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16 November 2021

BY PORTAL

Standing Committee on Social Policy
99 Wellesley Street West Room 1405, Whitney Block
Queen's Park
Toronto, ON M7A 1A2

To Whom It May Concern:

RE: Submissions on Bill 27, Working for Workers Act, 2021- Schedule 6

IAVGO is a community legal clinic that has operated since 1975. Our clinic is dedicated to assisting injured workers with their WSIB claims.

The decision to divide the WSIB surplus requires further consultation so that the ways in which the resources could be used to benefit injured workers needs to be discussed further. We demand that any decision on where the surplus will be allocated requires further consultation, so that all stakeholders can discuss the needs of their respective communities. As such, the provisions in Bill 27, related to schedule 6 and the division of WSIB surplus should be removed from the act until further consultation can occur.

Attached, you will find IAVGO's submission from August, addressing the various ways in which the money could be used to the benefit of injured workers and the WSIB, some of which. Also, we have attached the submissions of Injured Workers Action for Justice (IWA4J). In these submissions, IWA4J addresses many of the same issues discussed in IAVGO's submissions and testimony from injured workers lives that speak to these issues.

Furthermore, you will find the latest WSIB Operational Review Report attached with this letter as we make reference to it in our submissions.

Thank you for your attention to this matter.

Sincerely,

IAVGO Community Legal Clinic

Read the [plan to safely reopen Ontario](#) and continue to follow the [restrictions and public health measures](#).



Workplace Safety and Insurance Board operational review report

Learn about the independent review of the Workplace Safety and Insurance Board (WSIB) and the recommended operational, legislative and regulatory changes to help maintain its financial sustainability and better support and protect workers, their families and Ontario businesses.

Letter from the expert reviewers

Dear Minister McNaughton:

Please find enclosed our report from the review of the Workplace Safety and Insurance Board (WSIB) announced by the Ontario government in May 2019.

The analysis and recommendations in the report have been carried out as a joint collaboration. We both fully endorse the report's contents including its advice to you and your colleagues.

As we outline in the report, the Workplace Safety and Insurance Board is entering a period of significant transition — including (but not limited to) the elimination of its unfunded liability, the launch of a new Rate Framework, and plans to implement a Core Services Modernization initiative. Each of these initiatives is justified and generally positive in and of itself. But the cumulative effect of these various developments could produce risks for the WSIB and its stakeholders. Successful execution of these transitions will therefore require strong leadership, proper mitigation strategies and an overall legal and policy framework that supports the Workplace Safety and Insurance Board's efforts.

We have come to see our work primarily as developing recommendations that will help the Workplace Safety and Insurance Board manage these transitions, protect and maintain its financial sustainability, and ultimately better serve workers and employers in Ontario. This has been the principal lens that we have applied to the review.

The Workplace Safety and Insurance Board is a big, complex organization and the issues it deals with can be complicated and challenging. It receives 5.8 million telephone calls and another 1.9 million faxes each year. It manages more than 250,000 new claims per year and pays out roughly \$2.8 billion in annual benefits.

Just fulfilling its core mandate is therefore demanding. But there are various other factors that only serve to make the Workplace Safety and Insurance Board's work more complex. Evolving medical research and social norms are reshaping how we think about workplace injuries. New and emerging business models are producing difficult questions about WSIB coverage and how it should apply to the so-called “gig economy.” Our expectations about service quality, transparency and accountability, and the responsiveness of public institutions continue to grow. And, of course, we cannot forget the WSIB's daily work involves supporting people when they are most vulnerable.

Responding to these opportunities and challenges is critical if the WSIB is to retain the public's trust and confidence as a public institution. It is imperative therefore that it uses this moment of transition to modernize its operations and improve how it serves workers and employers. More responsive, timely, and individualized services are key for the Workplace Safety and Insurance Board to retain the trust and confidence of Ontarians now and into the future. That is the key takeaway from the review's consultations and our own research and analysis.

We have sought to be as comprehensive as we can in the pages that follow, but we also recognize that no single report can reasonably cover the wide range of issues that shape the WSIB's work. Given the timeframe and mandate, we regret any areas to which we have paid inadequate attention. These will need to be the subject of future inquiry and analysis.

Covering the breadth of issues facing the Workplace Safety and Insurance Board has not been a simple task. Fortunately, we have benefited greatly from the contributions and insights of various individuals and organizations as part of the review.

We have received considerable stakeholder input from businesses, labour unions, injured workers and others involved in workers' compensation issues. A combination of stakeholder meetings and written submissions from a wide range of individuals and organizations have been an invaluable resource as we have sought to better understand the opportunities and challenges facing the WSIB. We are enormously grateful to those who participated in the consultation process and shared their expertise and experiences with us.

We have also benefited from considerable time and attention on the part of officials at the Ministry of Labour, Training and Skills Development and the WSIB. We have been regularly impressed by their professionalism, institutional knowledge, forward thinking, and public spiritedness. We cannot recognize everyone with whom we have met and engaged within the Ontario government. But we would be remiss if we do not acknowledge the work of Jules Arntz-Gray, Adam Starkman, and Laura Campbell at the Ministry of Labour, Training and Skills Development. They have been tremendous to work with over the past several months and have helped this report come to fruition.

Another source of great assistance has been our small, yet highly capable research team comprised of students and recent graduates of the Master of Public Policy program at the University of Toronto's Munk School of Global Affairs and Public Policy. Our research and analysis were greatly aided by research assistants Declan Ingham and Luka Glozic and research manager Ian T.D. Thomson. The three of them have made a great contribution to this report and undoubtedly have bright futures in the world of public policy and governance.

Let us conclude by thanking you and Minister Scott for giving us the opportunity to participate in this review. It has been an interesting and meaningful experience. The Workplace Safety and Insurance Board has a rich history and critical role to play as part of Ontario's ongoing social safety net. We hope that we can make a small contribution to its future work — including managing the multiple transitions that it will undertake in the coming years.

We hope that you find our research, analysis, and recommendations helpful as the government develops and advances its policy agenda related to the Workplace Safety and Insurance Board and broader workplace health and safety throughout the province. We would be pleased to meet with you and your team to discuss the report and its contents.

Thank you once again for entrusting us to carry out this work.

Yours sincerely,

Linda Regner-Dykeman

Sean Speer

Introduction

Introduction

The Workplace Safety and Insurance Board (WSIB) is now in its 105th year of operations on behalf of workers and employers in Ontario. Its basic mission remains unchanged. The WSIB still operates according to the no-fault, collective liability principles envisioned by Sir William Ralph Meredith in his path-breaking report in 1913.

But while the principles remain unchanged, so much of the work that the Workplace Safety and Insurance Board does and the environment in which it is operating is changing. The Workplace Safety and Insurance Board has had to evolve and grow accordingly.

The size of its operations and the economy it covers has massively expanded. The WSIB now covers more than 5 million workers and over 319,000 employers across the province. It pays out nearly \$2.8 billion in annual benefits. It has become one of the largest insurance organizations in North America.

The issues it is responsible for are also rapidly changing. Evolving medical research and social norms are reshaping how we think about workplace injuries. New and emerging business models are producing difficult questions about WSIB coverage and how it should apply to the so-called “gig economy.” And our expectations about service quality, transparency and accountability, and the responsiveness of public institutions continue to grow.

As part of its efforts to respond to these economic and social trends, the Workplace Safety and Insurance Board is entering a period of significant transition – including (but not limited to):

- elimination of its unfunded liability
- launch of a new rate framework and
- plans to implement a core services modernization initiative

The goal of these initiatives is to make the organization more accountable, sustainable and effective at serving workers and employers in the province. Each of them is justified and generally positive in and of itself. But the cumulative effect of these various developments could produce risks for the WSIB and its stakeholders. Successful execution of these transitions will require strong leadership, proper mitigation strategies, and an overall legal and policy framework that supports the WSIB's efforts.

The Ontario government therefore appointed two external reviewers in May 2019 to conduct an operational review of the WSIB. The purpose of the review was to:

- provide the government with insights regarding the Workplace Safety and Insurance Board's operations and how it compares to best practices in other jurisdictions and in the insurance industry and
- complement the work of an MPP-led task force that is reviewing all provincial agencies

In particular, the reviewers were tasked with analysing the following areas:

- **financial oversight:** the sustainability of the Workplace Safety and Insurance Board insurance fund and the controls over it
- **administration:** the effectiveness of the current governance model and leadership structure
- **efficiency:** the effectiveness and cost efficiency of the Workplace Safety and Insurance Board's operations, including comparisons to other jurisdictions and private sector insurers

The review has sought to produce analysis and recommendations that will help the Workplace Safety and Insurance Board manage its transitions, protect and maintain its financial sustainability and ultimately better serve workers and employers in Ontario.

This ensuing report reflects input and contributions from a wide range of stakeholders and officials from the Ministry of Labour, Training and Skills Development and the Workplace Safety and Insurance Board. It is also informed by independent research including comparative analysis of the WSIB's model with other jurisdictions in Canada and, where applicable, with private sector firms. The report was conducted prior to the COVID-19 outbreak, but has been reviewed and will be considered by the government through a COVID lens.

The report is organized based on the reviewers' understanding of the Workplace Safety and Insurance Board's current state and the opportunities and challenges that it will need to confront over the medium and long-term. It is not a backward-looking document. Others have effectively covered the historical evolution of the WSIB. There is no reason to revisit the past here. The opportunities and challenges that the WSIB will face in the coming years deserve their own attention and analysis. That is the purpose of this report.

Eliminating the Workplace Safety and Insurance Board unfunded liability has been the principal focus for the organization for the past several years. It has rightly consumed the attention of the WSIB's board of directors, its senior management, and been reflected throughout its operations. But it has also limited the scope for broader reform such as modernizing the WSIB's processes or rethinking its insurance model or other forward-looking improvements to better serve workers and employers in the province.

Achieving its elimination can now enable broader thinking about the WSIB and how it works. It is a matter of both cause and effect. The effort to restore the Workplace Safety and Insurance Board's financial sustainability has caused the organization to place a greater emphasis on modernizing its core services and improving efficiencies. And the return to financial sustainability has had the effect of opening the window to enact service-oriented changes.

It comes at a critical time. The public's expectations about how public institutions function and perform are rapidly increasing. People want public services to be responsive, timely, and individualized. A failure to meet these expectations can erode public trust and confidence and ultimately cause people to question the ongoing justification for certain public institutions.

The Workplace Safety and Insurance Board is not immune to these developments. Its model of claims management is outdated and complicated. It is difficult for people to contact the Workplace Safety and Insurance Board or learn about the status of their claims. Adjudication decisions and payments are frequently too slow especially involving complex claims. The review's consultations found growing frustration on all sides about the WSIB's processes and systems.

It is imperative therefore that the Workplace Safety and Insurance Board uses this moment of transition to modernize its operations and improve how it serves workers and employers. More responsive, timely, and individualized services are key for the WSIB to retain the trust and confidence of Ontarians now and into the future.

The pages that follow set out a series of legal, operational, and policy recommendations that aim to ensure that the Workplace Safety and Insurance Board remains a vital and dynamic part of Ontario's modern social safety net.

Summary of recommendations

The report sets out several legal, operational and policy recommendations that we believe are consistent with the review's terms of reference and will help the Workplace Safety and Insurance Board manage its series of transitions, protect and maintain its financial sustainability, and ultimately better serve workers and businesses in Ontario.

Detailed analysis of these recommendations — including their underlying rationale and implementation considerations — are reflected throughout the report. But here is a full summary of the legal, operational, and policy recommendations from the review.

1. The government should adopt a regulation that prescribes a sufficiency ratio corridor of 115% and 125% for the WSIB for the five-year period between 2020 and 2025.
2. The regulation should also establish the parameters for surplus distribution including prescribing the WSIB to consider surplus distribution when the insurance fund exceeds 115% and require it distributes surpluses if the sufficiency ratio hits or exceeds 125%.
3. The government should amend the *Workplace Safety and Insurance Act* to clarify that any legal or policy changes that impose costs on the WSIB should come into effect in the year in which the Workplace Safety and Insurance Board can account for these costs in its rate-setting process.
4. The Workplace Safety and Insurance Board should develop a predictive modelling capacity within the organization as part of its effort to improve its pricing and rate-setting processes.
5. As part of the transition to a new rate framework, the Workplace Safety and Insurance Board should establish the position of Industry Class Manager with whom employers, industry associations and unions can engage about their issues and circumstances related to specific industry classes.
6. The Workplace Safety and Insurance Board should move to an “exclusionary model” for coverage on a go-forward basis for new employers and industries. This would not affect currently non-mandatory covered industries, but it would apply to any new firms or industries operating in the province.
7. The Workplace Safety and Insurance Board and the government should extend mandatory coverage to developmental support workers and those working in residential care facilities.
8. The Workplace Safety and Insurance Board and the government should consider consolidating all Schedule 2 employers in the collective liability framework. Moving in this direction would require a transition plan for industry classes, premium rates and Schedule 2 employers who may have ongoing claims. It would also involve consultations on the necessary legislative and regulatory changes as well as the appropriate timeframe for implementation.
9. The Workplace Safety and Insurance Board should modernize the claims process by expanding digital submission of documents and enabling individuals to register online in order to monitor the status of their files through a secure personal portal as soon as possible.
10. The Workplace Safety and Insurance Board should move to a self-service model for no-lost-time claims in particular and simple claims in general using a system of online claims and fast-tracked adjudication.
11. The Workplace Safety and Insurance Board should set separate targets for processing timelines for no-lost-time claims and lost-time claims.
12. The Workplace Safety and Insurance Board should continue to adjust and refine its process for claims adjudication to ensure that claims are being managed by the right people at the right time.
13. The Workplace Safety and Insurance Board and the government should consider consolidating the Workplace Safety and Insurance Board's multiple layers of appeal into a single appeals function within the WSIB before appeals move to the Workplace Safety and Insurance Appeals Tribunal (WSIAT). Moving in this direction would require consideration of the format and design of the new appeals function within the Workplace Safety and Insurance Board, timelines for appeals decisions, human resource issues and possible incremental resources to the WSIAT to address any resulting increases in its appeals caseload.
14. The Workplace Safety and Insurance Board and Workplace Safety and Insurance Appeals Tribunal should establish a new Quality Table to identify and anticipate trends through data analytics and actual case outputs in order to better inform adjudication guidelines and decision-making.
15. The Minister of Labour, Training and Skills Development should work with the Attorney General to ensure that legal representatives (including paralegals) participating in the occupational health and safety system are meeting a high

ethical standard and properly serving their clients.

16. The Workplace Safety and Insurance Board should maintain a statistically relevant number of audits related to claim suppression through the implementation of the new Rate Framework.
17. The Ministry of Labour, Training and Skills Development should increase budget funding for the Office of the Worker Adviser and the Office of the Employer Adviser to better serve workers and employers.
18. The government should amend the *Labour Relations Act* to clarify that labour unions must provide representation on behalf of their members in the occupational health and safety system including the Workplace Safety and Insurance Board.
19. The Office of the Chief Prevention Officer should work with the Workplace Safety and Insurance Board and the Ministry of Labour, Training and Skills Development to coordinate better data collection and analysis — including developing a set of future-oriented indicators to better anticipate workplace trends.
20. The government should change its funding model for prevention-related programming by providing dedicated funding to the health and safety associations for specialized training and services and launching a competitive funding pool for more general health and safety services and training.
21. The government should enter into three to five-year transfer agreements with the Health and Safety Associations.
22. If the government changes the funding model for prevention-related programming, it should consider increasing the overall funding available for these activities.
23. The Workplace Safety and Insurance Board board of directors should regularly prepare and provide a list of required board competencies to the minister to help inform appointment decisions.
24. Appointments to the Workplace Safety and Insurance Board's board of directors should have staggered expiration dates to ensure that several directors' terms do not expire at the same time.
25. The Workplace Safety and Insurance Board and the government should work with an independent adviser (such as Infrastructure Ontario) to conduct a review of the organization's real property portfolio, including how the Workplace Safety and Insurance Board manages it, in order to identify possible efficiencies.

Section 1: a primer on the current state of the Workplace Safety and Insurance Board in 2019

Introduction

The Workplace Safety and Insurance Board has been the subject of several independent reviews over the years. These reports have provided a solid foundation from which to build, including detailed descriptions of the WSIB's genesis and its evolution from 1914 to the present.

Readers interested in learning more about the WSIB's historical ebbs and flows should consult past reports such as *Reshaping Workers' Compensation in Ontario*, *Funding Fairness: A Report on Ontario's Workplace Safety and Insurance System*, *Pricing Fairness: A Deliverable Framework for Fairly Allocating WSIB Insurance Costs*, and the *Expert Advisory Panel on Occupational Health and Safety: Report and Recommendation to the Ministry of Labour*. The totality of these reports — particularly the *Funding Fairness* report produced by former Osgoode Hall Law dean Harry Arthurs — provides a useful description of the trends, developments, and policy choices that have contributed to the issues and circumstances now facing the WSIB.

This report will not revisit this historical analysis in great detail. There is not much that can be contributed to these excellent resources or to expand stakeholder awareness of the WSIB's historical evolution. It is also the case that the opportunities and challenges facing the WSIB in the short, medium, and long-term justify dedicated attention particularly in light of growing public expectations of our public institutions.

This section of the report provides a basic primer on the current state of the WSIB's financial position, insurance model, operations, and its interrelationship with the broader workplace safety ecosystem in Ontario. It will also present comparisons with other jurisdictions and private insurers if and where applicable. The basic goal is to give Ontarians an independent sense of where the WSIB currently stands on the key inputs and factors that affect its capacity to serve workers and employers in the province and, in so doing, lay the foundation for the forward-looking analysis and recommendations set out in the subsequent section.

1.1 Elimination of the Workplace Safety and Insurance Board's unfunded liability

Many readers will know that the WSIB's financial position was marked by a structural funding gap for decades. The result was an unfunded liability which represented the "amount by which the total assets less non-controlling interests is less than total liabilities." Put a simpler way, the WSIB had a consistent shortfall between the resources needed to pay future benefits and the money in the insurance fund. The unfunded liability was a function of various factors, but the main contributor was a sustained failure to adequately account for new claims costs in the WSIB's pricing. That is to say the WSIB's premium rates were lower than they ought to have been to fully cover the costs of benefit payments over several years. Simply put: the WSIB was charging roughly 80 cents for \$1 worth of benefits.

This gap was in large part a result of politics. Governments of different political stripes frequently enhanced benefits or limited premium increases without adequate consideration of the effects on the WSIB's insurance fund. As the Auditor General observed in a 2009 report: "The Workplace Safety and Insurance Board and the government face the least resistance from stakeholders when they keep premiums low (which satisfies employers) and benefits high (which satisfies workers). Over time, this can result in a large unfunded liability."

The funding gap was exacerbated by the 2007-08 financial crisis which harmed the WSIB's investment returns and worsened its financial position. The unfunded liability almost doubled in size from 2006 to 2008 alone. It reached its peak at \$14.2 billion in 2011.

Another way to think about the unfunded liability is as an expression of the Workplace Safety and Insurance Board's sufficiency ratio. A sufficiency ratio of 100% means that total assets (less non-controlling interests) minus total liabilities are equal. A sufficiency ratio of 150% means that total assets are 50% higher than total liabilities. At the recent peak of the unfunded liability, the WSIB's sufficiency ratio fell far below 60% (see Figure 1.1). Harry Arthurs referred to this funding level as a potential "tipping point" whereby the WSIB's capacity to generate sufficient funds to cover workers' benefits could be brought into question.

Figure 1.1: Workplace Safety and Insurance Board's sufficiency/funding ratio (%), 2000-2019

2000
66.8%
2001
67.2%
2002
63.8%
2003
62.4%
2004
68.0%
2005
69.1%
2006
73.2%
2007
66.4%
2008
53.5%

2009

54.2%

2010

54.5%

2011

52.2%

2012

56.5%

2013

66.0%

2014

71.6%

2015

77.9%

2016

87.4%

2017

95.8%

2018

108.0%

2019

111.0%

Source of Data: Ontario Workplace Safety and Insurance Board

The Ontario government responded to the WSIB's deteriorating financial position with a regulatory directive in 2013 that stipulated a path to greater sufficiency in the insurance fund over the medium-term. *Regulation 141/12* required the WSIB to achieve a prescribed sufficiency ratio according to the following timeline:

- 60% funding by the end of 2017
- 80% funding by the end of 2022 and
- 100% funding by the end of 2027

In response to the government's regulatory directive, the WSIB implemented a Funding Sufficiency Plan to meet the prescribed targets as well as a new Funding Policy to guide its own pricing and funding decisions. These policies have informed the WSIB's funding plan for the past several years.

One of the main consequences of the funding plan is that a portion of premium rates was dedicated to "past claims costs" to pay down the unfunded liability. That is, the WSIB has collected more from employers than was required to cover a combination of the new claims costs and administration and used the additional revenues to reduce the unfunded liability.

The share of premium revenues dedicated to past claims costs has been considerable. One way to think about it is to break down the average premium rate (for every \$100 of insurable earnings) to see the relative share dedicated to administration costs, new claims costs and past claims costs. The component dedicated to past claims costs peaked at \$1.10 or 42.3% of the average premium rate in 2016 (see Figure 2.1). The inclusion of a component dedicated to past claims costs contributed to the WSIB imposing one of the highest premium rates in the country.

Figure 2.1: Breakdown of the average Workplace Safety and Insurance Board premium rate (\$), 2009-2019

Source of Data: Ontario Workplace Safety and Insurance Board

A combination of factors – including the past claims costs (which was, according to the WSIB, the “single greatest contributor”), strong investment returns, improvements in claims duration and fewer lost-time claims – contributed to steady progress on eliminating the unfunded liability faster than anticipated. The Workplace Safety and Insurance Board announced in 2018 that it had, in fact, achieved a sufficiency ratio above 100% and in so doing had eliminated its unfunded liability.

As a result, it reduced employer premiums by 29.8% in 2019 and has announced another 17% in 2020 (see Figure 3.1). This marked reduction has been mostly a function of unwinding the past claims costs component of premium rates. Next year’s premium rates will no longer have a past claims costs component.

Figure 3.1: Workplace Safety and Insurance Board's average premium rate, 2009-2020

Source of Data: Ontario Workplace Safety and Insurance Board

Regulation 141/12, which prescribed an expectation that the WSIB achieve a 100% sufficiency ratio by 2027, does not provide direction about its funding plan after hitting the 100% target. That the WSIB has achieved a 100% sufficiency ratio several years earlier than directed has created policy uncertainty for employers, workers and the WSIB itself.

As will be discussed in Section 2, there is now an outstanding question about the right sufficiency target for the WSIB going forward to ensure that (1) it has sufficient resources to meet its obligations and withstand potential economic shocks and (2) it is not unduly extracting resources from the economy at the expense of investment and employment.

1.2 Workplace Safety and Insurance Board's funding policy and sufficiency ratio relative to other provinces

The *Workplace Safety Insurance Act, 1997* (WSIA) requires that the WSIB maintain an insurance fund that is sufficient to meet its obligations under the act and to make payments for current and future benefits.

The sufficiency ratio is thus a measure for assessing the WSIB’s capacity to meet its obligations and in so doing comply with the WSIA. The sufficiency ratio is defined as the WSIB’s total assets (less non-controlling interests) minus its liabilities. These calculations, including the treatment of assets and liabilities, are done in accordance with accepted accounting principles.

As discussed earlier, the WSIB’s sufficiency ratio hit its nadir in 2011 when it fell well below 60%. It has since gone up as the unfunded liability was reduced and is now eliminated. At the end of the second quarter in 2019, the WSIB’s sufficiency ratio was 110.2%.

The process for the Workplace Safety and Insurance Board's rate setting and adherence to its prescribed sufficiency ratio has been rooted in *Regulation 141/12* and the WSIB’s own funding policy. Approved in June 2013 and revised in 2015, the funding policy outlines the role of WSIB actors in determining its funding plan and the setting of premium rates. The implementation of the funding policy broadly aligns the WSIB with other major workers’ compensation boards in Canada Stanley, D. (2014).

The current funding policy is guided by five principles: (1) collective liability (2) fair and reasonable allocation of aggregate costs (3) stability of premiums (4) transparent and understandable and (5) financial security The policy’s basic assumptions

and the processes that the WSIB has used to operationalize it in rate-setting decisions have been key contributors to its improved financial position.

While the Workplace Safety and Insurance Board's funding plan has taken guidance from the government through *Regulation 141/12*, it ultimately has sole responsibility for rate-setting decisions as required by the WSIA. This responsibility includes "approving the recommended target funding level required to ensure **enhanced assurance** of maintaining 100% sufficiency ratio...".

The Workplace Safety and Insurance Board's board of directors has final approval of rate-setting decisions following consideration of the chief actuary's recommendations and the WSIB's management's advice and rationale. The board of directors is expected to consider *Regulation 141/12*, the funding policy, analysis and information from the chief actuary, and any other information deemed relevant to rate-setting decisions.

As mentioned, the funding policy and the Workplace Safety and Insurance Board's board of directors currently require "enhanced assurance" in meeting its sufficiency target and not falling below a sufficiency ratio of 100%. Enhanced assurance "represents a high degree of confidence in achieving the regulated sufficiency ratio requirements and maintaining full funding once reached, as determined by periodic asset-liability studies".

This model, broadly speaking, is not unique to the Workplace Safety and Insurance Board. The concept of a sufficiency or funding ratio is common across workers' compensation organizations across the country. Yet it can be somewhat difficult to compare their sufficiency ratios and overall experiences due to various contextual differences – including differences in employer coverage, the generosity of benefits and the composition of the economy. As such, each jurisdiction must determine the right funding level for its own circumstances.

Still, there is some scope to compare the current sufficiency ratios across the provinces and the different regimes in place to guide their funding plans. Presently every province has set a sufficiency target of either 100%, higher than 100%, or some range above 100% (see Table 1.1). As will be discussed, some provinces also have policies in place to guide "surplus distribution" when their funding level exceeds the target ratio.

Table 1.1: Sufficiency ratio and target range by province, 2017

Province	2017 Rate (E.Y.E.)	Target range
Newfoundland and Labrador	131.6%	100-120%
Prince Edward Island	165.4%	100-110%
Nova Scotia	89.4%	Full-funding
New Brunswick	102.2%	110%
Quebec	111.1%	100%
Ontario	95.8%	null
Manitoba	148.8%	130%
Saskatchewan	139.9%	105-120%
Alberta	127.3%	114-128%
British Columbia	153.1%	150%

Source of data: Ontario Workplace Safety and Insurance Board

The key point is that the Workplace Safety and Insurance Board's Funding Policy, its rate-setting process, and current sufficiency ratio are broadly consistent with other provinces. The main questions going forward relate to (1) avoiding a return to underfunding and (2) managing the risks of overfunding.

1.3 Workplace Safety and Insurance Board's Rate Framework Modernization

Although the Workplace Safety and Insurance Board's rate-setting process is unchanged, its broader rate framework is undergoing a significant modernization. The process to reform the rate framework started in earnest in 2014.

The case for reform was set out in the two external reports, *Funding Fairness and Pricing Fairness*, between 2012 and 2014. The basic argument was that WSIB's processes for employer classification, premium rate setting and experience rating were

complex, opaque and unpredictable.

The outgoing classification system, for instance, did not align with the standard *North American Industry Classification System* and instead used 155 separate rate groups. There have also been three separate experience-rating programs to incentivize workplace safety in different industries and among different sizes of firms. And the interaction of the two could have caused some firms to contribute too much to the collective liability relative to their workplace safety performance and others time too little based on their risk profiles. The result was a framework that was confusing for stakeholders, unfair for some industries and employers and inefficient for the WSIB to administer.

The rate framework modernization initiative was thus a multi-year exercise to improve the current WSIB process related to employer classification, premium rate setting and experience-rating programs. The goal of the initiative was to:

- establish a standardized and more consistent classification model to classify employers and set their premium rates
- incorporate stability measures to limit exposure and premium rate volatility, and provide for a gradual transition to the new framework
- recognize that individual employers in an industry represent different levels of risk due to investments in occupational health and safety; and
- provide a premium rate-setting approach that is simpler and more transparent

The Workplace Safety and Insurance Board's board of directors approved the new rate framework in Fall 2016. It was implemented in **January 2020**.

The new rate framework replaces the current classification system with a new classification model based on the *North American Industry Classification System* and in so doing reduces the number of rate groups from 155 to 34. The rates for individual firms are set using a two-step approach:

- The first step involves setting an average rate for each industry class based on their risk profile and share of responsibility to maintain the insurance fund
- The second step involves adjustments to the rate for individual businesses depending on how the business's claim history compares to the rest of the businesses in its rate group

The goal of this two-step approach is to ensure businesses are paying a fair rate that is reflective of both their industry and individual experience. One might think of it as a balance between collective liability and firm-level risk profiles.

The model shares some similarities with several other provinces, including Alberta, British Columbia, Manitoba, New Brunswick, Prince Edward Island, and Saskatchewan. These provinces also set premiums based on an industry class as well as an employer's individual experience-rating compared to other employers in their industry class.

The new rate framework will be implemented over a multi-year transition. This will smooth the impact on the minority of firms who experience rate increases as a result of joining a new rate group. Separate transition arrangements have been made for non-profit organizations and temporary employment agencies. The rate framework will therefore be fully implemented for most employers within three years and all affected employers by 2029.

As the next section will discuss, the Workplace Safety and Insurance Board and the government will now need to carefully monitor the transition process to ensure that it is implemented smoothly and does not produce inadvertent consequences such as a greater incidence of claim suppression.

1.4 Workplace Safety and Insurance Board's coverage relative to other provinces

Related to the rate framework is the breadth of the WSIB's insurance coverage in Ontario's economy. The question of mandatory coverage is the subject of considerable attention and debate among stakeholders. It is only likely to grow in light of the transition away from industrial employment and the rise of the so-called "gig economy" in particular and new, informal employment arrangements in general. It is worth unpacking the current state of the WSIB's insurance coverage and how it compares to other provinces.

Roughly 77% of the province's work force is subject to a combination of mandatory and opt-in coverage. Those employers and workers covered fall into two categories: Schedule 1 and Schedule 2.

Schedule 1 employers are subject to collective liability, are part of a collective insurance fund, and pay premiums to the WSIB. In turn, they are relieved of individual responsibility for actual claims costs since the WSIB pays benefits to workers affected by workplace injuries or illness.

Schedule 2 employers are subject to the individual liability scheme and pay the full benefit costs of each claim as an ongoing liability plus the administrative costs to process and manage them. The Schedule 2 model applies to a limited number of industries including: railways, federally-regulated telephone companies, airlines, municipalities, school boards and the provincial government.

The vast majority of employers and workers covered by Workplace Safety and Insurance Board fall thus into the Schedule 1 category (see Table 2.1).

Table 2.1: Number of Schedule 1 and Schedule 2 employers in Ontario, 2009 to 2018

Schedule Type	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018
Schedule 1 Employers	249,162	250,536	251,827	255,474	287,195	299,339	307,959	311,922	316,387	318,726
Schedule 2 Employers	634	611	606	600	602	600	579	581	581	590

Source of data: Ontario Workplace Safety and Insurance Board

Overall, the WSIB covers roughly 5.6 million of approximately 7.4 million workers in the province. Of the 5.6 million who are covered, 4.8 million work for Schedule 1 employers (see Table 3.1).

Table 3.1: Number of employees among Schedule 1 and Schedule 2 employers in Ontario, 2009 to 2018

Schedule Type	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018
Schedule 1 Employment	3,932,241	4,009,201	4,128,939	4,239,440	4,361,029	4,431,674	4,556,888	4,621,929	4,719,183	4,840,081
Schedule 2 Employment	700,205	702,383	695,358	694,335	698,452	690,942	700,153	714,636	730,604	751,971

Source of data: Ontario Workplace Safety and Insurance Board

The remaining employers and workers belong to what are sometimes referred to as “non-mandatory covered industries.” But that is not precisely correct. It is more accurate to describe them as uncovered business activities within the 34 covered industries.

We know a bit about these approximately 1.7 million workers. Nearly 60% of them, for instance, are employed in finance and insurance, health care and social assistance, and professional, scientific and technical services. But we do not have much information about how many belong to an alternative workplace insurance arrangement, the relative terms and generosity of such arrangements or the overall record of occupational health and safety in these workplaces.

We do know, however, how the Workplace Safety and Insurance Board’s coverage compares to other provinces. Ontario has the third-lowest level of coverage in the country. Its coverage rate is roughly 10% points lower than the national average (see Table 4.1).

Table 4.1: Percentage of workers covered by workers’ compensation boards by province or territory, 2017

Province or Territory	Workforce covered (percentage)
Newfoundland and Labrador	97.4%
Prince Edward Island	97.7%
Nova Scotia	74.9%
New Brunswick	91.4%
Quebec	92.6%

Province or Territory	Workforce covered (percentage)
Ontario	76.5%
Manitoba	78.8%
Saskatchewan	75.8%
Alberta	82.6%
British Columbia	97.2%
Yukon	96.4%
Northwest Territories and Nunavut	97.0%

Source of data: Ontario Workplace Safety and Insurance Board

Understanding the source of Ontario's differing coverage levels relative to the other provinces requires a brief historical explanation. Many of the non-mandatory covered industries were not included in mandatory coverage at the WSIB's origins. The rationale is difficult to know at this stage. But it would seem that Sir William Meredith and the government of the day believed that a comprehensive scheme would face too much political resistance.

Instead, then, the Workplace Safety and Insurance Board model was created based on what is known as an "inclusionary administrative framework" which means that industries must be actively included in regulation in order to be subject to mandatory coverage and a board-level policy must identify each covered business activity. The WSIB's responsibility is to classify employers in accordance with *Regulation 175/98* that prescribes the coverage status of industries. In the WSIB's employer classification manual, each business activity is thus listed as mandatory covered, non-mandatory covered (can apply for coverage), or ineligible for coverage (for example, sports teams or circuses).

Ontario and Nova Scotia are the only two provinces or territories with an inclusionary model. Elsewhere the default is that industries are subject to mandatory coverage unless they are actively excluded through government regulation.

As will be discussed in Section 2, the inclusionary model — including the requirement to actively classify hundreds of specific business activities within each industry — can produce various challenges. The process can lack a principle-based framework and the result is similar occupations can be treated differently due merely to historical circumstances or a lack of responsiveness in legislation or regulation. There are also concerns that certain business activities can "fall through the cracks" or new businesses are not dealt with in a timely fashion.

1.5 Current state of claims, types of claims, and claims duration

The Workplace Safety and Insurance Board's core function is to adjudicate and manage insurance claims from workers and employers. It is worthwhile therefore to spend some time understanding the current state of claims, including the number and types of claims and their duration.

The Workplace Safety and Insurance Board has received an average of nearly 240,000 new claims per year since 2009. More than 80% of them are from Schedule 1 employers (see Table 5.1).

Table 5.1: Number of registered claims by schedule type, 2009 to 2018

Schedule type	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018
Schedule 1 Registered claims	207,296	198,617	196,449	195,128	194,393	195,495	192,077	193,214	199,870	210,828
Schedule 2 Registered claims	40,566	39,781	39,366	38,108	37,856	38,150	37,247	37,719	39,175	43,163

Source of data: Ontario Workplace Safety and Insurance Board

To put these figures in some perspective, there were 767,146 claims reported across the provinces and territories in 2017. Ontario made up roughly one-third of them (see Table 6.1).

Table 6.1: Number of claims reported by province and territory, 2017

Province and Territory	Reported claims (#)
Canada	767,146
Newfoundland and Labrador	12,254;
Prince Edward Island	3,875
Nova Scotia	24,552
New Brunswick	22,659
Quebec	116,685
Ontario	239,045
Manitoba	35,931
Saskatchewan	28,650
Alberta	125,432
British Columbia	152,912
Yukon	1,727
Northwest Territories and Nunavut	3,424

Source of data: Ontario Workplace Safety and Insurance Board

It is notable that the number of WSIB claims is rising since 2015. They have gone up by more than 10% over this period after 7 years of minimal year-over-year change. The cause is difficult to fully discern. There has not been a spike of one particular type of claim.

Claims duration have also increased since 2015. As of Q3 2019, 5.9% of “lost-time claims” were still receiving benefits after 12 months which is up from 3.7% in 2015. Additionally, the number of lost-time claims still on benefits at the 24-month and 48-month marks have also increased during this period.

This is a useful place to emphasize that not all claims therefore are equal with respect to the time and costs associated with administering them or their possible duration. Remember every workplace injury for a covered employer and its workers must be registered with the WSIB, irrespective of the nature of the incident or injury.

Most claims are referred to as “no-lost-time” claims. This means that an incident or injury was registered but the affected worker did not miss work as a result. Think of someone requiring a small number of stitches but who can return to work the following day. More than two-thirds of claims are no-lost-time claims. Another 16% of claims involve time loss of less than 5 days. Basically, 85% of claims involve workers who are back to work in less than a week with minimal support. The WSIB considers these cases “low risk.”

The “high-risk” cases are those who miss more than one month of work due an incident or injury. These cases represent about 7% of overall cases. They require a much wider range of supports including health care services and Return-to-Work programming (see Figure 4.1).

Figure 4.1: Annual Workplace Safety and Insurance Board claims based on lost time (%), 2018

No-lost time

67%

1-5 days

16%

6-14 days

5%

15 days - 1 month

3%

1-3 months

4%

more than 3 months

3%

Source: Ontario Workplace Safety and Insurance Board

The Workplace Safety and Insurance Board has approved an average of roughly 78% of annual claims since 2009. There has been a perception among some stakeholders that more claims were rejected as part of the effort to reduce the unfunded liability. But the data indicate that the approval rate has been broadly consistent over this period. Two-thirds of these are no-lost-time claims which have remained a mostly constant share of approved claims since 2009 (see Table 7.1).

Table 7.1: Allowed lost-time and no-lost-time claims, 2009 to 2018

Claims	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018
Allowed lost-time claims	64,843	60,200	56,672	55,525	54,430	53,688	51,570	57,368	59,529	64,855
Allowed no-lost-time claims	131,843	123,852	123,675	124,019	125,328	125,524	122,133	121,505	126,251	129,759
Total	196,686	184,052	180,347	179,544	179,758	179,212	173,703	178,873	185,780	194,614

Source of data: Ontario Workplace Safety and Insurance Board

The Workplace Safety and Insurance Board's record on meeting targets for processing timelines is reasonably good. It has set a goal of reaching an initial entitlement decision within 10 days of a claim's registration and the organization reports that it meets this target in 86% of cases. This, of course, is positive but it is skewed by the composition of its claims. The target is artificially inflated by the large share of no-lost-time claims.

The truth is the Workplace Safety and Insurance Board's record on more lost-time claims in general complex claims in particular is more mixed. This represents a challenge especially since complex claims such as occupational disease and mental health claims are becoming more common. Mental stress cases, for instance, more than doubled between 2016 and 2018. It is critical therefore that the WSIB improve its processes in order to better target its attention and resources on the relatively small number of cases that are responsible for a disproportionate share of costs.

As a submission from the Christian Labour Association of Canada (CLAC) observed: "The single greatest issue in the WSIB system today is delays in processing claims." This sentiment was expressed by various stakeholders from across the spectrum. It is clear from the review's consultations that there is no more fundamental issue for the WSIB than to improve its capacity to better discharge its main function which is to adjudicate and administer claims. The next section of the report will address this issue in greater detail.

1.6 Workplace Safety and Insurance Board's claims and adjudication process

The most common theme or issue in the review's consultations was concerns about the WSIB's claims and adjudication process. Common frustrations expressed by stakeholders include:

- difficulty navigating the Workplace Safety and Insurance Board due to its complexity
- limited and one-sided communication channels
- outdated technology
- over-emphasis on and strict adherence to policies and procedures and
- long wait times

These concerns were virtually universal. Everyone from the Canadian Federation of Independent Business to the Ontario Federation of Labour agrees. It is reflected in data comparing service performance among workers' compensation boards across the provinces. One example: Ontarians wait longer to receive payment after injury than anywhere else in the country except for New Brunswick.

The Workplace Safety and Insurance Board recognizes that its model for claims and adjudication requires modernization. It is a highly antiquated system that is not only far behind the private sector but lags other provincial agencies as well.

The result is that the processes for claims submission and adjudication are inefficient, costly and, most importantly, difficult for those individuals affected. Just consider that the WSIB received 5.8 million telephone calls and 1.9 million faxes in 2018. That amounts to an average of 21,385 telephone calls and 7,057 faxes per day. It should be unacceptable that, in 2019, workers and employers must still submit their documentation via fax and interact with the Workplace Safety and Insurance Board only by telephone.

These telephone calls and faxes are typically coming from people in their most vulnerable circumstances who have been injured and need help. They may be facing serious financial insecurity or dealing with mental health challenges. Yet basic answers like “have you received my claim?” or “what is the timeframe for payment?” can only be provided via telephone during working hours.

As the Office of the Worker Adviser noted in their submission to the review:

In reviewing the operations of the Workplace Safety and Insurance Board, it is also important to consider the unique situation of injured workers. By definition, they are injured. Their health, livelihood and sense of self is often at stake in a claim. Most injured workers are in some form of financial, emotional or psychological distress. Furthermore, injured workers rightly view the workplace insurance system as a justice system with all the guarantees that entails. None of them have chosen to become involved in the system.

The Workplace Safety and Insurance Board’s Core Services Modernization Initiative aims to improve these challenges and in so doing better respond to the people and circumstances described above. It represents a primarily technological solution to the ongoing problems with claims and adjudication. The plan is to transform the basic platform for claims and adjudication over the next three years and ultimately to provide a simpler, more responsive, and individualized model for workers and employers. This is a multi-year project that will require a significant investment of resources and attention. It will be the subject of funding approval and ongoing oversight by the WSIB’s board of directors.

The Workplace Safety and Insurance Board model is presently a highly-labour intensive one with fewer claims per employee handled than virtually any other workers’ compensation board in the country. This is mainly a function of a failure to leverage technology and in so doing better target resources to the types of cases that are the most complex.

As previously observed, 67% of WSIB claims are no-lost-time claims. Another 16% involve lost time of less than 5 days. Only 7% of claims are described as “high-risk claims” which means that they involve lost time of one month or longer.

Yet presently the Workplace Safety and Insurance Board’s claims and adjudication models basically treat all claims the same. The goal of the Core Services Modernization Initiative is to automate and provide self-service for low-to-moderate risk cases. Then the organization can dedicate resources — including its most senior staff — to the relatively small number of high-risk claims that ultimately drive costs for the organization and generate public and political attention.

The path that the Workplace Safety and Insurance Board is on broadly makes sense. But technology and process changes may not be enough to fully address stakeholder concerns. There may be a need for organizational and structural reforms as well.

One area that might benefit from such reform is the appeals process. There is currently both an informal reconsideration appeal as well as a formal appeal layer at the WSIB as well as the final level of appeal at the Workplace Safety and Insurance Appeals Tribunal (described in greater detail below). If a party disagrees with a decision, they can ask for the decision to be reconsidered by the WSIB staff at the operating level where the initial decision was made. If the initial decision is affirmed, a party can appeal to the Appeals Services Division, which is the formal level of appeal at the WSIB. Decisions at this level are overseen and decided by an appeals resolution officer and are independent of the reconsideration at the operating level. Roughly 15 to 18% of appeal cases at the division level are by oral hearing.

The number of appeals with the Appeals Services Division increased by 5% last year. In any given year there are approximately 6,000-7,000 new appeals within the Workplace Safety and Insurance Board.

These internal processes for reconsideration and appeal at the WSIB are not subject to the same timeline standards as initial entitlement decisions. The process can be slow and complicated, and the review finds that the outcomes are not generally much different than the initial decision. The Appeals Services Division’s rate of allowance for claims is roughly 33% which has been consistent since 2014. This year the division has allowed 20.5% of appeals in full and 12.8% of appeals in part.

A frequent comment in the review's consultations was that "justice delayed is justice denied." Multiple layers of reconsideration and appeal that are both slow and do not generally produce different results for workers and employers may not provide the swift justice that stakeholders are searching for. As the next section will discuss, streamlining the appeals process within the WSIB and expanding resources to the Workplace Safety and Insurance Appeals Tribunal in order to enable it to hear more cases may be a more efficient and ultimately just model.

More generally, the *Core Services Modernization initiative* will need to be managed carefully and transparently to minimize the risks of cost overruns or service disruption and ultimately secure buy-in from stakeholders. There is presently a degree of theoretical support but practical skepticism on the WSIB's ability to deliver and the benefits that will purportedly derive from the new system. Section 2 will discuss these considerations in greater detail.

1.7 Workplace Safety and Insurance Board's auditing activities

Related to the claims process is the question of claim suppression and the WSIB's auditing activities. Claim suppression refers to "actions undertaken by an employer that hinder the appropriate reporting of a worker's injury or illness resulting from work." Such actions can come in the form of incentives such as paid short-term leave or a deterrent such as the threat of sanction or dismissal.

Some stakeholders — particularly labour unions — believe that claim suppression is a real problem in the Workplace Safety and Insurance Board model. They attribute the increasing use of experience rating as a heightened incentive for employers to under-report workplace incidents.

Various reports and studies have sought to understand the magnitude of claim suppression in the province. It is difficult to quantify it but there certainly seems to be evidence that it is present in the system. A 2013 report, produced in response to Harry Arthurs' review, for instance, concluded that "claim suppression appears to be a real problem" and "it is unlikely that claim suppression is restricted to a small number of anecdotal cases".

Assuming that this conclusion is correct, it is a problem for various reasons, but namely because it offends the basic premise of the WSIB's no-fault model. Injured workers should have access to the Workplace Safety and Insurance Board's benefits and services as a matter of principle. That is the whole purpose of the WSIB's model.

In December 2015, Bill 109 amended the *Workplace Safety Insurance Act, 1997* to provide new powers to investigate and penalize claim suppression. In particular, it granted the legal authority for a new system of administrative monetary penalties for claim suppression — including:

- \$5,000 for each of the first, second and third contraventions
- \$7,500 for each of the fourth, fifth and sixth contraventions
- \$10,000 for each subsequent contravention. These new penalties, outlined in *Regulation 175/98*, were developed in 2016 and took effect in January 2018. The Workplace Safety and Insurance Board has developed a risk-based auditing model to investigate employers who are most likely to engage in claim suppression. The model considers different factors such as a high percentage of no-lost-time claims with high health-care costs or low injury rates compared to their rate group average in order to target its auditing activities.

The Workplace Safety and Insurance Board is in the process of consolidating its revenue-related audits and its claim suppression audits over the next two years into a new "one-touch model" whereby auditors are able to conduct both types of audits concurrently. It should enable them to expand the number of claim suppression audits.

The overall target for audits in 2019 is 2,500. This is down considerably relative to the WSIB's past record. The organization's rationale is that the risk-based model is more focused and targeted. But the number of claim suppression audits (what the WSIB refers to as "employer accident report audits") will still be far fewer than the revenue-related audits (what the Workplace Safety and Insurance Board refer to as "employer revenue audits").

As the next section will discuss, there is scope to follow through with the risk-based model which is more efficient than the Workplace Safety and Insurance Board's past auditing practices and still expands its capacity to identify and penalize claim suppression. This will be particularly important as the new rate framework's experience-rating model is implemented.

1.8 Broader occupational health and safety ecosystem

The Workplace Safety and Insurance Board is only one component of the broader occupational health and safety ecosystem in the province. Other organizations including the Ministry of Labour, Training and Skills Development, a network of health and safety associations, industry associations, labour unions, researchers and civil society groups are also involved in promoting workplace safety and supporting workers and employers in the system.

The Workplace Safety and Insurance Board is a major part of this ecosystem, however, in part through its promotion activities (including the incentives inherent in its experience-rating programs and its newly-developed Health and Safety Excellence Program) and in part because the premiums it collects ultimately fund much of the rest of the organizations and activities that support the Ontario government's broader occupational health and safety goals. The WSIB effectively functions as both a player in the health and safety ecosystem and its ultimate funder.

One cannot evaluate WSIB, then, without considering the broader ecosystem and vice versa. The two are inextricably linked because of the relationship between health and safety programming and enforcement and the Workplace Safety and Insurance Board's insurance model as well as the role of premium-based, systemic funding.

The ecosystem can be complicated for workers and employers to understand or navigate. The Ministry of Labour, Training and Skills Development refers to each of the players as "system partners." But each of the organizations is autonomous and has its own mandate and stakeholders. Understanding the ecosystem and its component parts is therefore key to determining how the system works together, whether it is adequately financed, and if there are any gaps that require adjustments or reform.

Office of the Worker Adviser and Office of the Employer Adviser

The Office of the Worker Adviser (OWA) and the Office of the Employer Adviser (OEA) are operational agencies within the Ministry of Labour, Training and Skills Development that provide support to workers and employers, respectively, who are navigating the occupational health and safety system.

The Office of Worker Adviser provides representation, advice, and education to non-unionized workers with respect to their WSIB cases. The OEA provides similar services with a primary focus on employers with 100 employees or fewer. The former's statutory mandate focuses on non-unionized workers. The latter's statutory mandate places an emphasis on smaller firms — though about 10% of its clients have more than 100 employees.

As of 2018, the OWA had an annual budget of \$11.39 million and a staff complement of 97 and the OEA had a budget of \$3.7 million and 28 staff. Both are funded through WSIB premiums and their budgets are assessed annually by the Ministry of Labour, Training, and Skills Development. Both also have specialized staff including a combination of lawyers and paralegals who are located in various centres across the provinces.

The Office of Worker Adviser and Office of the Employer Adviser have similarly both experienced rising demand for their services. The OWA's case load in 2018 was 2,535. It accepted roughly 60% of representational requests. The OEA's case load was 1,178 in 2018. It does not quite have the same challenge of having to decline clients due to resource limitations. The difference is partly a function of a lack of awareness of its services among Ontario employers and a robust private market for legal representation on behalf of employers. Still there is evidence that the market has considerable demand for the Worker Adviser and Office of the Employer Adviser's services.

It is worth noting, for instance, that the Office of Worker Adviser and Office of the Employer Adviser have broad support among stakeholders. The OWA reports a client satisfaction rate of 97% and the OEA's is 99%. These rates accord with comments received from stakeholder consultations and submissions as part of this review exercise. Stakeholders rarely agree on Workplace Safety and Insurance Board-related matters but there is near universal recognition that the Office of Worker Adviser and Office of the Employer Adviser provide useful services to help non-unionized workers and small employers navigate WSIB adjudication, appeals and the broader occupational health and safety system.

Workplace Safety and Insurance Appeals Tribunal

The Workplace Safety and Insurance Appeals Tribunal (WSIAT) is an independent agency under the Ministry of Labour, Training and Skills Development that considers appeals to final decisions made by the WSIB. Section 123 (1) of the *Workplace Safety Insurance Act, 1997* gives the tribunal jurisdiction to rule on both entitlement questions — that is, whether a worker is entitled to a given compensation — and revenue questions — that is, whether a given employer should be included in a particular schedule or rate group and have a specific premium rate.

Ontario is not the only province with such an appeals tribunal. Most provinces in Canada have similar external appeal bodies that act as the final arbitrator on workers' compensation issues.

The Workplace Safety and Insurance Appeals Tribunal's annual budget is approximately \$22 million. It is headed by a chairperson and has 53 vice-chairs appointed through order-in-council for 10-year terms as well as 20 worker and employer representatives whose role is to bring balance to the hearing process. The WSIAT's budget is also funded from WSIB premiums.

Appeals to Workplace Safety and Insurance Appeals Tribunal can be registered by workers or employers and can cover issues ranging from entitlement decisions to premium rates to rate groups. Appeals heard by the WSIAT must first go through the WSIB's own appeals processes described above. While WSIAT is required to apply WSIB policy in its decision-making, it is a separate and independent adjudicative institution, so it is not bound by the WSIB's initial decisions or subsequent appeal decisions.

Workplace Safety and Insurance Appeals Tribunal hearings are typically held with one vice-chair presiding but also can involve tripartite panels comprised of a vice-chair and a worker and employer representative depending on the case and its circumstances. Roughly 60% of hearings are conducted using the former model and the other 40% involve panels.

Presently over 70% of hearings are conducted in-person. The Workplace Safety and Insurance Appeals Tribunal is currently experimenting with the use of teleconferences and "paperless hearings" to minimize the burden on workers and employers (particularly those located outside major centres) and to realize efficiencies for the tribunal.

At the end of 2018, the WSIAT had 4,018 active cases which represents a one-third reduction over the previous year. The timeline for a hearing had also been cut from 16.6 months to 10.9 months over this period. This trend represents an ongoing process to reduce a major backlog at the Workplace Safety and Insurance Appeals Tribunal which had peaked at more than 9,000 cases in 2015.

One of the contributing factors to the Workplace Safety and Insurance Appeals Tribunal's backlog is the lengthy timeline for a hearing to be held. For those who pursue an appeal to the WSIAT, it takes, on average, 28 months between the filing of an initial claim to the WSIB and ultimately having a WSIAT hearing. This timeline can represent a real challenge for those facing financial insecurity.

Applicants are allowed up to 24 months between first submitting a notice of appeal to the Workplace Safety and Insurance Appeals Tribunal and submitting a confirmation of appeal form which prompts a scheduling of a hearing. This gap provides the applicant a two-year window to gather and provide documentation necessary for a hearing. But it also contributes to long delays in the appeals process. This is unique among appeal tribunals in Canada. The British Columbia Workers' Compensation Appeal Tribunal, for instance, has far shorter waiting periods for requests of information — as few as 21 days.

The review's consultations heard that a major source of these delays is due to the capacity of those representing workers and employers in the system. Tighter timeframes for appeals (including the submission of supporting documents) would put pressure on lawyers, paralegals, union representatives, and others who act as representatives in these processes. There must therefore be a balance between swift decision-making and fair opportunity for individuals to properly make their case to the tribunal.

It is notable that the Workplace Safety and Insurance Appeals Tribunal's rate of overturning Workplace Safety and Insurance Board decision is high. Evidence provided by the WSIB indicates that the allowance rate for Workplace Safety and Insurance Appeals Tribunal decisions is roughly 55 to 66%: 33 to 38% of appeals are allowed in full and another 20 to 33% are allowed in part. The explanation for such a high overturn rate is multifaceted. It is partly explained by differing interpretations between the WSIAT and WSIB on various issues. Another factor is that by the time a case is heard by the WSIAT, there may be new information (including, for instance, new medical diagnoses) that was not part of the initial adjudication. Whatever the cause, this gap is a source of inefficiency for the Workplace Safety and Insurance Board, Workplace Safety and Insurance Appeals Tribunal and the workers and employers who are implicated. The next section will provide further analysis on how to ensure that the WSIB is incorporating key WSIAT decisions into its adjudication guidelines.

Office of the Chief Prevention Officer

The Office of the Chief Prevention Officer was established inside the Ministry of Labour, Training and Skills Development in 2012 in order to oversee and coordinate prevention-related activities across the province. The office is led by a chief

prevention officer whose position is the equivalent of an assistant deputy minister. It is advised by a prevention council representing some of the largest stakeholders in the health and safety system.

The prevention office's mandate for promoting and supporting injury prevention is mostly delivered through transfer payments to six health and safety associations. The next sub-section provides more information about the health and safety associations and their role in prevention.

The Prevention Office's activities — including its transfer payments to the health and safety associations (described below) — are funded from WSIB premiums. Overall spending on prevention totaled approximately \$113 million in 2018-19 (see Figure 5.1). Roughly 80% is directed to the health and safety associations. The remaining amounts cover the operating costs of the Prevention Office and some health and safety research.

Figure 5.1: Ministry of Labour, Training and Skills Development' expenditures on workplace injury prevention, 2012-13 to 2019-20 (\$millions).

2012-13

\$100.7

2013-14

\$114.6

2015-16

\$113.7

2016-17

\$116.1

2017-18

\$118.6

2018-19

\$113.4

2019-20

\$103.5

Source of Data: Ontario Workplace Safety and Insurance Board

Ontario's spending on occupational health and safety (including prevention) is consistent with the other provinces and territories. Most of them are clustered around the same level of spending measured as a share of \$100 per assessable payroll. The national average is \$0.10. Ontario is \$0.11 (see Figure 6.1). This clustering across the province is not unique to Canada either. Research by the Institute for Health and Work in 2010 found that most developed jurisdictions spending roughly the same proportion on prevention-related activities. The range was found to be from \$10.40 to \$13.70 per worker in Britain to \$37 per worker in Germany and Ontario was slightly on the higher end of the spectrum at \$33 per worker.

Figure 6.1: Occupational health and safety expenditures per \$100 of assessable payroll by province and territory, 2017

Canada

\$0.10

Newfoundland and Labrador

\$0.11

Prince Edward Island

\$0.06

Nova Scotia

\$0.12

Quebec

\$0.13

Ontario

\$0.11

Manitoba

\$0.10

Saskatoon

\$0.12

Alberta

\$0.07

British Columbia

\$0.09

Yukon

\$0.22

Northwest Territories and Nunavut

\$0.14

Source of Data: Ontario Workplace Safety and Insurance Board

It is worth noting that the Ministry of Labour, Training and Skills Development's own health and safety activities — including enforcement — are also funded from WSIB premiums. The ministry is projected to recover over \$100 million from the WSIB for prevention activities and \$230 million overall in 2019-20. These activities are outside the scope of this review. But it is important that ministry's budget is subject to the same internal scrutiny by the Ministry of Finance and the Treasury Board Secretariat as it would be if its full costs were being charged to general revenues.

More generally, there are ongoing questions about the effectiveness of the province's prevention model. The function has moved from the WSIB to the ministry and back at various points over the years and has been subject to independent reviews along the way. The crucial challenge remains that the various component parts have their own missions and mandates as well as unique stakeholders, and therefore it can be difficult to achieve system-wide coherence. The Prevention Office has sought in recent years to improve coordination but stakeholders in the review's consultations and written submissions observed that there are ongoing issues in "pulling [the different organizations] together."

There are also questions about financial accountability and the use of WSIB premiums to finance the entire prevention system. Relying on premiums as opposed to general revenues can theoretically preclude the typical budgetary trade-off considerations or outcome-based orientation that informs public spending. One stakeholder expressed concerns that the WSIB is treated like a "piggy-bank" without an adequate role for evaluation and results. The relationship between prevention

spending and workplace outcomes is mostly qualitative as opposed to outcome-based metrics related to Ontario's record of workplace safety.

This concern is exacerbated by the fact that while the ministry's health and safety activities (including prevention) span the entire economy, it is only those employers subject to mandatory WSIB coverage who are paying for them. In effect, 77% of employers are paying 100% of the costs. This issue was noted in the 2010 report chaired by Tony Dean and the 2012 report produced by Harry Arthurs and was a frequent observation in the review's consultations and written submissions including by groups ranging from the Compensation Employees Union to the Ontario Business Coalition.

This, of course, is not to say that prevention-related activities are not useful or should not be part of an overall occupational health and safety system. But, as will be discussed in the Section 2, there is a need for greater measurement and transparency to ensure that these activities are producing results and the system is ultimately more accountable.

Health and safety associations and workplace injury prevention in Ontario

As described above, the WSIB plays a considerable role in injury prevention through its newly-developed Health and Safety Excellent Program and financing of the broader ecosystem. But most of the work is currently carried out by six health and safety associations (HSAs) on behalf of the chief prevention officer. These arm's-length, non-profit organizations play such a critical role in the province's prevention-related activities that it is worth outlining their models and functions.

There are four HSAs that are focused on specific sectors of Ontario's economy. These associations provide workplace health and safety training, education, and consulting services to employers in their respective sectors. These HSAs are:

- **Infrastructure Health and Safety Association (IHSA)** – including construction, electrical, utilities, aggregates, transportation, read-mix concrete, and natural gas
- **Public Services Health and Safety Association (PSHSA)** – including health and community care, education and culture, provincial and municipal government and public safety
- **Workplace Safety North (WSN)** – including forestry, mining, pulp and paper and printing
- **Workplace Safety and Prevention Services (WSPS)** – including agriculture, industrial, manufacturing and services

There are also two, non-sectoral health and safety associations:

- **Occupational Health Clinics for Ontario Workers (OHCOW)** – focused on studying, treating and identifying occupational disease in the workplace
- **Workers Health and Safety Centre (WHSC)** – focused on training workers, supervisors and employers in workplace health and safety

Public funding for the six Health and Safety Associations is determined on annual basis by the Office of the Chief Prevention Officer and is delivered in the form of transfer agreements. This annualized process does not provide much scope for multi-year planning (including acquiring training equipment or other capital assets) and requires the HSAs to dedicate considerable resources to managing the funding renewal process. It is an inefficient funding model.

Cumulatively the six health and safety associations are receiving \$80 million in provincial funding in 2019-20. This is about \$12 million less than the overall average since 2012-13 (see Figure 7.1).

Figure 7.1: Annual provincial funding for the health and safety associations, 2012-13 to 2019-20 (\$millions)

2012-13

\$91.5

2013-14

\$93.4

2014-15

\$93.1

2015-16

\$90.8

2016-17

\$92.0

2017-18

\$94.7

2018-19

\$90.7

2019-20

\$80.9

Source of Data: Ontario Workplace Safety and Insurance Board

The Health and Safety Associations are a major source of workplace health and safety training in Ontario. The most recent estimate (based on a sample of certain health and safety certifications) is that they provide 53.2% of all such training across the province through a combination of public and private funding. In fact, OHCOW is the only HSA that does not recover some revenues through a fee-for-service model. The distribution of public funding varies across the organizations (Figure 8.1).

Figure 8.1: Annual funding from the Ministry of Labour, Training and Skills Development for the Health and Safety Associations, 2018-19 (\$millions)

Infrastructure Health and Safety Association

\$22.65

Public Services Health and Safety Association

\$9.17

Workplace Safety North

\$12.07

Workplace Safety and Prevention Services

\$29.09

Occupational Health Clinics for Ontario Workers

\$8.48

Workers Health and Safety Centre

\$9.24

Source of Data: Ontario Workplace Safety and Insurance Board

In addition to their core services, some Health and Safety Associations such as Workplace Safety North and Occupational Health Clinics for Ontario Workers have also assumed responsibilities for other government-mandated initiatives with separate transfer agreements with the Ministry of Labour, Training and Skills Development or other parts of the government. Workplace Safety North's Mine Rescue program, which provides equipment for employers, training for mine rescues and operates an annual mine rescue competition, is now a regulatory requirement for mining companies operating in the province. Similarly, OHCOW is involved in two government-funded investigations: an investigation of conditions at GE

Peterborough due to an emerging disease cluster, and the McIntyre powder project identifying those suffering from the effects of aluminum dust inhalation.

And, as discussed, the HSAs also rely on fee-for-service activities on behalf of private sector clients. The review's consultations found that the Health and Safety Associations are increasingly relying on this model to offset flat-lined or declining public funding. This provides some evidence of the market-driven demand for their services.

But it is also important to observe that there is an increasingly robust supply of other health and safety consultation and training services available to Ontario-based employers. Previous reports have highlighted the emerging role of alternative providers such as private consultants or industry associations or even labour unions in the marketplace. These players are currently providing a considerable share of health and safety training in the province. The research seems to show that small and medium-sized employers in particular seem inclined to using these alternative providers in addressing their health and safety needs. As the 2015 O'Grady report observed:

Overall, private consultants appear to be approximately as large as health and safety associations in terms of the number of front-line staff available to deliver occupational health and safety services and the number of employers to whom service is provided. Survey evidence suggests that private consultants play an important role in the small employer segment of the occupational health and safety services market. This could be an important consideration in formulating a strategy to increase the availability of services to these employers.

This should not be interpreted as a criticism of the health and safety associations model. The review's consultations demonstrated that the HSAs have highly-specialized staff and provide highly-specialized services for different sectors. But, as the next section will discuss, they also provide more generalized services where there seems to be an increasingly robust market-based supply and for which a government-provided monopoly (which is a function of the transfer agreements) may be difficult to justify. The challenge for policymakers is to identify which aspects of the HSAs business model is solving for a "market failure" and which parts could be served by a more open, competitive market.

Conclusion

Section 1 has largely refrained from analysis or recommendations. It has mostly focused on describing the current issues and trends facing the Workplace Safety and Insurance Board. The goal has been to provide readers with an independent sense of the progress that the WSIB has made over the past 10 years or so, but also to begin to draw attention to the opportunities and challenges that the organization will need to confront in the coming years. Time does not sit still. And neither can the Workplace Safety and Insurance Board.

Section 2: opportunities and challenges for the Workplace Safety and Insurance Board

The review's consultations with external stakeholders as well as officials from the Ministry of Labour, Training and Skills Development and the WSIB highlighted several areas that represent opportunities and challenges for the Workplace Safety and Insurance Board in the coming years. These issues are multi-faceted. Some are internal to the WSIB such as the role of technology to improve the claims and adjudication processes. Others are external such as evolving medical research and social norms on matters of occupational disease and mental health.

How the Workplace Safety and Insurance Board responds to these future opportunities and challenges will be critical to protecting and maintaining its financial sustainability and better serving workers and employers in the province. But, just as importantly, it is also critical to retaining public trust and confidence in the WSIB as a public institution.

This review has therefore focused on these forward-looking issues in order to better understand how they affect workers, employers and the WSIB, and what reforms may be required to the WSIB's operations and the government's legal and policy framework so that the upsides are realized and the downsides are mitigated. The outcome of this process of transition should be a stronger, more effective Workplace Safety and Insurance Board that is able to provide responsive, timely and individualized services on behalf of workers and employers. This is ultimately key to ensuring that the organization remains a vital and dynamic part of Ontario's modern social safety net.

This section of the report outlines these forward-looking opportunities and challenges and sets out the case for related operational, legal and policy reforms.

2.1. Setting a sufficiency ratio for the Workplace Safety and Insurance Board

Protecting the Workplace Safety and Insurance Board's vastly-improved financial position is foundational to the organization's ongoing effectiveness. It is the starting point for any forward-looking analysis or planning.

Neither the government nor the WSIB can permit the organization to fall backwards into the structural underfunding that produced its massive unfunded liability. But it also cannot fall into a path of structural overfunding which can produce its own set of challenges. That means setting parameters around the WSIB's financial framework that protects it against the actions and influences that contributed to its past problems and precludes the emergence of new ones.

The first step is establishing a sufficiency ratio that guides the annual rate-setting process on an ongoing basis. Remember the sufficiency ratio and timeframes set out in *Regulation 141/12* have since been superseded. The regulation directed the WSIB to achieve a 100% target by 2027. It is presently 110.2% funded.

This has created uncertainty for the WSIB and its stakeholders. The review's consultations heard from various stakeholders (including the WSIB itself) that new regulatory guidance from the government could provide greater clarity around the WSIB's overall financial strategy and protect against the risks of underfunding and overfunding. It could also issue guidance on how to manage the distribution of excess or surplus funding.

What might an updated version of *Regulation 141/12* set out for the Workplace Safety and Insurance Board? There are various perspectives on the relative risks of underfunding and overfunding and the right sufficiency ratio for the Workplace Safety and Insurance Board. The Workplace Safety and Insurance Board has carried out considerable analysis and research on asset-liability studies and adverse scenario projections to determine what a sensible and balanced sufficiency ratio might be in the short and medium-term. The reviewers met extensively with WSIB officials to understand this analysis, test its assumptions and ensure that it represents a reasonable basis to establish a reserve threshold.

As part of its 2020 rate setting, the WSIB has notionally sought to target a sufficiency "corridor" between 115% and 125%. This target reflects the board of directors' goal of "enhanced assurance" that the WSIB will not fall below a sufficiency ratio of 100%.

Targeting such a corridor is sensible, especially in the short-term. It can not only protect against economic downside and premium rate volatility, it can also provide a financial buffer as the WSIB fully unwinds the past claims costs from its premium rate. Remember the upcoming year will be the first time in several years that the past claims costs component will **not** provide implicit slack in premium rates. This is not to preclude adjustments to the sufficiency ratio over time. But it seems prudent that the target in the short-term errs on the side of stability as the WSIB shifts to a premium rate comprised of new claims costs and administration as well as implements the new rate framework.

The Workplace Safety and Insurance Board's analysis shows that such a target provides a high probability that the system remains at or above 100% funding for the foreseeable future. This judgement reflects a series of asset liability studies and economic modelling that is broadly comparable to how provinces such as Alberta and Manitoba determine their financial planning. It is notable for instance that under such a policy the WSIB could withstand an economic shock similar to the 2008-09 recession and not fall below a 100% threshold (see Figure 2.1).

Figure 2.1: Workplace Safety and Insurance Board insurance and loss of retirement income funds asset-liability study (based on 2008-09 recession)

Source of Data: Ontario Workplace Safety and Insurance Board

The Workplace Safety and Insurance Board's plan is therefore sensible with two key caveats. It is important to highlight both.

The first is that a sufficiency ratio corridor of 115% to 125% should be limited to a defined period of time that enables the WSIB to unwind the past claims costs component of premium rates and ensure that its pricing model for **new claims costs** and administration is correct. Assuming its pricing is accurate, the WSIB and the government may decide that such a significant cushion is unjustified and in turn lower it to 105% or 110%. The transition to the new rates under the rate framework will be mostly complete within five years. It seems reasonable therefore that the sufficiency ratio should be revisited at that time.

The second is that the regulation prescribing a sufficiency ratio should also establish general parameters for the distribution of excess funding above a sustainability reserve. The Workplace Safety and Insurance Board should not be permitted to accumulate large surpluses. But as important as it is to avoid overfunding, it is also critical that surplus distribution is principle-based and transparent. It should not be ad hoc or subject to politics.

A surplus distribution policy could assume different forms such as a dividend or premium credit for employers. The former is delivered in a one-time dividend payment to employers based on a combination of industry, rate group and health and safety performance. The latter is delivered in a one-time reduction in an employer's premium rate in a subsequent year.

The form of surplus distribution is less important than the process and parameters. The Alberta Workers' Compensation Board was one of the first workers' compensation boards to codify clear parameters for surplus distribution in its funding policy. It stipulates that, at the end of the fiscal year, the board of directors "may" consider surplus distribution in the form of a credit applied to an employer's account, or funding for health and safety initiatives if the sufficiency ratio exceeds its 114 – 128% target range. Other provinces have more ad hoc policies in place. The absence of a specific policy or prescription can cause surplus distribution to be arbitrary or politicized.

The Ontario government should follow Alberta's lead and prescribe the parameters for surplus distribution in regulation. The regulation should instruct the WSIB to consider surplus distribution if the sufficiency ratio exceeds 115% and (at the board of directors' discretion) require that it distribute surpluses if the sufficiency ratio surpasses 125%. The WSIB can consult with stakeholders on the best design for surplus distribution and codify the results of these consultations — including the specific procedures and mechanism for surplus distribution — in its funding policy.

It should be observed that enacting a new regulation to replace *Regulation 141/12* may first require legislative change. *Regulation 141/12* was enabled by a legislative amendment in 2013 that permitted the government to set regulatory conditions for the WSIB when the organization's insurance fund was not sufficient to meet its obligations under the act. The law, as it is currently written, may not permit the government to set conditions in regulation for the WSIB when its insurance fund is sufficient. It is beyond the capacity of the review to reconcile these legal subtleties. The government will need to make a judgment and, if necessary, amend the legislation in order to give itself the power to provide new regulatory guidance.

One of the main benefits of this overall approach is that it will place an implicit onus on the government to ensure its own policy choices do not undermine the Workplace Safety and Insurance Board financial position. Remember the Auditor General observed that a great deal of the WSIB's past financial challenges were the result of the government choices that imposed new costs on the organization or limited its capacity to raise sufficient revenues to pay for administration and benefits. A regulation requiring the WSIB to meet certain financial thresholds amounts to a high-profile public commitment on the part of the government to the WSIB's ongoing financial sustainability. It would effectively raise the political threshold for governments in designing policies that touch on the WSIB's financial position.

2.2. Sustaining and strengthening the rate-setting process

As described in Section 1, the Workplace Safety and Insurance Board has taken considerable steps to improve its processes for pricing claims costs and setting premium rates. The combination of *Regulation 141/12*, the funding policy and greater rigour in its pricing analysis has contributed to the WSIB's stronger financial position over the past several years. These are, of course, positive developments. The goal must be to sustain and strengthen the rate-setting process and the WSIB's financial capacity in order to protect the gains that have been achieved.

Various stakeholders observed that the greatest threat to the Workplace Safety and Insurance Board's ongoing sustainability is the potential for government policy in particular and politics in general to disrupt the organization's financial sustainability.

The primary risk is not from overt political interference in the rate-setting process, as may have been the case in the past. The funding policy is clear that the WSIB's board of directors has full responsibility for rate-setting decisions. The Chief Actuary's pricing recommendations have been consistently approved over the past several years based on the WSIB's models and projections. Politics have not, by all accounts, played a role.

The greater risk is that the government legislates new or enhanced benefits without adequate resources to fully cover them. This is hardly a theoretical risk. The 2009 Auditor General report, for instance, highlighted how previous policy decisions such as the 2007 indexation of worker benefits added to the WSIB's unfunded liability. The policy change to grant retroactive and presumptive eligibility for firefighters with occupational disease in the same year is another example. The latter case was especially challenging because data limitations made it difficult to project the costs of retroactive benefits.

The review does not question these policy choices or the government's authority to make them. But adequate time is required for the Workplace Safety and Insurance Board to adjust its rate to account for new or enhanced benefits. The imposition of mid-year costs can preclude planning and, as a result, harm the organization's financial position.

It is important therefore that the government refrain from mid-year policy changes. This does not mean that the government should never create new benefits or enhance existing ones. That is its prerogative. But it should be stipulated that new or enhanced benefits should come into effect in the fiscal year in which the WSIB can account for these costs in its rate-setting process. This was a past recommendation of Harry Arthurs. It remains a sensible recommendation now. While the government has in recent years collaborated with the WSIB in assessing the system effects when considering legislative or regulatory changes, codifying this expectation in the *Workplace Safety Insurance Act, 1997* would help to create greater certainty and stability in the rate-setting process.

Another reform that would improve the Workplace Safety and Insurance Board's financial planning is a better use of predictive modeling in its pricing and rate-setting processes. Private sector insurers are increasingly using predictive modeling to anticipate industry and firm-level trends and set rates more precisely. The WSIB has experimented with predictive model analysis but currently does not use any form of predictive modeling in its rate-setting processes. Yet it has a tremendous amount of data that could form the basis of sophisticated predictive modeling techniques. The WSIB should therefore develop a predictive modeling capacity within the organization as part of its efforts to sustain and strengthen its rate-setting processes.

2.3. Implementing the new rate framework

Section 1 described the Workplace Safety and Insurance Board's Rate Framework Modernization initiative, its rationale, and how it is being implemented over the coming years.

The new rate framework improves on the current system by simplifying the employer classifications and replacing the existing experience-rating programs. But it will be essential that the WSIB carefully monitors its implementation in order to ensure that it works smoothly in practice. There are specific risks that will require attention and possible adjustments.

One issue is the initial distribution of employers according to the different industry classes will require ongoing adjustments. The initial classification for most firms will be based on a judgment of the firm's "predominant business activity" based on insurable earnings. Yet businesses and business activities are regularly evolving. It will be critical for the WSIB to be flexible as the new model is implemented. The process for determining whether employers are subject to single or multiple premium rates will also need to be consistent and transparent.

As part of the transition to the new model, employer stakeholders have advocated for the assignment of a senior manager for each industry class who is responsible and accountable for these types of decisions. Think of it as a key point of contact for employers seeking to understand their grouping, its rationale, and how changes to their business activities will affect it.

This was challenging with 155 rate groups, but it should be doable and sensible with only 34 industry classes. The Workplace Safety and Insurance Board should therefore consider establishing an Industry Class Manager position especially as the new rate framework is phased in. It would be useful from an organizational standpoint to have a senior focal point with whom industry and worker representatives can engage about their unique issues and circumstances.

More generally, the biggest risk of the transition to the new rate framework is the extent to which a greater reliance on experience rating could enhance the incentives for claim suppression. Depending on an employer's size and its rate group, the percentage of individual experience considered in the rating setting will range from as low as 2.5% to as much as 100%. An employer whose individual experience will have a significant effect on its premium rates will theoretically have a high incentive to have robust workplace health and safety policies and procedures in place. But it will also theoretically have higher incentives to suppress claims if or when an incidence occurs.

This is not an indictment of experience rating in general or the model contemplated in the new rate framework in particular. The new model is simpler and more transparent than the panoply of programs that it is replacing. But that does not change the fact that labour unions and injured worker advocates are right to be concerned about how these incentives may affect employer behaviour. The use of a rolling six-year window to set individual premium rates will ostensibly help to mitigate the risks of rising claim suppression. Still, the WSIB will need to be vigilant including, as discussed later, expanding its audits for potential claim suppression.

2.4. Rationalizing Workplace Safety and Insurance Board coverage

Section 1 discussed the evolution of the WSIB's insurance coverage including the different treatment of Schedule 1 and Schedule 2 employers as well as the workings of the "inclusionary model" for coverage and the extent to which it can produce anomalies in the treatment of different firms and business activities.

The question of coverage is one of the most contentious issues facing the WSIB. It has been overshadowed for several years by the unfunded liability, but its elimination has pushed the subject back on the public agenda. There is growing momentum for the WSIB and the government to revisit its model for coverage led by labour unions such as the Ontario Compensation Employees Union.

The case for reform is not without basis. The inclusionary model, which requires the WSIB to render judgments about the inclusion of different firms and business activities, is poorly equipped to handle a fast-moving, innovative economy. The conversion to the North American Industry Classification System will simplify the administrative process of assigning different business activities but it will not change the basic model. The risk, as described earlier, is that certain workers and employers "fall through the cracks", or there are delays in determining their treatment in the inclusionary model.

It can also produce uneven treatment of different workers and employers that are difficult to justify based on evidence or principle. The review's consultation frequently heard about such anomalies in the system. Some developmental support workers, for instance, are included in mandatory coverage and others are excluded, depending on their employer. Residential care workers who work in retirement homes or senior citizen's residences are similarly treated unevenly. These anomalies can produce distortions. A part-time residential care worker, as an example, can conceivably work partly in a workplace that is subject to mandatory coverage and partly in one that is not, even though his or her activities and functions are precisely the same.

Fully changing the treatment of currently non-mandatory covered industries may create disruption or unintended consequences. Industries and firms have operated according to the current framework for more than a century and some have made alternative insurance arrangements for their workplaces. There may not be an appetite therefore for moving to mandatory coverage across the economy given the potential effects on business investment and employment. But the WSIB should move to an exclusionary model on a go-forward basis. That is to say henceforth new employers should be subject to mandatory coverage unless the WSIB and the government act to exclude them.

Under such a legal and policy scenario, the Workplace Safety and Insurance Board and the government would now be required to take policy or regulatory action to exclude an employer and then justify their rationale. An exclusionary model would ensure that future decisions are more transparent and accountable. The net outcome would ostensibly make for a more principle-based model.

British Columbia's exclusionary model is a good example of how such a new exclusionary arrangement could work. Section 2 (1) of the *British Columbia Workers' Compensation Act* stipulates that "this part [compulsory coverage] applies to all employers, as employers, and all workers in British Columbia except employers or workers exempted by order of the board." The Workplace Safety and Insurance Board and the government should consider adopting a similar legal framework that applies to new and future employers.

There are some current anomalies in Workplace Safety and Insurance Board coverage that justify immediate action. The Workplace Safety and Insurance Board and the government should undertake to extend mandatory coverage to developmental supporter workers and those working in residential care facilities as envisioned in Bill 145, which died on the order paper in the 41st Parliament. Leveling the playing field for workers in these industries would correct an unjustified anomaly in the WSIB's coverage with limited incremental cost or disruption.

Related to the question of coverage is the differing insurance schemes for Schedule 1 and Schedule 2 employers. The two separate models are a function of the WSIB's founding. The review's research found that it may have even been conceived as an experiment to see how the two models — collective liability and individual liability — worked in tandem. To the extent to which this is true, it seems like 105 years is long enough for an experiment to have run its course.

Maintaining both schemes creates some administrative complexities for the WSIB. Determining the administrative costs attributable to Schedule 2 employers, for instance, has been characterized as complicated and lacking transparency by a 2015 value-for-money audit carried by Ernst & Young.

The distinctions between the two schedules and in turn the justifications for maintaining them is, moreover, becoming less obvious. There are two main reasons for this trend.

The first is more Schedule 2 employers are voluntarily opting into Schedule 1 because of the cost certainty of collective liability. This has particularly been the case for municipalities that are struggling to manage the costs of retroactive claims by

firefighters and rising mental stress claims by other emergency personnel. Consider the number of Schedule 1 employers has increased by 28% since 2009 and the number of Schedule 2 employers has fallen by 7% over the same timeframe.

The second is the WSIB is now using a type of collective provision to pool risk among Schedule 2 employers. This works as a system of financial guarantees to protect claimants from firm bankruptcies. There is no longer a separate operating budget to manage Schedule 2 claims or a separate process for how the claims are treated. In short, the system is increasingly converging to a collective liability model.

Consolidating the two schemes was not an option as long as the unfunded liability persisted. It would have been unfair to require Schedule 2 employers to contribute to past claims costs, given that they were not previously part of the system. But now that the unfunded liability has been eliminated there is an opportunity to consider whether to fully consolidate Schedule 2 employers into the collective liability system.

Incorporating the roughly 590 Schedule 2 employers into the new rate framework would require consultations and possible adjustments to the industry classes and premium rates. It would also require a transition plan for Schedule 2 employers who may have ongoing claims under the individual liability system and would begin to pay premiums into the collective liability system for future claims. The WSIB and Ministry of Labour, Training and Skills Development would finally need to consider the necessary legislative and regulatory changes as well as the appropriate timeframe for implementation.

Yet, given the changes in pricing model, it seems like an opportune time to bring the experiment of a dual model — collective liability and individual liability — to an end. Moving in this direction would simplify the WSIB's administration and improve transparency with respect to pricing and administration costs. It would also bring greater cost certainty to Schedule 2 employers. The WSIB and the government should therefore prepare for the consolidation of Schedule 2 employers into Schedule 1 over the medium-term.

2.5. Modernizing and streamlining claims and adjudication

As discussed in Section 1, the WSIB's current model for claims and adjudication relies on outdated technology and slow, labour-intensive processes. The result is a “one-size-fits-all” system that lacks responsiveness and timeliness. Virtually every individual and organization who participated in the review's consultations emphasized the need for modernization in order to better serve workers and employers.

The Workplace Safety and Insurance Board recognizes that it has historically failed to examine its business from an “outside-in” perspective and spent too little time thinking about how it serves workers and employers. The result is clear: the WSIB has not kept up with the accelerated pace of change that technological advancements are delivering in the new digital world. It has fallen significantly behind not just its private sector comparators but even among public sector organizations and, as a result, failed to meet the needs and expectations of the people it serves. The need for change is real.

The first step is for the Workplace Safety and Insurance Board to structure itself around people's needs and deliver services that best fit their expectations. People expect the same level of interactions and services they already find in other organizations they deal with on a daily basis. The top priority for the WSIB must be to modernize the claims process by replacing the reliance of paper processing, telephone interactions, and faxing with easy to use online services. Online services that allow people to register claims, check claim status, and communicate digitally, can achieve administrative efficiencies for the Workplace Safety and Insurance Board and, more importantly, improve services for Ontarians.

The core services modernization initiative is prioritizing these changes in the immediate term. The expectation is that the digital submission of documents and online system for monitoring one's status should be available in 2020. This is a positive first step. Further digital enhancements should continue with the goal of a full end-to-end digital solution that allows people to conduct business fully online with the WSIB as soon as possible.

A second, related step is to move to the extent possible to a self-service model for no-lost-time claims in particular and simple claims in general. The average cost of a no-lost-time claim is \$344. The average cost of a lost-time claim exceeding three months in duration is \$27,753. Yet the current claims and adjudication processes do not effectively differentiate between them. There is no reason that managing low-risk claims (which are primarily about collecting data as opposed to delivering benefits and services) should be as labour intensive as they currently are. A system of online claims for these simple cases as well as fast-tracked adjudication (using a form of e-adjudication) would enable the WSIB to dedicate more resources to complex claims.

As part of a shift to such a risk-based model, the WSIB should set new targets for processing timelines that differentiates between no-lost-time claims and lost-time claims and reports on them separately. The WSIB's current practice of combining

the two types of claims when reporting on its performance on processing timelines is inherently inflationary due to the disproportionate number of no-lost-time claims. Disaggregating the data would provide a clearer sense of the organization's progress on improving processing timelines.

It should be possible through the use of digital technology, self-service, and e-adjudication to significantly reduce the processing timelines for no-lost-time claims. But, as importantly, it should also help to reduce processing timelines for lost-time claims by refocusing more resources and senior staff on them. Publishing separate metrics for each would enable Ontarians to track the WSIB's progress.

A third step is to continue to adjust the current model for claims adjudication. The Workplace Safety and Insurance Board has at different times relied on a case manager model whereby specific case managers were responsible for particular industries, employers, or individual claims, and a triage model whereby claims and cases are distributed across the organization based on capacity at any given time.

Both approaches have their weaknesses. The former can lead to an inefficient distribution of staffing and resources if some adjudicators are markedly busier than others. The latter can cause its own inefficiencies by precluding the development of specific competencies and expertise among WSIB staff and causing workers and employers to deal with multiple Workplace Safety and Insurance Board officials on their files. There is a sweet spot between the two, and the WSIB must organize itself and staffing to achieve it. Simple claims, as a general rule, can be resolved through a triage model. More complex ones (including mental stress and occupational disease cases) will require dedicated expertise. The goal must be to ensure that the right claims are being managed by the right people at the right time.

Shifting to a model that focuses resources and expertise on specific types of claims — particularly complex ones — will become more important as the number of mental stress and occupational disease cases grow. The number of mental stress cases, for instance, has already grown by 107% since 2016. Managing this potential major source of new, complex claims will require a combination of process reforms and internal expertise. It is critical that the WSIB is proactive in implementing such changes in preparation of a rising share of cases requiring greater and more specialized attention. The risk otherwise is that the WSIB's claim and adjudication processes may become overwhelmed and timelines could significantly worsen.

Overall, then, these three areas of improvement are critical to modernizing and streamlining claims and adjudication, addressing a major source of frustration for workers and employers, and positioning the organization for future caseload trends. Failure to make progress in these areas will erode public trust and confidence in the WSIB and could ultimately lead to new demands for more fundamental changes.

It is important, therefore, that not only the WSIB proceeds with its core service modernization initiative, but that it continues to engage stakeholders on its design and implementation. It will need to do so in order to both demonstrate progress as well as seek to input on different aspects such as the functionality of the online portal for both workers and employers.

2.6. Reforming the appeals process

As important as digital adoption and other technological changes are to improving the claims and adjudication processes, there is also need for some accompanying institutional reforms. Section 1 highlighted the appeals process as one area requiring the WSIB's and government's attention.

The Workplace Safety and Insurance Board's current appeals/reconsideration system imposes unreasonable delays by virtue of a myriad of steps and processes that ultimately rarely provide a final decision for the appellant or employer. The appeals/reconsideration system should not be viewed outside the claims continuum.

Streamlining the appeals process can therefore be part of an overall agenda to improve claims and adjudication. It does not need to come at the expense of workers — in fact, the review frequently heard that a streamlined process for appeals could actually improve outcomes for workers. There are three types of reforms that the WSIB and the government should consider.

The first is to consolidate the two layers of reconsideration and appeals presently housed within the WSIB. A single appeals function could draw from a combination of the current approaches of the reconsideration process at the operating level and the Appeals Services Division's appeals resolution officers. It would provide workers and employers with an opportunity for appeal within the WSIB but not have them stuck in a lengthy, multi-layer process that does not typically produce different results than the initial adjudication. It would, in effect, accelerate appeals to the WSIB, where the facts of the case can be reconsidered.

The legal and operational framework for a new consolidated appeals function within the Workplace Safety and Insurance Appeals Tribunal would require engagement on the part of the Workplace Safety and Insurance Board, the government, and the WSIAT. Considerations would include the design of the appeals function, including the role of in-person hearings; new timeline standards for appeals decisions; human resources and staffing; and possible incremental resources to the WSIAT, which would ostensibly receive more appeals as a result. These are significant considerations that should not be taken lightly. But the rationale for maintaining two separate layers of appeal/reconsideration at the WSIB seems difficult to justify given the evidence of delays and a lack of different results.

The second is to improve how the Workplace Safety and Insurance Appeals Tribunal's decisions are used to inform the WSIB's adjudication guidelines and vice versa. It seems unproductive for the WSIAT to overturn the WSIB's decisions in roughly half of cases and yet it can have no impact on how the WSIB adjudicates different types of cases. There is scope to protect the necessary independence of the two organizations and still enable a greater two-way conversation on cases where key principles are at issue. The goal should be to avoid cases with fundamental similarities, regularly returning to the WSIAT on appeal. A 55 to 65% overturn rate is not in the interest of the Workplace Safety and Insurance Board, Workplace Safety and Insurance Appeals Tribunal, workers, or employers.

In what form could this two-way feedback take shape? One option is the creation of a Quality Table with key representatives from both organizations. The purpose of the group would be to identify and anticipate trends through data analytics and actual case outputs. The Quality Table could work to ensure (1) a common understanding of the WSIB's procedural documents including those related to claims and employer accounts and (2) that signature WSIAT decisions are used to update WSIB's adjudication guidelines. Workplace Safety and Insurance Appeals Tribunal already highlights noteworthy decisions on its website and in its annual report. Transforming these highlights into formal guidelines with elaborated reasoning could help inform the WSIB's own reasoning and decision-making and minimize major differences between the two organizations.

The third is that the Minister of Labour, Training and Skills Development should work with the Attorney General to ensure that legal representatives participating in the workers' compensation system have adequate training and are serving injured workers in an ethical way. The review heard from several stakeholders that a minority of paralegals and legal representatives in the workers' compensation system risk harming the reputations of the significant number of paralegals and legal representatives who work hard on a daily basis to represent the interests of Ontario workers and employers.

The review heard that a small number of paralegals and legal representatives may be contributing to poorer system-wide outcomes that need to be addressed. The review in particular was told that claims that some may deliberately delay the appeals process in order to maximize their client base and in turn their earnings, others provide poor representation on behalf of clients in front of the WSIAT, or a small subset charge exorbitant contingency fees. These issues are beyond the scope of this review. But they came up frequently enough that it is important to raise them here. The Minister of Labour, Training and Skills Development should therefore work with the Attorney General and the Law Society of Ontario to ensure that paralegals and other legal representatives participating in the system have sufficient training and a clear understanding of their professional standards and obligations. This is important to protect the reputations of vast majority of paralegals and legal representatives who play a critical role serving injured workers and to ultimately ensure that workers are receiving the representation that they deserve.

2.7. Enhancing audits

The Workplace Safety and Insurance Board's risk-based approach for audits is intuitive. Random audits are inefficient. Targeted audits based on empirical metrics can be both more efficient and ultimately effective.

The reviewers met with WSIB officials to understand how the organization's risk-based model and the identifiers and factors used to identify firms for audits. The identifiers and factors are a reasonable basis to guide audit activities. These include:

- a high percentage of claims that were not established by a Form 7
- a high ratio of abandoned/rejected claims
- a high percentage of no-lost-time claims that had high health-care costs high percentage of claims that were reported late
- extremely low injury rate compared to their rate group average
- *Employment Standards Act* conviction(s) published by the Ministry of Labour, Training and Skills Development

But, as sensible as a risk-based auditing model may be, the WSIB must also recognize the potential risks associated with the new rate framework, such as employer confusion over compliance issues and the common perception that it will increase incidences of claim suppression. A significant reduction in audits in this context could not only miss possible changes in

employer behaviour, but it could also harm public trust. Stakeholders in the review's consultation expressed concerns over the reduction of auditing resources observed through a number of audits and auditors over the last few years.

This concern is heightened by the fact that the number of registered employers continues to rise and in turn the proportion of firms subjected to possible audits is falling. The result is that not only is the absolute number of audits (including both revenue-related audits and claim suppression audits) declining, but the relative number is projected to fall from 4.3% of Schedule 1 employers in 2015 to roughly 0.8% in 2020 (assuming average growth from the previous five years).

Changes to the auditing process are not occurring in a vacuum. The WSIB and the government must be more cognizant of the overall mix of operational and policy changes occurring during this period of transition and the cumulative impact on the incentives for employers. The combination of the implementation of the new rate framework and a decline in the absolute and relative number of audits risks sending the wrong signal about claim suppression and theoretically increases the potential for it to occur.

This would be a regrettable development for various reasons — namely, it would risk undermining the WSIB's progress on establishing a claim suppression audit function and implementing the new administrative monetary penalty that can be applied to non-compliant employers. It risks a step backward based on perception and fact.

The Workplace Safety and Insurance Board should therefore maintain staffing and resources to protect a statistically relevant number of audits through the implementation of the rate framework. It is beyond the capacity of the review to judge the optimal number of annual audits, but it should be much higher than planned for the foreseeable future. The goal should be to ensure that the number of claim suppression audits is statistically relevant in order to provide a credible basis to make judgments about the system's performance including whether any operational or policy changes are required.

2.8. Strengthening the occupational health and safety ecosystem

The Workplace Safety and Insurance Board is foundational to Ontario's broader occupational health and safety ecosystem, but, as discussed in the previous section, it is not the only player.

The review frequently heard about the utility and value of the Office of the Worker Adviser and the Office of the Employer Adviser. Their combined budgets are less than \$15 million per year, which is a small fraction of overall spending. Yet, by all accounts, these two small offices play a key role in educating their constituencies on WSIB issues and representing them throughout the process. The OWA, in particular, has been forced to decline cases due to limited resources. A modest investment, therefore, could go a long way to ensure that workers and employers are better served in the system. This is particularly important in light of previous evidence that non-unionized workers involved in the system may be at risk of poor representation and high contingency fees.

Providing these organizations with additional funding would enable them to better address the current gap between supply and demand for their services. It could also help to reduce the burden on the Workplace Safety and Insurance Board and Workplace Safety and Insurance Appeals Tribunal by making the appeals process more efficient and effective. The proper level of incremental funding is, however, difficult to judge. The Ministry of Labour, Training and Skills Development should therefore consult with the Office of Worker Adviser, Office of the Employer Adviser and broader stakeholders to determine the right funding profile to increase the budgets of the Office of the Worker Adviser and the Office of the Employer Adviser.

A related issue is the available representation of unionized workers in the system. It is first important to observe that most unions do a tremendous job representing their members through the claims, adjudication and appeals processes. It is not an exaggeration to say that union representatives, by and large, are among the most experienced and knowledgeable stakeholders in the entire workers' compensation system.

Yet there is a risk that exceptions to this rule not only poorly serve workers but also harm the reputation of unions who work hard to serve their members in the WSIB processes. Presently it is a legal obligation for unions to provide "fair representation" on behalf of its members in the area of collective bargaining. They face no similar legal obligation with respect to occupational health and safety issues. Amending the *Labour Relations Act* to require that unions must provide mandatory representation for their members involved in WSIB cases would ensure consistency in support and representation among unionized workers in the province. It would also ensure that these workers have proper representation given that the OWAs statutory mandate focuses primarily on non-unionized workers.

2.9. Delivering more effective and outcomes-based prevention programming

The review heard from various stakeholders about the importance of prevention as part of an overall occupational health and safety strategy. But, as described earlier, there was also considerable discussion about placing a greater emphasis on measuring the effectiveness of prevention-related programming.

Better analysis of outcomes will require more real-time and future-oriented data. The current data sources tend to be lagging indicators (such as lost-time injuries) that, by definition, capture incidents that have already happened. This is exacerbated by silos between the WSIB, Ministry of Labour, Training, and Skills Development and the Office of the Chief Prevention Officer. Although there has been progress on working more collaboratively, there is still room for improvement. As an example, the WSIB and Ministry of Labour, Training and Skills Development only share data with the prevention office by request and it can take several weeks or even months. And, moreover, there are data gaps. The reviewers requested data from the Ministry of Labour, Training and Skills Development on the occupational health and safety performance of firms that are not subject to mandatory coverage and learned such data did not exist. We do not know therefore if non-mandatory covered firms tend to have more or fewer workplace incidents.

The first step in improving Ontario's prevention model is to better leverage data and evidence. The WSIB and the Ministry of Labour, Training and Skills Development should provide data to the prevention office in real-time or as soon as it is available. The prevention office should also develop a set of leading indicators to better anticipate emerging workplace risks. More epidemiological data need to be captured to better understand the contributing factors related to different types of incidents and injuries. The Office of the Chief Prevention Officer should play a coordinating role between the WSIB and the Ministry of Labour, Training and Skills Development to accumulate and analyse these various sources of data in order to better inform prevention-related programming and to ultimately measure its effectiveness.

The government should also revisit its model for how it delivers prevention-related programming. Presently the Office of the Chief Prevention Officer transfers approximately \$80 million to six health and safety associations (HSAs) who are primarily responsible for delivering prevention services on behalf of the government. The funding is delivered in the form of annual transfer agreements.

The review heard from various stakeholders that the HSAs do an excellent job of providing highly specialized services. They have accumulated considerable expertise and specialization and are uniquely positioned to deliver certain types of advisory support and training. But the review also heard that new and emerging models (such as for-profit organizations) are also providing more general services and training in the marketplace, particularly to small and medium-sized employers.

The current funding agreements between the Office of the Chief Prevention Officer and the Health and Safety Associations, in effect, give them a public funding monopoly for both their specialized services and their general ones. The former area remains a "market failure," where they are the only options available given their capacity and expertise. But the latter is an increasingly competitive market.

The government should consider a new funding model whereby it continues to provide direct funding to the HSAs for their activities, which are specialized and unique, and run open competitions for more general services and training that HSAs as well as other organizations could apply for funding. It is beyond the capacity of the review to determine which specialized activities should continue to receive dedicated funding and which ones could be opened up to broader competition. The right mix between these two approaches would require consultations with unions, employers, the HSAs, and other stakeholders.

As part of this transition, the government should also consider providing three to five-year funding to the Health and Safety Associations as opposed to renewing them on an annualized basis. Additionally, increasing overall prevention funding, if it is more outcomes-based, can actually produce positive returns in the form of lower costs elsewhere in the system. If the government, therefore, pursues some of the structural reform proposed here, it may also consider increasing the overall prevention envelope in order to catalyse, support new and dynamic prevention-related models and partnerships and ultimately improve occupational health and safety in the province.

2.10. Improving the Workplace Safety and Insurance Board's governance

The review was asked to examine the WSIB's governance and executive structure to determine if any changes were necessary to improve the organization's efficiency and effectiveness. The consultations heard a bit about these issues, but they were not common areas of concern for most stakeholders. Still, there are some areas that require further attention or improvement that could contribute to better governance at the Workplace Safety and Insurance Board.

The Workplace Safety and Insurance Board's executive structure — including the number of senior executives and their reporting relationships — does not seem out of the ordinary or a cause for concern. There has been some consolidation in the organization's senior roles in recent months, for instance, that has reduced the number of personnel reporting directly to the

president and CEO. Still, if the government wanted to further analyse the WSIB's executive structure, it may consider hiring a corporate governance expert to conduct a review and provide advice on possible reforms based on best corporate practices.

The appointment of new directors to the WSIB's board is one area where reform may be valuable. Presently appointments are made by the Minister of Labour. Training and Skills Development with limited consultation or engagement with the current board of directors. The risk is that this process could produce competency gaps on the board, especially as a number of board terms will **expire** in the coming months.

One option would be for the Governance Committee of the Workplace Safety and Insurance Board to submit an evergreen list of skills and competencies that the board needs to fulfill its responsibilities. The list would represent private advice to the minister and could be regularly updated to reflect new and emerging competency needs. This would enable a two-way conversation between the WSIB's Governance Committee and the minister and in turn, would provide the board with an opportunity to input into the appointment process and mitigate the risk of competency gaps.

A related reform is to the term lengths of WSIB directors. The recent experience has shown the potential for multiple directors to have expiration dates concentrated in a short period of time. The risk, of course, is the loss of institutional knowledge and continuity. This is a particular concern during this period of transition for the WSIB. The government should therefore consider staggered expiration dates to ensure that there is an orderly process for managing board turn-over.

Another possible reform relates to the *Workplace Safety Insurance Act, 1997* legislative requirement for board meetings. The act stipulates that the Workplace Safety and Insurance Board's board of directors must meet at such a frequency that "in no case shall more than two months elapse between meetings". Most provincial Crown corporations (such as the Liquor Control Board of Ontario and the Investment Management Corporation of Ontario) are not subject to such legislative requirements and instead their boards of directors set the frequency and timing of meetings. There would be some practical benefits to granting the WSIB similar flexibility.

A final area for further attention is the Workplace Safety and Insurance Board's real property footprint. The organization's roughly 4,000 employees are spread across 15 offices in the province but approximately half are located in its Toronto office. The Workplace Safety and Insurance Board has been working with Infrastructure Ontario on a long-term strategy for its realty portfolio. It should engage an independent adviser (such as Infrastructure Ontario) to evaluate how the WSIB manages its real property portfolio and identify any possible efficiencies.

Recommendations

The review has reached 25 recommendations for the WSIB and the government. The goal of these recommendations is to help the Workplace Safety and Insurance Board manage the series of transitions that are currently undergoing while still protecting and maintaining its financial sustainability and ultimately better serving the workers and employers in Ontario.

The final point is fundamental: as a public institution, the WSIB must dedicate itself to earning the trust and confidence of Ontarians on an ongoing basis. These recommendations will hopefully help to achieve this goal.

Recommendation 1

The government should adopt a regulation that prescribes a sufficiency ratio corridor of 115% and 125% for the Workplace Safety and Insurance Board from 2020 to 2025.

Updating *Regulation 141/12 – Insurance Fund* with a new sufficiency ratio corridor between 115% and 125% in the short-term will help to protect the Workplace Safety and Insurance Board's financial position as it unwinds the past claims costs from its premium rate and transitions to the new rate framework. It may be a more conservative target than some employers would prefer. But there is a good case for erring on the side of stability as the WSIB goes through this period of transition. The government should revisit the proposed sufficiency ratio corridor in 2025 to determine if it can or should be adjusted at that time.

Recommendation 2

The government should prescribe the parameters for surplus distribution — namely, instructing the Workplace Safety and Insurance Board to consider surplus distribution when the insurance fund exceeds 115% and to require it distributes surpluses if the sufficiency ratio hits or exceeds 125%.

Setting out clear parameters for surplus distribution will help to protect against the risk of overfunding and the potential for ad hoc or politicized decisions. The related parts of the new regulation can be informed by the Alberta Workers' Compensation Board's funding policy, which sets out an effective, principle-based model.

Workplace Safety and Insurance Board should consult with stakeholders on the best design for surplus distribution — including possibly a dividend model or a premium credit. There may be scope for a differentiated model depending on how much a firm would be entitled to receive. It may be more efficient, for instance, to deliver small payments in the form of a premium credit on the subsequent year's premiums and larger payments in the form of dividend. The review will not prejudice the conclusions of the WSIB's consultations. But it is important that the parameters around surplus distribution, including how it will be implemented, are codified in the name of transparency, predictability and accountability.

Recommendation 3

The government should amend the *Workplace Safety and Insurance Act* to clarify that any legal or policy changes that impose costs on the Workplace Safety and Insurance Board should come into effect in the year in which the Workplace Safety and Insurance Board can account for these costs in its rate-setting process.

This recommendation, which was previously proposed in the Arthurs report, would help to protect against the risk that in-year policy changes enacted by the government harm the WSIB's financial position. Codifying this principle in the statute would not constrain the government's ability to make policy changes. It would just affect their implementation timing in order to give the WSIB adequate time to account for the effects in its pricing and rate-setting processes.

Recommendation 4

The Workplace Safety and Insurance Board should develop a predictive modelling capacity within the organization.

As the Workplace Safety and Insurance Board continues to refine and strengthen its pricing and rate-setting processes, it should develop a predictive modelling capacity to reflect industry best practices in order to proactively identify future trends and developments and price their costs.

Recommendation 5

The Workplace Safety and Insurance Board should establish the position of Industry Class Manager with whom employers, industry associations, and unions can engage about their issues and circumstances related to specific industry classes.

As part of the transition to the new Rate Framework, the WSIB should assign a manager position for each of the 34 industry classes who will be responsible for acting as a point of contact for employers, industry associations, unions and others who have questions or issues with the classification system.

This will help to manage the transition and better resolve issues that may stem from the consolidation of 155 rate groups into 34 industry classes.

The review's consultations heard that British Columbia's workers' compensation model has such a role. The Workplace Safety and Insurance Board may wish to consult with their BC counterparts to determine if there are any lessons or best practices that can be derived from their human resource model.

Recommendation 6

The Workplace Safety and Insurance Board should move to an "exclusionary model" for coverage on a go-forward basis for new employers and industries. This would not affect currently non-mandatory covered industries, but it would apply to any new firms or industries.

The Workplace Safety and Insurance Board's "inclusionary model" is not well-suited to the province's dynamic economy. Moving to an "exclusionary model" whereby firms would be subject to mandatory coverage unless the WSIB and the government deliberately exclude them would rationalize how these judgments are made and ensure the system is better positioned to manage new and emerging occupations and industries.

The review does **not** recommend revisiting the treatment of currently non-mandatory covered industries. Industries and firms have operated according to the current framework for more than a century, and some have made alternative insurance arrangements for their workplaces. Changing their treatment now would create disruption and possibly unintended consequences such as employment losses or diminished business investment. The shift to an "exclusionary model" should therefore apply on a go-forward basis and apply to new firms or industries in Ontario's economy. The timing for the new model would need to account for possible consultations or legislative and regulatory changes.

Recommendation 7

The Workplace Safety and Insurance Board and the government should extend mandatory coverage to developmental support workers and those working in residential care facilities.

The Workplace Safety and Insurance Board and the government should extend mandatory coverage to developmental supporter workers and those working in residential care facilities as envisioned in Bill 145, which died on the order paper in the 41st Parliament. This would solve for an unjustified anomaly that risks causing distortions in the labour market.

Recommendation 8

The Workplace Safety and Insurance Board and the government should consider consolidating all Schedule 2 employers in the collective liability framework.

The Workplace Safety and Insurance Board has run parallel liability schemes for 105 years. The vast majority of firms belong to the Schedule 1 collective liability model. Fewer than 600 participate in the Schedule 2 individual liability arrangement.

The Workplace Safety and Insurance Board should consider consolidating Schedule 2 employers into the collective liability model. This would require transition planning to account for possible adjustments to the industry classes and premium rates, the treatment of Schedule 2 employers who may have ongoing claims under the individual liability system and would begin to pay premiums into the collective liability system for future claims, and any necessary legislative and regulatory changes. The timing for implementation would need to account for consultations and legislative and regulatory changes.

But consolidating the two models would simplify the Workplace Safety and Insurance Board's administration and bring greater cost certainty to Schedule 2 employers. The elimination of the unfunded liability creates an opportunity for the WSIB and the government to move ahead with this possible reform.

Recommendation 9

The Workplace Safety and Insurance Board should modernize the claims process by expanding digital submissions of documents and enabling individuals to register online in order to monitor the status of their files through a secure personal portal.

That people can only interact with the Workplace Safety and Insurance Board via telephone and fax not only produces sub-optimal services, it is a threat to the organization's long-term credibility. The public's expectations about how public institutions provide services are growing. If the WSIB cannot provide more responsive, timely and individualized services, there is a risk it will lose the public's trust and confidence and lead to questions about its ongoing utility as a public institution.

The Workplace Safety and Insurance Board must modernize the claims process by replacing the reliance of paper processing, telephone interactions and faxing with easy-to-use online services. The organization should prioritize enabling digital submission of documents and online system for monitoring one's status as soon as possible.

Recommendation 10

The Workplace Safety and Insurance Board should move to a self-service model for no-lost-time claims in particular and simple claims in general using a system of online claims and fast-tracked adjudication.

The vast majority of WSIB claims are no-lost-time or minimal lost-time claims. Yet its current model for managing claims and adjudication fails to distinguish between these simple claims and more complex ones. The result is a poor distribution of staffing and resources.

The Workplace Safety and Insurance Board should move to a self-service model for no-lost time claims in particular and simple claims in general that leverages online submission and fast-track adjudication (including the use of e-adjudication) in order to better dedicate staffing and resources to complex claims.

This will require a combination of digital and operational changes envisioned in the Core Services Modernization initiative. The WSIB should prioritize these reforms in the short term.

Recommendation 11

The Workplace Safety and Insurance Board should set separate targets for processing timelines for no-lost-time claims and lost-time claims.

Presently the WSIB's target for its processing timelines does not distinguish between no-lost-time and lost-time claims. This inflates the organization's performance metrics given the disproportionate number of no-lost-time claims, which can typically be processed much faster than lost-time claims. The WSIB should set separate targets for no-lost-time claims and lost-time claims and report on its performance on meeting the timelines separately in order to give Ontarians a clearer sense of its progress in improving the claims and adjudication processes.

Recommendation 12

The Workplace Safety and Insurance Board should continue to adjust and refine its process for claims adjudication to ensure that the claims are being managed by the right people at the right time.

The Workplace Safety and Insurance Board has been experimenting with different models for assigning cases within the organization in order to distribute staffing and resources in an efficient way. This makes theoretical sense, but it has caused some issues for workers and employers due to a lack of continuity. The review frequently heard about having to speak to different WSIB officials each time a worker or employer called about their file. The outcome can be greater inefficiencies rather than less.

There is a ‘sweet spot’ between a highly-specialized approach and a completely generalist one. Simple claims, as a general rule, can be resolved through a triage model. More complex ones (including mental stress and occupational disease cases) will require dedicated expertise. The goal must be to ensure that claims are being managed by the right people at the right time.

Shifting to a model that focuses resources and expertise on specific types of claims — particularly complex ones — will become even more important in anticipation of a rising number of occupational disease and mental stress cases in the future. The WSIB should, therefore seek to adjust its model to distinguish between different types of claims and dedicate staffing and resources accordingly.

Recommendation 13

The Workplace Safety and Insurance Board and the government should consider consolidating the Workplace Safety and Insurance Board's multiple layers of appeal and reconsideration into a single appeals function before appeals move to the Workplace Safety and Insurance Tribunal.

The Workplace Safety and Insurance Board's multi-layer appeal process can contribute to considerable delays and yet do not tend to produce different outcomes from the initial adjudication. This does not serve the interests of workers or employers.

The Workplace Safety and Insurance Board and the government should therefore consider consolidating the two layers of appeals and reconsideration presently housed within the Workplace Safety and Insurance Board. A single appeals function could draw from the current approaches of the operating-level reconsideration process and the Appeals Services Division. It would provide workers and employers with an opportunity for appeal within the WSIB but not have them stuck in a lengthy, multi-layer process that does not typically produce different results than the initial adjudication. It would in effect accelerate appeals to the WSIAT which has a higher rate of overturning WSIB decisions.

The legal and operational framework for a new consolidated appeals function within the WSIB would require engagement on the part of the WSIB, the government, and the WSIAT. Considerations would include the design of the appeals function, including the role of in-person hearings; new timeline standards for appeals decisions; human resources; and incremental resources to the Workplace Safety and Insurance Appeals Tribunal, which would ostensibly receive more appeals as a result. These are serious considerations that should not be taken lightly.

But the rationale for maintaining multiple layers of appeal at the WSIB seems difficult to justify given the delays and outcomes. Reforming the system can ultimately contribute to a more responsive and timely process for managing claims and adjudication, including appeals.

Recommendation 14

The Workplace Safety and Insurance Board and Workplace Safety and Insurance Appeals Tribunal should establish a new Quality Table to identify and anticipate trends through data analytics and actual case outputs in order to better inform adjudication guidelines and decision-making.

The Workplace Safety and Insurance Appeals Tribunal overturns a high rate of Workplace Safety and Insurance Board decisions, and yet there is no mechanism for enabling a two-way conversation that would incorporate key WSIAT decisions into the WSIB's adjudication guidelines. This seems counterproductive for the two organizations as well as the workers and employers who are affected.

There is scope to protect the necessary independence of the two organizations and still enable a process for engagement where key principles are at issue. The goal should be to avoid having cases with similar characteristics regularly returning to the WSIAT on appeal.

The creation of a Quality Table with key representatives from both organizations could help in this regard. The purpose of the group would be to identify and anticipate trends through data analytics and actual case outputs. The Quality Table could work to ensure (1) a common understanding of the Workplace Safety and Insurance Board's procedural documents including those related to claims and employer accounts and (2) that noteworthy WSIAT decisions are used to update the WSIB's adjudication guidelines.

Recommendation 15

The Minister of Labour, Training and Skills Development should work with the Attorney General to ensure that representatives (including paralegals) participating in the occupational health and safety system are meeting a high ethical standard and properly serving their clients.

Legal representation is a key part of the workers' compensation system. Most legal representatives (including lawyers and paralegals) do an excellent job representing their clients.

But the review did hear that some bad actors can contribute to weaker system-wide outcomes by providing poor representation before the WSIAT and charging exorbitant fees (including "success fees" of up to 30%) to their clients. This is unfair to workers who may be facing financial insecurity.

The Minister of Labour, Training and Skills Development should work with the Attorney General and in turn, the Law Society of Ontario to ensure that paralegals and other legal representatives participating in the system have sufficient training and a clear understanding of their professional standards and obligations. This is important to protect the reputations of the vast majority of paralegals and legal representatives who play a critical role in serving injured workers and to ultimately ensure that workers are receiving the representation that they deserve.

Recommendation 16

The Workplace Safety and Insurance Board should maintain a statistically relevant number of audits related to claim suppression through the implementation of the new Rate Framework.

The Workplace Safety and Insurance Board is now conducting targeted audits for claim suppression. This is a positive development. Its risk-based approach is also sensible. It will ensure that audits are targeted and efficient.

But it is important that, as the new rate framework is implemented, the WSIB maintain sufficient staffing and resources to protect a statistically relevant number of annual audits. It is beyond the capacity of the review to judge the optimal number of annual audits. But it should be much higher than planned for the foreseeable future in order to ensure that number of audits is statistically relevant and, in turn, can provide a credible basis to make judgments about the system's performance. This will be key in ensuring that the new rate framework does not contribute to higher rates of claim suppression.

Recommendation 17

The Ministry of Labour, Training and Skills Development should increase budget funding for the Office of the Worker Adviser and the Office of the Employer Adviser to better serve workers and employers.

The Office of the Worker Adviser and the Office of the Employer Adviser do tremendous work representing the interests of workers and employers, respectively. Both offices are increasingly under financial strain due to rising demands for their services and representation. Increasing their capacity could help the WSIB and WSIAT alleviate appeals caseloads and revolve issues within the system more efficiently and effectively. The government should therefore consider modest increases to their budgets in order to meet these demands.

Determining the right level of incremental funding is difficult for the reviewers to judge. The Ministry of Labour, Training, and Skills Development should, therefore, consult with the Office of Worker Adviser, Office of the Employer Adviser, and broader stakeholders to determine the right funding levels for the two offices.

Recommendation 18

The government should amend the *Labour Relations Act* to clarify that labour unions must provide representation on behalf of their members in the occupational health and safety system including the Workplace Safety and Insurance Board.

Labour unions, by and large, do an excellent job providing representation on behalf of their members in the occupational health and safety system including with the WSIB and before the WSIAT. However, unlike collective bargaining, they are under no legal obligation to do so. The review heard that it would be useful to clarify this responsibility and in so doing ensure that any outliers are not undermining the great work that most unions do in the occupational health and safety system. A minor legislative change would level the playing field among unions and reinforce their key role in the system.

Recommendation 19

The Office of the Chief Prevention Officer should work with the Workplace Safety and Insurance Board and the Ministry of Labour, Training and Skills Development to coordinate better data collection and analysis — including developing a set of future-oriented indicators to better anticipate workplace trends.

Improving the outcomes-orientation of the government's prevention-related programming will require better use of data. The goal here must be to shift the government's prevention activities from focusing on outputs to targeting outcomes.

The Office of the Chief Prevention Officer is at the centre of the government's prevention activities and yet most of the data is held by the WSIB and the Ministry of Labour, Training and Skills Development's enforcement arm. There is a need for greater coordination in order to improve data collection and analysis. This includes developing a set of future-oriented indicators to better anticipate workplace trends rather than relying on backward-looking evidence.

These changes do not necessarily require legislative or policy changes. But it may require the creation of a steering committee, led by the Office of the Chief Prevention Officer, to identify data gaps and facilitate real-time data analysis. The outcome of this collaborative work can then be better informed and more targeted prevention-related programming.

Recommendation 20

The government should change its funding model for prevention-related programming by providing dedicated funding to the Health and Safety Associations for specialized training and services and launching a competitive funding pool for more general health and safety services and training.

The Office of the Chief Prevention Officer's primary prevention-related activities are delivered through transfer agreements to the six Health and Safety Associations (HSAs). These organizations have become the de facto service delivery vehicles for the government's prevention strategy.

The Health and Safety Associations do excellent work. They have highly specialized capacity and expertise. These activities are unique in the occupational health and safety training marketplace. But the Health and Safety Associations also carry out more generalized training and services where there is more robust supply by different service providers.

The government should aim to distinguish between the Health and Safety Associations specialized training and services for which there are no market competitors and more general activities for which there are different options in the marketplace. It should continue to provide dedicated funding to the HSAs for the former. It should launch a competitive process involving a wider range of players for the latter.

It is important to note that the Health and Safety Associations may ultimately submit the winning bids in the competitive funding pool. That would be a satisfactory outcome that would in effect, validate that they are providing the best training and services in the industry. It may also catalyse new consortium and different models. The government can only learn the outcome by opening the system to competition.

The government should consult with unions, employers, the HSAs and other stakeholders to identify which services and training should remain subject to dedicated funding to the Health and Safety Associations and which can be subject to a new, competitive funding process.

Recommendation 21

The government should enter into three- to five-year transfer agreements with the health and safety associations.

It is inefficient for the WSIB and the Health and Safety Associations that their transfer agreements are limited to one-year renewals. It consumes considerable attention and resources that could be better directed on actually delivering prevention-related programming. It also harms multi-year planning and makes it difficult for the HSAs to acquire training equipment and other capital assets.

The government should move the HSAs to multi-year funding agreements. The proper duration is flexible. It could be three years or five years. But it should cease being one year.

Recommendation 22

If the government adopts recommendations #22 and #23, it may consider increasing overall funding available for prevention-related programming.

Current funding levels for the Health and Safety Associations is approximately \$80 million. If the government accepts the proposal to separate the funding based on specialized and general services, public funding for the HSAs could fall — depending on whether they are successful applicants in the competitive process. Increasing the overall prevention budget would help to mitigate this risk.

It would also ensure that the level of funding in the new competitive pool was high enough to catalyse the creation of new and different service delivery models. This will help to encourage different providers to develop bids to access the funding pool and permit the government to test out the effectiveness of different arrangements and models.

The right funding level for the government's prevention activities will need to be determined following consultations on what parts of the Health and Safety Associations' current training and services should continue to receive dedicated funding and which parts should be subject to a new, competitive process. But there is an opportunity for a funding increase beginning in 2021 or 2022 as part of the transition to the new programming model.

Recommendation 23

The Workplace Safety and Insurance Board's board of directors should regularly prepare and provide a list of required board competencies to the Minister to help inform appointment decisions.

The Workplace Safety and Insurance Board's Governance Committee is notionally responsible for monitoring the board of directors' skills and competency profile and identifying gaps and needs. Yet the appointment of new board members is the purview of the Minister of Labour, Training and Skills Development and there is minimal consultation or engagement between the board and the Minister as part of this process. The risk is that it could produce competency gaps on the board especially as a number of board terms will expire in the coming months.

The Governance Committee of the WSIB should communicate skills and competency needs and identify gaps for upcoming appointment vacancies. The Chair should communicate those needs to the Minister to help inform decision-making and ensure good governance. The committee could update the gaps list regularly. The list would not be public. It would represent private advice to the Minister and would enable the board to provide input into the process and mitigate the risk of competency or skills gaps.

Recommendation 24

Appointments to the Workplace Safety and Insurance Board's board of directors should have staggered expiration dates to ensure that several directors' terms are not expiring at the same time.

It is important that the WSIB's board of directors maintains an institutional knowledge and diverse set of competencies as members' terms expire. A number of directors have had their terms expire in the past several months. It highlights the challenge of having their expiration dates concentrated in a short period of time. The government should therefore appoint new WSIB directors using staggered expiration dates so as to avoid the challenge of multiple expirations in a short timeframe. This will enable greater continuity during this period of transition for the Workplace Safety and Insurance Board.

Recommendation 25

The Workplace Safety and Insurance Board and the government should work with an independent advisor (such as Infrastructure Ontario) to conduct a review of the organization's real property portfolio, including how the Workplace Safety and Insurance Board manages it, in order to identify possible efficiencies.

The Workplace Safety and Insurance Board has a considerable real property footprint — including its main office in Toronto. The WSIB should work with an independent advisor to conduct a review of its real property portfolio, including how the organization manages it, in order to identify possible efficiencies.

Its ongoing work with Infrastructure Ontario to develop a long-term strategy for its realty portfolio may inform possible reforms. There may be opportunities, in particular, to further decentralize the WSIB's operations outside of the City of Toronto to realize savings and better serve workers and employers or to restructure leases to secure better terms or partner with other government agencies to share office space. This review does not prejudice the outcome of such an analysis. But it seems like a worthwhile exercise that could help the Workplace Safety and Insurance Board operate more efficiently.

Conclusion

The Workplace Safety and Insurance Board has been a key part of Ontario's social safety net for the past 105 years. It is set to undergo a period of significant transition. The review has sought to produce analysis and recommendations that will help the WSIB manage these transitions, protect and maintain its financial sustainability, and ultimately better serve workers and employers in Ontario. It is a forward-looking document that aims to anticipate the opportunities and challenges that the organization will face in the short, medium, and long-term.

There may be no bigger challenge than maintaining the public's trust and confidence as a public institution. In order to achieve this goal, the WSIB must ensure that its services are meeting public expectations with respect to service quality, transparency, and accountability, and the overall responsiveness of public institutions.

It is imperative, therefore, that the WSIB uses this moment of transition to modernize its operations and improve how it serves workers and employers. More responsive, timely, and individualized services are key for the WSIB to retain the trust and confidence of Ontarians, now and into the future. The report, including its 25 recommendations, aims to ensure that the WSIB remains a vital and dynamic part of Ontario's modern social safety net.

Appendix: consultations as part of the Ontario Government's Operational Review of the Workplace Safety and Insurance Board

As part of the review process, the external reviewers engaged a wide range of individuals and organizations through a combination of roundtable discussions, meetings, and written submissions. The following individuals and organizations participated in the process.

- Philip Allan
- Association of Hearing Instruments
- Barbara Bench
- Halla Bereskow
- Ed Braithwaite
- Canadian Federation of Independent Business (CFIB)
- Canadian Manufacturers & Exporters
- Canadian Vehicle Manufacturers' Association
- Cement Association of Canada
- Christian Labour Association of Canada (CLAC)
- Construction Employers Coalition
- Debbie Coulson
- Council of Ontario Construction Association
- Wally Cox
- Roger Durocher
- Dianne Dyck
- Mike Easton
- Fasken Martineau DuMoulin, LLP
- Fink & Bornstein Professional Corporation
- GE Advisory Committee and Ventra Advisory Committee of Peterborough
- Darlene Glover
- Dave Green
- Stephanie Hawkins
- Home Care Ontario
- Hearing Industry Association of Canada
- Krista Hille
- Cheryl Hobbins
- JAVGO Community Legal Clinic
- Injured Workers Community Legal Clinic
- Institute for Work & Health
- Laura Kay
- Cheryl Kemp
- Nick Lelyk
- Joy Lippai
- L.A. Liversidge
- Ricky Leone
- Jeff Lozier
- Ian Lyons
- Niki Marshall
- Corrie McInroy
- Office of the Chief Prevention Officer
- Office of the Employer Adviser (OEA)
- Office of the Worker Adviser (OWA)

- Ontario Building Trades
- Ontario Chamber of Commerce (OCC)
- Ontario Compensation Employees Union (OCEU)
- Canadian Union of Public Employees (CUPE) 1750
- Ontario Federation of Labour (OFL)
- Ontario General Contractors Association (OGCA)
- Ontario Home Builders' Association (OHBA)
- Ontario Legal Clinics' Provincial Workers' Compensation Network
- Ontario Mining Association
- Ontario Network of Injured Workers' Groups (ONIWG)
- Ontario Occupational Health Nurses Association (OOHNA)
- Ontario Painting Contractors Association
- Ontario Public Service Employees Union (OPSEU)
- Ontario Retirement Communities Association
- Ontario Sewer and Watermain Construction Association
- Tom Pelayo
- Provincial Building and Construction Trades Council of Ontario
- Residential Construction Council of Ontario (RESCON)
- Retail Council of Canada (RCC)
- Safety Works Consulting
- Schedule 2 Employer Group (S2Eg)
- School Boards' Co-operative Inc.
- SEIU Healthcare
- Senator Tony Dean
- Skills Ontario
- Paul Taylor
- Norman Traversy
- Thunder Bay & District Injured Workers Support Group
- Toronto Transit Commission
- UNIFOR
- UNIFOR Local 636
- Workers Compensation Board of Manitoba
- Workplace Safety & Prevention Services (WSPS)
- Workplace Safety and Insurance Appeals Tribunal (WSIAT)
- Workplace Safety North (WSN)
- Workplace Safety and Insurance Board (WSIB)
- WSIB Grand Valley Construction Association Safety Groups Program

Footnotes

- [1] ^ Workplace Safety and Insurance Board. (2016). [Framework for Operational Policy Development and Renewal](#).
- [2] ^ Weiler, P. C. (1980). Reshaping Workers' Compensation for Ontario.
- [3] ^ Arthurs H. (2012). [Funding Fairness: A Report on Ontario's Workplace Safety and Insurance System](#).
- [4] ^ Stanley, D. (2014). [Pricing Fairness: A Deliverable Framework for Fairly Allocating WSIB Insurance Costs](#).
- [5] ^ Expert Advisory Panel on Occupational Health and Safety (2010). [Expert Advisory Panel on occupational health and safety](#).
- [6] ^ Workplace Safety and Insurance Board. (2015). [Workplace Safety and Insurance Board Funding Policy](#).
- [7] ^ Office of the Auditor General of Ontario (2009). [2009 Annual Report of the Office of the Auditor General of Ontario: Unfunded Liability of the Workplace Safety and Insurance Board](#)
- [8] ^ Ibid
- [9] ^ Ministry of Labour, Training and Skills Development. (2019, September 24). [Elimination of the Unfunded Liability Charge to Employers to Provide More Money for Jobs & a Strengthened Economy](#)
- [10] ^ The WSIB switched from reporting the unfunded liability as a "funding ratio" to "sufficiency ratio" following the implementation of *Regulation 141/12* in January 2013. Both sufficiency and funding ratio are measures of the WSIB's assets to liabilities and are expressed as a percentage. But they involve different accounting practices. Funding ratio is presented according to International Financial Reporting Standards. The sufficiency ratio is presented in accordance with Ontario regulation with its assets and liabilities reflecting investment and pension liabilities calculated on an on-going basis and are presented according to accepted accounting practices. The differences in measurement

produce slightly different figures. For instance, in Q2 2017, the funding ratio was 92.4% and the sufficiency ratio was 91.8%. Per regulation, the WSIB focuses on its sufficiency ratio in its reporting. Most provinces still call it “funding ratio” in their reporting. But the methods of WSIB’s sufficiency ratio is comparable with methods of other workers’ compensation boards across the country.

- [11] ^ Arthurs H. (2012). [*Funding Fairness: A Report on Ontario’s Workplace Safety and Insurance System*](#)
- [12] ^ Workplace Safety and Insurance Board. (n.d.). [*Sufficiency Plan and Funding Policy*](#)
- [13] ^ Office of the Auditor General of Ontario (2009). *2009 Annual Report of the Office of the Auditor General of Ontario: Unfunded Liability of the Workplace Safety and Insurance Board*
- [14] ^ Workplace Safety and Insurance Board. (2018). [*From Tipping Point to Turning Point: How the WSIB eliminated the Unfunded Liability*](#).
- [15] ^ Ibid
- [16] ^ Workplace Safety and Insurance Board. (2019). [*2018 Annual Sufficiency Report*](#)
- [17] ^ Workplace Safety and Insurance Board. (2018). [*2019 Premium Rates Manual: Part 1, Section 1-5*](#).
- [18] ^ Workplace Safety and Insurance Board. (2019). [*2020 Premium Rates*](#)
- [19] ^ [*Workplace Safety and Insurance Act, 1997*](#) (S.O. 1997, c. 16, Sched A).
- [20] ^ [*Ontario Regulation 141/12*](#) made under the *Workplace Safety and Insurance Act, 1997*. (2012). E-Laws Ontario
- [21] ^ Workplace Safety and Insurance Board. (2019). [*Second Quarter 2019 Sufficiency Report*](#). Retrieved from.
- [22] ^ [*Pricing Fairness: A Deliverable Framework for Fairly Allocating WSIB Insurance Costs*](#)
- [23] ^ Workplace Safety and Insurance Board. (2015). [*Workplace Safety and Insurance Board Funding Policy*](#).
- [24] ^ Ibid
- [25] ^ Specifically, the Funding Policy lists the following considerations: (1) New claims costs; (2) Administration costs expected to arise during the year; (3) Retirement of any unfunded liability; (4) Impact of gains or losses to the benefit liability; (5) Enhanced assurance of achieving and maintaining the Sufficiency Ratio requirements under *Ontario Regulation 141/12*, and the WSIB’s established trajectory to achieve full funding, as approved by the Board of Directors; (6) Impact of gains and losses on investments; and (7) Any other factor(s) deemed relevant to the maintenance of financial prudence. (Ibid.)
- [26] ^ Workplace Safety and Insurance Board. (2015). [*Workplace Safety and Insurance Board Funding Policy*](#)
- [27] ^ Marchione, D. (2017, May 8). [*Ontario’s WSIB to Implement New Premium Rate Framework*](#)
- [28] ^ Workplace Safety and Insurance Board. (2019). [*Advanced Copy: Transition to the Rate Framework Operational Policy*](#)
- [29] ^ Workplace Safety and Insurance Board. (n.d.) [*Rate Framework: Our new policies*](#)
- [30] ^ Of those firms covered by WSIB insurance, approximately 20,000 (or nearly 6%) have voluntarily chosen to participate in the model (Ontario Workplace Safety and Insurance Board)
- [31] ^ Workplace Safety and Insurance Board. (2017). [*Schedules 1 & 2*](#)
- [32] ^ Workplace Safety and Insurance Board. (2019). [*By the Numbers: 2018 Workplace Safety and Insurance Board Statistical Report*](#)
- [33] ^ Kralj, B. (2019). [*A Study of the Impacts of Workplace Safety Insurance Act, 1997 Coverage Expansion in Ontario*](#)
- [34] ^ In a letter to Ontario’s lieutenant-governor, which accompanied his 1913 report, Meredith wrote: “There is, I admit, no logical reason why, if any, all should not be included, but I greatly doubt whether the state of public opinion is such as to justify such a comprehensive scheme.” (Meredith, 1913, p.9). Meredith, W. R. (1913). [*The Meredith Report*](#).
- [35] ^ [*Ontario Regulation 175/98*](#): General under *Workplace Safety and Insurance Act, 1997*. (2018)
- [36] ^ Workplace Safety and Insurance Board. (n.d.). [*Employer Classification Manual*](#)
- [37] ^ Ontario Workplace Safety and Insurance Board
- [38] ^ Institute for Work and Health. (2011). [*Trends in no-lost-time claims in Ontario*](#)
- [39] ^ Workplace Safety and Insurance Board. (2019). [*Workplace Safety and Insurance Board 2018 Annual Report*](#)
- [40] ^ Ontario Workplace Safety and Insurance Board
- [41] ^ Association of Workers’ Compensation Boards of Canada. (2017). [*External KSM Definitions*](#)
- [42] ^ Ontario Workplace Safety and Insurance Board
- [43] ^ Ontario Workplace Safety and Insurance Board
- [44] ^ Workplace Safety and Insurance Board. (2019). [*Workplace Safety and Insurance Board 2018 Annual Report*](#)
- [45] ^ Workplace Safety and Insurance Board. (2018). [*2017 Annual Report*](#)
- [46] ^ Ontario Workplace Safety and Insurance Board
- [47] ^ Institute for Work and Health. (2014). [*Suppression of workplace injury and illness claims: Summary of evidence in Canada*](#)
- [48] ^ Prism Economics and Analysis. (2013, April). *Workplace Injury Claim Suppression: Final Report*. Toronto, Ontario: Workplace Safety and Insurance Board
- [49] ^ Bill 109, [*Employment and Labour Statute Law Amendment Act, 2015*](#), Session 1, 41st Parliament, 2015
- [50] ^ Ontario Regulation 175/98: General under [*Workplace Safety and Insurance Act, 1997*](#). (2018).

- [51] ^ [Workplace Safety and Insurance Act, 1997](#) (S.O. 1997, c. 16, Sched A), Section 176(2)
- [52] ^ [Workplace Safety and Insurance Act, 1997](#) (S.O. 1997, c. 16, Sched A), Section 176(1)
- [53] ^ Office of Employer Adviser. (2018). [Annual Report 2017-2018](#)
- [54] ^ Office of the Worker Adviser. (2018). [Annual Report April 1, 2017 to March 31, 2018](#).
- [55] ^ Office of Employer Adviser. (2018). [Annual Report 2017-2018](#)
- [56] ^ Office of the Worker Adviser. (2018). [Annual Report April 1, 2017 to March 31, 2018](#)
- [57] ^ Ibid
- [58] ^ Office of Employer Adviser. (2018). [Annual Report 2017-2018](#)
- [59] ^ Office of the Worker Adviser. (2018). [Annual Report April 1, 2017 to March 31, 2018](#)
- [60] ^ Office of Employer Adviser. (2018). [Annual Report 2017-2018](#)
- [61] ^ [Workplace Safety and Insurance Act, 1997](#) (S.O. 1997, c. 16, Sched A)
- [62] ^ Association of Workers' Compensation Boards of Canada. (2015). [Appeals Process and Procedures](#)
- [63] ^ It was \$30 million in 2019 due to temporary funding to address excess caseload. But its typical budget in the past has been approximately \$22 million per year. Workplace Safety and Insurance Appeals Tribunal. (2019). [Vision to Reality Workplace Safety and Insurance Appeals Tribunal Annual Report 2018](#)
- [64] ^ Ibid
- [65] ^ Workplace Safety and Insurance Board. (2013). [Operational Policy Manual: Legislative Authority: Adjudication Principles](#)
- [66] ^ Workplace Safety and Insurance Appeals Tribunal. (2019). [Vision to Reality Workplace Safety and Insurance Appeals Tribunal Annual Report 2018](#)
- [67] ^ Workplace Safety and Insurance Appeals Tribunal. (2019). [Vision to Reality Workplace Safety and Insurance Appeals Tribunal Annual Report 2018](#)
- [68] ^ Ibid
- [69] ^ BC Workers' Compensation Appeal Tribunal. (2018). [Appealing a Review Division Decision – Worker's Guide](#)
- [70] ^ Ontario Workplace Safety and Insurance Board
- [71] ^ Ontario Workplace Safety and Insurance Board
- [72] ^ It should be noted that 2012-13 was a transition year for prevention-related activities. It was the year in which Prevention Office was in the Ministry of Labour and so the funding level does not represent a full year
- [73] ^ Meeting with the Institute for Health and Work, July 19, 2019
- [74] ^ Arthurs H. (2012). [Funding Fairness: A Report on Ontario's Workplace Safety and Insurance System](#) p. 107; Expert Advisory Panel on Occupational Health and Safety (2010). [Expert Advisory Panel on occupational health and safety: Report and Recommendation to the Ministry of Labour](#). p. 58
- [75] ^ Prism Economics and Analysis. (2015). [Market Metrics & Service Delivery: Research Report & Recommendations \[O'Grady Report\]](#). Toronto: Prevention Office, Ministry of Labour
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- [83] ^ Workplace Safety and Insurance Board Operational Policy. (n.d.). [Advanced Copy: Employer Accounts: Employer Level Premium Rate Setting](#)
- [84] ^ [Workers Compensation Act](#), [RSBC 1996] Chapter 492
- [85] ^ [Bill 145, Workplace Safety and Insurance Board Coverage for Workers in Residential Care Facilities and Group Homes Act, 2017](#), Session 2, 41st Parliament, 2017
- [86] ^ Ernst & Young. (2015). [Workplace Safety and Insurance Board Value-for-Money Audit Schedule 2 Insurance Program Final Report](#). Internal Ernst & Young Report: unpublished
- [87] ^ Ontario Workplace Safety and Insurance Board
- [88] ^ Calculated using data from the Ontario Workplace Safety and Insurance Board
- [89] ^ [Workplace Safety and Insurance Act, 1997](#) (S.O. 1997, c. 16, Sched A). Section 162

11 November, 2021

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To Whom It May Concern:

RE: Bill 27, Working for Workers Act, 2021 - WSIB Fund Surplus Distribution to Employers

We, Injured Workers Action for Justice (IWA4J), are a community-based group of injured workers in the Greater Toronto Area and other areas of Ontario with partners across the province, such as the Ontario Network of Injured Workers Group (ONIWG) and other local injured workers groups, community legal clinics, unions, and community organizations and groups.

We are writing to express our grave concern and opposition to the WSIB fund surplus distribution to employers in Bill 27 put forth by the Ministry of Labour, Training and Skills Development (MLTSD). We believe that this proposed bill is against legislative obligations to injured workers. There must be true accountability and transparency to address the following issues for both workers and employers.

Historically, workers gave up their right to sue employers in exchange for full and fair compensation for work injuries. Currently, not only have employers been protected from being sued, they have also been rewarded with rebates -- their WSIB premiums were reduced by over 50% since this government was in power since 2018. And employers have received a financial relief package during the pandemic. While employers have enjoyed these favourable conditions, injured workers have had to suffer from cuts under the “unfunded liability (UFL)” for decades and the legislation change from the WCB compensation model to the WSIB insurance model. We urge you to consider reversing these cuts. If there is any surplus, we insist that it should be put towards efforts to ensure all injured workers are receiving their legal entitlements.

Here are some recommendations based on the life experiences of injured workers in this province:

1. **Claim Suppression:** As the Operational Review Report pointed out, the WSIB claim suppression audits are insufficient. This impacts many workers from racialized backgrounds and in precarious workplaces such as migrant workers, temp-agency workers and undocumented workers. If the WSIB allocated resources properly and fulfilled its obligation to investigate and penalize claim suppression, there should be no surplus in the first place. In addition, this surplus distribution to employers could have a negative consequence of creating the conditions for even further (and more aggressive) claim suppression by employers. This would put workers at further risk of having their claims denied.
2. **Real Healthcare for Injured Workers:** Based on the “Bad Medicine” report (IAVGO, 2017), the WSIB payment of drug benefits decreased 35% (\$33M) from \$96M in 2010 to \$63M in 2015 while the new claims entering the system are consistent during that period. It says, “About 18,000 injured workers per year have disappeared from the drug benefits program, with no viable explanation from the WSIB.” However, the WSIB’s own Annual Financial Reports confirmed that the benefits paid out to injured workers’ were cut in half from 2010 to 2015. The WSIB should provide health care injured workers need and fund medical treatments and medication our doctors prescribe, especially for those workers and migrant workers injured in precarious workplaces and repatriated to their countries with no medical attention.
3. **Chronic Mental Stress Injuries:** Since the legislation change in 2016, the WSIB is now required to cover work-related chronic mental stress injuries but only 6% of these claims are allowed in 2018. It means another discriminatory cut (94% denial) to many injured workers who are experiencing tremendous hardship, especially during this pandemic. The WSIB’s policy of mental stress contributing factor is discriminatory in our view and should be changed. Eligible workers whose mental stress injury cases have been denied should be reconsidered for benefits.

4. **Language Barriers and Racism:** As Professor S. Premji identified in her study in 2015, language barriers in the WSIB process, Early and Safe Return to Work and Work Reintegration programs are inadequately taken into account in the implementation of policies and practices, such as in the determination of suitable work. The WSIB should implement policies against these barriers and racism in the WSIB system and fully support workers who are speakers of English as a Second Language (ESL).
5. **Occupational Disease:** The researchers highlighted systemic barriers faced by workers filing occupational disease claims, especially complex claims involving multiple hazardous substances. As the result, workers are most likely denied. The Occupational Disease Standard Panel must be reinstated and fully funded, and all recommendations of Demers Report respecting occupational diseases must be implemented. Victims of occupational disease should be properly compensated.
6. **Loss of Earnings:** The WSIB should restore the Loss of Earnings benefits from 85% of net average earning to 90% as it was established in Ontario before 1998, and it is the rate used for Manitoba, Saskatchewan, BC and the Northwest Territories. Also, injured workers should be paid inflation at the actual rate of the consumer price index.
7. **End the WSIB Deeming:** The WSIB deeming policy is another critical benefit cut to injured workers and pushes us into poverty and forces many to turn to other public-funded programs such as ODSP and OHIP. This completely serves corporate interests on the backs of injured workers. The government must pass Bill 119 to end the WSIB deeming practice so that injured workers are allowed to receive their benefits when an appropriate job is declined with no income.
8. **Sufficient Retirement for Injured Workers:** The WSIB should provide at least 10% of the Loss of Retirement Income benefit and provide a sustainable pension when injured workers with permanent impairments reach the age of 65 years with no sufficient retirement fund.
9. **Non-Economical Loss (NEL)** benefits were inadequately replaced with the injured workers' pension system in 1990, and the NEL benefits payments continue to go down by 65% from 2010 to 2015 under the UFL. Now it's time to restore the NEL rates so that permanent impairments are more accurately and realistically rewarded.

The above recommendations we are putting forth come from lived experiences of injured workers in Ontario. Here are some testimonials to highlight some of their experiences from the group.

"I was injured in 2010 from workplace sexual harassment and retaliation. After I filed a complaint in two hours, my manager forced me to work with the harasser, one-on-one and in-person. I lasted 3 more days at work before hospitalization for the mental crisis. My WSIB claim for mental injury was rejected mainly due to WSIB financial reasons. I have met injured workers who were forced to return to work when not ready. Some of them repeated several times return to work, re-injure and reclaims became permanently impaired. Submission to UN CRPD (Committee on the Rights with Disability) complained that deeming cuts compensation. It is clear to our society that compensation is inadequate: academia reported more than 46% of permanently impaired injured workers living on the poverty line, and media reported injured workers became homeless. No more delay. Pay injured workers benefits first!" -- Jenny Tang from the IWA4J Chinese Injured Workers' Group

"I was injured at my work, but my employer blamed and abused me while I was suffering from my work injury instead of protecting me and providing a safety net to recover from my work injury. That impacted my psychological condition. In addition, the WSIB with the employer attacked me by saying that I'm lazy and treated me like I was a fraud. The WSIB is not designed to help people like me with a language barrier in the Spanish-speaking community, who have already faced so many problems during this devastating pandemic. The WSIB should provide more funding and sustainability to the workers who speak English as a second language." -- John Camargo from the IWA4J Spanish-speaking injured worker Group

"I was injured in 2016 in my workplace. After a few months on modified duties, the WTS (Work Transition Specialist) from the WSIB and my employer without consultation with me just picked a permanent position for my RTW (return to work) that was not suitable and safe for my work injury. And then, the WSIB cut my benefits while I'm still recovering from my work injury. I learned about the creation of the "surplus" under the "unfunded liability" on the backs of injured and ill workers benefit cuts. This is a systemic problem in our legislature. It's not right! I support this submission and also urge the government to stop the surplus distribution to employers. Please consider pay workers benefit first!" -- Justina Wright (not her real name) of the IWA4J Spanish-speaking injured worker Group

"As an injured worker, I am bound by several regulations that now govern my life. WSIB and employers govern using paper doctors and not the Meredith Principles that are supposed to protect the injured workers. That shared liability has been siphoned to the point of oppression of injured workers forced into poverty. Along with the drainage of our rights, the people controlling the decisions are not utilizing the regulations they were intended, creating more barriers and denials. Please use the surplus to injured workers benefits they are entitled". -- Justiniana (not her real name) of Injured Workers Action for Justice Group

"I have a repetitive work injury, carpal tunnel syndrome from my work, but my employer and the WSIB denied my injury, and my employer started bullying and harassing me about my injury and my request for modified work. And then, the employer pushed me to resign from my job and laid me off at work. Because of this kind of injustice and lack of help and support system at the workplace, I had to go through a very difficult time suffering from injury and stigma in our system. When I found out about this consultation, I feel like there is no justice. This is not right! I'm supporting this submission. The MLTSD should listen to the injured workers' community and stop distributing the surplus to employers. The WSIB needs to break down the barriers, systemic problems and provide injured workers benefits now." -- Mohammad Naqvi, Injured Workers Action for Justice Group

We as an injured workers' group demand that the government amend the bill and abolish all harmful policies and practices at the WSIB. In order for the Ministry of Labour to fulfill its legislative obligations, the WSIB system must be made responsive and accountable to the public it's supposed to serve, not the corporations. This so-called "surplus" at the WSIB resulted from denial of benefits, claim suppression and cuts under unfunded liability. In other words, the "surplus" was gotten off the backs of injured workers.

Please reconsider how you can best carry out your mandate to serve the community for a more fair and full compensation system for workers.

Thank you for your consideration.

Regards,

Injured Workers Action for Justice

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