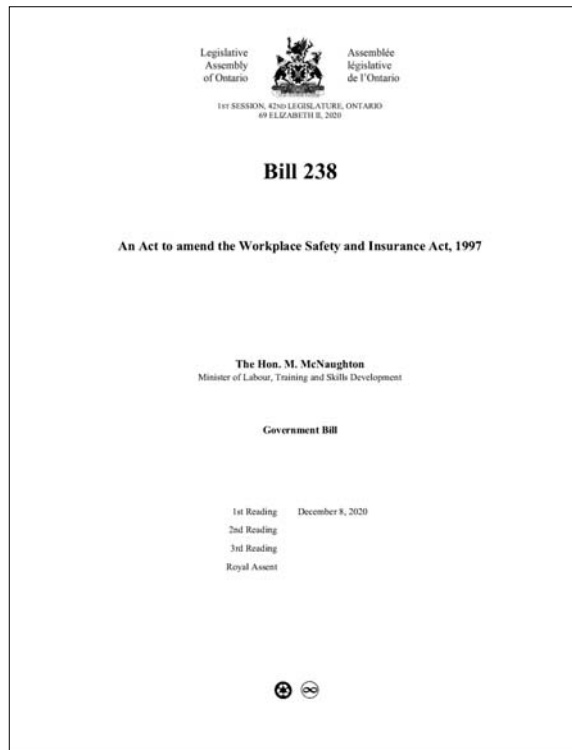


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**Submission on Bill 238**  
**An Act to amend the Workplace Safety and**  
**Insurance Act, 1997**

**Introduced by The Hon. M. McNaughton**  
**Minister of Labour, Training and Skills Development**

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*Submitted:*  
**March 8, 2021**

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**A. New s. 88.1: Premiums and the Earnings Ceiling**

**1. *What the bill does:***

*From the explanatory note:* New section 88.1 sets out a special rule for the calculation of certain premiums payable by employers for the 2021 calendar year. The Lieutenant Governor in Council is given regulation-making powers with respect to the calculation and the period during which the special rule applies.

**2. *Why this is necessary:***

- a. For 2021, the normal application of s. 54 of the *Workplace Safety and Insurance Act* would drive an earnings ceiling increase of 7.8%, increasing the ceiling from \$95,400 to \$102,800. This is at a time when the WSIB held 2021 premium rates at 2020 levels “*offering stability as employers grapple with the economic impact of the global pandemic.*”<sup>1</sup>
- b. A policy conundrum presents itself. The WSIB declared that premium rates should not increase yet the statute demands that they do.

**3. *How the problem arises:***

- a. Annual increases in the earnings ceiling counters inflation erosion of the maximum earnings ceiling. Simply put, as wages rise, so should the ceiling.
- b. 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.*”
- c. 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.*”
- d. However, the June 25, 2020 report explains that the COVID-19 triggered collapse in employment had a disproportionate impact on lower wages. As lower wages are removed, simple arithmetic will drive the average upwards.

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<sup>1</sup> [WSIB October 1, 2020 premium rate announcement](#). See as well the [WSIB 2020 Economic Statement](#), p. 4.

- e. The average wage did not increase because wages rose (the purpose of s. 54), but because lower wages fell off a cliff.
- f. 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 premium hike for high wage sectors.

4. ***The Bill 238 solution:***

**Exception, 2021 calendar year**

88.1 (1) Despite subsection 88 (3), for the period beginning on January 1, 2021 and ending on December 31, 2021 or such later date as may be prescribed, the premium payable by an employer for each of the employer's workers applies only with respect to a maximum amount of average earnings of,

- (a) \$97,308; or
- (b) if another amount is prescribed for the purposes of this section, that amount.

**Regulations**

- (2) The Lieutenant Governor in Council may make regulations,
  - (a) prescribing a date for the purposes of subsection (1);
  - (b) prescribing an amount for the purposes of clause (1) (b).

**Same**

- (3) A regulation made under clause 2 (a) shall not prescribe a date that is later than December 31, 2022.

5. ***A response to critics of Bill 238:***

- a. Bill 238 responsibly and quickly responds to a once-in-a-hundred-year medical and economic crisis in a measured and pragmatic manner. Bill 238 does not promote underfunding, nor does it signal a retrenchment of 11 years of focused resolve to ensure solid WSIB funding.
- b. To those that suggest Bill 238 does not go far enough, that there are a litany of issues that require attention, I suggest that Bill 238 is a quick, narrow legislative response to an urgent but narrow problem. There are of course other pressing issues. There always are. The **Regner-Dykeman/Speer [Workplace Safety and Insurance Board Operational Review Report](#)**, released November 2020, addressed many timely issues from funding to coverage and is currently under active consideration.

**B. New s. 167: WSIB to Provide Minister with Information**

1. ***What the bill does:***

*From the explanatory note:* New section 167 provides that the Minister may direct the Board to provide the Minister with information that the Minister considers necessary for the proper administration of the Act. The Board is required to provide the information on or before the date specified by the Minister and in the form specified by the Minister. The Minister may delegate the Minister's powers under section 167 to the Deputy Minister.

2. ***The proposed amendment:***

**Information**

167 (1) The Minister may direct the Board to provide the Minister with information that the Minister considers necessary for the proper administration of this Act.

**Same**

(2) If the Minister directs the Board to provide information under subsection (1), the Board shall provide the information on or before the date specified by the Minister and in the form specified by the Minister.

**Same, delegation to Deputy Minister**

(3) The Minister may delegate the Minister's powers under this section to the Deputy Minister.

3. ***This provision may not be necessary:***

- a. It is patently obvious that the open and timely exchange of information between the WSIB and the Minister is essential to sound administration. The WSIA already clearly sets out this expectation and sets out the process through which to achieve it.
- b. [WSIA s. 159\(9\)](#) requires OIC approval for the exchange of information between the WSIB and governments and agencies, Ontario or otherwise. However, WSIA s. 159(9.1) directs that the exchange of information between the WSIB and the Minister requires no such approval. Clearly, the exchange of information between the WSIB and the Minister is expected in the normal course.
- c. [WSIA s. 166\(1\)](#) directs that the Minister and the Board enter into a **Memorandum of Understanding** ("MOU") "*containing only such terms as may be directed by the Minister.*" The MOU is designed to advance the interests of the Minister.
- d. The MOU may address any matter "*the Minister considers appropriate*" (WSIA, s. 166(4), para. 3).
- e. An [active MOU](#)<sup>2</sup> which was [affirmed by the Minister November 14, 2019](#)<sup>3</sup> exists.
- f. MOU Article 11 specifically addresses the question of information exchange between the Minister and WSIB Chair. It is excerpted below, **with core portions highlighted**.

**11. INFORMATION EXCHANGE AND CONSULTATIONS**

**11.1 INFORMATION EXCHANGE**

**11.1.1** The Minister and the Chair recognize that timely and accurate information exchange and effective consultation are essential to discharging their respective responsibilities and in particular are critical for:

- i) the Minister's overall accountability for the Board in the Legislative Assembly;

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<sup>2</sup> Memorandum of Understanding Between The Minister of Labour And The Chair of the Workplace Safety and Insurance Board, signed by Minister March 25, 2014. [https://www.wsib.ca/sites/default/files/2019-02/memorandum\\_of\\_understanding.pdf](https://www.wsib.ca/sites/default/files/2019-02/memorandum_of_understanding.pdf)

<sup>3</sup> [https://www.wsib.ca/sites/default/files/2019-12/wsib\\_mou\\_affirmation\\_eng\\_sep2019.pdf](https://www.wsib.ca/sites/default/files/2019-12/wsib_mou_affirmation_eng_sep2019.pdf)

- ii) the Minister's awareness of significant financial or policy issues relating to the Board's operations;
- iii) the effective exercise and coordination of their respective mandates to promote health and safety in workplaces;
- iv) the Board's capacity to align its corporate policy and operational initiatives with the strategic direction of the GO and the Ministry, and to conduct annual budget planning;
- v) the Minister's responsibility for taking legislative and regulatory changes to Cabinet, while providing the Board with sufficient notice of pending legislative change; and
- vi) the Chair to be kept informed of GO and Ministry initiatives and broad policy directions that may affect the Board's mandate and functions.

**11.1.2** The Board, at the request of the Minister or the Deputy Minister, shall supply specific data and other information that may be required from time to time for the purpose of administering Ministry legislation.

**11.1.3** Prior to meetings of the Board of Directors, the Board will provide the Minister with notice of Board meetings. The Board will provide the Minister with the minutes of the meeting (subsequent to approval by the Board of Directors) and notification of any Board decisions.

**11.1.4** Consistent with the Minister and Chair's agreement that the timely exchange of accurate information regarding financial matters, program operations, policy issues, research findings or related strategies is an important part of information exchange, Ministry and Board staff will share information with each other in a timely fashion and will meet as required to discuss matters or issues that are of interest to, or require the other's attention, including, but not limited to those that may:

- i) have significant impact on clients or stakeholders;
- ii) have a significant financial or operational impact on the workplace health, safety and insurance system;
- iii) raise questions in the Legislature;
- iv) require reports to Cabinet, any committee or sub-committee of Cabinet, or other relevant government agencies;
- v) raise questions in the media.

**4. *The amendment may attract unintended consequences:***

- a. All Acts are considered remedial (*Interpretation Act*, R.S.O. 1990, c. I.11, s. 10). Therefore, the amendment must be interpreted as addressing an issue that currently exists with the flow of information from the WSIB to the Minister.
- b. As the MOU expressly addresses the issue with almost identical language, and as a specific problem has not been set-out in the Explanatory Notes, on its face, it appears that the amendment is either redundant or designed to expressly supplant the MOU.
- c. The amendment may inadvertently diminish the degree of independence between the WSIB and the Ministry, which may trigger future unintended consequences.

5. ***Advice:***

- a. The MOU is intended to facilitate that which the amendment seeks. If it is the case that the MOU arrangement is not sufficiently efficacious, MOU Clause 11.2.4 allows for a process to address “*specific matters concerning . . . information sharing.*” It is of course unknown to this author if that Clause has been activated, however, the need for legislative amendment is unclear.

**LAL**  
**March 8, 2021**