

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



July 21, 2022

The Hon. Monte McNaughton, Minister of Labour,
Immigration, Training and Skills Development
Ministry of Labour, Immigration, Training and Skills Development
400 University Avenue, 14th Floor
Toronto, ON M7A 1T7

Dear Minister McNaughton:

Re: WSIB loss of earnings benefit payment levels

Congratulations on your appointment as Minister of Labour, Immigration, Training and Skills Development. We look forward to working with you and your office relating to WSIB issues.

Today we are reaching out with respect to the April 20, 2022 Government announcement (and media reports) that advised that the Government will explore options about increasing benefits from 85% of net to 90% of net.

We submit that it is critically important that the Ministry's first step should be to commission a report similar to the *BC Royal Commission Report (attached to forwarding email)*. This report was part of the mandate of the Royal Commission to examine proper wage replacement levels, specifically:

This paper discusses the history of the “75% gross” compensation rate in BC and the “90% net” compensation rate in other jurisdictions, more recent developments with respect to the establishment of compensation rates and the adequacy, equity, cost, and return to work incentive/disincentive factors that might be considered in evaluating alternatives [at page 2].

The Ontario experience is highlighted in that report at **pages 1-14**.

This is the only report we were able to locate that assesses this issue. For your immediate reference, we have included a brief history of WSIB benefit levels over the years at **Appendix A**.

As the Government's announcement was to “consider” and “explore” this issue we look forward to an opportunity to participate and learn about the next steps the Government plans to take, or direct the Board to take, and the timeline for any consultations that will explore this issue.

Please reach out at any time to arrange a meeting (virtual or in person).

David Frame, CEC Chair

Appendix A**A brief history of WSIB benefit levels**

1. History: Workers' compensation wage replacement levels.
 - a. 1914: 55% of gross
 - b. 1920: 66 2/3% of gross
 - c. 1950: 75% of gross
 - d. 1985: 90% of net
 - e. 1998: 85% of net
2. The November, 1980 paper "*Reshaping Workers' Compensation for Ontario*" presented an argument for the move from 75% of gross to 90% of net (pages 38-40).
3. The 1981 Government "*White Paper*" outlined an argument for 90% of net (Recommendation #2, pages 6 - 9).
4. The December, 1983, Standing Committee on Resources Development, Final Report, the majority agrees with 90% of net (pages 15-16).
5. Bill 101 in June, 1984 amended s. 40 of the *Worker' Compensation Act* ["WCA"] and provided compensation based on 90% of net.
6. In 1995 as part of PCPO Common Sense Revolution, a 11 point-plank on WCB reform included #5: reduce benefit levels to 85% of net.
7. In June, 1995 Mike Harris PCs were elected and appointed Elizabeth Witmer as Minister of Labour and Cam Jackson Minister for Workers' Compensation Reform.
8. The June, 1996 Cam Jackson Report "*New Directions*" (at page 23) noted regarding 90% of net: ". . . a worker on WCB benefits for up to 39 weeks can" . . . "receive net income that exceeds" pre-injury net.
9. "*New Directions*" (page 23) re 90% of net: Employers advocated for 80% of net for the first 39 weeks then 85% thereafter.
10. Three principles were identified: compensation should not exceed pre-injury income; compensation should be less than pre-injury to ensure return to work incentive, and funding pressures influenced 85% move.
11. Bill 99 introduced on November 26, 1996 created a new s. 43 (2) that set the wage replacement rate at 85% of net.
12. Bill 99 debates (House and Committee) took place between November, 1996 to September, 1997. The 85% issue was a small element of these debates. Government comments re 85% net: Focus on "*financial viability*" (Witmer, Nov. 26, 1996) and consistency with trends in other provinces (Witmer, April 24, 1997) & other similar.
13. From 1997, little public dialogue regarding the adequacy of 85% net. Significantly, a March 2016 Institute for Work and Health report regarding the impact of Bill 99 states: "*fully compensated for lost earnings, on average*".
14. Very little academic level analysis has been undertaken with the exception of the *BC Royal Commission Report*.

15. *Compensation Rate: A Briefing Paper*, April 4, 1997 by the Royal Commission on Workers' Compensation (75 pages) provides an academic level comprehensive analysis. This was written after Ontario Bill 99 introduced. Therefore, aware of Ontario argument for 85% of net (BC later adopted 90% of net).
16. Extrapolating from WSIB 2021 Q3 report, an increase from 85% to 90% will result in a 5.9% increase. Applying the modern funding policy (2015 - today's premiums must fund today's costs) employer premiums must cover the increase, and therefore must increase at least 5.9%.