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ONLY OHSA AND WSIA COMPLIANT EMPLOYERS WILL RECEIVE WSIB SURPLUS DISTRIBUTIONS

Recent amendments to the Workplace Safety and Insurance Act (Bill 27) and newly passed regulations under the WSIA (O.Reg 141/12) do the following:

- Require the WSIB to maintain a funding sufficiency ratio of not less than 100%
- Give the WSIB the ability and the discretion to distribute surplus funds to Schedule 1 employers when the sufficiency ratio is between 115% and 124.9%; this is referred to as a "discretionary distribution"; once the WSIB has decided to make a discretionary distribution, it has 90 days to do so
- Require the WSIB to distribute surplus funds to Schedule 1 employers when the sufficiency ratio is 125% or greater; once the sufficiency ratio reaches 125%, the WSIB is required to make a mandatory distribution within 30 days in an amount such that the result will be a sufficiency ratio of 115.1%

In making both discretionary and mandatory distributions to Schedule 1 employers the WSIB is required to consider the following criteria to determine an employer's eligibility to receive a share of the distribution:

- A conviction against an employer under the Workplace Safety and Insurance Act (WSIA) within the past year OR two or more convictions under the WSIA within the preceding five years
- A conviction against an employer under the Occupational Health and Safety Act (OHSa) within the past year OR two or more convictions under the OHSa in the preceding five years

Many WSIB watchers see this distribution framework as a somewhat elegant solution and that reaching a sufficiency ratio of 125% will trigger a disastrous "nuclear option" that the WSIB will want to avoid at all costs. They also contemplate that the WSIB may even want to maintain a sufficiency ratio of below 115% to avoid persistent demands from employers for discretionary distributions.

- Because the sufficiency ratio now stands at about 120%+, we believe that the WSIB may be developing interim policies to allow a discretionary distribution sometime very soon, before the June general election for the government to win favour with the voters and to provide additional stimulus to the economy at no cost to the provincial treasury. Over the longer term, the WSIB may develop more durable policies that reduce the sufficiency ratio in stages (unless the financial markets do that for them in the interim).

LAWYER CALLS OH&S CHANGES IN RED TAPE REDUCTION BILL “ANTI-BUSINESS”

Bill 13 Supporting People and Businesses Act, 2021 was a government omnibus “red tape reduction” Bill that amended 32 statutes. It passed third reading and received Royal Assent on December 2, 2021. Schedule 15 of the Bill makes amendments to the Occupational Health and Safety Act.

Norm Keith, an occupational health and safety lawyer with KPMG, didn’t see the OHS amendments as being particularly helpful for employers, in fact he has a completely a different perspective. Known to be a feisty defender on behalf of employers, Keith in a recent article in the Daily Commercial News called the health and safety changes “anti-business”. Here’s Keith’s take copied from that DCN article:

Section 8

Context: Section 8 of the OHS Act sets out the role and responsibilities of a health and safety representative. In the instance of a death or critical illness at the workplace, the worker representative may inspect the accident site under s.51(2) and report the written findings to a director, under s.8(14).

Amendment: Section 8 has been amended to add s.8(14.1) which states that the health and safety representative may share with a MLTSD inspector, any of the findings made under s.8(14).

Employer concerns: The investigation of a workplace incident by a worker health and safety representative may now be legally “shared” with a MLTSD investigator and used against the employer as evidence of non-compliance to convict an employer when charged under the OHS Act. This will likely cause suspicions, divisions and undermine the Internal Responsibility System (IRS), the foundation of the OHS Act.

Section 9

Context: Section 9 of the OHS Act sets out the roles and responsibilities of a joint health and safety committee in the workplace. Currently, s.9(31) states the members of a committee shall designate one or more members to investigate cases where a worker is killed or critically injured at a workplace, and such members may inspect the incident site under s.51(2) and shall report the findings to a director.

Amendment: Section 9 has been amended to add s.9(31.1), which states that the investigating member may share with a MLTSD inspector any of the findings made under s.9(31).

Employer concerns: Similar to the abovementioned concerns, a Joint Health and Safety Committee (JHSC) representative may share internal investigation information with a MLTSD investigator and it may be used as evidence against the employer when facing charges under the OHS Act. Not only will this cause suspicions, divisions and undermine the IRS in the workplace, it also compels employers to get early legal advice, assert claims of privilege and Charter rights to protect the fair trial rights of the construction community.

Section 25(4)

Context: Previously under s. 25(4), the requirement to prepare and review an annual written OHS policy and develop and maintain that policy did not apply to smaller workplaces of five or less.

Amendment: s. 25(4) has been amended to state that this is still not a requirement for workplaces of five or less “unless otherwise prescribed.” In other words, workplaces of five or less may need to meet this requirement if prescribed by regulations.

Employer concerns: Small employers, or workplaces with five employees or less, may now be given the

heavy regulatory burden of developing a written OHS policy and program and reviewing them every year. No background information or public study was released to justify this new regulatory burden on small contractors and projects are being targeted by this legislative change.

Section 52(1)

Context: Section 52(1) states that if a person is disabled from performing his or her usual work or requires medical attention due to an accident, explosion etc. at the workplace, but is neither killed or critically injured, the employer must give written notice of the occurrence within four days to the: (1) committee, health and safety representative and the trade union, or (2) the director, if an inspector requires the notification of the director.

Amendment: Section 55.4 has been added to the OHSA which states that for the purposes of s.52(1), an inspector may order an employer to give written notice to a director during such period as may be specified by the inspector.

Employer concerns: This is a “take back” amendment from the OHSA that previously relieved contractors from the regulatory burden of reporting non-critical incidents to the MLTSD. These changes give individual MLTSD investigators unfettered discretion to issue such orders under this new provision. The MLTSD exercises very little supervision, oversight and quality control of the activities of their investigators at construction projects. This new power is open to misuse and abuse with very little recourse by employers, other than to appeal such orders under s. 61 of the OHSA.

The government’s justification of these changes in the provincial parliament in third reading was: “This proposal would help support businesses and enhance the role of workplace parties following injuries at work by modernizing rules, obligations and processes.”

Nothing could be further from the truth.

Construction industry members will need to review and adjust practices to mitigate the further legal risk associated with these changes.”

ACHIEVEMENT INCENTIVE PROGRAM FOR SPONSORS OF APPRENTICES ENHANCED

Beginning on April 1, 2022, the Achievement Incentive program will be enhanced to include the following:

- Milestone payments of \$1,000 to an apprenticeship sponsor for each level of in-class training completed by the apprentice (up to four levels) and an additional \$1,000 certification bonus.
- A new \$1,000 registration payment, and additional \$1,000 payments per level and certification prior to an apprentice turning 25 years of age.

- A new \$1,000 registration payment, and additional \$1,000 payments per level and certification if an apprentice is from an underrepresented group (e.g. women, Indigenous, people of colour, people with disabilities, Francophone, newcomers).

To learn more about the Achievement Incentive and how you can participate in the program, please follow this link <https://www.ontario.ca/page/hire-apprentice>

OEA OFFERING FREE SEMINARS TO HELP EMPLOYERS WITH THEIR WSIB ISSUES

The Office of the Employer Advisor (OEA) is presenting a series of free webinars in February and March. The schedule of the sessions along with the links to register is below. We encourage you to share this information widely so that more construction employers can take advantage of these very practical and helpful learning opportunities.

To register and view all of OEA's webinars follow this link: <https://www.employeradviser.ca/webinars/>

OEA Services - WSIB update

Feb 1, 2022 | Time: 10:00 am ET

This webinar outlines the OEA services available to Ontario employers dealing with workplace safety insurance issues and when to engage those services. Also covered are the recent changes relating to COVID-19 and the WSIB's new rate framework.

Introduction to Workplace Safety and Insurance

Feb 3, 2022 | Time: 2:00 pm ET

This webinar provides a basic overview of Workplace Safety and Insurance: who is covered, what are accidents, and reporting and other legal obligations. In addition, employer classification, return to work and appeals are addressed.

Completing The Form 7 An Employer's Guide

Feb 8, 2022 | Time: 2:00 pm ET

This webinar walks you through an employer's obligation to complete their 'report of accident' – the Workplace Safety and Insurance Board's (WSIB) Form 7. You will learn what information the WSIB is looking for and best practices for answering the form questions.

Claims Management Tips

Feb 10, 2022 | Time: 10:00 am ET

This webinar provides you with helpful practices to better manage your Workplace Safety & Insurance needs – starting from your hiring practices to dealing with an injured worker and their subsequent return to work.

SIEF and Cost Reduction Tools

Feb 15, 2022 | Time: 10:00 am ET

This webinar explains the tools available to employers to reduce their accident costs and, in some cases, have them removed entirely.

A Practical Guide to Return to Work for Employers (Non-Construction)

Feb 17, 2022 | Time: 2:00 pm ET

This webinar explains the benefits of having a return to work program, your legal obligations under the WSIA, key steps for implementing a return to work program and plan, as well as resolution strategies for disputes in return to work.

A Practical Guide to Return to Work for Employers (Construction)

Feb 22, 2022 | Time: 2:00 pm ET

This webinar explains the benefits of having a return to work program, your legal obligations under the WSIA, key steps for implementing a return to work program and plan, as well as resolution strategies for disputes in return to work.

WSIB Appeals

Feb 24, 2022 | Time: 10:00 am ET

This webinar outlines the appeal process, the different levels of appeal, and how to prepare for either your own, or your worker's appeal.

NEW LEADERSHIP AT THE WSIB

The government of Ontario has appointed Grant Walsh to serve as the new Chair of the Board of Directors of the Workplace Safety and Insurance Board. Walsh who has been a member of the WSIB's Board of Directors for the past several years also serves on the boards of a number of other organizations. He is the Managing Director of Walsh Leadership Group Inc. and was previously Chairman of Canada Lands Corporation and President & CEO of St Peter's Health System. He earned a BA from Roberts Wesleyan College, an MBA from Southern Illinois University Edwardsville and a Chartered Director designation from McMaster University. His term as WSIB Chair will commence when the term of the current Chair, Mrs. Elizabeth Witmer, expires on February 14th.

The government also looked to the WSIB's Board of Directors in its 18-month search to find a new President & CEO. Jeff Lang of London Ontario has been appointed to succeed Acting President & CEO Tom Bell commencing on April 15th. Lang who is the owner and President of Exi-Plast Custom Moulding, was the unsuccessful PC standard bearer in the London West riding in the 2000 federal election and has been active in community affairs including service on the London Police Services Board.

Of interest to WSIB watchers may be the following about Lang's mandate copied from an article in the January 22, 2022 edition of The London Free Press, "He (Minister Monte McNaughton) cited decentralizing the WSIB as one example of the changes Lang will be spearheading. McNaughton noted the 'outrageousness' of the agency having a call centre in downtown Toronto, and indicated he wants Lang to reduce its real-estate footprint."

Consistent with the rules governing these types of appointments, both new leaders have been appointed to three-year terms. We congratulate both Mr Walsh and Mr Lang on their appointments, wish them much success and look forward to working with them to ensure the province's workplace compensation system meets the needs of Ontario's workers and employers and supports prosperity across the province.

Appointed to fill vacancies on the WSIB's Board of Directors created by these appointments are:

- Executive strategist, consultant and coach and former executive search consultant Sandra Wrycraft
- Peter George

COCA HAS MOVED

Our new address is:

**123 Edward Street, Suite 926
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Phone (416) 968-7200**

LONDON WEST TORIES SELECT CANDIDATE TO SUCCEED JEFF YUREK

To the surprise of almost everyone, on Friday, January 7th the MPP for Elgin-Middlesex-London, Jeff Yurek, announced that he would be resigning his seat in the Ontario Legislature in February. Yurek, a pharmacist by trade from the St Thomas area of the riding, was first elected in 2011. Prior to 2011 in the era of Premier Dalton McGuinty the riding had been held by popular three-term Liberal MPP, Cabinet Minister and Speaker of the House, Steve Peters, who did not seek re-election in 2011.

Yurek was re-elected by healthy margins in 2014 and 2018. Following the election of the Doug Ford PC government in 2018, Yurek served first as Minister of Natural Resources and Forestry, then Transportation and Environment and Parks and finally Environment and Conservation before he was jettisoned in the June 2020 shuffle.

That changing of the government deck chairs saw a total of five Ministers (including Yurek) who were all long serving, experienced MPPs and all from what are considered to be safe, rural, Tory ridings, dropped in favour eight fresher and more diverse faces principally from Toronto and the 905.

An even bigger surprise came a week later when the Minister of Long Term Care, Rod Phillips announced his immediate resignation from Cabinet and his resignation from the Legislature in February. Phillips was regarded as a super star candidate when he picked up, moved to Ajax prior to the June 2018 election, got himself nominated by the PCs there and went on to defeat the three-term incumbent Liberal MPP (who placed third) and the second place NDP candidate by almost 4,000 votes.

Of course, that election saw the Wynne Liberals decimated and the PCs under the leadership of Doug Ford swept into power at Queen's Park. In the early days of the Ford government Phillips served

as Minister of Environment Conservation and Parks before he was appointed Minister of Finance about a year later.

Then in December 2020 a serious personal lapse of judgement (that only goes to prove that even smart people are capable doing of really dumb things) found Phillips on vacation in the tony Caribbean vacation hot spot for the rich and famous, St Barts, at a time when the government in which he was a senior member was advising Ontarians to stay home.

He was forced to resign and he sat in the government's penalty box until the cabinet reset of June 2021 when he was appointed to the very challenging portfolio of Long Term Care. Before his St Barts trip, many saw Phillips as a very serious contender for the PC leadership post Doug Ford.

Legislators rarely resign on their own terms. They usually let the voters make that decision for them. Retirements by first termers like Phillips are extremely rare. Here are some of the reasons why MPPs resign:

- A legitimate retirement after long service as an MPP, to enjoy a leisurely retirement and pursue personal interests and hobbies
- Personal family reasons
- Personal health reasons
- A better opportunity outside of elected office, a better job offer
- The opportunity to seek election as an MP in the federal Parliament in Ottawa
- The prospect of winning in the upcoming election is bleak
- Disenchantment with the direction of the party of which the MPP is a member

- The MPP determines that it's time, they have spent long enough at Queen's Park, have tried their best, done their time, have given back to the community, are satisfied with their accomplishments and feel that it's some else's turn

Could the successive resignations of Yurek and Phillips start a snowball of resignations? Might those MPPs who were sidelined in the June 2021 cabinet reset like Bill Walker, Ernie Hardeman, Laurie Scott and John Yakabusky consider leaving politics. Is the rumoured chaos and dissension in the PC caucus real and if so could

FOUR POLLS AND FOUR DIFFERENT RESULTS

The results of the public opinion polls released by Angus Reid, Abacus Research Ekos Politics and Innovative Research that were released within the last two weeks have Queen's Park watchers in a spin.

Innovative Research was first out of the gate on January 13th releasing the results of their survey of 516 randomly selected Ontarians aged 18+ that was in the field from January 6 to January 11, 2022. The full details of their work can be found at

<https://innovativeresearch.ca/wp-content/uploads/2022/01/CTM2201-W1-Ontario-Politics-Report-RELEASE-.pdf>

But the numbers that most are interested in are that among all respondents, 31% would vote Liberal, 30% PC, 19% NDP, 5% Green, 2% Other, 11% Undecided and 3% would not vote.

Ekos Politics followed on January 18th with the results of their survey of 907 Ontario residents which was in the field from January 7 to 17, 2022. The Ekos report can be found at <https://www.ekospolitics.com/index.php/2022/01/ford-maintains-clear-but-modest-lead/>

34.8% of their respondents said they would vote PC if an election was held at the time of the poll. 26.6% said NDP, 26.3% said Liberal, 4.9% Green and 8% Unknown.

One day later **Abacus** released the results of their polling of 1,210 Ontario residents aged 18+ between January 7 and 12, 2022. Even though 50% of respondents said they definitely feel the need for a change in government and the polling showed Premier Ford's negatives climbing and his favourables falling, 37% said they would vote PC, 28% Liberal, 25% NDP, 5% Green and 5% Other. The Abacus results are available at the following link:

<https://abacusdata.ca/ontario-politics-pcs-ford-lead-january-2022-onpoli/>

And finally the Angus Reid Institute surveyed 3,375 Canadian adults between January 7 and 10, 2022 including 909 Ontarians age 18+ and published the results on January 20th. The full report is available here: <https://angusreid.org/provincial-politics-quebec-ontario-election/>

With regard to the voter intention question, surprise, surprise, 36% of respondents said they would vote NDP if the election was held at the time the poll was taken, 33% PC, 19% Liberal, 4% Green and 8% Other.

These voter intention numbers of course don't tell the full story. But clearly the Tories have much work to do if they are going to maintain their majority government status after the June election.