WSIB Rate Framework Review Consultation

Mechanical Contractors' Association of Ontario

Submission to the WSIB

Presented to:

Workplace Safety & Insurance Board RFR Review

October 2, 2015

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PART I: Introduction

1. Mechanical Contractors' Association of Ontario – Who We are

For purposes of introduction, MCA Ontario is a major Labour Intensive Provincial Construction Employer Trade Association (Management) that represents approximately 350 Construction Companies across Ontario – involved in the Mechanical Contracting field (Industrial, Commercial and Institutional, i.e. HVAC, Plumbing, Steamfitting & Gas Piping Systems, Sheet Metal Installations, Fire Protection and Refrigeration Systems); and is the "*Designated Employer Bargaining Agency*" under the *Ontario Labour Relations Act* for mechanical work performed in the Industrial, Commercial, Institutional and Extended Power Sectors of the province. Our Member Firms employ approximately 14,000 Construction Tradesmen across Ontario. For further information go to: **http://www.mcao.org/about_mcao.php**

Our primary Workplace Safety & Insurance Board ["WSIB" or the "Board"] Rate Group ["RG"] is **RG 707 - Mechanical & Sheet Metal Work**. The **RG 707** 2015 premium is $4.16, and based on a projected 2015 payroll (projected by the WSIB) of $3.6 billion, we are in the largest RG (by payroll) within **Class G – Construction**, contributing a full 20% of the **Class G** payroll.

The 2015 projected premium for **RG 707** is $150 million, which is about 12% of the total $1.3 billion construction premium, which in turn represents 27% of the total system premium.[1] In short, MCA Ontario represents a significant sector.

MCA Ontario is a founding and senior member of the **Construction Employers Council on WSIB Health and Safety and Prevention** ["CEC"], a coalition of Ontario construction associations formed in 2008 dedicated to initiating reform of Ontario's workers' compensation system to better meet the needs of the province's construction industry. The CEC vision is a workers' compensation system that works effectively and efficiently for both workers and employers in the construction industry in Ontario. As the name **Construction Employers Council on WSIB Health and Safety and Prevention** suggests, Ontario's workplace safety and insurance ["WSI"] and immediately related issues are the single focus of the group's activities, attention and resources.

Through the CEC, we are also aligned with the **Employers' Council of Ontario** ["ECO"], a like-minded coalition of non-construction employers, with matching aims and purposes, and very similar broad positions.

B. The focus of our presentation

We will focus on the following:

1. A critique of the Case for Change as advanced by the WSIB
2. A discussion of target rates and the development of a bridge to a reasonable transition
3. Transitioning from the current system with zero UFL and with all rate groups at target
4. The application of the North American Industry Classification System (NAICS)
5. Collectivizing certain WSI costs

[1] All figures are direct or derived from the ***WSIB 2015 Premium Rates Manual***, with a particular focus on **Class G, Construction**, pp. 426-433.

PART II: A critique of the Case for Change as advanced by the WSIB

A. What is the problem? Is this project a solution looking for a problem?

1. MCA Ontario and the CEC made extensive presentations to the WSIB with respect to the Doug Stanley phase of the RFR project in April 2013. They bear repeating. They are as relevant now as they were in 2013. These were our key points:

> The January 2013 "***WSIB Rate Framework Consultation Discussion Paper***" (the "Paper") strongly presumes a problem and several potential "solutions". The Paper presents a cursory overview of relevant events over the past two decades.
>
> It is our respectful suggestion that the "problem" is not defined and the proffered solutions do not address the real deficiencies facing the system. In the Paper at p. 2 under the heading "**Why and Why Now**", the following is said:
>
>> ***Why and Why Now?***
>>
>> This is not the first time that the WSIB has turned its mind to one or more aspects of the classification, rate setting and experience rating systems. The list includes:
>>
>> 1989 Revenue Strategy: A Framework for the 1990s and Beyond
>> 1998 Consultation Report on the WSIB Funding Policy
>> 2008 Recommendations for Experience Rating, Morneau Sobeco
>> 2009 Chair Mahoney's Report on Stakeholder Consultations
>> 2010 WSIB Funding Review
>>
>> The conclusion reached in each of these examinations, was that there is something that needed to be fixed. In my assessment of the these reviews, the time has passed for asking the question, "is there a problem?", and it is now time to move on to, "how do we fix this problem?".
>
> In effect, the Paper seems to suggest that since there have been a number of studies over the years, a problem persists and it must be fixed.
>
> But, the Paper does not explain that not only did the 1989 **Revenue Strategy** identify a problem, **it fixed a problem**.
>
> The **Revenue Strategy** project was one of the most significant, engaged and comprehensive consultation projects ever undertaken by the Board in its almost 100 year history. The system which emerged still meets the needs of Ontario's employers. The primary focus of the **Revenue Strategy** was employer equity *not* WSIB administrative ease.
>
> In the **CITF** submission to the **Funding Review** this was noted:
>
>> It seems that the WSIB is vaguely seeking some administrative efficiencies as its primary objective. This is odd noting the current scheme is designed to promote a higher standard of employer fairness *even if* the administration is more complex. The **1989 Revenue Strategy** notes:
>>
>>> Grouping employers in this way may make administration of the compensation system more complex. ***However, it is fairer to employers*** . . . (**Revenue Strategy, 1989, at p. 9, emphasis added**)
>
> On administrative ease, at p. 7 the Paper actually takes a contrary view:
>
>> ***Ease of Administration*****:** The classification and pricing model must be simple, efficient and effective, to the extent possible, in order to facilitate an employer's ability to meet their reporting and payment obligations.
>
> No comprehensive case has been made for *any* change let alone a massive redesign.
>
> It seems that the WSIB is vaguely seeking some administrative efficiencies as its primary objective. This is odd noting the current scheme is designed to promote a higher standard of employer fairness *even if* the administration is more complex. The **1989 Revenue Strategy** notes:
>
>> Grouping employers in this way may make administration of the compensation system more complex. ***However, it is fairer to employers*** . . . (**Revenue Strategy, 1989, at p. 9, emphasis added**)

2. We continue to share the points expressed in a CEC letter of April 7, 2014 to WSIB CEO:

Dear Mr. Marshall:

We ask that this letter be read in conjunction with the **Construction Employers Council on WSIB Health and Safety and Prevention** ["CEC"] April 24, 2013 submission to the Rate Framework Review ["RFR"]. In our concluding comments presented a year ago, we said:

> Job 1 of the WSIB is long term financial viability. The Paper makes it clear that there is no linkage between this project and the financial integrity of the system. We respectfully suggest that is distracting to engage on a massive project over a period of some years that will consume employer and WSIB resources and if history offers any lesson, this will exhaust the Board when none of this contributes to the Board's primary focus.
>
> No real problem has been defined - a problem has been presumed. Employers have not been calling for any of these changes nor have employers ever advanced any suggestion for a complete revamp of rate classification or experience rating. This is 100% a WSIB initiative. Without employer support, radical redesign of the taxation scheme will likely be resisted.
>
> A massive reclassification was successfully developed over the period 1988 - 1993 through the Revenue Strategy. The primary focus of the Revenue Strategy was employer equity, even if WSIB administrative challenges increased. The Board commenced that project with the awareness that employer equity trumps administrative simplicity. Yet, the primary focus of this project is to simplify WSIB administrative needs. In other words, the paradigm has been turned upside down.
>
> The Paper implies "Rate Shopping" is a major problem although no evidence has been presented. Rate Shopping, if it is a serious concern, and this is doubted, would be limited to smaller businesses just entering the workplace safety and insurance system. If it is a problem, this is an indictment of WSIB diligence, nothing else.
>
> One culprit has been effectively highlighted in the Paper - lax WSIB administrative maintenance over the years. That is a real problem and accepted as such by employers. The solution is self-evident - start effectively maintaining these programs, starting with the most serious and pressing concerns and working through incrementally. No case has been made for an architectural makeover. A case has been made for better administration. Start that now.
>
> After participating in the RFR for over a year and after considering the report, Pricing Fairness ["PF"], we end where we started with a repeat of our April 24, 2013 conclusions. We ask that the Board not accept the recommendations set out in PF and instead administer the current classification scheme in the manner originally intended more than 20 years ago. Lax administration does not present a legitimate licence for program change. As we then said, "no case has been made for an architectural makeover - a case has been made for better administration".

While we do not intend to present a full response to every observation and recommendation set out in PF, some remarks warrant comment. We dispute that there is a "*growing sense of urgency and frustration among stakeholders and a genuine desire among many for the WSIB to get on* " with a new classification model (PF at p. 4). The RFR project was never inspired by employer demand. A suggestion that stakeholders malign the current system as "not fair" (PF at p. 5) is interesting. We suggest that the Board's current premium setting policy in place since 2010 not to adjust premiums downwards even if earned by sustained improved performance is the real culprit (if there is one) - not classification architecture. That noted, as you are aware, the CEC has supported this overall policy approach as an interim, short-term plan (we have addressed this in a recent communication). The linkage of classification reform to system sustainability (PF at pp. 5 - 7) is confusing. Simply put, there is no linkage, a sentiment with which we know you agree.

Even though PF attempts to repackage the case for change (PF pp. 7 - 9) the arguments remain as unconvincing today as they were a year ago. The commentary suggesting that the Standard Industry Classification (SIC) is no longer relevant (PF at p. 8) is itself, not relevant. The SIC grid was simply a starting point 25 years ago. We now have a "made in Ontario" scheme. The one cross-subsidization example presented (PF at p. 9) is an argument for administrative maintenance - the true culprit - not system re-design.

We agree with the overall rate setting commentary (PF pp. 9) and have focused on this with the Board over the years. The "across the board" approach, as we have recently suggested, must be addressed. We expect that it will and have asked that those discussions commence soon and wrap-up by year's end.

We have never disagreed with any well-considered plan to modernize experience rating ["ER"] (PF pp. 10 - 12) but temper that potential project with two comments: one, construction demands a retrospective scheme; and two, there is no urgency for change. More to the point, bearing in mind that the current ER models took years to develop and fully implement, change must be carefully, methodically and painstakingly addressed. This one element itself is a massive project. To be frank, this is not the right time to embark down this road. As we have said, "Job 1 of the WSIB is long term financial viability". As you well know, the CEC has been (rightly) complimentary to the WSIB administration for the remarkable transition underway. But, this transformation is still in its infancy and remains fragile. As we said, "this will exhaust the Board when none of this contributes to the Board's primary focus".

While we do not support implementation of the Pricing Fairness proposals, this was still an important project. We will continue to work in partnership with the Board to achieve incremental and continual improvement. The immediate next step is to focus on 2015 premium rates and ancillary issues such as target rates and unfunded liability contribution rules, as set out in a recent communication to you.

Regards,

Jason Ottey, CEC Chair

3. These comments remain valid criticisms.

B. A direct to response to RFR Paper 2, "*Current State Analysis*"

1. **RFR Paper 2, "*Current State Analysis*"**, presents an unreliable and skewed analysis of the reasons for change.

2. The first observation we present is what is missing. From reading the narrative offered, one could be excused for believing that all of the current classification and experience rating ["ER"] programs were designed by some alien civilization from a distant world.

3. We say this of course with exaggerated glib, but nowhere in this paper (or any RFR paper for that matter) is there any recognition that the Board, with its eyes fully open and its policy mind in high gear, with focused determination, purposely and intentionally developed each and every one of these policies in no less a thoughtful fashion than the current RFR project.

4. In fact, if anything, the policy development process behind the policies the Board now condemns, was far superior in its approach, competence and outreach. The **Revenue Strategy** project of 1988 – 1993, which gave rise to the current regime, addressed the identical territory to that of the RFR. If that approach was so wrong, and according to the Board of that there is no question, one would expect a very clear analysis as to why it was that an earlier regime of WSIB management was so mistaken. Yet, we see no such analysis.

5. Paradoxically, the **Revenue Strategy** preferred employer equity over administrative simplicity whereas administrative simplicity (for the Board - not employers) is the clear *raison d'être* for this reform. The absence of a crystal clear analysis as to what went wrong is concerning.

6. Our take on all of this is pretty simple. Nothing went wrong in the initial (1988 – 1993) **Revenue Strategy** classification design. But, since implementation, the Board neglected these policies and did little to properly maintain them. Yet, the policy infrastructure remains sound. Administrative neglect is a reason for rolling up one's sleeves and getting to work, not for drafting up a new set of blueprints, which in time, will similarly decay through neglect.

7. The second is the absence of any real recognition of the strong "case against" change (see **Paper 2, Case for Change**, p. 7). It is as if all we have said consistently, and rather well, in several papers over the past several years was for naught, and was either not heard, was ignored or was simply brushed aside.

8. The third is the very misleading suggestion that "*inadequate experience rating programs that exclude many employers, lead to premium rate instability*" (see **Paper 2, Case for Change**, p. 7). In a single short sentence, the Board contradicts itself and trips over its own words. If many employers are excluded from ER, then for those employers, premiums are not subject to "premium rate instability". The premiums remain perfectly stable. Secondly, the employers that are excluded from ER are excluded for sound policy and design reasons. They are too small. **Paper 2** implies (as did past RFR papers) that this is a hardship and inequity for those employers. Yet, in **Paper 1, Executive Summary – An Overview of the Proposed Preliminary Rate Framework**, at page 10 Figure 4, we learn that a small employer will have a negligible variation in its premium.

Figure 4: Proposed Actuarial Predictability Scale

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

9. It appears clear that this project is more about selling RFR and less about product design. The Board is making a pitch to the majority of employers (smaller enterprises) (see also **Paper 2, Classification Unit Analysis**, p. 8) for performance based premium rate variability, all the while knowing that it won't work for the small firm.

10. The fourth is the overall suggestion that the proposed RFR regime is "simpler". Indeed, it will be administratively simpler for the Board, but not at all for the customer. Is this summary explanation, taken from **Paper 1**, p. 8, any simpler for an employer than the current scheme?:

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

11. We challenge the Board to present the arithmetic as set out in **RFR Technical Paper 3** pages 52 – 63 to a group of average employers and honestly assess the level of comprehension.

12. The fifth is the suggestion that a weakness of the current scheme is "rate shopping," although the term has been dropped (see **Paper 2**, page 9, 2nd para.). This argument has always been nonsense since it is the WSIB that directly and exclusively controls where employers are placed.

13. The sixth is the argument throughout (see **Paper 2**, page 9, para. 3 for example), that the problems of the current regime (caused by WSIB neglect) would take more work to fix than to replace with the new RFR. Saying it does not make it so. The Board makes no case. It simply asserts.

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

15. The eighth is the outrageous suggestion that change is needed because 137,000 employers are "*paying too much*" while 77,000 employers are "*paying too little*" (see **Paper 2, Figure 2**, page 12) when the overpaying or underpaying as the case may be has nothing whatsoever to do with the classification scheme and everything to do with deliberate WSIB premium policy in place since 2010. The Board has refused to float the premium to the risk and now uses this as a reason for reform. This is brazen.

16. The ninth is the suggestion that ER off-balances are creating inequities for some employers and claim and firm cost limits "*limit the ability to hold employers fully accountable for their costs*" (**Paper 2**, page 13, 2nd para.). This is an affront to logic. ER off-balances are growing (but still much less than past years) for two reasons – improved performance and over-taxed premiums. By its own admission, *in the same paper*, the Board admits to overcharging the majority of employers. Yet, it returns only a negligible amount of that excess tax in the form of a net rebate.

17. The tenth is the absurd conclusion that **Paper 2** presents "*a detailed understanding of why change is now required*" when it does nothing of the sort. To cap the hyperbole, the Board concludes with this, "*With some employers paying too much and other employers paying too little, changes to the existing scheme are necessary in order for the WSIB to charge a fair premium . . .*" Of course, the WSIB has chosen not to charge a fair premium since 2010. This concluding statement is a fitting end to the paper.

18. A strong case has not been advanced for architectural adjustment of the current rate classification system. MCA Ontario recognizes that the real problem has been lax WSIB stewardship, oversight and maintenance over the past two decades. Through its overt neglect of the current system, the Board has not established the *bona fides* to be entrusted with the design, implementation and stewardship of a wholly new scheme. We sincerely believe that design enhancements aside, the development and seamless implementation of a new classification and premium scheme will exceed the Board's administrative capacity.

19. We respectfully appeal to the Board to continue to focus on *Job 1* – the financial integrity of the system. Once the system has reached and maintained 100% funding for several years, attention can then be re-focused towards a number of other objectives. At the end of the day, MCA Ontario is concerned that the Board will end up trading one set of imperfections with a new but different set of imperfections.

C. A comment on the Consultation Process

1. MCA Ontario has increasing concerns with the RFR consultation – not at all with the earnestness of the Board staff engaged in it, but with the execution and overall approach.

2. We are of the view that for a consultation exercise such as this to be effective, and at all worthwhile, it must be very fluid. In other words, it must be a very engaged discussion and able to adapt and respond to questions and information requests in almost real time.

3. Yet, the current approach is deadline focused. The Board's goal has been to try to respond to as many meeting requests as possible within a prescribed time-line (i.e., by August), await submissions by October 2nd and regroup in some form in November (or later).

4. No doubt, the Board's team is run-off-its-feet, but in our view, the consultation mechanism that the Board designed is the blame – not the project. And, all the while, the current approach is not being very responsive to stakeholder asks. The process is far less than preferred and falls short of what is needed.

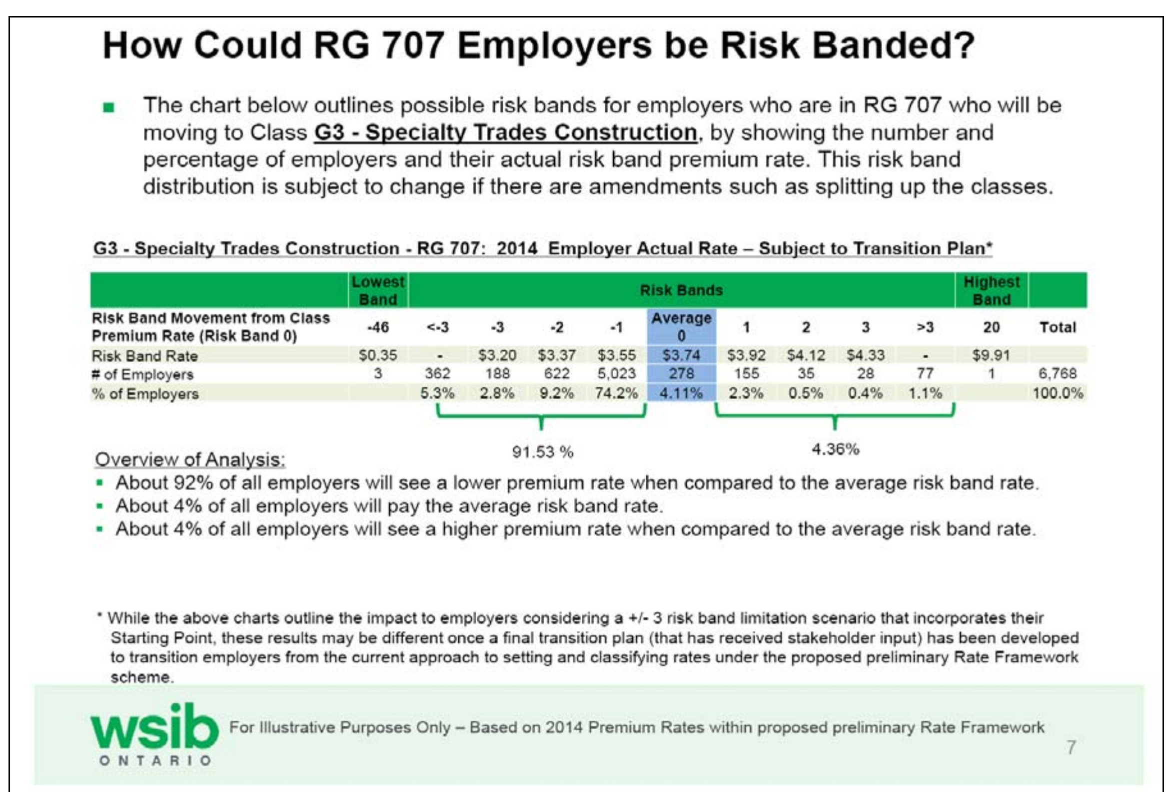
5. It would have been our preference to have addressed this phase of the consultation far differently through the **Chair's Advisory Groups**. Instead, the Board preferred model will achieve little more than facilitating the same conversation over-and-over several dozens of times, bringing several interest groups to a modest but less than required level of comprehension.

6. We presume that design ideas are what is ultimately being sought. That requires a very different approach than simple stakeholder edification. If all the Board is trying to achieve is stakeholder awareness, then your consultation model is satisfactory. Awareness on its own, while an essential component to consultation, is not enough.

7. The consultation continues "full steam ahead" when very basic and essential design elements are at the blueprint stage. For example, the April 28th outreach meeting was the 1st time we were made aware that model design was continuing. Our representative at that time made the strong point that completed model design was the first step – not an interim step.

8. It was in that meeting that the Board's consulting actuary advised, without providing much detail, that the Board was considering expanding the construction (G) class, specifically, the G3 group, which of course is now the case.

9. Refer to the **Rate Framework Modernization presentation on RG 707, Mechanical and Sheet Metal Work**, page 7, which is replicated below:



How Could RG 707 Employers be Risk Banded?

- The chart below outlines possible risk bands for employers who are in RG 707 who will be moving to Class **G3 - Specialty Trades Construction**, by showing the number and percentage of employers and their actual risk band premium rate. This risk band distribution is subject to change if there are amendments such as splitting up the classes.

G3 - Specialty Trades Construction - RG 707: 2014 Employer Actual Rate – Subject to Transition Plan*

	Lowest Band	Risk Bands									Highest Band	
Risk Band Movement from Class Premium Rate (Risk Band 0)	-46	<-3	-3	-2	-1	Average 0	1	2	3	>3	20	Total
Risk Band Rate	$0.35	-	$3.20	$3.37	$3.55	$3.74	$3.92	$4.12	$4.33	-	$9.91	
# of Employers	3	362	188	622	5,023	278	155	35	28	77	1	6,768
% of Employers		5.3%	2.8%	9.2%	74.2%	4.11%	2.3%	0.5%	0.4%	1.1%		100.0%

91.53 %

4.36%

Overview of Analysis:

- About 92% of all employers will see a lower premium rate when compared to the average risk band rate.
- About 4% of all employers will pay the average risk band rate.
- About 4% of all employers will see a higher premium rate when compared to the average risk band rate.

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

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For Illustrative Purposes Only – Based on 2014 Premium Rates within proposed preliminary Rate Framework

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10. That is good, solid essential information. However, it is not nearly enough. With the data organized at the RG level, which of course is essential, most associations, including MCA Ontario, would benefit immeasurably from identical information presented for their membership

base. ***Without impact information at the company level, an informed comment is simply impossible***.

11. We have made this request on multiple occasions from the outset of this project, to no avail. In fact, Board staff recoiled at our request. The CEC has aggressively advanced the identical plea as outlined in the May 13, 2015 letter to the Board's Chair and President (replicated at the right).

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

May 13, 2015

Ms. Elizabeth Witmer, Chair
Workplace Safety & Insurance Board
200 Front Street West
Toronto ON M5V 3J1

and

Mr. David Marshall, President & CEO
Workplace Safety & Insurance Board
200 Front Street West
Toronto ON M5V 3J1

Dear Ms. Witmer and Mr. Marshall,

<u>Re: Request for information on sector- and company-specific impacts of the Rate Framework Reform</u>

The Construction Employers Coalition for WSIB and Health & Safety and Prevention (CEC) represents more than 2,000 firms employing approximately 80,000 workers in province. The CEC was formed in 2011 for the purpose of studying and responding to "big-picture" issues related to Occupational Health and Safety, Prevention, and WSIB that will affect construction workers and employers in the province.

The Rate Framework Reform (RFR) project is the most important issue that we have collectively dealt with to date. The size and scope of the proposed changes are significant, with its impact certain to be wide-ranging in the construction industry. Following on a number of independent inquiries made by CEC members, we are requesting that the WSIB provide the CEC with all of the current Rate Group (RG) target rate information and data detailing company specific impacts in the manner suggested by WSIB officials at the most recent CIAC meeting. This information is crucial for our understanding and analysis of the RFR, and for our ability to communicate and discuss this reform process and its impacts with our members.

We appreciate your attention to this request.

Regards,

Patrick McManus, CEC Chair

Construction Employers Coalition (for WSIB and Health & Safety and Prevention)
c/o OSWCA, 5045 Orbitor Drive, Unit 12, Suite 300, Mississauga, ON, L4W 4Y4

12. We are reminded of the most analogous historical example of a very similar - contextually identical actually – consultation facilitated by the Board. That dealt with the introduction of the NEER plan in the mid-1980s.

13. The Board's approach then represented the pinnacle of an engaged dialogue with the stakeholder community. We describe one such instance.

14. The Board brought together close to 1,000 members of a major trade association in late 1985.

15. The purpose was to educate and demonstrate the impacts of the NEER program, then in its infancy. From 1986 (NEER Year 1) to 1992, NEER was subject to voluntary participation with a majority affirmative vote process facilitated by a representative association and endorsed by the Board necessary for inclusion.

16. To engage with that industry, the Board replicated **<u>at the firm level</u>** the effect of the NEER plan on individual companies.

17. Every company was able to see the impacts of the proposed plan.

18. This facilitated design understanding and as a result of this depth of awareness in this particular sector, led to design enhancement.

19. ***This is the very type of information that is required now***.

20. For all of the reasons the Board was then of the view of the importance of this approach, principally targeted stakeholder awareness and engagement, the Board of today opposes it.

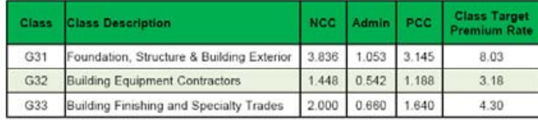
21. MCA Ontario requires the same type of information set out in **Slide 7** for our member firms and we re-assert our request.

22. In **Rate Framework Modernization presentation on RG 707, Mechanical and Sheet Metal Work**, at page 19, MCA Ontario was presented with a "***Risk Disparity Analysis – G3 Specialty Trades Construction"***, replicated below:

Risk Disparity Analysis - G3 Specialty Trades Construction

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

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



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

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

For Illustrative Purposes Only – Based on 2014 Premium Rates within proposed preliminary Rate Framework

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23. At **Slide 19**, the Board presents *some* limited information on the recently considered G3-1, G3-2 and G3-3 groups (hereinafter collectively G3-3). This precipitates an obvious request - *present the information for the G3-3 groups in the same manner as presented for G3* (at Slide 7). While we advanced this request several times, we were informed that the information cannot be compiled in time for the current phase of the Board's consultation. This is not satisfactory. The information is required now.

Purpose of This Session

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

wsib ONTARIO 2

24. We are struck by the openness suggested in the opening slide of all of the Board's presentations (replicated to the right). It is clear that the commitment to ensure "*understanding at the level you believe is necessary*" is being applied as "*the level the Board deems necessary*".

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

26. When the Board developed what we will refer to as "***Proposition 1***" (the five technical discussion papers and earlier WSIB presentations), it did so with the expectation that there would be a "***Proposition 2***". "***Proposition 2***" is what will be the subject of a discussion later this year.

27. In other words, the Board expected the model to evolve.

28. We have asked during the consultation whether or not with the development of "***Proposition 2***" the Board expects there to be a "***Proposition 3***" (which is our clear preference, especially since we still have experienced inadequate information in this first consultation phase).

29. In other words, is "***Proposition 2"*** seen as an important but interim consultative step?

30. The short answer presented to us initially was an unequivocal "no". In fact, the response to our query was itself a question – "*When should the Board stop*?", suggesting an implicit institutional impatience to an open-ended consultation protocol.

31. That question is easily answered. The objective must be getting it right – not perfecting it as much as possible within an arbitrary and WSIB imposed timetable. So, the process ends when the model is satisfactory – not when it is the "*best by a certain date*".

32. MCA Ontario is participating on the expectation that the consultation phase is not over with the October 2, 2015 submission deadline, and that this simply represents the end of one phase and the commencement of the next.

33. We also expect that our information requests, continuously advanced since the commencement of the consultation, will be honoured well in advance of the next phase of consultation.

34. We further expect that all participants will asked to formally respond to ***Proposition 2***.

35. We conclude this section with an interesting observation. During the course of our interaction with the WSIB administration during this phase, we reminded various meeting facilitators that the official WSIB position, as expressed by the WSIB Chair as recently as the **Chair Advisory Group** meetings in May 2015, was that the Board has not officially committed to RFR let alone to any specific design. All is on the table and open for discussion. It is the views of the stakeholders that is of critical interest to the Board's leadership. Let us conclude with the interesting revelation that the administration's reaction was less than consistent with this.

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

A. WSIB RFR Paper 5: A Path Forward

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

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

2. In addressing the transitional influence of the unfunded liability ["UFL"], **Paper 5** notes:

> One of the proposed key considerations to assess when transitioning from the current scheme to the proposed preliminary Rate Framework, is how it could be linked to the resolution of the UFL. The reduction of the UFL would provide significant maneuverability for employers who would find themselves particularly far from their Employer Target Premium Rate. For these employers, the gradual removal of roughly 40% of their premium rate due to the elimination of the UFL would provide the ability to maintain premium rates relatively stable, while making up significant ground towards arriving at their Employer Target Premium Rate.

3. MCA Ontario has a much simpler proposition which builds on the Board's thinking behind the above excerpt. Like the Board, we are concerned with the inflating influence of the UFL on premium rates. Our thoughtful suggestion is comprised of three distinct phases:

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

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

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

B. The need to "get to target" (starting now)

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

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

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

Figure 2: Assessment of Employer Premium Rates

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

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

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

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

5. As a direct result of financial sustainability concerns identified in the **2009 Annual Report of the Ontario Auditor General**, since 2010 - a period of six (6) years - ***WSIB premium rate setting policy has prohibited declines in premium rates*** for any sector even when earned through improving performance.

6. Initially, MCA Ontario and the CEC enthusiastically supported this approach, adopting a general position that financial sustainability and UFL reduction was "**Job 1**".

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

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

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

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

10. From 2005, the WSIB established the following yearly premium rate policies:

    2005: ***WSIB Policy:*** *Premium rates will reflect performance*. The 2005 APR is $2.19 - the same as the average rate for 2004. ***WSIB Announcement:*** This 0% average rate change does not mean rates will stay the same for all employers. Premium rates for individual rate groups have been recalculated based primarily on injury frequency and claims costs for individual rate groups.

    2006: ***WSIB Policy:*** *Premium rates will reflect performance*. The 2006 APR is $2.00, an increase of 3% over 2005. ***WSIB Announcement:*** This 3 % APR rate increase does not mean rates will increase for all employers. Premium rates for individual rate groups have been recalculated based primarily on injury frequency and claims costs for individual rate groups.

2007: ***WSIB Policy:*** *Premium rates will reflect performance*. ***WSIB Announcement:*** The WSIB has introduced a number of measures to improve its financial situation. By helping to alleviate some financial pressures on the system, these measures have allowed our Board of Directors to keep the average premium rate at $2.26 per $100 of insurable earnings. This is unchanged from the 2006 average premium rate.

2008: ***WSIB Policy:*** *Premium rates will reflect performance*. ***WSIB Announcement:*** For the second year running, measures introduced in recent years to improve the WSIB's financial situation have provided the WSIB Board of Directors with the flexibility to keep the average premium rate unchanged for 2008 at $2.26 per $100 of insurable earnings.

2009: ***WSIB Policy:*** *Premium rates will reflect performance*. ***WSIB Announcement:*** The 2009 APR $2.26 - unchanged from 2007 and 2008 - is based on careful financial analysis, and an expectation that improvements will occur in health-and-safety and return-to-work outcomes consistent with the WSIB's Road to Zero and Prevention Strategies.

2010: ***WSIB Policy:*** *Premium rates will increase but not decline based on performance*. ***WSIB Announcement:*** For 2010, the WSIB Board of Directors has decided to freeze rates for the majority of employers, while applying the usual rate-setting methodology for the rate groups that have not achieved expected health and safety and return to work outcomes. The WSIB approach to rate-setting is based on industry accountability for workplace insurance costs. The WSIB's decision protects the financial sustainability of the system from current financial pressures, while being fair to the workers and employers who rely on it.

2011: ***WSIB Policy:*** *The APR will increase 2%. No rates will decrease*. ***WSIB Announcement:*** For 2011, in response to growing concerns about the unfunded liability (UFL) - the difference between the costs of claims currently in the system and the funds in the system to pay for them - and the future viability of the system, the WSIB has announced modest increases in employer premiums and a long-term plan for financial sustainability. This plan will ultimately ensure lower and stable premium rates for employers in the long term.

2012: ***WSIB Policy:*** *All premium rates will increase by 2 % regardless of performance*. ***WSIB Announcement:*** Any proposed changes to the premium rate structure resulting from the Harry Arthurs review would not come into effect until 2013. Ontario's workplace insurance system is in a transition period until then, and the modest premium rate increase for 2012 is the minimum necessary to stabilize the system's finances while being fair to the workers and employers who rely on it.

2013: ***WSIB Policy:*** *All premium rates will increase by 2.5% regardless of performance*. ***WSIB Announcement:*** This increased rate is a necessary step to reducing the WSIB's unfunded liability (UFL), which has grown to $14.2 billion.

2014: ***WSIB Policy:*** *All premium rates will be maintained at current levels regardless of performance*. ***WSIB Announcement:*** The decision balances the needs of Ontario's workers while providing stability for employers as the WSIB reviews its methods for setting premium rates in consultation with stakeholders to come up with the fairest and most effective solutions.

2015: ***WSIB Policy:*** *All premium rates will be maintained at current levels regardless of performance*. ***WSIB Announcement:*** For the second consecutive year, premium rates will be maintained at current levels for the majority of employers.

11. From 2011, the UFL (in constant 2015 $) has declined from $15.076 B to $6.86 B (as at March 31, 2015), an impressive 55% decline.

Year	UFL (in constant 2015 $ B)
2011	$15.076
2012	$14.549
2013	$10.872
2014	$8.993
2015 (March 31)	$6.860

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

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

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

14. It worked, but it went on far too long. MCA Ontario and the CEC have been calling for a return to "*some coordinated discipline*" since 2013 **(see slide opposite from MCA Ontario's April 24, 2013 presentation to Doug Stanley)**.

Premium Rate Setting Policy Compromised 2010 – 2013

WSIB policy enhanced RG subsidization

- The Board's 2010-13 acceptance of RG subsidization must be viewed as an interim measure.
- ***Today's challenge:***
  - Place some coordinated discipline to that policy, to ensure that rate group subsidization is not a perpetual structural facet of the Board's funding strategy.

April 24, 2013 Rate Framework Review MCA Ontario 28

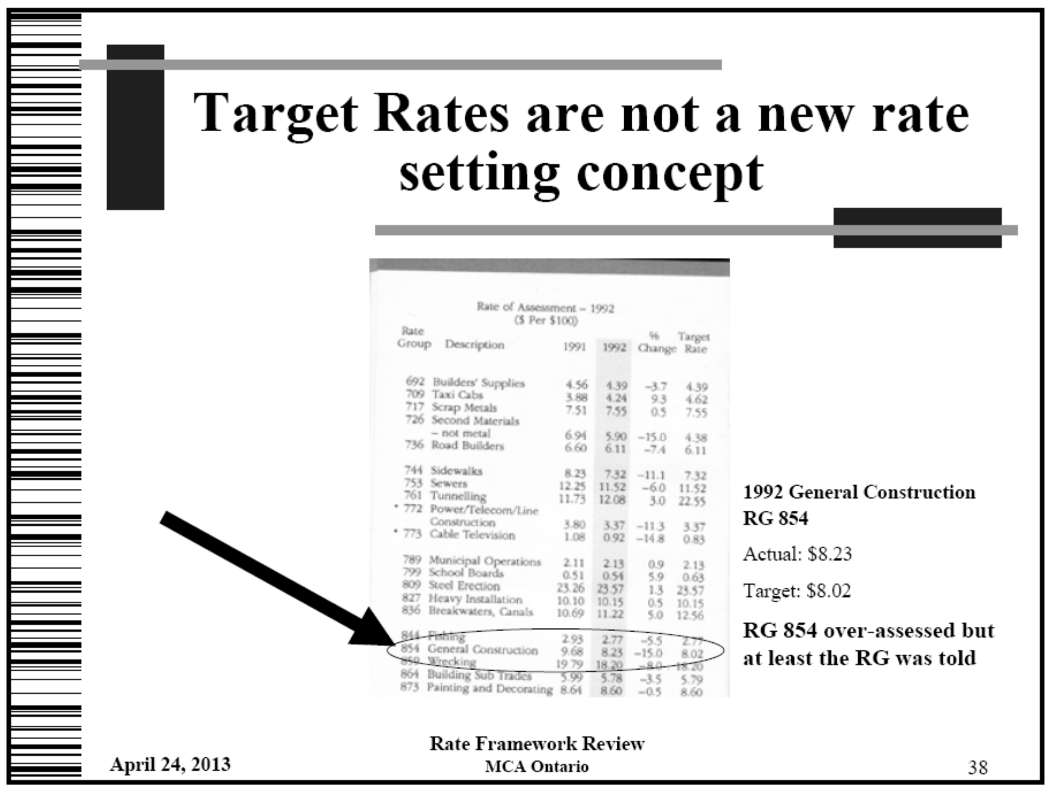
15. The retirement of the UFL is well ahead of schedule.

16. *The reason is simple:* the WSIB is over-taxing Ontario employers – specially Ontario's construction employers.

17. For construction, from 2005 to 2015 the lost time injury rate has declined 42% but the construction average premium rate has increased 14%.

18. Since 2011, MCA Ontario and the CEC has requested the WSIB to provide RG premium target rates.

19. It is important to note that the provision of target rates is not a new workers' compensation consideration, and was a routine element in premium rates as far back as 1992, a point we made on April 24, 2013 (see Slide 38 from MCA Ontario's April, 2013 presentation to Doug Stanley).



Rate of Assessment – 1992
($ Per $100)

Rate Group	Description	1991	1992	% Change	Target Rate
692	Builders' Supplies	4.56	4.39	–3.7	4.39
709	Taxi Cabs	3.88	4.24	9.3	4.62
717	Scrap Metals	7.51	7.55	0.5	7.55
726	Second Materials – not metal	6.94	5.90	–15.0	4.38
736	Road Builders	6.60	6.11	–7.4	6.11
744	Sidewalks	8.23	7.32	–11.1	7.32
753	Sewers	12.25	11.52	–6.0	11.52
761	Tunnelling	11.73	12.08	3.0	22.55
* 772	Power/Telecom/Line Construction	3.80	3.37	–11.3	3.37
* 773	Cable Television	1.08	0.92	–14.8	0.83
789	Municipal Operations	2.11	2.13	0.9	2.13
799	School Boards	0.51	0.54	5.9	0.63
809	Steel Erection	23.26	23.57	1.3	23.57
827	Heavy Installation	10.10	10.15	0.5	10.15
836	Breakwaters, Canals	10.69	11.22	5.0	12.56
844	Fishing	2.93	2.77	–5.5	2.77
854	General Construction	9.68	8.23	–15.0	8.02
859	Wrecking	19.79	18.20	–8.0	18.20
864	Building Sub Trades	5.99	5.78	–3.5	5.79
873	Painting and Decorating	8.64	8.60	–0.5	8.60

20. We have long held the firm view that, notwithstanding the premium rate policy in place or the reasons behind the policy, the provision of target rates was an essential feedback mechanism.

21. This is *especially* important when premiums did not reflect performance.

22. Unfortunately, despite repeated requests, the Board did not act on our appeals for 2011, 2012, 2013, 2014, or 2015.

23. This request was last formally introduced by the CEC in a letter of March 27, 2015 to WSIB Chair Witmer (replicated at right).

24. The Chair did act on the CEC request and as part of the RFR consultation exercise we were provided with target rate data.

25. It is now clear (and the WSIB admits) that the Board has been over-assessing Ontario construction employers. For 2014, the construction average rate was $6.36. For 2015, it was $6.65. It should be much less.

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

March 27, 2015

Ms. Elizabeth Witmer, Chair
Workplace Safety & Insurance Board
200 Front Street West
Toronto, ON M5V 3J1

Dear Ms. Witmer:

Re: CEC Request for Class G Rate Group Target Rates

At the joint Employer Advisory Group meeting on March 3, 2015, we were provided with class level target rates (a replicated copy is attached in Appendix B). Although the information provided was welcomed, limiting target rates to the class level hinders our ability to effectively engage in the upcoming Rate Framework Review (RFR) consultations. Without this information, we cannot truly understand the impact that the proposed RFR changes will have on the various sectors of the construction industry.

The Construction Employers Council on WSIB, Health and Safety, and Prevention (CEC) has consistently been asking for target rates for each of the Construction (Class G) rate groups since 2010, and we would like to strongly reiterate this request. At the March 3 meeting, WSIB President David Marshall confirmed this information is available and the recently provided RFR technical papers corroborates that this is the case. The WSIB has simply chosen not to provide this information. We do not understand the rationale for this decision.

The CEC asks that you direct the WSIB administration to immediately release this information to us. We thank you for your consideration of this request.

Regards,

Patrick McManus
Chair

Construction Employers Coalition c/o OSWCA 5045 Orbitor Drive, Suite Unit 12, Suite 300, Mississauga, ON L4W 4Y4

26. The chart below is extracted from the **RFR RG 707 Presentation** (at page 20):

Industry Class	2014 Net Rate
A – Forest Products	4.93
B – Mining and Related	6.28
C – Other Primary Industries	4.04
D – Manufacturing	2.49
E – Transportation and Storage	4.83
F – Retail and Wholesale Trades	1.75
G – Construction	6.36
H – Government and Related	1.33
I – Other Services	1.27
Schedule 1	**2.46**

2014 Class Target Rate	
($10B UFL)	($0 UFL)
5.79	3.60
4.90	3.13
4.70	2.95
2.99	1.88
4.53	2.79
1.65	1.08
5.52	3.41
1.43	0.93
1.25	0.81
2.46	**1.56**

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

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

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

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

27. As noted, the WSIB 2015 Average Premium Rate [“APR”] for **Class G Construction** is $6.65.

28. The WSIB has shown that even with a $10 B UFL, the APR should only be $5.52. With zero UFL, the construction APR should be $3.41.

29. For 2016, the UFL likely will be less than $6.0 B.

30. At $6.0 B the construction APR should be approximately $4.68 (using 2014 as a base). This means that for 2016, the construction APR could decrease by more than 25% and still properly fund the WSIB.

31. In short, Ontario’s construction employers, currently contributing approximately $1.25 B in premiums, are owed a minimum $300,000,000 premium reduction.

C. The challenge to reduce the UFL has exceeded expectations

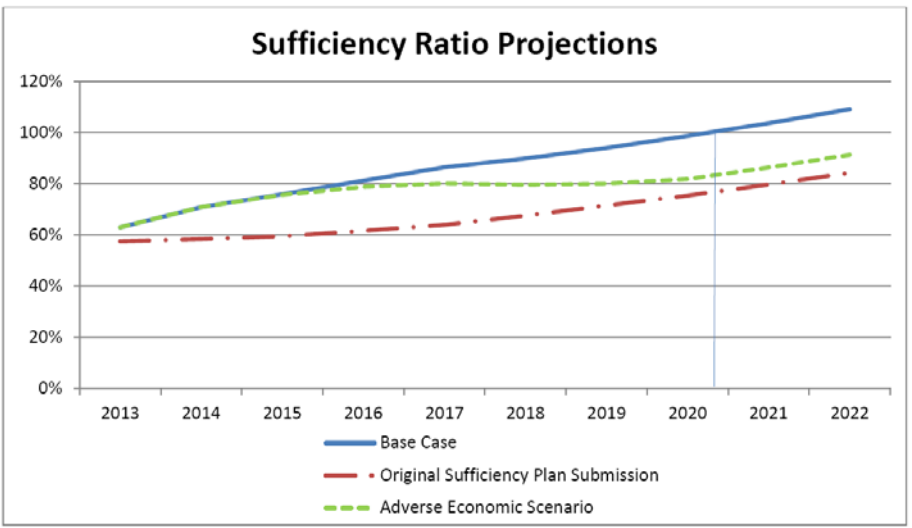
1. On the question of reducing the UFL, WSIB stewardship has been exemplary. Let us not forget however, that the single most important element in securing this reduction has been the over-taxing of Ontario’s employers.

2. Yet, the achievement has nonetheless been remarkable.

3. In the ***WSIB Sufficiency Plan Update*** publicly released in September, 2015, it is evident that the Board is well ahead of schedule.

4. The extract (page 8 of the report) on the following page speaks volumes:

Workplace Safety and Insurance Board



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

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

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

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

1. One can now, and for the first time in over 30 years, reasonably prophesize that the UFL story will conclude with the preverbal happy ending. The early retirement of the UFL can, and must, be integrally linked to RFR transition. In so doing, a serious potential pitfall is remedied.

2. This problem is introduced in **WSIB RFR Paper 3**, at page 60:

> **Step I: Determining an Employer's Risk Band Movement**
>
> There may be a difference (varying from a very small to a large variance) between what an employer should be paying as their Employer Target Premium Rate and what the employer is paying under the current system. Some employers (especially those who are seeing their premium rates increase) would not want to experience drastic changes in their premium rates from one year to the next to reach their Employer Target Premium Rate.

3. We see a remedy to this problem. The transition discussion continues in **WSIB RFR Paper 5**.

4. The significance of the problem becomes clearer with the following chart (from **RG 707 RFR Presentation**, page 21):

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

5. When viewed against 2014 premium rates (below), the problem of transition is readily apparent.

704	Electrical And Incidental Construction Services	3.69
707	Mechanical And Sheet Metal Work	4.16
711	Roadbuilding And Excavating	5.29
719	Inside Finishing	7.51
723	Industrial, Commercial & Institutional Construction	4.55
728	Roofing	14.80
732	Heavy Civil Construction	7.03
737	Millwrighting And Welding	6.90
741	Masonry	12.70
748	Form Work And Demolition	18.31
751	Siding And Outside Finishing	10.25
755	Non-Exempt Partners and Executive Officers in Construction	0.21
764	Homebuilding	9.10

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

Past Claims Cost

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

Previous Methodology – the NCC Methodology (Since 1999)

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

Current Methodology – the Remainder Methodology (Recent Changes)

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

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

21

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

8. This point was heightened in a May 4, 2015 CEC letter to WSIB Chair Witmer (reproduced to the right).

9. We encourage the Board to signal its acceptance of this important suggestion at the earliest opportunity.

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

May 4, 2015

Ms. Elizabeth Witmer, Chair
Workplace Safety & Insurance Board
200 Front Street West
Toronto ON M5V 3J1

and

Mr. David Marshall, President & CEO
Workplace Safety & Insurance Board
200 Front Street West
Toronto ON M5V 3J1

Dear Ms. Witmer and Mr. Marshall,

<u>Re: Recommendation to position the implementation of any new WSIB Rate Framework to coincide with the retirement of the unfunded liability</u>

Following up on a request made during the Construction Industry Advisory Council meeting on March 31, 2015, the CEC and its members strongly recommend that the WSIB plan the implementation of any new rate framework for after the official elimination of the unfunded liability (UFL). Given the proposed classification model in the Rate Framework Reform (RFR) *Paper 3: The Proposed Preliminary Rate Framework*, waiting until the UFL is eliminated will ensure that a new model has a much more palatable impact than if otherwise imposed with an existing debt-load on the system.

Positioning implementation to coincide with the retirement of the UFL also allows for a much more significant and robust consultation process on a new framework model that may replace current system.

We appreciate your attention to this request.

Regards,

Patrick McManus, CEC Chair

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

1. MCA Ontario supports the CEC position to have all RFR entrants, be it new companies or long-standing firms, to enter the newly designed RFR grid at the firm's respective **Class Target Premium**.

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

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

4. Since the UFL will be zero, and all RGs will be at their respective target rate, significant transitional rate fluctuations will be minimal and likely in every instance, premiums will be lower than current rates.

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

A. The purpose of NAICS

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

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

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

3. In a letter to the RFR consultation group on August 25, 2015, the **Ontario General Contractors Association**, our CEC colleague, wisely noted that:

> The North American Industry Classification System (NAICS) was developed as an industrial classification system, not as a method of allocating insurance risk

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

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WE BUILD ONTARIO
ONTARIO GENERAL CONTRACTORS ASSOCIATION

Suite 703, 6299 Airport Road,
Mississauga, ON L4V 1N3
TEL: (905)671-3969
FAX: (905)671-8212

August 26, 2015

Mr. Jean Serge Bidal
Executive Director
Rate Framework Modernization
Workplace Safety and Insurance Board
200 Front Street West
Toronto, Ontario M5V 3J1

Reference: Rate Framework Application to Rate 723 Members

Dear JS:

Thank you for meeting with the OGCA Safety Committee in June to explain the proposed application of Rate Framework to general contractors.

Since that meeting, I have met with members of the actuarial department and they provided a direct target rate comparison of rates 723 and 764. Recently, the WSIB released an analysis on all rate groups and created a risk Disparity Analysis. This produced an alternative or expanded group of rates under the proposed model.

I understand that you will join us at the Committee meeting on September 11th. This letter is to advise you of the issues we will present at that time.

Responsiveness of the System

As you know, OGCA and our members have been focused for many years on improving safety performance in our industry for the benefit of our workers and to influence lower WSIB costs. We were original members of the Safety Group Program and are now actively working to establish the COR™ program in Ontario.

We have also been supporters of the WSIB's experience rating programs that have been in place for the last thirty years. We feel that it has had a significant influence on the long term reduction in injury rate that Ontario has enjoyed. The system must find a balance between providing insurance protection and recognizing effective prevention and return to work performance.

The Rate Restructuring proposal as presented is seriously flawed in that it provides a reduced incentive for performance, particularly for medium and small employers. As a result, long term performance gains will be lost at the cost of further injuries and higher WSIB costs.

ogca.ca

5. There is no sound policy reason for this if other means of grouping employers satisfactorily meets the test for "actuarial predictability", which the WSIB has set at a $2 billion annual payroll.

> The WSIB assessed the actuarial predictability of each two-digit NAICS sector and determined that $2 billion in insurable earnings per year for each sector provided a level of predictability that can be relied upon to predict future outcomes and therefore fairly and accurately set premium rates.

6. When applying the $2 billion threshold against the *current* classification grid, one discovers that of the 12 construction RGs, five (5) RGs clearly exceed the threshold and a sixth comes very close.

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

Class G Assessable Payroll by Rate Group (From WSIB 2015 Premium Rate Manual)	
Rate Group	**Assessable Payroll ($ billion)**
704 Electrical	$2.7
707 Mechanical	$3.1
711 Roadbuilding	$2.2
723 ICI Construction	$2.1
728 Roofing	$0.5
723 Heavy Civil	$0.9
737 Millwrighting	$0.7
741 Masonry	$0.5
748 Form Work	$0.5
751 Outside Finishing	$1.0
764 Homebuilding	$2.5

8. MCA Ontario sees no reason for strict adherence to NAICS as the default organizing tool.

9. MCA Ontario would prefer utilizing the current classification grid *unless specific RGs are not statistically credible*.

10. At a minimum, MCA Ontario proposes that current RGs 704, 707, 711, 719, 723, and 764 continue as currently structured and populated.

11. On the question of statistical credibility, while payroll is a sound indicator, certainly a sector with a $2 billion payroll and a very low injury rate (say under 1% such as many groups in the retail sector), does not necessarily sit on the same credibility plateau as a construction sector generating more claims albeit, with a lower payroll.

12. We note that it is interesting that **New Brunswick**, also organized under NAICS (and coincidently, once headed by WSIB RFR Special Advisor Doug Stanley – the primary initial proponent of NAICS), and which has nowhere near the payroll of the Ontario system (the total New Brunswick system

assessable payroll is $8.5 billion[2], whereas the Ontario construction sector alone has an annual assessable payroll of $19 billion), is able to manage <u>seven</u> (7) construction rate groups, those being:

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

13. At a minimum, MCA Ontario seeks the (potentially) proposed G3-1, G3-2 & G3-3 breakouts, but we do not adhere to a strict application of NAICS. For the most part, the current grid - at least for construction – is fine.

B. The question of rate groups and employer classification

1. The establishment of rate groups is a core and integral element of any WSI scheme.
2. Not only is a sound classification scheme an essential precursor to experience rating, as properly pointed out by the OGCA in its October 25, 2015 letter, equitable employer classification is an essential strategic component to injury prevention.
3. Rate classification is a valued requirement as: i) it is a prerequisite to experience rating; ii) it may be justifiable with respect to resource allocation in the long run and has an influence on prevention, and; iii) it is justifiable on the basis of employer equity.[3]
4. The long term result of a limited rate system would be increasing rates for small employers and decreasing rates for larger employers.[4] A single or limited rate approach would simply not be equitable, especially for smaller employers, who would be required to contribute at the average set rate and would lack the relative power to secure meaningful rate rebates, whereas the larger employer would be able to acquire strong experience rating gains.
5. Experience rating as a premium modifier is most effective as the size of the assessed payroll base increases. It is not possible for small or even medium sized employers to benefit in any material manner from experience rating (and this is the case be it under NEER, CAD-7, MAP or the proposed prospective RFR scheme).
6. A reduction of the number of RGs risks both adverse selection[5] and increased moral hazard.[6] Such a policy would pit smaller employers against larger employers and either promote small employers to be insurance free-riders or crush them under oppressive premium rates.

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[2] WorkSafe New Brunswick, 2015 Premium Rates, p. 4
[3] P.S. Atiyah, "Accident Prevention and Variable Premium Rates for Work-Connected Accident" Parts I & II (1974) 3 Ind. L.J. 1 & 89 at 1.
[4] Ian B. Campbell, "Experience Rating for Accident Compensation: A Necessity or Wishful Thinking" (1989) Department of Management Systems, Business Studies Faculty, Massey University, Occasional Papers: 1989 Number 4 at 18.
[5] Adverse selection refers to the greater tendency of high-risk individuals to seek insurance, particularly if the premium they would pay is less than their expected loss. Workers' Compensation Insurance In North America: Lessons For Victoria?, Upjohn Institute Technical Report No. 96-010, H. Allan Hunt, Assistant Executive Director, W.E. Upjohn Institute for Employment Research, Robert W. Klein, Director, Center for Risk Management and Insurance Research, Georgia State University, November 1, 1996, at p. 12-13. Found at: http://www.upjohninst.org/publications/tr/tr96-010.pdf
[6] Moral hazard occurs when insurance diminished an insured's incentive to prevent or contain losses, *ibid*.

7. We continue to support the principles advanced in the Board's papers, "**Revenue Strategy, A Framework for the 1990s and Beyond, 1989**" and "**Revenue Strategy, The New Classification and Pricing Strategy, 1990**." While these may, in the eyes of some, be "old policies", the organizing ideas remain vibrant and advance employer equity over WSIB administrative ease.

8. The non-aligned experts[7] involved in the antedating 2011/12 **Funding Review Technical Sessions** affirmed that fair employer classification is an essential ingredient, although clearly expressed caution to proceed with a classification review while system funding remains the primary focus. We concur.

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

9. Accurate and refined initial classification is an essential and integral element for the Board to achieve one of its fundamental objects to promote health and safety. Unless the initial classification generally represents the associated insurance risks, WSI premiums lose any connection to prevention. For all except the largest employers, ER is not an effective tool to calibrate the premium based on experience, be it prospective or retrospective. "Business activity" remains a sound and effective principle to act as the objectively based proxy for risk.

C. The question of employer incentives

1. ER was born out of a cooperative process in the early 1980s – in effect, a powerful WSIB/employer partnership. It took a decade to design, perfect and introduce ER on a broad scale (from 1982 to 1992). ER received wide-spread employer support as a means to establish a higher degree of employer accountability.[8]

2. Experience rating deals with the management of "moral hazard" in workers' compensation insurance, which is the "*resulting tendency of an insured to under-allocate to loss prevention after purchasing insurance*."[9]

3. The underlying economic theory under-pinning experience rating is straight forward – higher costs internalized by employers for injuries should translate into workplace safety expenditures to the point where "*the marginal cost of reducing injuries equals the expected marginal benefits*."[10]

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

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

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

[9] Kenneth S. Abraham, "Distributional Risk: Insurance, Legal Theory, and Public Policy, (Yale University Press, New Haven and London) 1986 at 14.

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

5. The recent ER "debate" was triggered from long-standing opposition to the very idea of ER. The WSIB was not concerned before media reports surfaced (in 2008). In fact, in the mid-2000s, at its most senior levels, the WSIB affirmed ER as an essential program as minor program adjustments were designed and implemented.

6. Importantly, the systemic benefits of ER were heralded in a well-received report from the **Institute of Work and Health**, "***Assessing the Effect of Experience Rating in Ontario: Case Studies in Three Economic Centers*", (June 2005)**: "*Our research indicates that NEER functions well, encourages prevention and contributes to positive workplace health and safety practices.*"

7. Recognizing that a design misstep will be unrecoverable, the Board must proceed cautiously. There is no urgency. There is no crisis. There are no deep-seated design flaws in the current programs.

8. Whatever the design arithmetic for an ER program, smaller employers must receive appropriate and special consideration. The "problem of small employers" is aptly addressed in a May 1998 report to the **British Columbia Royal Commission on Workers' Compensation**:[11]

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

9. In Ontario, a significant number of employers are quite small. 98,000 employers fall under the "**Merit Adjusted Premium**" ["MAP"] plan, compared to 16,500 under the **NEER** plan and 6,000 under **CAD-7**.[12] The **MAP** plan appears to be a compromise ER program, ensuring some level of simple ER participation with smaller employers (up to $25,000 in premiums), and is

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

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

relatively uncontroversial. As an alternative to the proposed RFR, serious consideration should be given to increasing the ceiling for MAP, which presently applies to $560 million in premiums (approx. 18% of the total Schedule 1 premium).

10. A fundamental ER design choice is whether the program is retrospective or prospective. Some industries may prefer one *over* the other or some elective approach (by the assessed employer) for one *or* the other. ***MCO Ontario, as does the CEC, strongly endorses a retrospective plan and will strenuously resist any movement towards a prospective ER plan, regardless of the (eventual) design arithmetic***. With that said, we are not at all opposed to other industries adopting a different program. These are our reasons:

    a. *First*, the principal advantage of retrospective rating is a more direct and immediate link between claims experience and compensation costs.[13]

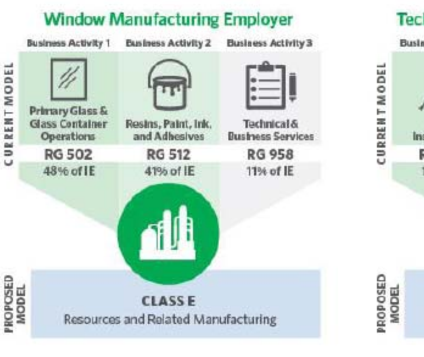
    b. *Second*, a retrospective scheme assists in middle management empowerment, proved to be a strong link between positive managerial action and senior management support and engagement.

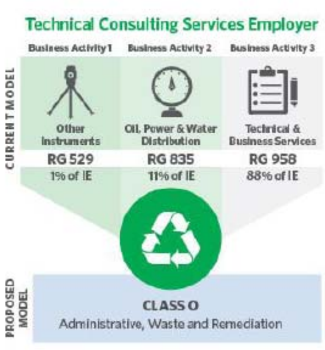
D. Multiple business activities – a word of caution and a construction demand

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

Multiple Business Activities

- The proposed preliminary Rate Framework ceases the practice of having multiple premium rates for single employers, which provides a significant amount of complexity in the system and can lead to adverse implications related to the fairness of the system.
- For premium rate setting purposes, the proposed preliminary Rate Framework classifies all employers in a single class according to their predominant class. For modeling purposes, the WSIB is using a definition of "predominant class" as the class that represents the largest percentage of the employer's annual insurable earnings.





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

2. MCA Ontario opposes the planned move to assess on the basis of predominant business activity. We present several reasons.

3. *First*, it is clear that the Board's administration has less than a precise understanding of the actual effect of this proposed change. Post implementation, we predict that unintended consequences will be exposed in case after case. This approach represents a policy "shot in the dark" that has not garnered the depth of study one would expect for a profound policy adjustment.

4. *Second*, **WSIB RFR Paper 3** (at p. 19) clearly acknowledges that under the proposed RFR, even with **O. Reg. 175/98** intact, for most employers currently reporting under multiple rate groups, the issue becomes moot since "*in most cases, the business activities would fall under the same class*". In effect, the problem becomes redundant.

> Employers that currently report earnings under multiple CUs according to different business activities would continue to identify all of their earnings to the WSIB. In most cases, the business activities would fall under the same class (e.g., logging and reforestation services are two distinct business activities under the current classification system, falling under separate CUs and RGs for rate setting purposes. Under the proposed preliminary Rate Framework, both would fall under the same class: Primary Resource Industries).

5. *Third*, following the above, those employers post-RFR that remain in two or more business activities are clearly in distinct and disparate business. There is no sound policy reasons for incongruent business risks to be assessed at the same premium rate. **O. Reg. 175/98** represents a thoughtful and well considered method to fairly and effectively assess distinct business activities operating within the same enterprise. The Board's proposal creates an artificial premium rate that, except for the largest of employers, will not be mitigated through experience. This will skew otherwise competitive markets and present advantages and disadvantages where currently none exist.

6. *Fourth*, the Board's concern over "*a more burdensome classification structure and process*" is grossly over-stated. As already mentioned, most currently multi-classified employers, post-RFR will be not engaged in more than one classification unit. In effect, the RFR over-arching protocol resolves the worry. However, while the Board's proposal may be "easier" (albeit mainly for the Board), it is not fairer. Fair taxation, not easy taxation, is the objective.

> An employer may engage in more than one business activity. However, for premium rate setting purposes, classification would focus on what the employer is primarily in the business of, at the class level. In the current system, multiple classifications using several RGs are sometimes necessary for employers with multiple business activities in order to better approximate the "right fit" for the employer's premiums. This makes for a more burdensome classification structure and process.

7. *Fifth*, the proposal will eradicate the long-sought and hard-fought separate rate group for construction executive officers, now subject to compulsory coverage (even if not exposed to any construction risk). With the implementation of ***Bill 119***, MCA Ontario, along with the CEC and every major construction trade association, aggressively pursued a fair premium rate commensurate with the insurance risk. As is evident by the April 1, 2010 letter below, this was a priority right out-of-the-gate. Our efforts were successful. Construction executive officers not exposed to a construction risk are assessed under RG 755, Non-Exempt Partners and Executive Officers in Construction, at the fair rate of $0.21. We caution that any retrenchment of this policy will ignite a fire-storm of discontent in our sector.

Construction Industry WSIB Task Force

April 1, 2010

Ms. Dana Leshchyshyn
Executive Director, Operations, WSIB
Workplace Safety & Insurance Board
200 Front Street West
Toronto ON M5V 3J1

Dear Ms. Leshchyshyn:

Consultation on draft operational policies relating to Bill 119

On behalf of the **Construction Industry Task Force (CITF)**, I am enclosing the CITF response to the Board's "*Consultation on draft operational policies relating to Bill 119, mandatory coverage in the construction industry*" (reference your letter of January 18, 2010).

Our engagement on the development of *workable* policies is not coming to an end with these submissions, it is effectively beginning. As you are aware, the CITF has been a fervent supporter of *Bill 119*. However, more work is required to ensure the Board's policies receive the support of the CITF. As there is no real urgency at this point, and there is sufficient time to perfect the Board's policies, we are seeking to commence the more formal phase of policy development with a meeting with you and your colleagues to review our concerns and set out the next steps.

All that said, we are greatly concerned with what has been omitted from the policies.

First, notwithstanding an agreement from the WSIB at its most senior levels that a new rate group within the construction cluster for executive officers will be struck, no specific policy has yet been developed. As you know, we expect a new rate group with a premium commensurate with the true insurance risk of executive officers. CITF support for moving forward is contingent on such a policy being developed and presented to the CITF for ratification.

Second, the Board remains silent on a cornerstone commitment – to commence a process to explore the development of a verification system as contemplated by s. 183(1.1) and (1.2) of the *Workplace Safety & Insurance Act*. As you were present at the meeting held at the Minister's office last December, I will not repeat our position. The CITF expects that the Board will commence that dialogue before these policies proceed for approval. While the Board is approaching the policy development phase as being distinct from the verification protocol, the CITF links the two as being integral features of Bill 119.

We will be in touch to schedule our next discussion.

Yours truly,

Clive Thurston
Chair, CITF

cc: The Hon. Steve Mahoney, WSIB Chair
David Marshall, WSIB CEO
Tom Teahen, Chief, Corporate Services Cluster

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

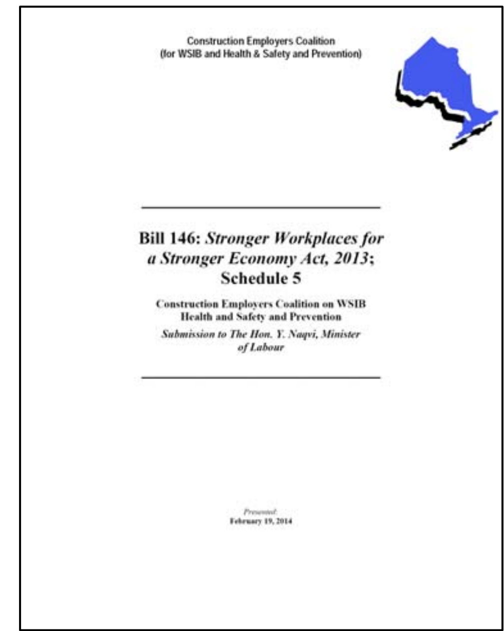
E. Temporary employment agencies

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

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

2. MCA Ontario supports this recommendation.

3. In fact, this very recommendation was advanced by the CEC to the Minister of Labour with respect to Schedule 5 of the (then named) ***Bill 146, Stronger Workplaces for a Stronger Economy Act, 2013*** (and now *Bill 18, Stronger Workplaces for a Stronger Economy Act, 2014*).


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

Bill 146: *Stronger Workplaces for a Stronger Economy Act, 2013*; Schedule 5

Construction Employers Coalition on WSIB Health and Safety and Prevention

Submission to The Hon. Y. Naqvi, Minister of Labour

Presented:
February 19, 2014

4. In part, this is what the CEC submitted when this bill was initially being considered:

CEC does agree with the need for premium equity – this can be immediately achieved without statutory or regulatory reform

While the CEC does not support Schedule 5 and is of the view it does not and will not deliver on the government's objectives, CEC strongly adheres to the principle that workplace safety and insurance costs should be the same for the same risk, an "apples-to-apples" or "level playing field" approach if you will.

All temporary labour should be assessed based on the risk of the client employer, ensuring principled premium assessment.

While for the most part this is consistent with WSIB priorities, current WSIB policy is a needless labyrinth of complexity. More importantly, current policy does not always ensure that our "apples-to-apples" preference is achieved.

As a result, the government's worry that the WSI premium risk for *some* temporary labour may be less than if hired directly is a reasonable concern. This is presently a result of WSIB employer premium and classification policy, *albeit* a problem likely with some limited impact.

CEC sees the need for WSIB policy reform and has a simple and specific but broad-reaching policy proposal to suggest.

Under the *Workplace Safety & Insurance Act*, S.O.1997, c. 16, Sch. A., as amended ["WSIA"] the WSIB Board of Directors ["BOD"] has broad policy setting powers. Section 159(2)(a) expressly confers the power to "*establish policies concerning the premiums payable by employers under the insurance plan*". This power manifests itself in the Board's design and maintenance of its employer classification and premium rate setting schemes, both elaborate, complex and intricate systems. While there is little direct legislative design imposed on the Board, the Board's polices adhere to Ontario Reg. 175/98.

Our general apples-to-apples or level playing field principle is articulated to a degree in O. Reg. 175/98:

> If an employer contracts with another person to have that person carry out an operation that would be a business activity or part of a business activity if the employer carried out the operation, the employer shall, for the purposes of determining what premium rates should apply to the employer, be deemed to be directly carrying out that activity. **O. Reg. 175/98, s. 10**.

The CEC suggests that the principle set out in O. Reg. 175/98, s. 10 form the basis of a new policy dealing with the supply of temporary labour.

Currently, there are two separate classification rate groups ("RG") and premium rates for the supply of labour. The "**Supply of Non-clerical Labour**" is assessed under RG 929, with a premium of $5.05/$100 of payroll (more than two times the average premium rate). The "**Supply of Clerical Labour**", is assessed under RG 956 with a premium of $0.21/$100 of payroll.

With respect to the classification and assessment of the supply of non-clerical labour:

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

However, there is a long list of exemptions:

> **Excluded are non-clerical workers whose work activities fall under the CUs listed below:**
>
> A-030-01, Logging Operations.
> E-560-04, Marine Cargo Handling.
> E-570-11, Supply of Drivers and Helpers.
> G-732-02, Large Bridge Construction.
> G-737-01, Millwright and Rigging Work.
> G-737-04, Custom Welding Services.
> G-748-01, Wrecking and Structural Demolition.
> G-748-03, Structural Steel Erection.
> G-748-09, Form Work (high-rise).
> G-751-08, Steel Reinforcing.
> G-764-01, Homebuilding Operations.
> **G-764-07, Supply of Labour, Construction.**
> H-861-05, Child Daycare and Nursery School Services.
> H-875-14, Offices of Social Workers.
> I-919-05, Supply of Labour, Restaurant/Catering.

The exemptions are clearly designed as an attempt to promote "apples-to-apples" premium assessment. They are however, cumbersome, confusing and may not always address the policy concern. Even the highlighted exemption above, "**Supply of Labour, Construction**" is confused with a list of its own exemptions (exemptions to the exemptions if you will):

> **Document No. G-764-07, Supply of Labour, Construction**
>
> Business activities include supplying labour to any industry to perform construction work, i.e. work that would be classified in a Class G (Construction) CU if carried on as a business activity in its own right.
>
> Excluded is the supply of labour to perform the following work:
>
> demolition (structural) or wrecking
> drywall and plaster
> high-rise forming
> large bridge construction
> masonry
> millwrighting and rigging
> roofing
> steel reinforcing
> structural steel erection
> welding
> Also excluded is the supply of labour to perform any work for residential construction which is 3 stories or less above grade.

The CEC policy solution:

Through WSIB policy, we recommend repealing current "Supply of Labour" Classification Units.

We suggest a simple policy statement in their stead (borrowing on the principle articulated in O. Reg. 175/98, s. 10):

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

It is our considered view that this policy reform speaks to the government's concerns. If there is an additional worry that certain temporary employment firms may be conducting business while not being in good standing or up to date in their premiums, a Bill 119 type Clearance Certificate approach may be worthy of discussion.

F. Graduated claim limits

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

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

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

Figure 9: Proposed Graduated Per Claim Limit Approach

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

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

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

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

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

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

G. Graduated risk band limits

1. **WSIB RFR Paper 3** presents an extensive presentation of risk bands (at pp. 60 – 68). MCA Ontario suggests that the concept of, and application of, "risk bands" will prove to be the most difficult for individual employers to understand and may well become the "Achilles Heel" of the RFR project. With no pun intended, there is a serious risk that, once RFR is "in play" employers will rebel when actual impacts become known.

2. As we have addressed the question of transition elsewhere, our risk band comments apply to "post-RFR-transition." In other words, the trauma of moving from current to proposed has been completed.

3. MCA Ontario admits difficulty in presenting other than generalized comments. As we have criticized earlier, we have not been presented with the most valuable background information – the presentation of the actual impacts for our individual members. Without that, informed comment is not possible.

4. In **Paper 3** (at p. 65), the risk band movement approach is summarized:

Analysis: Risk Band Movement and Stability

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

Figure 25: Risk Band Movement

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

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

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

Graduated Risk Band Limits

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

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

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

8. We understand this will take time. This is where the time should be spent. Variable "what-if" scenarios are the precise way to get to the best design. This though requires a re-jigging of the Board's appraoch.

9. We are certain the Board will agree with us – the objective is to get it right; not get it wrong quickly.

H. The question of surcharges

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

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

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

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

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

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

5. In WSIB RFR Paper 2 (at p. 9), we are informed:

> - Employers have also expressed that premium rate stability is more important than premium rate responsiveness.

6. And, at p. 10:

> The issue of premium rate stability was also brought up by stakeholders as part of the 2013 Rate Framework Reform discussions. In this review, a number of design issues in the current experience rating programs have led to increased premium rate instability.

7. And, in WSIB RFR Paper 3 (at p. 34):

> Taken together, these design elements of the proposed preliminary Rate Framework promote a greater balance between premium rate stability and premium rate responsiveness that protects employers from premium rate volatility.

8. And at p. 60:

> The results of the above analysis showed that when the premium rate changes were small, it would take a longer time (either up or down) for employers to reach their Employer Target Premium Rates and there would be too much premium rate stability. Logically, the opposite would also be an issue when the premium rate changes were larger, employers would reach their Employer Target Premium Rate quite quickly and there would be too much premium rate responsiveness. The WSIB concluded that in order to ensure premium rate stability for employers, and that the trend in risk performance is real and statistically reliable (and not too responsive with the increases/decreases in premium rates), every year an employer could move either up or down to a maximum of three risk bands, relative to the performance of their class in order to reach their Employer Target Premium Rate.

9. And at p. 64:

> **Pricing Fairness Recommendation #3.1, #4.2**
>
> *The existing experience rating programs (NEER, CAD 7 and MAP) should be abandoned and replaced with a prospective, risk adjusted premium rate setting system.*
>
> *There should be a drive to maximize the participation of employers of all sizes.*
>
> *A sectoral premium rate should be developed for each of the 20 - 25 sectoral groups, based on the collective claims experience all employers.*
>
> *Risk bands should be developed in each of the two-digit NAICS levels considering appropriate expansions and collapsing of the two-digit level, and ALL employers placed into those risk bands based on the risk that they present to the system, considering their level of actuarial credibility. If the costs increase the employer's rate would go up and if their costs decrease, their rate would go down.*
>
> *In the design of this system, stability is preferred over responsiveness and appropriate measures for stability ought to be considered.*

10. And at p. 65:

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

11. And, at p. 69 a direct comment on the volatility of surcharges:

> While a retrospective program can be more responsive to short-term changes, this also means that there can be significant changes from year to year that result in employers moving from a surcharge position to a refund position, or vice-versa. In the WSIB's view, and for many stakeholders, this means that the current programs are much too volatile.

12. And at p. 75:

> Throughout the document, the WSIB has illustrated, through examples, how the proposed preliminary Rate Framework would work for employers. These examples are intended to demonstrate that the Employer Level Premium Rate Adjustments would be a reflection of the real costs they are generating, balancing premium rate stability, while also ensuring measured responsiveness to employer efforts to reduce workplace injuries through risk and claims experience.

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

I. Weighting experience window

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

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

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

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

J. Catastrophic claims costs

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

QUESTIONS FOR CONSIDERATION

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

a) Should the WSIB include these claim costs in the year that they occur, which may result in a higher premium rate being charged to employers?

b) Or, should the WSIB reduce the premium rate increase and add the remainder as an amount for future premium rate consideration?

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

2. While a solid question, it has not been contextually introduced. It must be explained. What is the data behind the question? What is a "catastrophic situation"? What is the Board's history with these circumstances?

3. Present us with an informed outline of the perceived problem and we will most certainly present you with an informed suggestion to address this.

PART V: Collectivizing certain WSI costs

A. Second Injury and Enhancement Fund

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

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

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

3. MCA Ontario categorically opposes this position.

4. It should be noted that the current policy discussion initiated by the WSIB is virtually identical to a policy dialogue commenced more than twenty-five (25) years ago. Reference is made to the **WCB Discussion Paper**, ***The Application of the Second Injury and Enhancement Fund, January 5, 1990***. After an extensive consultation exercise (a more involved process than currently being addressed by the Board, triggered with the release of a detailed and comprehensive policy options paper), the Board shelved plans to adjust SIEF.

5. An in-depth SIEF policy discussion is set out at **Appendix A**. This is the same position advanced during the **Funding Review** consultation and the earlier phase of the RFR consultation.

6. Our positon has not changed. Not an inch. Nor should it.

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

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

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

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

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

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

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

B. Long Latency Occupational Disease

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

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

2. We agree with this approach.
3. No employer, no matter of size, is held to account for all WSI costs.
4. Cost accountability seeks an inherent policy objective – one of continual performance improvement.
5. By the time the LLOD is diagnosed, often years if not many decades after exposure, the workplace bears little resemblance to the workplace at the time of exposure. More often than not, the exposure has long been remedied.
6. Holding an employer accountable in these circumstances, does not advance any credible WSI policy goal.
7. This position is long-standing WSIB policy, approved at the WSIB Board of Directors. This issue was exhaustively addressed in the **Board's Discussion Paper dated December 22, 1986** which addressed whether LLOD costs should be excluded from costs for experience rating purposes. In part, the paper states:

> Ideally, given its principal objective of directly influencing workplace health and safety performance through adoption of preventative measures, an experience rating plan should focus on identifying and targeting for possible rebate or surcharge all risks which are reasonably avoidable by employer preventative actions, while spreading all remaining risks through collective liability principles.
>
> In practice, of course, it is not always easy to segregate risks in this fashion. However, on this basis, it seems clear that certain types of industrial disease claims, characterized by long latency periods (e.g. cancer, hearing loss) are not really amenable to direct influence by way of experience rating.
>
> The reasons for this conclusion include the usually unappreciated connection between a disease and a work process at the time of exposure, the very long time lag between preventative actions and the impact on worker health, and the difficulty of apportioning causation (and subsequent charges) between what may have been a number of employers over a long period of time.
>
> The conclusion that the long latency industrial disease should properly be excluded from the ambit of experience rating does not, of course, imply that they are somehow less worthy of attention; it simply means that experience rating is not an appropriate or suitable method for seeking to influence their incidence. The same considerations do not apply, however to short latency industrial diseases

such as dermatitis: there remains no reason why these should not be covered under the terms of an experience rating plan.

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

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

C. Collectivizing certain "Disablement" Claims Costs for the Construction Sector

1. In a similar vein to LLOD costs, and for the identical policy reasons, MCA Ontario and the CEC have long petitioned the Board to collectivize certain "disablement" claim costs that through the application of the WSIB policy "*the last employer of record*" are unfairly attributed to construction employers.

2. The "*black-letter*" application of this policy results in accountability for claims costs, even where the evidence proves that the condition was present prior to the worker commencing employment with that specific employer

3. While this appears to address a very narrow set of circumstances, it is a common problem within the construction sector.

4. Naming an employer the employer of record and thereby burdening that employer with the costs of a claim simply because it was the last employer rather than because the employment process was a significant factor in the development of the condition claimed, is contrary to the principles of fairness and equity, which are purportedly the foundation of the RFR exercise.

5. Section 15(3) of the WSIA distinguishes a Schedule 3 occupational disease from a disablement and provides a presumption linking the condition claimed directly to the last employment.

6. If the worker's disability does not meet the criteria for an occupational disease, it is then characterized as a disablement contributed to by the nature of the worker's employment with several employers [see for example **W.C.A.T.** ***Decision No. 381/ 92I*** **(February 26, 1993)**].

7. A disablement and an occupational disease are treated in essentially the same way when determining the date of accident, particularly where the conditions result from the cumulative effect of an exposure over months or years.

8. Yet, the costs of LLOD claims are allocated to the relevant class of employers rather than to specific employers [see for example **W.S.I.A.T.** ***Decision No. 622/98I*** **(June 10, 1998), par. 26**].

9. Appeals Tribunal jurisprudence suggests that in the case of a disablement, the WSIB identifies one employer as being responsible and charges that one employer with the costs of the claim, even though other employers may have contributed to the disability overall [see for example **W.C.A.T.** ***Decision No. 381/ 92I*** **(February 26, 1993)**].

10. The approach of choosing one employer among several has the potential for unfairness.

11. The WSIA and Board policy contain provisions providing for variations from the strict terms of a policy on the merits and justice of the case. **Operational Policy Document No. 11-01-03 "Merits and Justice"** notes there may be rare cases where the application of a relevant policy would lead to an absurd or unfair result that the WSIB never intended. Therefore, a decision-maker may depart from a policy if it can be shown that the case has exceptional circumstances that justify doing so [see for example **W.S.I.A.T.** ***Decision No. 1926/06*** **(January 30, 2007), par. 12**].

12. Yet, the routine application of the foundational legal principle occurs only at the Appeals Tribunal. For example, in **W.S.I.A.T.** ***Decision No. 1926/06*** the employer was granted its request for the costs of a claim to be excluded from experience rating even though the condition claimed was not included on the Board's schedule of occupational diseases.

13. Through the RFR exercise, we are asking that the costs of "long-latency" disablement claims (for want of a more apt descriptor) be excluded for construction employers in the same manner that LLOD claims are excluded.

D. Excess Earnings

1. MCA Ontario is disappointed at the blaring omission of the issue of the calculation of excess earnings in the RFR consultation.

2. WSIB officials are well aware of MCA Ontario's long-held views.

3. While the Board, at its most senior levels, pledged at the outset of the RFR project in 2013 that excess earnings <u>would</u> form part of the RFR process, the Board has bobbed-and-weaved on this issue ever since.

4. First, it was allocated to the RFR agenda.

5. Then, it was removed from the RFR agenda as it was slated for a direct consultation and dialogue. MCA Ontario agreed and welcomed this approach. High level discussions ensued, all initiated by MCA Ontario.

6. Then after many months of what later was interpreted as a clear act of prevarication, MCA Ontario was informed, after a direct follow-up it should be noted, that excess earnings was "bumped" from the policy agenda due to other more pressing concerns, such as the RFR exercise.

7. Later, MCA Ontario was simply advised, with no reasons offered, that the Board would not be proceeding with the excess earnings issue at all.

8. The Board's treatment of this important issue, thoughtfully presented by an association representing one of the system's largest rate groups, supported by the CEC, speaking for more than 25% of the entire WSI system, is, in a word, discreditable.

9. MCA Ontario fully expects the WSIB to recover from this maladministration through demonstrating a good-faith commitment to address this question within the next phase of the RFR consultation.

10. This is a technical issue that impacts pretty much exclusively the construction sector. A detailed analysis is attached at **Appendix B**. We will again summarize our positon.

11. Prior to 1989, for all industries *including* construction, excess earnings were calculated on a "pay-period" or pro-rata basis (example: if the ceiling was $31,200 per annum, premiums were not submitted for weekly earnings in excess of $600 [$31,200/52]).

12. In 1989 for all industries *except* construction the Board adopted a new method to calculate excess earnings commonly referred to as the "C.P.P. Method".

13. The C.P.P. method radically adjusted the way excess earnings were calculated. Under the C.P.P. method all payroll dollars are assessable until the ceiling is reached. This accelerated the flow of assessment to the Board particularly for high wage seasonal employers.

14. Employer stakeholders, *especially construction*, opposed the C.P.P. method. In spite of this opposition the C.P.P. method was approved by the (then named) WCB Board of Directors (for all industries *except* construction).

15. The Board Administration lauded the C.P.P. method as being simple, easily applied, and familiar to employers, but it will redistribute the premium burden among individual employers, and collect more premiums faster, problems which the Board considered only transitional.

16. For construction, the Board introduced a hybrid compromise method with the ceiling calculated pro-rata over 45 weeks (instead of 52).

17. This method remained in-place until 1998 when the WSIB *unilaterally* imposed the C.P.P. method on construction with no public consultation.

18. **Appendix B** is excerpted from a report presented to the WSIB several years ago, and re-introduced several times. The issue remains unresolved. While the ceilings and premium levels are not current, the principles remain untouched.

19. The C.P.P. method of premium assessment for high wage industries with a transient labour pool effectively leads to "double insurance." If every construction employer was exactly the same as the next, the calculation of "excess earnings" would not be a material issue. However, as each employer possesses unique characteristics, and as certain classes of construction employers are determinately distinctive (union versus non-union), a structural inequity persists which is no longer tolerable.

20. MCA Ontario fully expects the WSIB to address this important issue. Our request is simple - for the construction sector, return to the "pay-period" method of calculating excess earnings.

Concluding comments:

While progress has been made, **Job 1** of the WSIB continues to be the long term financial viability of the Ontario WSI system. There is no linkage between **Job 1** and the RFR project. We respectfully suggest that is distracting to engage in a massive project over a period of some years that will consume employer and WSIB resources, that will, if history offers any lesson, exhaust the Board. None of this contributes to the Board's primary focus.

We repeat our long expressed view that no real problem has been defined. A problem has been presumed. Employers have not been calling for any of these changes nor have employers ever advanced any suggestion for a complete revamp of rate classification or experience rating. This is 100% a WSIB initiative. Without employer support, radical redesign of the taxation scheme will likely be resisted.

We continue to be concerned with the consultation process. There persists a reticence to fulfill the commitment to ensure we understand at the level we deem to be necessary. We have advanced reasonable requests for information. They have not been honoured. We expect that as this phase of consultation comes to a close, the Board will re-group, develop the data we require, and allow us to commence the next consultation phase with the essential information.

All of which is respectfully submitted

Appendix A: Second Injury and Enhancement Fund

SIEF Plays a Vital Role

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

Primary Interest Must Be One of Equity

1. The Board's primary interest, and ours, must be the same - equity. As the funders, one of our paramount objectives is to promote *equitable* employer accountability.
2. It must be clearly understood that the SIEF adds no additional costs to the system. The SIEF is simply a mechanism to pool liability, and allocate financial accountability. SIEF "expenditures" are not additional expenditures.
3. The primary policy objective of the SIEF is to promote equity.
4. The SIEF is not viewed as a cost cutting measure by employers. Employers continue to view state of the art accident prevention programs as the key ingredient to cost reductions, with reinstatement and rehabilitation actions being second. ***SIEF is about equity - not cost reduction***.
5. SIEF is very complimentary to experience rating. *In fact, in the absence of SIEF, experience rating actually becomes quite unfair*.
6. In 1988, twenty-one percent (21%) of lost time injury ["LTI"] claims were incurred by individuals older than 45 years of age, whereas by 2007, those older than age 45 represented forty percent (40%) of the total LTI claims mix.[14] This represents a doubling of the claims mix represented by older workers which intuitively, would lead to a greater involvement of pre-existing or underlying conditions, the very triggers for the application of the SIEF.
7. Moreover, from 1998 to 2007, "sprains and strains" grew from approximately forty percent (40%) of total LTIs to forty-nine percent (49%), an increase of over twenty-two percent (22%) with the most dramatic increase occurring since 2003.[15]
8. This very admittedly cursory review nonetheless supports the proposition that the noted increase in the utilization of the SIEF is not only expected and consistent with the core policy objectives of the SIEF, but is a reflection of a change in the mix of claims trends over the past two decades, a proposition which attracted no attention from the consultant.

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

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

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

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

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

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

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

Expanded Basis of SIEF - Equity

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

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

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

Board Recognizes Equity as Basis for SIEF Relief

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

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

   The basis on which financial relief is given to the employer is clear and provides for equitable transfers to the SIEF.

   The Board followed their recommendation and approved the new policy on November 3, 1978.

   This policy, as opposed to its predecessor clearly indicated not only that the pre-existing condition need not be disabling, but that it need not be symptomatic.

   Page six of the new policy read in part:

   The medical significance of a condition is to be assessed in terms of the extent that it makes the employee liable to develop disability of greater severity than a normal person. There need not be associated pre-existing disability...

   Examples:

   Asymptomatic spondylolysis demonstrated on x-ray....

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

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

The Need for Employer Equity

1. The need for employer equity in a no fault workers' compensation scheme is self evident.
2. No fault ensures entitlement regardless of blame. "No fault" does not mean direct employer accountability for all WSI costs. The principle of collective liability certainly speaks against this.

WSI Based on Collective Liability

1. WSI is fundamentally based on the principle of collective liability. Essentially, it is an accident insurance system for both employees and employers.
2. Theoretically, there are two main criteria to be considered when setting insurance rates:

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

But, Ontario System Not Purely Collective Liability

1. However, if the Ontario WSI system was based on a pure model of collective liability, then all employers would be assessed the exact same rate of premium notwithstanding the nature of their industry or their individual accident experience record. Under such a model, there would be no need for SIEF since no individual case would influence the employer's record.
2. While such a model would be true to the principle of collective liability, it greatly offends any notion of employer equity. To satisfy the objective of equity while maintaining the principles of collective liability, the competing interests of employer accountability and appreciation of individual risk must be balanced.

Need For Balance of Collective Liability and Individual Risk

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

Employer Accountability Instils Motivation to Prevent Injuries

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

SIEF is compatible with and complimentary to Experience Rating

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

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

Weiler Supportive of Concept

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

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

2. This statement indicates that it highly unlikely that Professor Weiler would agree with a sweeping generalization that the SIEF would somehow undermine the purpose of experience rating.
3. As the precision and power of the experience rating system increases (as in the case of the NEER and CAD-7 models), the requirement for the safety valve is enhanced.
4. It is not only false that experience rating and SIEF are not compatible; the truth is that they are inseparable.

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

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

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

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

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

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

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

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

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

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

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

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

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

The Current Model of SIEF is Essentially Fair

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

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

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

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

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

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

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

SIEF Compatible with "Thin Skull" Doctrine

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

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

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

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

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

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

Equity or Fairness Considerations Linked to Degree of Control

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

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

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

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

Additional Considerations

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

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

2. Larson also made the following recommendations:
    - all jurisdictions should have second injury funds;
    - the funds should provide broad coverage;
    - a threshold level of severity for the previous impairment should be established;
    - funds should be fully publicized in order to gain optimum effect;

The Recommended Approach

1. We restate our support for the principles behind the SIEF. It is our view that the SIEF is valid, and represents an essential feature of the WSI system. We are fully supportive of employer accountability and endorse the theoretical models for rate classification and experience rating. Accountability and equity are not mutually exclusive concepts - in fact - they are clearly linked.
2. SIEF promotes employer equity. We recommend the following:
    a. That the SIEF continue to be supported.
    b. SIEF should be applied where:
    c. there exists a pre-existing condition the pre-existing condition has contributed to the causation or duration of an impairment
3. The present matrix for determining degree of accountability is continued.
4. That the SIEF be codified in ***Workplace Safety and Insurance Act*** with appropriate regulations.
5. That the Board automatically review every claim for potential relief under the SIEF at regular intervals. We strongly recommend that the Board take a more pro-active and interventionist role in the identification of cases requiring SIEF.

Appendix B: Excess Earnings

The Impact of WSIB Policy Pertaining to the Calculation of "Excess Earnings" for Construction Employers

A. Excess earnings: Background

1. Under the terms of the *Workplace Safety and Insurance Act,* S.O. 1997, c. 16, Sch. A., as amended ["WSIA"] workplace safety and insurance ["WSI"] benefits and employer premiums are capped at 175% of the average industrial wage [the "ceiling"] **[Note 1]**.

2. Earnings in excess of the ceiling, commonly referred to as "excess earnings", are not subject to premiums. The method to calculate excess earnings rests entirely within the policy purview of the Workplace Safety & Insurance Board ["WSIB" or the "Board"], so long as employer premiums do not exceed the ceiling **[Note 2]**.

B. Excess earnings: The policy framework - the evolution of WSIB excess earnings policy

1. Prior to 1989, for all industries including construction, excess earnings were calculated on a "pay-period" or *pro-rata* basis (*example*: if the ceiling was $31,200 per annum, premiums were not submitted for weekly earnings in excess of $600 [$31,200/52]). In 1989 for all industries except construction the Board adopted a new method to calculate excess earnings commonly referred to as the "C.P.P. Method" **[Note 3]**.

2. The C.P.P. method radically adjusted the way excess earnings were calculated. Under the C.P.P. method all payroll dollars are assessable <u>until</u> the ceiling is reached. This accelerated the flow of assessment to the Board particularly for high wage seasonal employers **[Note 4]**.

3. Employer stakeholders, especially construction, opposed the C.P.P. method. In spite of this opposition the C.P.P. method was approved by the (then named) WCB Board of Directors **[Note 5]** (for all industries except construction). The Board Administration lauded the C.P.P. method as being simple, easily applied, and familiar to employers, but it will redistribute the premium burden among individual employers, and collect more premiums faster **[Note 6]**, problems which the Board considered only transitional **[Note 7]**.

4. For construction, the Board introduced a hybrid compromise method with the ceiling calculated *pro-rata* over 45 weeks (instead of 52) **[Note 8]**.

5. This method remained in placed until 1998 when the WSIB unilaterally imposed the C.P.P. method on construction with no public consultation **[Note 9]**. While the Board recognized that more premiums will be collected faster, the *quid pro quo* would be lower construction premium rates.

C. Assessment of the impacts of the C.P.P. method in construction industry

1. Rate Group ["RG"] 707 (Mechanical and Sheet Metal Work) has been chosen for illustrative purposes. Through a review of premium rates alone, it seems that the Board was true to its word – premium rates did drop after 1998 (for RG 707 premiums dropped 18.1% from 1998 to 2000, from $4.93 to $4.04). In fact, rates even now are lower than in 1998 **[Note 10]**.

2. As a result of the premium rate reductions, the "per worker maximum premium" dropped from 1998 to 2000 (for RG 707, from 1998 to 2000, maximum premiums per worker dropped 16.5%, from $2,869.26 to $2,395.72). This decline trend though was temporary. Commencing in 2002 for RG 707, with some initial fluctuations, the trend was again upwards.

3. Significantly, while rates declined For RG 707, ***from 1998 to 2000 total premiums increased by $128 million*** (from $227.8 million to $355.8 million), a 56% increase, ***even though actual person hours increased by only 12.7%*** (1998: 12,033,181 hours; 2000: 13,558,894 hours) **[Note 10]**.

4. The switch to the C.P.P. method more likely than not was largely responsible for this dramatic increase in aggregate premiums, in spite of a decline in premium rates. In short, the Board lowered rates, but increased premiums collected.

D. A simple example to demonstrate the effect of the C.P.P. method:

1. The C.P.P. method is only of concern in high-wage high-turnover industries. High-wages is not enough and high-turnover on its own is not enough to red flag this policy. In the simple illustration which follows the *high-wage high-turnover* company is contrasted with the *high-wage low-turnover* company.

2. The basic assumptions are as follows:

   a. Both construction companies are in RG 732 (Heavy Civil). The "assessment year" is 2008. "Company X" has a stable labour force (low turnover), whereas "Company Y" has a high turnover rate.

   b. For each "person year of labour", Company X employs one (1) worker and Company Y employs two workers. In other words, for Company Y, the workers each work six (6) months – the same amount of labour is simply spread over two workers, instead of one. Worker "A" works January 1, 2008 to June 30, 2008; Worker "B" works July 1, 2008 to December 31, 2008.

   c. Each worker earns at a rate equal to two times the maximum ceiling ($73,400). For 2008, each worker earns $2,823 per week. Premium Rate: $6.34

3. **Example**: *The C.P.P. method; Premiums calculated on total actual earnings until maximum contribution reached.*

   a. *Company X*:

      i. Worker is engaged entire year. Earns $2,823 per week. Company X calculates premiums for the worker until the ceiling is reached.

      ii. Contributes premiums based on actual weekly earnings, with no regard for the ceiling.

      iii. Premiums per week are $178.98 per week. But, as Worker engaged for 52 weeks, premiums need to be contributed only until the maximum contribution per worker ($4,653) is reached, which is reached at Week 26. Total premiums are $4,653.

      iv. For Company X the impact of the C.P.P. method is purely cash flow. The C.P.P. method accelerates the flow of premiums to the Board, however, the total premiums payable is not altered.

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b. *Company Y*:

i. Worker "A" earns $2,823 per week. Company Y contributes premiums based on derived weekly ceiling of $1,631.11 per week.

ii. Premiums per week are $178.98. Worker engaged for 26 weeks. Total premiums payable are $4,653.

iii. Worker "B" calculations identical. Total premiums are $4,653.

iv. Total premiums for Workers "A" & "B" are $9,306.

c. With this method, even though the exposures are the same for Company X and Company Y, Company Y will contribute *double the premiums* for the same insurance risk.

E. Relevant policy considerations

1. A policy review is likely warranted. The C.P.P. method likely remains unfair to certain firms as some firms with low labour turnover rates will contribute lower premiums for the same insurance risk. If the C.P.P. method is abandoned, construction premium rates may increase. **[see Note 11 for more policy considerations]**.

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NOTES

Note 1:

1. A worker who experiences a loss of earning as a result of a workplace injury receives premiums under the WSIA for that loss of earnings [**WSIA, s. 43 (1)**] subject to certain limitations.
2. Worker benefit payments are limited to eighty-five percent (85%) of the difference between the worker's net average earnings before the injury and the net average earnings that the Worker is able to earn in suitable employment or business after the injury [**WSIA, s. 43(2)**].
3. However, there is a statutorily imposed limit to the amount of "insurable earnings" which may be taken into account to calculate a workplace safety and insurance ["WSI"] benefit level. The WSIA imposes a maximum limit on the amount of average earnings to that of one-hundred and seventy five percent (175%) of the average industrial wage for Ontario [**WSIA, s. 54(1)**], set by the WSIB based upon the most recent published material available by July first of the proceeding year [**WSIA, s. 54(2)**].
4. Ontario employers are required by the WSIA to remit premiums to the WSIB with respect to insured workers. The establishment of premium rates rests within the exclusive jurisdictional purview of the Ontario WSIB. The Board shall determine the total amount of premiums to be paid by all insured employers [**WSIA, s. 81(1)**] and apportion the total amount of premiums among the classes, sub-classes and groups of employers having a regard for the extent to which each class, sub-class or group is responsible for costs occurred under the WSIA [**WSIA, s. 81(2)**].
5. However, the WSIA clearly contemplates symmetry between the maximum premiums payable by an employer and the maximum benefits that may be claimed by a worker. Premiums are payable with respect to the maximum amount of average earnings determined "*as set out under the previously noted s. 54 of the WSIA*". [**WSIA, s. 88(3)**].

Note 2:

1. The method utilized to calculate is established by the Board [**WSIA, s. 81(5)**], and the Board may establish different payment schedules for different employers "*for premiums to be paid in a year based on such factors that the Board considers appropriate*" [**WSIA, s. 81(6)**].
2. The WSIB is prescribed the powers to "*establish policies concerning the premiums payable by employers under the insurance plan*" [**WSIA, s. 159(2)(a)**] and has the more general power to establish its own "practice and procedure" [**WSIA, s. 131(1)**]. The Ontario WSIB has exclusive jurisdiction to examine, hear and decide all matters arising from the WSIA [**WSIA, s. 118(1)**].
3. The WSIA does not set out any specific rules pertaining to "excess earnings" and these have been left to reside exclusively within the purview of discretionary WSIB policy. However, as broad as the Board's discretionary policy setting powers may be, they do not and cannot exceed statutory authority. In the context of "excess earnings" the Board is compelled to follow the statutory instructions that "*the premium payable by an employer applies only with respect to the maximum amount of average earnings*" [**WSIA, ss. 88(3), 54(1)**].

Note 3:

1. The policy change was explored in the 1989 document, "***Revenue Strategy: A Framework for the 1990s and Beyond***" ["Revenue Strategy"] which had significant implications on most elements of the "business end of the Board's business", and materially reformed how employers were classified into rate groups and how premium rates were ultimately calculated.
2. The Revenue Strategy was released July 6, 1989, and following a short period of extensive consultation, the WCB administration presented a series of recommendations to the WCB Board of Directors on October 30, 1989 [**Report on the Consultation Process for the Revenue Strategy; Revenue Strategy Implementation Project, October 30, 1989**]. These recommendations were approved by the WCB Board of Directors November 10, 1989 [**WCB Minute # 3, November 10, 1989, p. 5327**].
3. One of the proposals re-aligned the calculation of excess earnings ["**Proposal 11 – Excess Earnings**"]. **Proposal 11** set out a recommendation which revolutionized the calculation of excess earnings, adopting what was referred to as the "*Modified Annual Maximum Method*", which has been commonly referred to as the "*C.P.P. approach*" as it mirrors the methodology employed by the Canada Pension Plan in calculating C.P.P. contributions.

Note 4:

1. The Board recognized that the C.P.P. method "*will accelerate the flow of assessment to the Board*" and that the impact "*will tend to fall most heavily on firms that tend to engage a disproportionately high ratio of seasonal workers*". Notably, with respect to the construction sector, the October 30, 1989 consultation report advised:

> **In the construction sector, the pricing of jobs may be affected since employers whose workers have already reached the statutory ceiling need not build workers' compensation premiums into the cost of a project. [October 30, 1989 Consultation Report, p. 9]**

Note 5:

1. Notwithstanding these shortcomings and stakeholder discord, the Board Administration proceeded to recommend the adoption of the C.P.P. method:

> **To conclude, each method proposed to calculate assessable earnings in seasonal industries is subject to its own shortcomings. On balance, however, Board Administrators continue to believe that the C.P.P. approach is the most desirable method for addressing this issue. Consequently, it is recommended that the proposal be adopted. To ensure that revenue neutrality is maintained, however, it is also recommended that, were individual rate groups will be adversely impacted by the effect of this proposal, any excess revenues should be estimated prior to the assessment year and taken into account when the relevant rates are set [October 30, 1989 Consultation Report, p. 9].**

2. The Board acknowledged that the C.P.P. method will "*increase the flow of funds from employers*" thereby offending the over-arching policy of "revenue neutrality". The Revenue Strategy was not intended to raise additional funds for the WSIB but to simply re-design the methodology for classifying employers and collecting premiums.
3. While the Board recognized the problem of "revenue neutrality" as being offended by several of the Revenue Strategy proposals, including **Proposal 11** [excess earnings], the remedy was to be globally introduced through premium rate setting protocols. Specifically, the Board proposed as follows:

> **To ensure, however, that the Board adheres to the principle of revenue neutrality it is recommended that, prior to the establishment of assessment rates for the 1991 and subsequent fiscal years, the Board Actuary estimate the projected additional funds (if any) to be generated by the Revenue Strategy and to then adjust the relevant assessment rates accordingly. Should this approximation either under- or over-estimate the funds in question, further changes should then be reflected in assessment rates for subsequent years [October 30, 1989 Consultation Report, p. 12].**

Note 6:

1. The Board Administration advanced the virtues of the "*new C.P.P. method*" as follows:

> **Under the new C.P.P. method, all earnings for each individual worker are assessed until the maximum assessable earnings ceiling is reached, regardless of the employment period. No pro-rating of the annual maximum earnings is required for workers who are employed less than a full year. The system is simple and easily applied, and is also familiar to employers because C.P.P. premiums are levied and collected in a similar manner. This ease of understanding promotes voluntary compliance, an essential component to revenue strategy [September 17, 1991 Report p. 9].**

2. The Board Administration however also reminds the Board of Directors that there are "*side effects*" associated with the C.P.P. method:

> **The C.P.P. method, particularly in combination with assessing on actual payrolls, has certain side effects. The most prevalent of these is a tendency to advance assessment payments in cases where workers earn at rates above the level of the assessable earnings ceiling. Furthermore, it may also have the effect of redistributing the assessment burden among individual employers and of expanding the assessable payroll base for the rate group as a whole. [September 17, 1991 Report p. 9].**

3. The Board Administration recognizes that the C.P.P. method may be "*problematic*" in high-wage, high-turnover industries (such as construction). The report notes:

> **The changeover to the C.P.P. method may be problematic, therefore, in high-wage, high-turnover industries. In these groups, an employee working for several employers during one year might earn well over the assessable earnings ceiling in total, yet it is possible that none of the employers in question would be able to deduct a portion of those earnings as excess earnings in determining assessable payrolls. [September 17, 1991 Report p. 9].**

Note 7:

1. The Board Administration was of the view that this was only a temporary or transitional problem noting that:

> **Once the assessable payrolls used in determining the assessment rate and the actual payrolls to which a rate is applied are both determined by the C.P.P. method, the higher assessable payrolls in these industries will be naturally compensated for, assuming other costs remain stable, by a lower assessment rate. [September 17, 1991 Report p. 9].**

2. While acknowledging that an inequity may present itself, the Board suggested this is transitory only, noting:

> **A potential inequity with this labour turnover effect only arises, therefore, when there is a <u>changeover</u> from one method to another. Until the assessment rates are being calculated with historical payroll data in which all assessable payroll was calculated by the C.P.P. method, there will be a changeover period during which the assessment rate will use historical data calculated by the pro-rated method. One the other hand, the assessable payrolls to which the rate will be applied during this period will be calculated by the C.P.P. method. The result, in some industries, will be higher rates being applied to higher assessable payrolls. [September 17, 1991 Report p. 9, emphasis in original].**

3. During the consultation process, several employer groups advocated that the principle of revenue neutrality ought to be applied at the firm level and not simply at the rate group level. In response the WCB Administration advised the WCB Board of Directors as follows:

> **During the consultation process, a number of employer groups advocated that revenue neutrality be applied at the lowest level, i.e. the firm level, wherever possible. However, it was generally recognized that it was not administratively feasible to apply a short-term adjustment to offset the rise in assessable payroll at the firm level [September 17, 1991 Report p. 10].**

Note 8:

1. On October 4, 1991 after further consultation with employer stakeholders, the WCB Administration recommended to the WCB Board of Directors that the construction industry be exempted from the C.P.P. method [**Revenue Strategy: Final Policy Recommendations, October 4, 1991, Minute #5, October 29, 1991, p. 5479**]
2. The WCB Board of Directors approved an alternative method to the C.P.P. methodology to be applied exclusively to the construction industry. The Board set out a modified version of the (then) method in place of "pro-rating" assessable payroll.
3. In response to the WCB Administration's reliance on reduction in premium rates approach to remedy any over collection of premium, COCA responded as follows:

> **However, COCA is concerned that such adjustments, based as they would be on average experience, would under-compensate some firms while over-compensating others, since employer turnover rates can differ considerably, within a given year from firm to firm [October 4, 1991 Report p. 3, emphasis in original].**

4. In a follow-up report of November 27, 1991, "**Revenue Strategy – Alternative to C.P.P. Method for Construction**", which was approved by the WCB Board of Directors in late 1991 [**BOD Minute #9, December 5, 1991 p. 5491**], set out an alternative to the C.P.P. method.
5. Part three of the report assesses the impact on the construction industry of the C.P.P. method. **[November 27, 1991 Report p. 2].**

> **Potentially, the construction industry may be affected more significantly than most others by the application of the C.P.P. method, since it combined relatively high wage levels with high labour turnover rates. In addition, hiring hall practices may diminish an employer's opportunity to mitigate the impact of the C.P.P. method by re-hiring the same workers after a break in employment. Other high-wage, high-turnover employers can often limit the impact on their assessable payrolls under the C.P.P. method by hiring back the same workers to the same job. In these cases, the employer would not be starting again from zero in accumulating assessable earnings, as it would be the case with the hiring of a new worker, but would simply continue the accumulation from the point that earnings had reached during the prior employment period(s) provided, of course, that the periods in question all occur within the same calendar year. Once the maximum was reached, any further earnings could be claimed as excess and, therefore, would not be assessable. [November 27, 1991 Report, pp. 2, 3]**

6. The WCB Administration and the WCB Board of Directors approved an alternative to the C.P.P. method to be applied exclusively for the construction industry. The policy is set out as follows:

> **Non-cumulative weekly maximum derived by dividing annual ceiling by 45**
> **Applied to each [full or part] week paid and/or work**
> **Subject to audit, but no annual reconciliation required for excess earnings. [November 27, 1991 Report p. 4]**

7. COCA recommended a variant of this option as follows:

> **A weekly non-cumulative maximum to be calculated by dividing the annual ceiling by 48.**
> **No year-end reconciliation should be required for excess earnings.**
> **A working week should consist of seven days [November 27, 1991 Report, p. 6]**

8. This recommendation was rejected by the WCB Administration, although, it was accepted that the weekly maximum would apply to a full period of seven (7) calendar days **[November 27, 1991 Report, Recommendations, p. 8]**

Note 9:

1. In 1998 the WSIB Board of Directors, with very little background information, retrenched from the 1991 alternative method for construction and subjected the construction industry to the C.P.P. method. In **WSIB Board Minute #15 of June 15, 1998, p. 6089**, the Board of Directors approved "*implementation of assessable payroll using C.P.P. method*" for the construction industry.
2. It appears that the June 19, 1998 recommendation [approved June 25, 1998] was simply one part of a larger review addressing general issues in the construction industry that would, using the Board's language, "*get their house in order*" [**June 19, 1998 Memorandum to WSIB Board of Directors, Linda Jolley, Vice-President Policy and Research**].
3. Absent from the 1998 material however is any reference to the long-standing and in-depth historical dialogue pertaining to the side-effects surrounding the adoption of the C.P.P. method for the construction industry. It seems to be the case that the focus of the Board of Directors in June, 1998 had less to do with the pros and cons of the C.P.P. method directly. The 1998 review was focused on more general "construction issues".

4. The "*assessable payroll-C.P.P. model issue*" was now being assessed within the context of a "*revenue leakage*" perspective. Little consideration was given to the equity and fairness of the C.P.P. method itself, which was the prime concern a decade earlier.
5. The presentation to the Board of Directors noted:

   Proposed method
   Excess earnings in Construction to be determined by C.P.P. method in the same manner as all other industries
   Result will be lower assessment rates for construction
6. This was the last policy consideration with respect to the excess earning issue in the Ontario Workplace Safety and Insurance system and within the context of the impact on the construction sectors.

Note 10:

1. The history of premium rates and earnings ceiling in Ontario from 1993-2008 is set out in **Table 1**:

Year	Rate Group Premium - 707	Earnings Ceiling
1993	4.84	52,500
1994	4.86	53,900
1995	4.84	55,400
1996	5.26	55,600
1997	5.00	56,100
1998	4.93	58,200
1999	4.42	59,200
2000	4.04	59,300
2001	3.89	60,600
2002	4.11	64,600
2003	3.96	65,600
2004	3.83	67,700
2005	3.67	67,700
2006	4.02	69,400
2007	4.02	71,000
2008	4.02	73,400

2. **Table 2** shows the total premiums collected by the WSIB for RG 707:

Year	Ceiling	RG 707	Total Assessable Payroll	Total Premiums
1993	52,500.00	4.84	867,304,570	179,195,159
1994	53,900.00	4.86	907,001,191	186,625,759
1995	55,400.00	4.84	968,719,414	200,148,639
1996	55,600.00	5.26	1,022,481,733	194,388,162
1997	56,100.00	5.00	1,062,266,101	212,453,220
1998	58,200.00	4.93	1,123,164,500	227,822,414
1999	59,200.00	4.42	1,245,067,075	281,689,383
2000	59,300.00	4.04	1,437,382,070	355,787,641
2001	60,600.00	3.89	1,620,456,437	416,569,778
2002	64,600.00	4.11	1,772,455,058	431,254,272
2003	65,600.00	3.96	1,951,219,574	492,732,216
2004	67,700.00	3.83	2,011,730,585	525,256,027
2005	67,700.00	3.67	2,144,617,461	584,364,431
2006	69,400.00	4.02	2,237,736,751	556,650,933
2007	71,000.00	4.02	N/A	N/A
2008	73,400.00	4.02	N/A	N/A

Note 11:

1. If it were the case that all construction employers had identical labour rates and labour turnover rates, the C.P.P. method becomes a moot point. If such were the reality, no matter what methodology the WSIB adopted with respect to the payment of premiums, all companies would be "in the same boat" and the Board's over-arching policy remedy, i.e., addressing the increase in revenue through premium rates, would be entirely satisfactory.
2. The C.P.P. methodology therefore becomes a relevant consideration and a potential source of inequity amongst different corporate players within the same rate groups who are subject to the same WSIB premium rate but different premium exposures due to variables in labour turnover rates.
3. In short, the high wage company with a high turnover rate is disadvantaged when contrasted against the competing company with a lower turnover rate. As the Board has observed in its historical review of this issue, "hiring hall" employers do not have the capacity through their own internal requirement policies to mitigate the impact of the C.P.P. methodology through re-hiring the same workers. Therefore, the C.P.P. methodology as well, creates a union versus non-union bias in the WSIB premium methodology (with union companies being disadvantaged over non-union companies) as well as a bias pertaining to variances in labour turnover rates.
4. It is evident that the 1998 policy revision went forward for reasons not entirely connected with the C.P.P. methodology. In fact, the historic and extensive in-depth discussions on the pros and cons on adopting the C.P.P. method for the construction sector were only summarily considered, if considered at all.
5. The adoption of an alternative to the C.P.P. method was no longer being viewed by the WSIB officials and WSIB Board of Directors as an issue of industry or individual employer equity, but instead as a "revenue leakage" consideration. In other words, the Board's institutional focus had significantly evolved and changed without any footing in the policy rationale against the adoption of the C.P.P. method for the construction sector.
6. The long-standing perspective of the Board's administration that the C.P.P. methodology will be counter balanced by lower premium rates was unquestionably accepted by the WSIB Board of Directors without any extensive analysis or background data being presented.
7. The 1998 policy decision must also be analyzed within the context of events contemporary to that time. There are two prime indicators that act as core performance measurements of the WSIB – premium rate levels and the Unfunded Liability ["UFL"]. It should come as no surprise that the WSIB possesses a clear institutional interest to ensure that both these indicators are as low as potentially possible, while still ensuring that the WSI system adheres to basic sound governance parameters as guided by prudent fiscal management and as demanded by the WSIA.
8. In the years just prior to 1998, the WSIB was failing on both of these prime indicators – premium rates were on the rise, as was the UFL. WSI reform was an ingredient to 1995 election commitments, and by 1998 the government and the WSIB expressed clear commitments to improve performance as measured by these over-arching parameters.
9. Therefore, a policy decision that would both reduce premium rates and yet still increase the aggregate premiums collected, would fit well within the institutional interests of the Ontario WSIB, even if some individual firms were disadvantaged (in the manner canvassed by the Board itself and the industry in the earlier policy debates on this subject).
10. The C.P.P. method was therefore an attractive policy alternative that proved irresistible. Its integrity had been long established and in fact had been in place for all "other than construction" employers for several years, had strong internal support, allowed for lower premiums while raising at least the same aggregate premium (and *may* have increased the overall premiums collected).
11. With one policy move, the WSI system had the appearance of more positive performance indicators with actual overall performance likely remaining constant. Irresistible indeed.
12. It is important and of significance that the WSIB [and WCB] Administration(s) had strongly urged the adoption of the C.P.P. method since 1989 for construction and all other industries. The "construction exemption" and the later "construction alternative" were put in place through the lobbying efforts of the construction industry (principally though COCA) and did not arise from any unilateral administrative recommendation from Board officials.
13. While at one level it is clearly evident that the adoption of the C.P.P. methodology in the context of calculating excess earnings is problematic to the construction sector, the question the industry must grapple with is whether or not the premium rate "remedy" is sufficient to counter balance the adverse effects of the adoption of the C.P.P. methodology.
14. It goes without saying that should the Board rescind the C.P.P. methodology for the construction industry (which is within the scope of its discretionary authority under the WSIA), or adopt an alternative, premium rates will increase.

15. In other words, there will be a clear cause and effect in the context of premium rates. In the earlier stages of the policy dialogue on the adoption of the C.P.P. methodology, the industry (through COCA) initially recommended that the WSIB administration consider alternatives that would allow a “firm level” remedy. These recommendations were outright rejected by the Board Administration at the time as being administratively unworkable.
16. Precise recommendations of a “firm level” approach were not discovered but it is at the firm level where the inequities arise and must be addressed. The payroll calculation method in place before the adoption of the C.P.P. method (the daily or pay-period maximum approach) provided equity at the firm level.
17. The Board’s assertion that this led to a confused system and aberrant impacts was never challenged. The policy documents do not present any evidence of the Board’s assertions.
18. It is not likely the case that all construction employers have very similar or identical exposures under the C.P.P. methodology and from this perspective re-opening the policy discussion has merit.
19. This will no longer be seen as an issue over which the Administration has a clear policy vested interest and therefore, the industry will be “on it’s own” in developing the case for policy reform.
20. In addition, and of significance, WSIB premiums rate policy has an inherent political component. Increases in premium rates are very visible, and attract extensive scrutiny when on the rise. Increasing aggregate premiums through adjustments to the premium calculation methodology has an allure that brings a shroud of protection from increased public scrutiny. Raising tax rates is very public, whereas raising revenues through a complex application of technical rules is well hidden.
21. While retrenchment from the C.P.P. method will increase premium rates, in the long-haul, this may add more accountability to the Ontario workplace safety and insurance system, for the industry and the Board.