linked to the predictability scale (in a manner similar to the graduated per claim limit). We support the proposal to limit smaller firms to an annual change of +/- 1 or 2 bands, and larger firms moving +/- up to 5 risk bands. This concept associates a firm's size with their participation in experience rating, and we support this proposed amendment.

In addition to these primary concerns, we are submitting feedback on two additional items in the proposed rate framework:

Six-year Window

NEER was a 3-year window, now a 4-year window, and WSIB now proposes a 6-year window. We do not support the expanded window concept. However, in the event WSIB moves forward with the 6-year window, we would request that the Board strongly consider a weighting scenario, recognizing/ encouraging Prevention Program enhancements by attaching greater weight to the more recent years (placing greater weight on years 1-3, less weight on years 4-6).

Cost Relief

The WSIB communications around the elimination of Cost Relief focus on (i) the percentage of firms that actually benefit from Cost Relief and on (ii) the initial intent of Cost Relief (post WW2). We believe Cost Relief in some form, is required. While point (ii) may be true, we would counter that point with the fact that the definition of a compensable injury drawing benefits under the Act has also changed markedly (post WW2). There simply are cases where a pre-existing or underlying condition has significantly impacted the injury/ recovery in a claim and it is unfair to burden the employer with the full costs of said claim.

Regarding point (i), under the current Experience Rating (ER) schemes, the majority of firms covered by WSIB are heavily "insured" due to their smaller size. Those firms do not necessarily benefit from Cost Relief, since the insurance features in the ER plans provide their stop-loss insurance protection in prolonged claims. For larger firms, Cost Relief is imperative, especially in light of the Board's proposal to move to a six-year window.

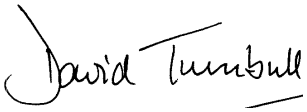
Safety Group
Data supports that the Quebec Safety Group approach is working to reduce claims costs within the system on a group basis. By offering a mechanism where firms can register into a Safety Group, assuming risk at the magnitude of the group while also realizing increased rebate opportunity, will allow more firms to more fully participate in Experience Rating with significant incentive in prevention and early return to work for small and medium sized organization.

We recommend modeling the Safety Group option similar to the effective CSST model.

Transition Plan
We are recommending a gradual implementation of the new Model. Limiting the impact and allowing firms to fully understand the new Model before moving forward fully is best.

We thank the WSIB for the opportunity to provide input to the Proposed Preliminary Rate Framework. Our association is available to answer any questions should you require any clarification on the above recommendations.

Sincerely,



David Turnbull
President & CEO
Canadian Courier & Logistics Association

CC. Elizabeth Witmer, Chair WSIB

Advisory Committees

WSIB RATE FRAMEWORK STAKEHOLDER CONSULTATION

October 2015

RECOMMENDATIONS

Respectfully submitted by:

WSPS Advisory Committees Representing Ten Ontario Sub-sectors

In response to the WSIB Proposed Preliminary Rate Framework

Released April 2015 and

WSIB Response to Questions Submitted by WSPS Advisory Committees in June 2015

WSPS.CA

Workplace Safety & Prevention Services®

Advisory Committees

WSPS Advisory Committees' Response to

WSIB PROPOSED RATE FRAMEWORK

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Appendix A: About WSPS Advisory Committees

Appendix B: WSIB Response to Questions from WSPS Advisory Committees

A. INTRODUCTION

The employer members of the Advisory Committees (ACs) of Workplace Safety and Prevention Services (WSPS) appreciate the initial responses provided by Workplace Safety and Insurance Board (WSIB) staff to the committees' questions regarding the proposed preliminary rate framework. This submission represents the next step in the discussion of the framework. The industries we represent collectively employ more than 3.8 million Ontarians.

The material in this submission has been developed by the employer stakeholders of the WSIB, and volunteer members serving on ten WSPS advisory committees, representing more than one hundred firms in the agriculture, manufacturing and service industries.

Our mandate is to mobilize our health and safety expertise and sector-specific knowledge to help WSPS achieve its mission. The ten committees represent ten sub-sectors within the agriculture, manufacturing, and service industries. WSPS draws on our expertise and insights to aid in the development of its strategy, programs, services and products.

Our volunteer role falls into three categories:

- Improvement of WSPS occupational health and safety solutions;
- Development of new initiatives; and
- Advocacy.

Appendix A provides more information on our role.

A. INTRODUCTION

It is important to emphasize at the outset that the comments and recommendations in this submission were authored by the WSPS advisory committee members.

Further discussions within the ACs and the Executive Advisory Committee (Chairs and Vice Chairs) have identified some remaining general and specific points of concern. This paper will address the general points and then the detailed items. Many of our concerns address complex aspects of the proposed changes. For this reason, we request an opportunity to meet with the appropriate senior representatives of the WSIB in order to explore the implications of the changes and our conclusions and recommendations.

RECOMMENDATION #1
The WSIB should meet with representatives of the WSPS Advisory Committees to discuss this submission.

B. GENERAL COMMENTS

1. Use of the NAICS Classification

After review of the additional material provided by the WSIB and further discussion, the ACs agree that NAICS is in principle a reasonable way to organize the new rate framework. Nonetheless, it remains to be seen how this new organization will play out in terms of class and employer rates. In particular, the members of the Agriculture and Horticulture Advisory Committee note that the activities included in the classification A-Primary Resource Industries do not coincide with the NAICS Categories. This anomaly must be satisfactorily cleared up before final agreement can be given.

CONCLUSION #1
NAICS is in principle a reasonable way to organize the new rate framework, but final agreement will be withheld until anomalies between NAICS and the Primary Resource Industries group in the allocation of agricultural activities are resolved.

It should facilitate ease of administration and reporting to have the WSIB and the Ministry of Labour (MOL) use the same classifications. For example, if the MOL decides to place a special focus on inspections in a particular area of activity, it would be helpful for it to define the area using the same classification system as the WSIB. Not only would this facilitate administration, but it would also reflect the fact that performance in a variety of employment standards interconnects with WSIB experience and health & safety performance.

The new framework must be reviewed after it has been in operation for a while to ensure it is operating as expected, and any needed adjustments are made. As the framework is proposed to be based on the NAICS system, it would make sense to align this review with one of the regular revisions of the NAICS classifications carried out by national statistical agencies every five years. The first NAICS revision after full implementation of the new rate framework would be the appropriate time for a review.

RECOMMENDATION #2
The rate group classifications should be reviewed at the time of the first review of the NAICS classification after the framework has been implemented.

1. Use of the NAICS Classification CONTINUED

The restructuring into the new framework also presents an opportunity to change the system by which employers are identified. We recommend the WSIB use the Single Business Number issued by the Canada Revenue Agency (CRA). This would simplify administration within a company and facilitate the management of HR matters for employers that have operations in more than one province. We note that the CRA and WSIB already share data files.

RECOMMENDATION #3
The WSIB should use the Single Business Number issued by CRA.

2. Number of Rate Groups

It is our understanding that consideration is being given to expanding the number of rate groups from the initial proposed 22 to 32. We support increasing the number of rate groups. Given there are 155 rate groups under the current framework and all are presumably actuarially credible, there should be no issue with how stable 32 will be. However, there is no information on how the 22 groups will be reallocated into 32. Until this and the implications for the new groups and the employers within them are clear, we can give only conditional support. This support will be contingent on the results employers obtain from the simulation tool proposed below in the section on target rates.

CONCLUSION #2
The ACs support the move to a larger number of rate groups than 22, subject to a satisfactory explanation of the new groups and information on the implications for employers.

The role, effectiveness and fairness of the risk bands will be critical to the success of the rate groups. A wide range of activities with very different hazards and risks will be grouped together into a single rate group, so the risk bands will be the tool that ensures differentiation and fairness among the members of a rate group. For this reason, employers must be provided with a simulation tool that will enable them to work through, in detail, how their final net premium costs will evolve from the current system of a rate and series of incentives/penalties to a position on a risk band.

2. Number of Rate Groups CONTINUED

The move to a larger number rate groups should be helpful in properly classifying the activities of temporary help agencies by providing a little more flexibility. This plus the introduction of rate bands should help to discourage rate-shopping.

3. Second Injury Enhancement Fund (SIEF)

How to handle pre-existing medical conditions and illnesses is a matter that will only grow in importance and complexity. The Ontario labour force continues to become more mobile, with individuals working for multiple employers in differing industries within their working life, even within a calendar year. The average age of the labour force is also increasing. The WSIB response to the June questions noted there is "a clear consensus that some form of cost relief is required." The response states that this perspective is important and will assist in making the most appropriate decisions. In response to a question about the future implications for employers who may hire individuals with pre-existing conditions, the WSIB noted this was outside the scope of the rate framework modernization.

This position is completely inadequate and unacceptable. If maintained, it has the potential to compel employers to reject the entire rate framework proposal. Before employers agree to the new framework we simply must have a clear, acceptable proposal for how the WSIB will fund pre-existing conditions. This proposal must clarify where the liability rests for three elements potentially involved in a claim that includes pre-existing conditions:

1) The costs relating to the injury immediately attributable to the current work activity;
2) The costs relating to prior workplace injuries that occurred in Ontario; and
3) The costs relating to outside factors, e.g., medical conditions and illnesses incurred on personal time not at work.

RECOMMENDATION #4
The WSIB must have a clear, acceptable proposal for how it will fund pre-existing conditions.

There is no question this is a complex matter. Large employers are concerned that they will carry an excessive burden of these costs if smaller employers "cap out" quickly and the rest of the costs are allocated to the rate group. ACs with large numbers of small businesses note that this is a particularly important matter for these employers as they cannot support the cost of pre-existing conditions in the absence of a SIEF.

3. Second Injury Enhancement Fund (SIEF) CONTINUED

They add that small businesses comprise the overwhelming majority of WSIB clients. Despite the complexity of the matter it must be resolved in a manner that attracts consensus support. Not only is this a matter of equitable treatment of employers, but without some SIEF-type facility, employees with pre-existing conditions will be significantly disadvantaged in the employment market.

This section also covers a point on long-latency diseases. The removal of this policy would have effects similar to the elimination of the SIEF. If the new framework were expected to incorporate coverage of these diseases the financial effect on an employer who hired a person later in his or her career could be devastating. This would damage the employment prospects of older workers in many sectors. It could also impact labour market re-entry success as well as return to work options for previously injured employees.

CONCLUSION #3
Removal of the policy on long-latency diseases would have effects similar to the elimination of the SIEF.

In our questions submitted in June 2015, we noted the implications of activities outside the workplace for workplace injuries and recovery. The WSIB response was that this matter was outside the scope of the rate framework project. We accept this answer, but would note it has not resolved the issue. This is another matter that will only grow in importance with the passage of time.

4. Target Rates

The proposals on target rates continue to be a source of confusion and uncertainty. ACs containing large numbers of small businesses have heard many of these employers emphasize they do not have the staff and expertise to work through the proposed system. Unable to understand it or the implications for their costs, many of these employers are expressing serious doubts about the proposed framework.

The question of how disparity/deltas within each class will be managed was reiterated in the June 2015 questions to the WSIB. The response was a reference to slide 27 in the April 22 2015 Technical Presentation. The slide only states that risk bands will allow, "the system to fairly assess individual employer-level claims cost variability in the rate charged..."

4. Target Rates CONTINUED

This is not an acceptable answer to an important question about the operation of the new system. The additional risk disparity analysis published on the WSIB web site in August provides no meaningful additional clarity about how risk bands will operate.

CONCLUSION #4
The WSIB has not responded adequately to employer questions about how disparity within rate groups will be handled.

There is a lack of clarity about the implications, even with a larger number of rate groups, of the grouping together of employers with different experience. As an example, RG 962, Advertising and Entertainment, has been allocated into the N-Professional Scientific and Technical classification. Rate Group 962, by the nature of the work, has a naturally much higher number of claims and more expensive claims than the other activities with which it will be grouped. This raises doubts about whether 962 is accurately classified. These concerns must be addressed, both individually and as part of the design of the system. The implications are particularly unclear for employers within a rate band whose experience is markedly different from the average, i.e., those at the very top and very bottom of the band. This position puts a hard boundary on one direction of movement of their premium. As an example, if an employer at the very bottom of the risk band improves its performance even further what are the implications for its premium rate? These companies must know what the rate implications are before they can support the organization of the rate group and the rate bands.

It is particularly important to explain clearly how a risk band will work for a group of employers that is comprised of both large and small employers, and how their divergent circumstances will be accommodated. In response to a question in the June 2015 submission, the WSIB indicates that an employer's risk profile will be based only on claims costs and not include any assessment of health and safety indicators. This does raise questions about what incentives there will be in the new framework for employers to increase their efforts to improve health and safety. This is discussed further in the section below on incentive programs.

Employers must have a clear explanation of how the risk bands will operate in order to understand the implications for their organization. This is a critical factor for employers, and they cannot agree to the new framework without a clear understanding of how the risk bands will operate.

4. Target Rates CONTINUED

RECOMMENDATION #5
The WSIB should provide a clear explanation of how risk bands will operate.

Given the magnitude of the change proposed, the only possible solution is for the WSIB to indicate to each employer the risk band they are expected to be allocated, an estimate for the average rate and a tool for the company to estimate its position within the band. This tool must enable an employer to calculate its current net premium cost, accounting for all applicable rebates and penalties, and then compare this net cost to a simulated calculation for the same set of facts under the new system. Without this information the decision-makers within an organization have no idea of the financial implications they may be agreeing to, something that conflicts with their fiduciary obligations to their organization. This tool must be available for use before final approval of the framework. This work will also benefit the WSIB, as doing a first run in advance will answer a lot of concerns and highlight any issues before the new system is implemented.

RECOMMENDATION #6
The WSIB should produce a simulation tool that can compare an employer's current net premium to its costs under the new framework. This must be available to employers in advance of implementation of the framework.

There has been a temptation to categorize employers with claims costs higher than their risk group as "bad employers". With the move to a small number of rate groups and the use of risk bands to accommodate the wide range of experience within each rate group, this facile accusation will be even less tenable. We strongly recommend the WSIB emphasize in its communications that differing cost experience **by itself** is no indicator of an employer's commitment to the health and safety of its employees.

RECOMMENDATION #7
The WSIB should emphasize that differing cost experience by itself is no indicator of an employer's commitment to health and safety.

4. Target Rates CONTINUED

This is another area/reason for closer integration between the WSIB and the investigation/enforcement activities of the MOL. The MOL must not use simply the existence of relatively high claims cost as a guide to which activities or groups of employers to target for focused inspection or other enforcement activities. A practice of selecting employers in the highest risk bands or at the top of individual risk bands for enhanced enforcement activities on this criterion alone would be ineffective and counter-productive. It would undercut support for the rate framework and provide an excuse for other non-compliance behaviours. This is not to argue there are no bad employers. Rather to urge that tools be developed to identify such organizations more effectively and accurately. The ACs ask the WSIB to commit to joining with employers in demanding that the MOL develop a more sophisticated approach to setting priorities for enforcement activity. This should include the use of effective risk analytics, and other data trends to support the identification of what describes a poor performing firm.

RECOMMENDATION #8
The WSIB should urge that the MOL develop a sophisticated approach to setting priorities for enforcement activities.

For ease of reference to comments in this section two documents are attached as follows:

- **Appendix A:** About WSPS Advisory Committees; and
- **Appendix B:** WSIB Response to Questions from WSPS Advisory Committees – June 2015

The ACs recognize under the proposed rate framework, the creation of risk bands should mean an employer's costs match more accurately to its claims experience, and the resetting of the rate on a moving year average should provide an incentive for improving the organization's performance. A major attraction of this approach is that it moves the focus onto an employer's experience and how that experience evolves over time. Another is the actual rate for an organization is accurately set at the start rather than being the result of an unpredictable calculation after the fact. In this approach the employer retains the funds rather than waiting for them to be repaid, sometimes after considerable delay. It also undercuts traditional accusations that an employer with an above-average claims cost is, by definition, not sufficiently committed to improving health and safety. One aspect that has not been addressed is how this approach will account for any changes that may result for appeals and reversals of decisions. Employers need clarity on this aspect.

4. Target Rates CONTINUED

RECOMMENDATION #9
The WSIB should explain how rates will be readjusted in the event of changes arising from appeals and reversals of decisions.

5. Incentive Programs

The existence for decades of a visible system of rewards and penalties under NEER and other programs has created a pattern of behaviour within employers that will be resistant to change. A rebate cheque or penalty notice after the closure of a year provided a high profile statement of how the organization was performing and carried a real bottom line message. This has been particularly important for smaller employers. In some larger companies this financial summary of performance became a critical element in the evaluation of the employer's staff working on WSIB programs such as return to work and health & safety programs. In some cases it is even determinative in establishing future budgets. The rebate was used as a tangible measure of the ROI on these activities. This emphasis will be lost in the new approach and there is a risk that commitment to and funding for these programs could be affected. It will be important for the WSIB to develop means of effectively communicating the powerful benefits of improving claims experience.

RECOMMENDATION #10
The WSIB should develop a plan to communicate the benefits of improving claims experience.

The loss of visible incentives will affect small employers with particular force. An employer with fewer than, say, 20 employees may not experience a claims incident for many years but still not move within its risk band. This removes any incentive to emphasize health and safety other than concern for the workers. Currently small employers are eligible for a no accident benefit. The WSIB should consider continuing this instrument to emphasize the importance of working constantly to improve health and safety.

RECOMMENDATION #11
The WSIB should retain the no accident benefit for employers currently eligible for it.

6. Other General Comments

The proposed framework represents an enormous change to the system, and a challenge to all who operate within it – the WSIB, the MOL, health and safety associations, and most importantly employers and employees. The chances of its success will be enhanced if there is good communication among all involved parties and transparency into all the decisions of the WSIB. Responses such as 'reference a slide from an old presentation' rather than an answer are not the way to go. We recommend the WSIB prepare a transition plan that details how the workplace parties will be partners in the process.

RECOMMENDATION #12
The WSIB should develop a plan explaining the roles of its partners in the shift to the new framework.

One area in which greater transparency is required is with respect to the WSIB's administrative costs and the annual costs to administer the OHS Act. Employers should have a clear accounting of the full range of WSIB expenditures – including annual contributions to the MOL Prevention Office, MOL Operations, MOL Policy Branch, IWH, research programs, health and safety associations, etc. The WSIB should provide a clear accounting of how the various elements of WSIB administration and other contributions are allocated to the premium rate. This will help employers and employees to determine whether they are getting value for the money allocated to these activities.

RECOMMENDATION #13
The WSIB should provide an accounting of how administration costs are allocated to the premium rate.

Given the size of the change, the WSIB should make a commitment not to introduce any additional policy changes until the framework is in place and running well.

RECOMMENDATION #14
The WSIB should not introduce any additional policy changes until there is consensus that the framework is operating well.

6. Other General Comments CONTINUED

The WSIB should join with employers in making the same case to the MOL. In addition to the proposed rate framework, employers are also grappling with the introduction of a new province-wide pension plan, and may face proposals for complex changes to the Employment Standards Act. This is simply too much change to accommodate unless there is an overall plan for the phasing in all of these massive shifts in the regulatory landscape.

Without a plan that accommodates employers' legitimate concerns about their ability to adapt, the WSIB and Government could well face higher levels of non-compliance, a loss of investment and jobs, and growth in the underground economy. The employers represented on the Advisory Committees, and indeed the vast majority of Ontario employers, would be very concerned if this were to happen. It would be as harmful to their interest as those of the WSIB and Government. Moreover, introduction of additional changes will make it impossible to assess the impact of the new framework and discourage acceptance of both it and the other initiatives.

RECOMMENDATION #15
The WSIB should urge the MOL not to introduce additional workplace changes until the rate framework has been successfully implemented.

The importance of time for the employer community to understand the new rate framework, plan and budget for it cannot be overstated. Employers must have time to understand the implications for their workplaces and work processes and develop a timeline for incorporating changes into their facilities. Nothing will damage the new framework more than for employers to be forced into it before they have had time to prepare themselves. This will require the WSIB to develop tools that employers can use to test out the new system. WSIB staff themselves will require this time also. As part of this, a clear transition plan is required for the shift from the NEER-based system to the new framework. Because they are so very different in philosophy and design, it is not a matter of turning one off and the other on.

RECOMMENDATION #16
The WSIB should produce a plan detailing how it and its clients will transition to the new framework.

6. Other General Comments CONTINUED

The change to a new framework will clearly have implications for the size of the unfunded liability (UFL) currently carried by the WSIB. As part of the plans for the new system the WSIB should detail their best estimate of the impact on the size of the UFL and its future reduction.

RECOMMENDATION #17
The WSIB should provide an estimate of the impact of the new framework on the UFL and its reduction.

C. DETAILED COMMENTS

This section addresses matters raised by specific ACs or affecting specific rate groups.

The current rate group system has a 'Landscaping' category. This name does not properly reflect the nature of the activity carried on by these employers and has resulted in the group being mis-classified in the proposed framework. 'Landscaping' should be re-named to 'Horticulture' in recognition that the activities include growing, designing, installing, and maintaining green infrastructure. These activities have the most in common with those carried out in other agricultural industry sectors. For this reason the proposed location in the rate framework O – Administrative Waste and Remediation is not appropriate. Horticulture should be placed in the rate group containing other agricultural activities. Representatives of related agricultural industry sectors support this change.

RECOMMENDATION #18
The WSIB should re-name the 'Landscaping' category 'Horticulture' and place it in the rate group containing related agricultural industry sectors.

There is support for the proposed treatment of temporary agency staff who are injured while working for a client. The principle of joint responsibility is acceptable, although more clarity is needed regarding the allocation of responsibility and costs between the agency and the client employer.

CONCLUSION #5
The ACs support the proposed treatment of temporary agency staff.

C. Detailed Comments CONTINUED

Some ACs have raised the question of whether this is the time to permit either rate groups or individual employers to obtain private insurance coverage. They note this is an important feature of the proposed Ontario Retirement Pension Plan. There is some evidence that employers currently outside the WSIB system incur lower costs and in some cases employees receive better coverage and benefits.

The move to a six-year window at the same time as the shift to the framework raises questions about how past claims costs (pre-new framework) will be treated. For example, if the changes come into effect in 2018, claims from earlier years will once again go through experience rating. Employers need to know whether the WSIB will allow employers to review claims from the years before the introduction of the new framework and submit new information.

RECOMMENDATION #19
The WSIB should clarify whether employers will be able to review claims from the years before the introduction of the new framework and submit new information.

The proposed six-year window for costs will be a challenge for employers that operate on a contract-by-contract basis and the engagements are for less than this period. After the end of the contract, the work relationship with the employees and contractual relationship with the client end. After this point the employer has no ability to manage claims and no control over return to work matters. The employees may be hired on by a succeeding sub-contractor, further complicating the situation.

D. RECOMMENDATIONS AND CONCLUSIONS

This section provides the summary list of recommendations and conclusions mentioned throughout this submission.

Recommendations

1. The WSIB should meet with representatives of the WSPS Advisory Committees to discuss this submission.
2. The rate group classifications should be reviewed at the time of the first review of the NAICS classification after the framework has been implemented.
3. The WSIB should use the Single Business Number issued by CRA.
4. The WSIB must have a clear, acceptable proposal for how it will fund pre-existing conditions.
5. The WSIB should provide a clear explanation of how risk bands will operate.
6. The WSIB should produce a simulation tool that can compare an employer's current net premium to its costs under the new framework. This must be available to employers in advance of implementation of the framework.
7. The WSIB should emphasize that differing cost experience by itself is no indicator of an employer's commitment to health and safety.
8. The WSIB should urge the MOL develop a sophisticated approach to setting priorities for enforcement activity.
9. The WSIB should explain how rates will be readjusted in the event of changes arising from appeals and reversals of decisions.
10. The WSIB should develop a plan to communicate the benefits of improving claims experience.
11. The WSIB should retain the no accident benefit for employers currently eligible for it.
12. The WSIB should develop a plan explaining the roles of its partners in the shift to the new framework.
13. The WSIB should provide an accounting of how administration costs are allocated to the premium rate.
14. The WSIB should not introduce any additional policy changes until there is consensus the framework is operating well.
15. The WSIB should urge the MOL not to introduce additional workplace changes until the rate framework has been successfully implemented.
16. The WSIB should produce a plan detailing how it and its clients will transition to the new framework.
17. The WSIB should provide an estimate of the impact of the new framework on the UFL and its reduction.
18. The WSIB should re-name the "Landscaping" category "Horticulture" and place it in the rate group containing related agricultural industry sectors.
19. The WSIB should clarify whether employers will be able to review claims from the years before the introduction of the new framework and submit new information.

D. RECOMMENDATIONS AND CONCLUSIONS CONTINUED

Conclusions

1. NAICS is in principle a reasonable way to organize the new rate framework, but final agreement will be withheld until anomalies between NAICS and the Primary Resource Industries group in the allocation of agricultural activities are resolved.

2. The ACs support the move to a larger number of rate groups than 22, subject to a satisfactory explanation of the new groups and information on the implications for employers.

3. Removal of the policy on long-latency diseases would have effects similar to the elimination of the SIEF.

4. The WSIB has not responded adequately to employer questions about how disparity within rate groups will be handled.

5. The ACs support the proposed treatment of temporary agency staff.

All of which is respectfully submitted by

WSPS Advisory Committees

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APPENDIX A: BACKGROUND ON WSPS ADVISORY COMMITTEES

Who are the WSPS advisory committees?

More than 100 firms are represented on ten WSPS advisory committees from the agriculture, manufacturing and service sectors. That's a lot of diversity. Where all committee members converge is in their passion for exchanging health and safety knowledge and sector-related insights to meet an over-arching goal: to help every Ontario worker return home safely every day. WSPS draws on the expertise and insights of these volunteers to aid in the development of its strategy, programs, services and products. Each of the ten committees meets quarterly and is comprised of 15 to 18 members. An Executive Advisory Committee comprised of chairs & vice-chairs from each of the ten committees provides strategic direction to the sub sector committees.

What industry sub-sectors do the committees represent?

The committees represent ten sub- sectors within the agriculture, manufacturing and service industries:

Agriculture

- Agriculture

Manufacturing

- Commercial Industrial Services
- Durable Goods Production
- Food, Pharmaceuticals & Personal Products
- Vehicle Industrial Equipment Manufacturing

Service

- Restaurant & Food Services
- Retail, Wholesale & Office
- Television, Film & Live Performance
- Tourism & Hospitality
- Vehicle Sales & Service

What is the role of WSPS advisory committees?

- *Improvement of WSPS occupational health and safety solutions*
  - Serve as a forum for the exchange of ideas, feedback and industry intelligence to assist WSPS in improving the quality and effectiveness of its programs, services and products.
- *Development of new initiatives*
  - Identify existing and emerging occupational health and safety issues, challenges and trends to support research and the development of new initiatives and solutions.
- *Advocacy*
  - Serve as an advocate of WSPS and sub-sector employers within Ontario's prevention system, by engaging in dialogue and problem-solving with various stakeholders.
  - Support and participate in WSPS activities, events and programs, as appropriate.

With whom do the advisory committee members interact?

The committees collaborate with WSPS and external stakeholders to achieve their goals. As part of their role, they participate in stakeholder consultations within Ontario's prevention system, by engaging in dialogue and problem-solving with various stakeholders:

- WSPS senior leadership & its Board of Directors
- Ontario employers, employees and other stakeholder groups
- Ontario prevention partners; e.g. the Ministry of Labour (MOL), Workplace Safety and Insurance Board (WSIB); other Health & Safety Associations (HSAs)
- Ontario research organizations; e.g. Institute for Work & Health (IWH), the Centres for Research Expertise (CREs) etc.

WSIB RATE FRAMEWORK

THEMES, QUESTIONS & WSIB's RESPONSE
TRANSITION/IMPLEMENTATION

How close to a "done deal" is this proposed framework?

The proposed preliminary Rate Framework proposes a plausible working model – a way forward for the WSIB to distribute the costs of the system in a fair and transparent manner. It is important to note that there are a number of options and key questions for further consideration. The WSIB understands that it is only with stakeholders' varied and unique perspectives that it will be able to make informed decisions on the issues currently faced by the system.

Through the consultation process, we look forward to hearing the diverse perspectives as we consider potential reforms to the current approaches for employer classification and premium rate setting. Stakeholders are encouraged to send the WSIB their submissions by the end of the consultation period.

Consultation Plan:

April 2015	• Public technical briefing sessions for stakeholders to provide a baseline understanding of the proposed Rate Framework and how it works, including a question and answer period. • Host webinars for small/medium business to provide overview and chance to engage in consultations.
May 2015	• Host WSIB working group sessions (open to all employer and worker-focused stakeholders**)** to be a follow-up on the technical sessions obtaining stakeholder feedback considering merits, potential variations and implications.
October 2, 2015	• Wrap up of online and written submissions.
Fall 2015	• Review of input received and share overview of stakeholder perspectives. • "What we've heard" sessions with key stakeholders/ participants in the consultation process to provide an understanding of the feedback received during the consultation.

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THEMES, QUESTIONS & WSIB's RESPONSE
A comprehensive transition plan to support stakeholders and the WSIB's own implementation would be developed towards implementation and form part of further stakeholder discussions at a later phase.
The paper suggests that transition is to occur gradually and in a manner that fosters stability. What might that look like? Adopting a new classification and premium rate setting methodology would require the WSIB to develop a transition plan in partnership with stakeholders, to allow for implementation in a gradual manner that fosters stability - ensuring that employers have sufficient time to adjust to a new premium rate setting process. The WSIB has published a paper and some information to guide discussions on a potential transition without specifying a transition. See Technical Paper 5 on the WSIB's website, www.wsibrateframeworkreform.com. Following the determination of a new Rate Framework, the WSIB will be engaging in discussion on a transition from the current system.
Has the WSIB examined the cost of change vs. maintaining the status quo? What is the cost to the WSIB? Employers? Taxpayers? The proposed preliminary Rate Framework represents a plausible working model that aims to address fundamental issues raised by stakeholders, partners and the WSIB itself, with the current employer classification structure and premium rate setting processes. The adoption of a new Rate Framework would not affect the total amount of premium dollars collected by the WSIB, thereby remaining revenue neutral. However, a new system would, in a reasonable and gradual manner, shift the distribution of premiums among individual employers based on their claims experience, while ensuring that employers are paying their fair share of workplace coverage. Like most other Worker's Compensation Boards in Canada, the proposed preliminary Rate Framework is recommending to move to a prospective premium rate setting process – that is, a rate that is updated each year to reflect the experience of each employer within their industry. The WSIB

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evaluated the merits of revising the existing experience rating programs, and it was determined that the programs should be replaced with a prospective employer level premium rate adjustment that applies to all Schedule 1 employers – right now approximately 140,000 employers do not participate in any of the current experience rating programs.
Does this change increase the need for additional infrastructure at the WSIB? (E.g. staff, increased operational costs) As with any change, implementing the proposed preliminary Rate Framework would require some resources internally to manage the transition. Since the management of employer accounts and the associated activities of generating premium rates and of data collection and reporting already exist, it is not expected to generate any significant change to the current requirements.
What support will be in place to onboard employers? Adopting a new classification and premium rate setting methodology would require the WSIB to develop a transition plan in partnership with stakeholders, to allow for implementation in a gradual manner that fosters stability - ensuring that employers have sufficient time to adjust to a new premium rate setting process. The WSIB has published a paper and some information to guide discussions on a potential transition without specifying a transition. Following the determination of a new Rate Framework, the WSIB will be engaging in discussion on a transition from the current system. As noted in Paper 5: A Path Forward, the guiding principles that would form the basis of adopting an approach to transitioning employers to their Employer Target Premium Rates, the WSIB proposes to consider: • Gradual, incremental movement towards Class Target Premium Rates; • Utilizing the decreasing/eliminated UFL to support movement towards Employer Target Premium Rates; • Balance between degree of premium rate increases and decreases; • Gradual, incremental movement towards Employer Target Premium Rates; and • Consideration for economic circumstances and potential legislative amendments.

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What is the change management strategy for WSIB? What is the transition plan within WSIB? How will it be communicated to staff? Adopting a new classification and premium rate setting methodology would require the WSIB to develop a transition plan in partnership with stakeholders, to allow for implementation in a gradual manner that fosters stability - ensuring that employers have sufficient time to adjust to a new premium rate setting process. The Rate Framework Modernization consultations are still ongoing. The WSIB will include a change management strategy and all other necessary elements once a new Rate Framework has been finalized. All necessary internal resources are committed and fully engaged to the RFM initiative and staff are aware of the progress of the initiative.
Is it possible to see a side-by-side comparison of the current model against the proposed model, to better understand the changes/impact? Throughout the Rate Framework consultation papers, the WSIB has attempted to provide an explanation of the "current state" along with the proposed model's features. Please refer to the consultation papers and key products presented on the website www.WSIBRateFrameworkReform.com The modelling performed and included in the technical papers identifies a model as though rates had been set in 2014, under then proposed Rate Framework.
Will the proposed rate framework affect Schedule 2 employers? No, a new Rate Framework only affects Schedule 1 employers (which includes Schedule 2 employers that have opted in to Schedule 1).
Will the proposed classification system affect/change the current claims adjudication process? Will there be changes to the adjudication process? No, a new Rate Framework would not affect the claims adjudication process, which would be outside the scope of the project.

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What does actual/potential cost look like? What does it mean for good performance and what does it mean for bad performance? Businesses need to plan for this – has a dollar figure been estimated by the WSIB? Please see outcomes described in the Technical Presentation, Step 3 (slides 29-52) and Risk banding specifically. The premium rate for, each individual employer would vary based on the claims experience and the risk that they bring to the system. That is, an employer with claim experience that is better that the average of their industry would see rates below that of the average, and vice versa. Regarding the question of a dollar figure, see also slide 3 on Revenue Neutrality. The proposed Rate Framework would not generate additional revenue, but redistribute the costs of the system to industries and individual employers based on the risk that they bring to the system.
When might an employer expect to be notified of what class they would move to and what other prior rate groups are in the class that they are in? Adopting a new classification and premium rate setting methodology would require the WSIB to develop a transition plan in partnership with stakeholders, to allow for implementation in a gradual manner that fosters stability - ensuring that employers have sufficient time to adjust to a new premium rate setting process. As the initiative would move towards implementation, employers would be notified and have the opportunity to review their classification as part of any new Rate Framework. An employer who can identify their predominant NAICS number can estimate how they would be classified in the proposed approach based on the concordance of NAICS numbers and the WSIB's proposed classification structure. A description of NAICS classes including the other business activities that would be included is available on StatsCan website: http://www.statcan.gc.ca/eng/subjects/standard/naics/2012/index
How much can we expect rates to change? In order to move employers from the current to the new proposed process, a **starting point** or an employer's Net Premium Rate in terms of their Employer Actual Premium Rate needs to be established. When transitioning from the current system to a new Rate Framework:

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○ For employers who are currently participating in WSIB experience rating programs: using the employer's average "net" premium rate (after considering experience rating refunds and surcharges) over the last three years; ○ For employers who are currently not experience rated (who are not eligible to participate in an experience rating program) using the premium rate of the RG from the prior year; and ○ For all employers, the starting point in the following year would be their previous year's premium rate. Based on the proposed Rate Framework, rate movement would be limited to +/- 3 risk bands relative to the class for any given year (subject to any potential transition considerations) with each risk band representing a 5% increment in premium rate.
Sounds like a better system for those who perform well, are safer. Where will this put employers in future, given past and current performance? See response above regarding "Starting Point". See also outcomes for good and poor performers described in Step 3 of the Technical Presentation (slides 29-52).
What does "ease of administration" look like under the proposed framework? As noted in the description of the key goals of the proposed Rate Framework, "ease of administration" refers to a Rate Framework that would be "efficient and effective for the employer community and for the WSIB to administer and maintain." The WSIB is recommending a proposed preliminary Rate Framework that replaces its current classification structure, premium rate setting process, and experience rating programs. Its key features proposed are: • A simplified, transparent and modernized classification system, aligned to an accepted national standard; and • A fair process that prospectively sets premium rates, reflecting individual employers' claims experience relative to their industry. This includes using information that is easily understood to better understand how rates are set and why they are moving in any particular direction.
How does the WSIB propose to make the framework more understandable?

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The WSIB has prepared of series of products that describe the proposed Rate Framework at varying levels of detail, including overview videos, short summaries and information sheets, presentations and other more technical products for those seeking more detailed information on the proposed modernization. As part of any transition toward a new Framework, the WSIB would ensure further education and information would be provided to ensure all stakeholders had a better understanding. Below, we have included a quick overview. Instead of matching their business activity or activities to one (or more than one) rate group from among 155 rate group choices, employers would fall under one of 22 classes. With fewer choices and therefore clearer differences between each employer grouping, it would be easier for employers to understand where they belong. As discussed in Chapter 2: Current State Analysis, in the current system, regardless of their own experience, all employers pay the same premium rate within their rate group. Experience rating programs adjust individual employers' premium costs; however, because there are three different programs with different rules and factors applied, they yield different outcomes and resulting in a lack of fairness and of transparency. A further problem is that many smaller employers are simply not eligible to participate in these programs. The proposed preliminary Rate Framework uses a methodology that is seeking to set employer centric premium rates that considers an employer's claims experience in setting a premium rate for the upcoming year, and gradually moves employers towards a premium rate that is truly reflective of their own experience. As a result, it is proposed that employers will be better able to understand why they are paying a given premium rate.
How and when would employers be notified of their new premium rate? What measures will be taken to reduce/mitigate any financial burden? In today's system, the premium rate setting process is a yearly exercise that begins with the valuation of actuarial benefit liabilities at the beginning of the year, requires the WSIB Board of Directors' approval of a set of premium rates, typically in the summer, and ends with the communication of premium rates to employers ahead of the end of the year. This process would be respected under any new Rate Framework. The adoption of a new classification structure and prospective Risk Adjusted Premium Rate process would not affect the total amount of premium dollars collected by the WSIB, thereby remaining revenue neutral. However, a new system would, in a reasonable and gradual manner, shift the

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distribution of premiums among individual employers based on their experience, while ensuring that employers are paying their fair share of workplace coverage. The proposed Preliminary Rate Framework considers the financial burden on employers that WSIB premiums can pose. In particular, the WSIB is proposing to limit premium rate increases to three risk bands up or down, or about 15% relative to the class rate. This is intended to ensure that, while employers are moving towards their Employer Target Premium Rate, they are doing so in a way that does not overburden them year over year.
EMPLOYER CLASSIFICATION
Are 22 RGs enough? Some stakeholders have responded to the WSIB questions on whether the WSIB should consider expanding the number of classes it has recommended under the proposed preliminary Rate Framework to account for what may be very different risk or claims experience within the proposed 22 industry classes. The WSIB has committed to an examination of the proposed classification structure consisting of 22 classes to identify where risk disparity may exist, while balancing the need for large enough industry classes to ensure the resulting premium rate does not bring premium rate volatility from one year to the next. The approach and analysis that is being undertaken as part of our Risk Disparity Analysis may lead to a revised and greater number of classes in a new Rate Framework. This analysis will be made public on our website at www.wsibrateframeworkreform.com later this summer.
How can we know who else is in our group? See Technical Presentation, slide 8. A description of NAICS classes are available on StatsCan website: http://www.statcan.gc.ca/eng/subjects/standard/naics/2012/index

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How can you be sure that doing away with split premium rates will work? The proposed preliminary Rate Framework ceases the practice of having multiple premium rates for single employers, which provides a significant amount of complexity in the system and can lead to adverse implications related to the fairness of the system. The PPRF proposes to cease the practice of having multiple premium rates or rate groups for a single employer, and moves to setting a premium rate that is a better reflection of the predictable risk and claims experience of an employer's overall operation.
How might Corporate Head Offices, residing in a separate physical location from Operations (e.g. Distribution Centre) file under the proposed framework? An organization will be classified by their predominant business activity, not by location. See Step 1 of Technical Presentation (slides 5-17). Similar to the current approach, head offices would be considered ancillary to the employer's business activities.
When a majority of locations operate with a similar type of categorization (e.g. café), how would the new changes impact the overall rate group if a handful of locations operated somewhat differently (e.g. serving alcohol, thus being considered a restaurant)? An employer would be classified based on their predominant industry class and not their predominant Rate Group. This means that the insurable earnings would be aggregated to the 22 industry classes that are being suggested in our model. We would not look at each individual Rate Group. Information on this topic can be found on slide 12-13 and pages 14 – 20 of Paper #3.
How often will the predominant business activity be reviewed? Some businesses may fluctuate based on the market and the pursuit of new business segments – how often will a business be reviewed based on their business model? See Technical Presentation slides 14-15.

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○ Where an employer begins a new business activity or discontinues a business activity, and this change would result in a class change, the WSIB would consider a potential change in classification, to reflect the immediate changes made by an employer. ○ Where an employer does not begin or discontinues a business activity (i.e., only their insurable earnings have changed), the WSIB would consider this information for potential reclassification for the following premium year.
What is the majority rate determination based on? Payroll dollars per rate group or number of employees per rate group? What if you have two rate groups where the payroll fluctuates throughout the year, changing the majority rate from one business category to another? In this case, how would the employer be classified? See Technical Presentation, Step 1 (slides 5-17). ○ An employer with multiple business activities will be able to report their earnings for each of these business activities. From there, the WSIB would aggregate the insurable earnings reported under each business activity into the proposed industry classes. If the insurable earnings map to multiple classes, the class associated to the highest proportion of insurable earnings is the "predominant class", and the employer is classified on this basis. ○ From there, each employer's experience would be considered in setting a premium rate for each individual employer based on the risk they bring to the system in relation to their industry. ○ Where an employer does not begin or discontinues a business activity (i.e., only their insurable earnings have changed), the WSIB would consider this information for potential reclassification for the following premium year.
What will happen to organizational accounts? Will this new structure affect them? Will classification be determined corporately or via each individual account? The WSIB is proposing to classify employers at the "organization" level, not the "account" level. This essentially equates to the legal entity, subject to business activity rule (e.g. ancillary and associated employer rules). An employer with multiple business activities will be able to report their

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earnings for each of these business activities. From there, the WSIB would aggregate the insurable earnings reported under each business activity into the proposed industry classes. If the insurable earnings map to multiple classes, the class associated to the highest proportion of insurable earnings is the "predominant class", and the employer is classified on this basis.
Does (or will) the Ministry of Labour align with NAICS? We are not sure what this question may be referring to. Please provide additional explanation as to what you mean by MOL alignment to NAICS.
EXPERIENCE RATING
For the six year experience window, how will the WSIB weight each of the accident years? See Technical Presentation, slide 41. Currently, each accident year within the six year window is weighed equally. During working group sessions, some stakeholders have suggested that the proposed approach may provide an imbalance towards greater rate stability, with not enough focus rate responsiveness. To counter this perceived imbalance, some have brought forward the consideration of amending the proposed six year window by adding more weight to the claims and insurable earnings experience on the more recent years (e.g. most recent 2-3 years) and less weight on the historic years (e.g. years 4-6). This is something that will be considered along with other suggested amendments from stakeholders
What is the logic behind taking so many years into consideration when most other WCBs are only using a 3-5 year window as a maximum? The use of 6 years as a period or window for setting premium rates, is linked to ensure a greater level of responsibility and accountability. In addition, the disconnect between the 72 month lock in period for claims and the window for current experience rating programs was noted by Douglas Stanley, in his Pricing Fairness Report, as a concern that ought to be addressed.

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During working group sessions, some stakeholders have suggested that the proposed approach may provide an imbalance towards greater rate stability, with not enough focus rate responsiveness. To counter this perceived imbalance, some have brought forward the consideration of amending the proposed six year window by adding more weight to the claims and insurable earnings experience on the more recent years (e.g. most recent 2-3 years) and less weight on the historic years (e.g. years 4-6). This is something that will be considered along with other suggested amendments from stakeholders
When will WSIB have all the Class Target Rates set? The implementation date for a new Rate Framework has not yet been determined, however it would be no sooner than January 2018. Once the model is finalized, and a transition plan has been discussed with stakeholders the WSIB can finalize the implementation date. The WSIB has put forward Class Target Rates based on the initial 22 classes put forward in the proposed preliminary Rate Framework – these can be found in the materials published by the WSIB. In today's system, the premium rate setting process is an annual exercise that begins with the valuation of actuarial benefit liabilities at the beginning of the year, requires the WSIB Board of Directors' approval of a set of premium rates, typically in the summer, and ends with the communication of premium rates to employers ahead of the end of the year. This process would be respected under any new Rate Framework.
Do you know if the reforms, in eliminating NEER, will also eliminate rebates to employers, with the idea being that better rate predictability up front will result in a more accurate reflection of employers' experience and the so rebates will no longer be required? Yes. See Technical Presentation, Step 3 (slides 29-52)
Regarding the discontinuation of the SIEF program, it seems like employers are being expected to carry the full burden of a claim that could be impacted by a non-occupational issue? SIEF is the only system employers have for injuries impacted by underlying conditions (e.g. extended recovery time.) What is the WSIB prepared to put in place to address the impact of underlying conditions on claims? The WSIB has heard many perspectives on the recommended approach to discontinue the Second Injury and Enhancement Fund (SIEF) program. This includes the concerns raised with the recommended approach and a clear consensus that some form of cost relief is required. Some

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stakeholders have also highlighted potential unintended consequences with the proposal to discontinue SIEF, while others have provided specific examples to support their view. These perspectives are important to us and will assist us in making the most appropriate decision on this point.
Employee well-being can impact their potential for injury, and for recovery. Activities that they do outside of the workplace, such as use of hands/thumbs for texting, gaming, obesity issues; shoulder strains caused by an employee's inability to stand closer to the workstation, eye issues from constant use of smartphones and screens can impact what they do in the workplace. How will WSIB screen out these non-occupational activities/conditions from occupational injuries? Will WSIB exclude hand injuries like they do heart issues? Will they look to reduce entitlement to an employee if they're obese? This is Out of scope for the Rate Framework Modernization.
If SIEF is eliminated going forward, how will current claims be examined? Also what does this look like for the employer upon hiring individuals with sustained injuries from a previous organization (e.g. occupational disease, hearing loss, etc.?) This is Out of scope for the Rate Framework Modernization. See point above on feedback received on SIEF.
Concern: The absence of rebate programs like NEER will make it more difficult for Health & Safety Departments to defend their prevention programs as they use the end of year rebate as a motivating factor for executives and managers. See Technical Presentation, slide 52: The proposed preliminary Rate Framework would act as an early warning for employers by providing target premium rates allowing employers to; better identify the future projected path of their premium costs; and take proactive health and safety actions (e.g. prevention; and return to work (RTW) to address the risks). In some discussions with stakeholders, we have been able to map out how this information would be helpful to engage senior executives by demonstrating the journey for each particular employer and demonstrating either how rates could be expected to increase if no specific action is taken to reduce claims costs, or how rates are expected to decrease given particular investment in health safety that have reduced claims costs.

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Can you prepare sample scenarios for employers who have been receiving large rebates, as well as for those employers who have been paying large surcharges under this new experience rating model? Examples provided in Paper 3, page 69.
WSIB has moved from a 2.5 times the maximum assessable earnings to the proposed graduated per claim approach from .5 to 7 times. How this impact employers with high claims does costs, especially when considering a six year window? See Technical Presentation, slide 20. ○ In order to assign responsibility/accountability to employers for their claims costs, the use of a per claim limit ensures that premium rate adjustments do not overly charge employers for having a single extremely high cost accident. It also helps to minimize premium rate fluctuations and provides premium rate stability for employers, especially in those circumstances when a catastrophic claim occurs. ○ The graduated per claim limit increases with increasing predictability, so that small employers (who are in the lower predictability scales) would have a lower per claim limit and would be less individually accountable for the claim costs that they incur (with the remainder of the costs being pooled at the class level). ○ The WSIB is recommending the implementation of a graduated per claim limit that changes based on an employer's predictability. A graduated per claim limit offers more protection for small employers who may have that one large claim, as opposed to large employers, who may be better positioned to absorb a claim that carries the same cost or a higher cost.
RISK
How will risk disparity/deltas within each class be managed and addressed? See Technical Presentation, slide 27.

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Some stakeholders have responded to the WSIB questions on whether the WSIB should consider expanding the number of classes it has recommended under the proposed preliminary Rate Framework to account for what may be very different risk or claims experience within the proposed 22 industry classes. The WSIB has committed to an examination of the proposed classification structure consisting of 22 classes to identify where risk disparity may exist, while balancing the need for large enough industry classes to ensure the resulting premium rate does not bring premium rate volatility from one year to the next. The approach and analysis that is being undertaken as part of our Risk Disparity Analysis may lead to a revised and greater number of classes in a new Rate Framework. This analysis will be made public on our website at www.wsibrateframeworkreform.com later this summer.
For a small industry group, how will risk bands be researched and applied? Risk bands are hierarchical series of divisions within each of the proposed industry classes (approximately 40-80 in each of the proposed classes). Each division represents a different level of risk where employers would be placed relative to the Class Target Premium Rate. Employers with similar risk profiles would be grouped for premium rate setting purposes within a risk band and pay a common rate. Depending on each individual employer's claims experience relative to their class, industries that used to pay the same premium rate may not be in the same risk band and therefore may not pay the same premium rate.
While it seems reasonable that an employer would only move up to a maximum of 15% within a risk band if their performance decreases, is there a maximum for employers who demonstrate significant performance improvement? Other boards provide incentives to employers with good performance. See Technical Presentation, Step 3 (slides 29-52), and specifically risk band movement. The same annual risk band limitation (that is 3 risk bands or 15% from one year to the next, relative to your class) applies to employers with better than average performance on their own individual journey towards their target premium rate.

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This is referred to as prospective rate setting and provides each employer with a rate that better reflects their own individual experience.
When building a risk profile for an employer, will things like training records and health & safety policies and practices be taken into consideration? No, each employer's risk profile is determined based on the claim costs that the employer paid into the system versus the earnings that were reported for that same time period. An employer's risk profile, relative to their class would determine their premium rate. We have received suggestions from some stakeholders that some form of health safety indicators should be considered as part of the Rate Framework. This is something that will be considered along with other suggested amendments from stakeholders.
If an employer's standing is rated "High Risk," what will the determining factors be to move the employer into the "Lower Risk" classification? In addition, what will the duration allowance be before becoming eligible to be considered part of the lower risk band? The risk profile of a particular employer is a function of their actual claims costs over a 6 year period, divided by their payroll or insurable earnings for the same period, in relation to the risk profile of their industry class. The premium rate setting process would continue to occur on an annual basis, that is the risk profile of each employer would be reviewed annual with employer rate movement from one risk band to another, from one year to the next, would be limited to +/- 3 risk bands, or less, based on their risk profile. Each risk bands represents a 5% increment in premium rate. New employers entering the system will be introduced to prospective rate setting (e.g. the risk bands) when they have 12 months of continuous experience with the WSIB at the time of rate setting.
INCENTIVES

WSIB RATE FRAMEWORK

THEMES, QUESTIONS & WSIB's RESPONSE
Will SCIP and Safety Groups continue to support prevention? The prevention mandate was moved to the Chief Prevention Officer, and under the auspices of the Ministry of Labour. Recently, the CPO and MoL engaged in a review of the WSIB's prevention programs. As one of the partners in the province's occupational health and safety system, the WSIB remains committed to collaborating with the MOL and other system partners in these areas.
Will WSIB build any other incentives into the program for those employers who participate in Safety Groups, for instance? We have received suggestions from some stakeholders that some form of health safety indicators should be considered as part of the Rate Framework. This is something that will be considered along with other suggested amendments from stakeholders.
Will there be financial benefit/incentive to the new framework? See Technical Presentation, Step 3 (slides 29-52). Based on the determination of an employer's risk profile in relation to their industry, employers would moves towards a premium rate that best reflects their experience and risk to the system. As such, employer with a risk profile that is better than their industry peers will see rate reductions.
Health & safety initiatives to improve performance for an individual sector – the rewards should be more significant in premium reduction that they currently reside. As the accident statistics suggest, a decrease within the sector, the rewards are not compensable for the improvement. How will the new Rate Framework align rewards for premium reduction? The premium rate adjustments will be a reflection of the injury costs for a given employer (i.e. an employer with lower claims costs than their industry would see premium rate reductions, in line with the risk brought to the system. See also Technical Presentation, slide 52:

WSIB RATE FRAMEWORK

THEMES, QUESTIONS & WSIB's RESPONSE
The proposed preliminary Rate Framework would act as an early warning for employers by providing target premium rates allowing employers to; better identify the future projected path of their premium costs; and take proactive health and safety actions (e.g. prevention; and return to work (RTW)) to address the risks.
UFL
What will happen to the UFL? How much of the UFL will be carried over to the new framework? The Unfunded Liability (UFL) represents the shortfall between the money needed to pay the future benefits to workers for all established claims, and the money that is in the accident fund. How much of the UFL may remain when the WSIB implements a new Rate Framework will be dependent on many factors, including the timelines for implementation, overall economic performance, and many other considerations. The proposed Rate Framework suggest allocating the remaining UFL to industry classes using the methodology that was in place from 1999 to 2010, i.e. based on each industry's relative share of new claims costs in the system.
FAIRNESS
Will WSIB take into account and factor in those companies/associations not registered with the current WSIB rate group? The issue of the underground economy is a complex issue; specific measures to address the underground economy are beyond the scope of the Rate Framework Modernization consultations. The WSIB has a compliance strategy in place, and a range of programs and initiatives to help ensure full compliance among employers.
What process will be taken with the WSIB Rate Framework to ensure fairness and transparency by the WSIB? Will the WSIB look at specific sector challenges (e.g. aging workforce) and ensure the fairness is allocated to the employer's business needs? We are not sure what the last two questions are specifically referring to for response.

WSIB RATE FRAMEWORK

THEMES, QUESTIONS & WSIB's RESPONSE
Related to cost relief: Can there be clarification on the definition of "alternative mechanisms" and "consistent claims adjudication"? What has been the process in the past that has not led to consistent claims adjudication? What are the changes proposed and how will this impact business when dealing with the WSIB? Both Harry Arthurs and Doug Stanley suggested that the WSIB could consider other approaches to support the objectives of promoting the hiring of previously injured workers, such a wage support programs, rather than cost relief. Consistent claims adjudication refers the fact that the WSIB was the only jurisdiction that did not have a Policy dealing with pre-existing conditions. A recent policy was approved in 2014 that would be expected to provide greater clarity to stakeholders and the WSIB's own decision makers. In the end, the proposed approach includes a number of measures that are meant to provide a balance between rate responsiveness and stability (e.g. risk band limitations, graduated per claim limits, etc). This, combined with consistent claims adjudication that appropriately considers the contributing nature of a pre-existing condition that reduces the applicability of SIEF. That said, the WSIB has heard many perspectives on the recommended approach to discontinue the Second Injury and Enhancement Fund (SIEF) program. This includes the concerns raised with the recommended approach and a clear consensus that some form of cost relief is required. Some stakeholders have also highlighted potential unintended consequences with the proposal to discontinue SIEF, while others have provided specific examples to support their view. These perspectives are important to us and will assist us in making the most appropriate decision on this point.
Currently, fraudulent claims feel like a big problem. Under the proposed framework, how would these issues of fraudulent claims be addressed? The issue of fraudulent workers' compensation claims relates to adjudicative practice (determining work-relatedness and reviewing medical and other evidence) and, potentially, compliance. It is therefore beyond the scope of the Rate Framework consultations.
How will the proposed framework address loopholes and inappropriate exceptions?

WSIB RATE FRAMEWORK

THEMES, QUESTIONS & WSIB's RESPONSE
We are not sure what this question may be referring to. Please provide additional clarification as to what loopholes or inappropriate exceptions are being referred to.
How might the proposed framework address the underground economy? The issue of the underground economy is a complex issue; specific measures to address the underground economy are beyond the scope of the Rate Framework Modernization consultations. The WSIB has a compliance strategy in place, and a range of programs and initiatives to help ensure full compliance among employers.
WHAT IF?
Has any thought been given to offering "first accident forgiveness," similar to what's offered by private insurance companies? No. We have not explored such concepts.
Are there other options for employers to source coverage? Coverage expansion or reduction is out of scope of the Rate Framework Modernization consultations, and falls within the authority of the MOL. The coverage status for business activities in the classification scheme is based on Schedules 1 and 2 of Ontario Regulation 175/98 under the *Workplace Safety and Insurance Act, 1997*. Employers who fall under Schedule 1 and 2 must have WSIB coverage. Business activities that are not covered under Schedule 1 and 2 of Ontario Regulation 175/98 or are by application may "source" coverage from a private insurer or seek coverage with the WSIB with some exceptions.
When purchasing other types of insurance coverage, factors like activity, age/demographics and location are taken into consideration. Could this be integrated into the proposed framework somehow?

WSIB RATE FRAMEWORK

THEMES, QUESTIONS & WSIB's RESPONSE
The Rate Framework reforms are focused on ensuring there is fair allocation of the costs to the system to employers, based on the principles that currently underlie worker's compensation in Ontario. The proposed approach considers business activity and the actual claims experience of each individual employer. A factor like location is not considered and likely doesn't have the same application as personal car or home insurance. Age and demographics are factors that the WSIB examines as part of valuing its liabilities for each industry class.
What about initial entitlement? Will there be considerations for workplace injuries for those who have breached process? (E.g. if someone broke the law, or company protocol, and it can be proven, will the employer be able to focus their methods on training to reduce both their exposure and the workers' exposure to injury?) This is out of scope of the Rate Framework Modernization consultations.
If individual companies are performing much better than other companies within the sector, there should be an "opt out" of the sector option. The employer who is contributing to health and safety success should in fact be given the opportunity decreased paid premiums according to performance levels, the "opt out" option to enter an "alike" sector for good performance would be relative? See Technical Presentation, Step 3(slides 29-52) Good performing employers, in relation to their industry, will be rewarded with premium rate reductions.
INDUSTRY SPECIFIC
Arborists are currently voluntary participants. Would the proposed rate framework make this group mandatory? No, as per the WSIB's employer classification manual, business activities including tree trimming, tree surgery, tree removal, and orchard pruning are considered "by application" (i.e., not compulsory covered). The intention is to replicate the current scope of coverage prescribed in the General Regulation under the WSIA. Coverage expansion is not within the scope of the Rate Framework Modernization consultation.
Under what classification would Live Entertainment fall? Who else would be part of that classification?

WSIB RATE FRAMEWORK

THEMES, QUESTIONS & WSIB's RESPONSE
If you are referring to RG 962: Advertising and Entertainment, this group would move to Class R: Leisure and Hospitality under the proposed model. Class R equates to industries that have a NAICS number beginning with 71 and 72. The Statistics Canada website on NAICS would identify any other industries that would find themselves in the same NAICS groupings – Click Here
When looking at classifications within a sector, will poor performance affect the premiums? Currently, 630 has shown improvements, but the "muffler shops" contribute to poor performance, therefore, the group as a whole pays it back in premiums. See Technical Presentation, Step 3 (slides 29-52). Good performing employers, in relation to their industry, will be rewarded with premium rate reductions.