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

August 07, 2020

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

Dear Ms. Witmer and Mr. Teahen:

Reference: Calculation of Earnings Ceiling for 2021

Thank you for discussing this issue within the joint Chair's Advisory Committee on August 5, 2020. Based on a "black-letter" application of s. 54 of the WSIA, the Board advised that for 2021 the earnings ceiling will increase 7.8% from $95,400 to $102,800, at a time when the WSIB itself has declared "*employer rate increases (are) not possible in (the) current environment*" (WSIB presentation, Slide 5). In response to the "current environment" the WSIB is holding all 2021 employer premium rates at 2020 levels.

We are in full support of the premium rate freeze. However, as construction is a high-wage industry, the increase in the ceiling will increase our premiums by over $50,000,000, a result in total polarity to a rate freeze. In this communication, we will repeat our argument advanced at the CAC meeting, and set out a reasonable and fair resolution. Immediate action is required for both the WSIB and the government.

How the problem arises: Annual increases in the earnings ceiling counters inflation erosion of the maximum earnings ceiling. Simply put, as wages rise, so should the ceiling. WSIA s. 54(1) sets the earnings ceiling at "*175 per cent of the average industrial wage for Ontario,*" and s. 54(2) directs that "*the calculation of the average industrial wage . . . is based upon the most recent published material that is available on July 1 of the preceding year . . . as published by Statistics Canada*." The report the WSIB therefore must apply for the 2021 ceiling is the **Statistics Canada Report of June 25, 2020 "Payroll employment, earnings and hours**." However, the June 25, 2020 report explains that the COVID-19 triggered collapse in employment had a disproportionate and higher impact on lower wages. As lower wages are removed, simple arithmetic will drive the average upwards. The average wage did not increase because wages rose (the purpose of s. 54), but because lower wages fell off a cliff. This one-time anomalous influence of the COVID crisis over the calculation of the average wage cannot be permitted to set the ceiling for 2021 and contrary to policy intent, result in a *de facto* $50 million premium hike for construction.

The WSIB Board of Directors must act: A one-year exemption to the ceiling calculation is vital. This requires legislative amendment. Simply informing the government of the problem, which we understand the Board has done, is insufficient. Section 159(2)(b) provides the WSIB Board of Directors with the power "*to review this Act and the regulations and recommend amendments or revisions to them*." As the expert agency charged with administering the WSIA, we interpret s. 159(2)(b) as *requiring* the Board to exercise this power in exigent circumstances of this nature. We ask that the WSIB Board of Directors, urgently and formally, propose a statutory solution to the government.

The solution: There are two viable policy choices available. As a premium rate freeze will be implemented, a one-year freeze in the ceiling would be appropriate under these emergency circumstances. Alternatively, as the WSIA adopts a general annual indexing factor tied to CPI (WSIA, s. 49(1)), this could be applied to the ceiling for 2021.

Regards,

David Frame, CEC Chair