
CEC December 8, 2022

ZOOM Meeting

Notes Developed
by L.A. Liversidge, LL.B.

December 08, 2022

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A. **Bill 46, Less Red Tape, Stronger Ontario Act, 2022**

1. ***Bill 46, Less Red Tape, Stronger Ontario Act, 2022***, was introduced [November 22, 2022](#), and has been debated in Second Reading November [28](#), [29](#) and [30](#) and on [December 1, 2022](#) was referred to the **Standing Committee on Finance and Economic Affairs**.
2. An omnibus bill, through **Schedule 9, Bill 46** amends certain provisions in the WSIA. From the description in the Bill:

**SCHEDULE 9
WORKPLACE SAFETY AND INSURANCE ACT, 1997**

The Workplace Safety and Insurance Act, 1997 is amended as follows:

1. The definition of “health care practitioner” is amended to remove a reference to drugless practitioners.
 - a. **LAL Comment: Housekeeping. The Drugless Practitioners Act was repealed July 1, 2015.**
 2. Section 53 of the Act is amended to include rules governing how the Board is to determine the average earnings of a worker who is an apprentice.
 - a. **LAL Comment: Essentially consistent with WSIB policy. Eliminates ambiguity.**
 3. Section 159 of the Act is amended to provide that the requirement that the Board obtain the Lieutenant Governor in Council’s approval to acquire or dispose of real property does not apply to real property acquired or disposed of by lease.
 - a. **LAL Comment: Impacts only lease arrangements.**
 4. Section 162 of the Act is amended to provide that the board of directors of the Board must meet at least four times annually.
 - a. **LAL Comment: From current 6 times yearly. Arguably reduces accountability.**
 5. Section 166 of the Act is amended to require the Board and the Minister to be parties to a memorandum of understanding and to review the memorandum of understanding periodically. The requirement that the Board provide the Minister with a strategic plan is repealed.
 - a. **LAL Comment: Main impact is to eliminate the need for an annual outline of WSIB priorities by the Board to the Minister.**
3. See LAL December 02, 2022 comment on the bill for a detailed overview, [here](#).
 4. The most interesting observation is not the bill itself, but the opposition rhetoric on worker equity issues and the fairness of the WSIB. **LAL observations:**
 - a. It appears that general opposition and anger towards the WSIB is growing.
 - b. “Deeming” continues to draw the ire of opposition members and is likely to be a stronger source of future reforms.

- c. Despite some focus on occupational disease (OD) by the Board and government in the last year, demand for aggressive OD reform is escalating, not abating.
- d. The Board is generally viewed by opposition members as an insensitive, uncaring institution hell-bent to deny claims, and is fraught with red tape against those making claims.
- e. Legislative debates, which in years past included concerns about high insurance costs and the competitive implications of high premiums, have been entirely supplanted with a focus on injured worker equity concerns, often legitimately expressed.
- f. Opposition members have stated on the record so often that 50% of injured workers live in poverty, that this statement, which is categorically false, will be accepted as fact. This narrative must be countered with the facts.
- g. LAL predicts that this will be a growing and persistent trend and the next generation of workers' compensation reforms will acquire attributes similar to the reform thrusts of the late 1970s and 1980s – worker equity.
- h. *A lesson here?* When a WSIB reform is about little of substance, the opposition will readily fill the rhetorical void.

B. What is the real state of WSIB finances?

- 1. According to the published 2022 Q2 results, the Board enjoys a 115.5% sufficiency ratio and has net assets of \$5.0 B.
- 2. This is only very technically the case.
- 3. Recall: at the WSIB October 3, 2022 2023 premium rate meeting, LAL suggested that increases in inflation and decreases in equities would likely place the Board's sufficiency ratio in the 110% range, if not slightly below.
- 4. LAL has secured copies of the detailed **Q2 Financial Report** and the **Q2 Sufficiency Report**. These reports affirm the LAL projections.
- 5. If calculated on an IFRS (International Financial Reporting Standards) basis the sufficiency ratio is actually 109%. The variance will be explained.
- 6. From the **WSIB Q2 Financial Report**: (next page)

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Condensed Interim Consolidated Statements of Comprehensive Income (Loss)
Unaudited (millions of Canadian dollars)

| | Note | Three months ended | | Six months ended | |
|---|------|--------------------|--------------|------------------|--------------|
| | | 2022 | 2021 | 2022 | 2021 |
| Revenues | | | | | |
| Premium revenue | 11 | 881 | 836 | 1,698 | 1,604 |
| Investment income (loss) | 12 | (2,162) | 1,530 | (3,728) | 1,629 |
| Investment expenses | 12 | (76) | (86) | (160) | (194) |
| Net investment income (loss) | | (2,238) | 1,444 | (3,888) | 1,435 |
| Total revenues | | (1,357) | 2,280 | (2,190) | 3,039 |
| Expenses | | | | | |
| Claim payments | 13 | 621 | 643 | 1,257 | 1,292 |
| Claim administration costs | 13 | 137 | 138 | 277 | 263 |
| Change in actuarial valuation of benefit liabilities | 13 | 698 | (23) | 814 | 39 |
| Total claim costs | | 1,456 | 758 | 2,348 | 1,594 |
| Loss of Retirement Income Fund contributions | | 13 | 13 | 26 | 27 |
| Administration and other expenses | 14 | 131 | 136 | 252 | 273 |
| Legislated obligations and funding commitments | | 65 | 57 | 130 | 122 |
| Total expenses | | 1,665 | 964 | 2,756 | 2,016 |
| Excess (deficiency) from operations | | (3,022) | 1,316 | (4,946) | 1,023 |
| Surplus distribution expense (recovery) | 15 | (68) | - | 1,267 | - |
| Excess (deficiency) of revenues over expenses | | (2,954) | 1,316 | (6,213) | 1,023 |
| Other comprehensive income (loss) | | | | | |
| Item that will not be reclassified subsequently to income | | | | | |
| Remeasurements of employee benefit plans | 9 | 552 | (24) | 1,402 | 812 |
| Item that will be reclassified subsequently to income | | | | | |
| Translation gains (losses) from net foreign investments | | 12 | (20) | (22) | (59) |
| Total other comprehensive income (loss) | | 564 | (44) | 1,380 | 753 |
| Total comprehensive income (loss) | | (2,390) | 1,272 | (4,833) | 1,776 |

| | Note | Three months ended | | Six months ended | |
|---|------|--------------------|--------------|------------------|--------------|
| | | 2022 | 2021 | 2022 | 2021 |
| Excess (deficiency) of revenues over expenses attributable to: | | | | | |
| WSIB stakeholders | | (2,955) | 1,264 | (6,214) | 918 |
| Non-controlling interests | | 1 | 52 | 1 | 105 |
| | | (2,954) | 1,316 | (6,213) | 1,023 |
| Total comprehensive income (loss) attributable to: | | | | | |
| WSIB stakeholders | | (2,390) | 1,222 | (4,831) | 1,677 |
| Non-controlling interests | | - | 50 | (2) | 99 |
| | | (2,390) | 1,272 | (4,833) | 1,776 |

The accompanying notes form an integral part of these unaudited condensed interim consolidated financial statements.

7. From the **Q2 Sufficiency Report**:

Workplace Safety and Insurance Board

Second Quarter 2022 Sufficiency Report

Sufficiency Ratio Statement

June 30, 2022

(millions of Canadian dollars)

Sufficiency Ratio Statement

| | Note(s) | Jun. 30 2022 | Dec. 31 2021 |
|--|---------|-----------------|-----------------|
| Total assets under IFRS | 4 | 35,596 | 40,532 |
| Add (Less): Asset adjustments | 2,4 | 2,453 | (2,403) |
| Less: Sufficiency Ratio non-controlling interests | 2 | (712) | (756) |
| Sufficiency Ratio assets | 4 | 37,337 | 37,373 |
| | | | |
| Total liabilities under IFRS | 4 | 32,532 | 32,517 |
| Less: Liability adjustments | 3,4 | (217) | (1,681) |
| Sufficiency Ratio liabilities | 3,4 | 32,315 | 30,836 |
| | | | |
| Sufficiency Ratio (assets divided by liabilities) | | 115.5% | 121.2% |

2. Sufficiency Ratio assets

Invested assets used in the Sufficiency Ratio calculation are valued at fair value. However, only a portion of the investment gains or losses is included in the asset value. Specifically, the current period's investment returns above or below a net expected long-term annual return are deferred and recognized over the next five years on a straight-line basis. After five years, those past investment gains and losses are fully recognized in the asset value. This procedure moderates the effect of investment market return volatility and is known as the asset adjustment.

Notes to Sufficiency Ratio Statement

June 30, 2022

(millions of Canadian dollars)

The amount of unrecognized investment returns to be recognized in future years is as follows:

| Year earned | Total unrecognized gain (loss) as at Jun. 30, 2022 | Investment returns to be recognized in future years: | | | | |
|-------------|--|--|-----------|------------|------------|------------|
| | | Remainder of 2022 | 2023 | 2024 | 2025 | 2026 |
| 2022 | (4,494) | 500 | 998 | 999 | 998 | 999 |
| 2021 | 1,615 | (231) | (462) | (461) | (461) | - |
| 2020 | (187) | 37 | 75 | 75 | - | - |
| 2019 | 793 | (264) | (529) | - | - | - |
| 2018 | (197) | 197 | - | - | - | - |
| | (2,470) | 239 | 82 | 613 | 537 | 999 |

8. By smoothing its losses, the actual impact of the decline in equities is spread out into future years.

9. The 115.5% requires a smoothing of the significant losses the Board experienced 2022 Q1 and Q2, which is a whopping \$6.2 B deficiency of revenues over expenses, resulting in an actual massive \$4.8 B comprehensive loss.
10. The Board is smoothing out those losses over 5 years in calculating the sufficiency ratio.
11. The same thing was done in 2020 Q2 and Q3. In 2020, the markets bounced back quite fast. But, in 2020 inflation wasn't a thing so liabilities remained flat. Today there are two moving targets, liabilities going up and assets going down, and perhaps a third moving target – the risk of recession. The seas are stormier today.
12. I conclude that the Board's finances are quite volatile and fragile at the moment. The next 2-3 years are critically important. Pressure may return for rate hikes beginning as early as 2024.

C. Chronic Mental Stress – WSIB/WSIAT interpretive conflict

1. This will represent a short summary of a complex issue. LAL would be pleased to facilitate a stand-alone CMS ZOOM presenting an in-depth analysis.
2. LAL has been addressing this issue since an email of April 2, 2021 to the Chair's office and a later email of November 22, 2021, also to the Chair's office. CEC addressed these issues in a letter of April 23, 2021.
3. LAL wrote to the (then) WSIB General Counsel on September 28, 2022, met with senior WSIB officials on November 22, 2022, and presented suggestions for WSIB intervention to the Board's (current) General Counsel (Angela Powell) on November 25, 2022.
4. In the November 22, 2022 discussion (arranged by the Board), the opening thinking of the Board was essentially this: that the Board's July 8, 2021 letter introduced in **Decision 693/20R (para. 1)**, sparked a rethinking by subsequent panels of the WSIAT, and more recent decisions are more in line with the Board's CMS policy.
5. I disagreed (and disagree) with that analysis. The analysis in **Decision 693/20** is clearly and undeniably at odds with WSIB policy, a point acknowledged in **Decision 693/20R** (at para. 40), and as a result, in my strongly held view, is legally incorrect. The Appeals Tribunal conflates the "significant contribution test" (the normal standard applied to all cases other than CMS) and the "predominant contribution test" (expressly required by WSIB policy).
6. By not facilitating a WSIA s. 126(4) referral to the Board as is required, the WSIAT exceeded its lawful jurisdiction (please refer to the LAL November 22, 2022 note, paras. 5 – 9).
7. More than 18 months ago, in my April 2, 2021 email to the Chair's office, I suggested that the Board adopt an *amicus curiae* type role in a future and appropriate CMS case. After the release of **Decision 693/20R**, which suggested (in para. 53) a future panel of the Tribunal "*may consider requesting submissions from the WSIB*," in a November 22, 2021 email I set out a specific recommendation that the Board, not the Appeals Tribunal, identify the case that would best fit that approach.

8. More than 18 months later, no such case has been identified and the reasoning set out *Decision 693/20* still stands.
9. With respect to CMS cases, the Board and the Tribunal “are at odds” and being at odds is not a permissible state of affairs under the WSIA. Due to the passage of time, the *amicus curiae* approach is, in my view, no longer viable. Moreover, it does appear that the Board is committed to even this course of action any longer.
10. For the reasons I set out in the November 22, 2022 note, I argue that the Board must take a more active role to reassert its policy dominion as set out in the WSIA. This issue is now larger than the CMS issue itself (a large enough issue).
11. A state of jurisprudential confusion is not only not contemplated by the WSIA, the WSIA sets out the mechanisms to ensure that this state of affairs is methodically remedied through the clear instructions set out in s. 126. The 126 requirement that the Board retain control of WSI policy only works if the Tribunal and the Board both properly exercise their respective jurisdictional requirements and authority.
12. It is my strongly held view required that the Board resolve the interpretive discord either through the invocation of s. 126(6), by constructively concluding a referral was required, or alternatively through the exercise of the Board’s discretionary authority pursuant to s. 131(1) (practice and procedure) and ss. 159(2) (a.2) and (a.3) (establishing entitlement policies).
13. The CEC should develop a position on this.

D. Temporary Employment Agencies

1. In November, 2022 the Board consulted on changing its longstanding policy (arising out of the rate framework project and consultation), to set the premium rates for temporary help agencies (TEAs) at the same rate (the sector average) as the client employer.
2. Even though the current policy has been articulated since 2015 and in place since 2017, and was supported by many employer associations (including the CEC), apparently TEAs have recently been pushing hard demanding a policy retraction. The policy was set to “go live” 2022.
3. The CEC presented a submission on November 10, 2022 supporting its original position.
4. This issue has a long and protracted history. If requested, LAL will facilitate a stand-alone in-depth ZOOM.

E. Construction Centric 2023 Premium Rate Technical Sessions

1. The WSIB facilitated general 2023 “technical sessions” on 2023 premium rates December 1 and 7, 2022.
2. The CEC should request a construction centric technical session (which was routine prior to 2019).

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3. In addition, the CEC should request specific information for each construction sector on the distribution of firm specific premium rates for 2023. This information is available upon request.

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