

WSIB Place
300 Tartan Drive
London, Ontario N5V 0E9

October 2026

Dear Jeff Lang and WSIB Management Team:

RE: Bill 105 Policy Recommendations

As lawyers, paralegals, community legal clinics, unions, injured workers groups and worker advocates, we represent the majority of injured workers across Ontario from every sector – see organizational endorsements below. This makes us keenly aware of the ramifications that occur when there are changes at the WSIB.

In anticipation of the policy changes required if Bill 105, Schedule 9 were to come into effect, we are sending this letter asking that the WSIB consider our experienced and professional recommendations regarding how the WSIB can best implement the proposals in Bill 105. We offer concrete recommendations and principles rooted in evidence, worker experience, procedural fairness, and health and safety in the following areas:

- 72-month lock-in
- Wage caps/offsetting benefits
- Loss of earnings (LOE) beyond age 65
- Transparency and accountability

It is our position that significant policy changes, particularly relating to fundamental systemic changes, should not proceed without input from the injured worker community. Accordingly, **in addition to considering the enclosed submissions, we urge you to engage in a fulsome consultation with the injured worker community prior to finalizing any policy changes should Bill 105 come into effect.**

I. Context

The compensation system works well for about 80% of workers who file a claim; specifically, those who recover and return to work within a short time (which thankfully is a significant majority of workers injured). But for workers who end up with a life-long impairment or disability, the system often fails them. It is important to understand the systemic factors that influence long-term outcomes for workers with permanent impairments, so that WSIB policies are drafted in a way that support the permanently disabled injured workers who are most in need the workers' compensation system.

We know that most, if not all, injured workers deal with challenges to their mental health. They are faced with many unknowns; are often stigmatized by colleagues/management who doubt them; and must manage the impact of their decreased ability to work and support themselves and their families, which attacks a core aspect of their dignity. **The creation of WSIB policy should always consider its implications on the mental health of injured workers, to avoid exacerbating the existing trauma of workplace injury and its impacts.**

The workers' compensation system must also guard against pursuing fiscal responsibility and efficiency at the expense of those workers most in need of support and compensation. Furthermore, cost shifting from WSIB to provincial services such as health care, income support, community services and retirement services, significantly impacts provincial budgets. Any deterioration or inadequacy of the workers' compensation system has long-term consequences on Ontario's economy as well as our workers and their families. **The WSIB can afford to improve benefits and services to injured workers without risking its financial viability.** This is obvious given the WSIB's ability to maintain a "surplus" while reducing employer premiums and distributing \$6 billion rebates to employers within 18 months.¹ Before any further distribution of rebates or decrease in premium rates, the WSIB must ensure that appropriate investments are made into the system itself. **There can be no surplus unless there is fair compensation.**

The proposed changes in Bill 105, while expanding certain compensation entitlements, could simultaneously make existing rights harder to enforce or long-term entitlements less secure if not implemented correctly. We fully support any measures that increase benefits and protections for workers across Ontario; however, we must ensure that the measures proposed in Bill 105 are implemented in a way that addresses significant historical and ongoing injustices and **does not disadvantage the most disabled injured workers.** We do not want any new provisions to weaken access to justice, undermine enforcement activities, generate greater long-term instability, or create additional burdens on workers. Therefore, **policies accompanying new legislation require careful thought to ensure full justice for injured workers in a way that does not shift additional burdens (financial or otherwise) onto them.**

II. Elimination of the 72-month lock-in

Bill 105 proposes adding section 44.1 to the *Workplace Safety and Insurance Act*, which would allow for the review of payments for loss of earnings ("LOE") benefits at any time, with the timing to be determined by the WSIB. The change in the legislation would apply to any worker whose benefits had not been locked-in (generally 72-months after injury) at the time that the legislation comes into force.

If the 72-month lock-in is removed, it is important that WSIB policy set out reasonable conditions under which a review of LOE benefits takes place. To require WSIB staff to continually review all claims would place an unbearable administrative burden on the WSIB's resources. It would also create extreme and unjustifiable stress on injured workers. It is extremely challenging to heal from the trauma and stress of workplace injury, while also navigating the demands and administration of the WSIB, health care, and one's employer. The continual specter of perpetual unscheduled LOE reviews would place a further and unconscionable burden on injured workers' mental health and capacity to heal.

With the elimination of SIEF cost relief, employers (particularly Schedule 2 employers) will have more incentive to find ways to manage their WSIB claims costs. Without limitations on the conditions under which LOE may be reviewed, there is a risk that employers will aggressively engage in surveillance and request regular reviews of ongoing LOE benefits.

¹ \$2 billion in September 2025, \$2 billion in Nov 2024, and \$2 billion in April 2025

Proposal 1: Establish finality through a rebuttable presumption of no further reviews

Even if the 72-month lock-in is removed, injured workers should still have a basic degree of economic security and predictability upon which to arrange their financial affairs. It is imperative that, as a general rule, there remains a final LOE determination with no further expected reviews. Once impairments have reached maximum medical recovery and return to work services are complete, a final LOE determination should occur, and reviewing LOE should no longer be necessary. Other provinces, while they do not have the same “Lock-In” system we currently have in Ontario, do not require perpetual notices of “material changes.” This means that once a final LOE determination is made in another province, it is, in practical terms, final. A simple way to accomplish this goal in Ontario, if Bill 105 passes, is to establish a rebuttable presumption that no further LOE reviews be conducted once Non-Economic Loss Awards have been determined and Return-to-Work services are complete.

Proposal 2: Outline criteria to limit the arbitrary review of LOE benefits

In addition to implementing a rebuttable presumption of no further reviews, the following are some principles or criteria WSIB policy should take into account to ensure the finality and fairness of LOE benefits:

- Benefit reviews should not take place without reason, simply because a certain amount of time has passed. There should also be clear limits on how frequently or how many times benefits can be reviewed (the same way that there can be no NEL re-assessment within 12 months of the last one).
- Schedule 2 employers must be restricted in their ability to request reassessment or review of longstanding LOE benefits, including through a requirement that they demonstrate new and material evidence before initiating such requests.
- There must be specific limits on the admissibility of surveillance evidence.
- If a worker requests an increased Non-Economic Loss award, this alone should not be a basis for adjusting LOE. If there is a NEL increase, the WSIB should be allowed to consider an increase in LOE benefits at the worker’s request.
- There should be a specified income threshold before LOE benefits are adjusted; for example, an annual change in income of 15% or greater.
- LOE benefits should not be adjusted based on presumed increases to deemed wages, for example increases to the minimum wage or the average wage in an identified Suitable Occupation.
- Conditions under which LOE could be reviewed include the following:
 - If there is an actual return to work
 - Specific medical information of a change in the compensable condition directly linked to a change in working capacity
 - A worker being laid off from a job in which they have been accommodated due to their injury

III. Wage caps and offsets

It is important to remember that the intention of the historic compromise when the workers' compensation system was first established was to provide workers' compensation benefits for work related injuries in exchange for giving up the right to sue. The compensation system provides workers with benefits if their earnings capacity is impaired.

Proposal 1: Protect income sources not prescribed in the legislation

If workers can return to work post-accident, it is understandable that employment earnings are factored into LOE offset calculations. Actual employment earnings would be a factor to determine whether a LOE review is warranted. However, this is not an opportunity to relieve employers of their obligations by turning the compensation system into a payor of last resort. Board policy should be clear that all sources of income unless expressly required by legislation or regulation are excluded from any offset calculations.

Any source of income unrelated to actual earnings, subject to legislation or regulation, is not an opportunity to effectively benefit employers because of the life circumstances of some workers. It is not the Board's purpose to police the finances of injured workers on behalf of employers.

Benefits such as pension income, retirement savings (including CPP retirement and OAS), employer-sponsored disability plans, other collectively bargained benefits, and childcare or family support benefits must be explicitly excluded from any offset calculation, to avoid transforming the workers' compensation system into a mechanism for reallocating costs onto other social and employment programs.

In fact, if childcare, survivor, or family support benefits were to be offset, this would effectively mean that these workers would receive less compensation than single workers. It would be a violation of the Ontario Human Rights Code to discriminate against injured workers because of family status in this way.

Proposal 2: Clearly identify reporting obligations

Any policy regarding benefit offsets should clearly identify the limited circumstances that warrant reporting. The policy should outline the Board's obligation to provide injured workers with a clear explanation of exactly what sources of income must be reported (e.g. employment income, but not retirement or other government benefits) and in what circumstances (e.g. only if there is more than a 15% increase in employment income in one calendar year). One of the outcomes of Bill 105 that the Board must avoid is a continual insult to injured workers' dignity by making continual inquiries about income and finances. The policy should be clear that workers are entitled to privacy and are not meant to be on perpetual probation.

Proposal 3: Use workers' actual pre-injury earnings

Where there is an offset, the Board must avoid the punitive effect on workers with net average earnings lowered by s. 54 of the *Workplace Safety and Insurance Act, 1997*. Workers with net average earnings above the legislated maximum amount for average earnings do not effectively receive the same level of benefits compared with workers with lower incomes. If these injured workers are to have income offset, the Board should not exacerbate the problem by using the maximum average earnings contemplated by s. 54 of the *Workplace Safety and Insurance Act*,

1997 when calculating pre-injury earnings. The fair approach is to offset, when appropriate, using the worker's actual pre-injury earnings.

IV. LOE beyond age 65

Bill 105 was introduced in the context of injured workers' claims, and the Minister of Labour's acknowledgment, that the legislation discriminated against older injured workers. The legislation, policy, and practice related to benefits beyond age 65 must be substantive, and not merely a superficial attempt to address this unfairness. As written and without further direction, subsection 1.3 of Bill 105 leaves the WSIB with essentially unlimited discretion in deciding whether to pay LOE benefits beyond age 65. Any policy associated with this change must clearly identify what factors and evidence the WSIB will consider, to avoid unequal access to LOE benefits beyond age 65.

Proposal 1: Communicate benefit availability and criteria

If clear policy direction is not created, many injured workers will be placed in the impossible circumstance of having to prove that they would have kept working beyond age 65, without knowing how to do so. What evidence will be required? What evidence will be available to injured workers who may have been injured decades earlier or when very young? What evidence will be available to low-wage earners who did not have any expendable income to plan for retirement, and whose only financial option was to keep working as long as they could? Without clear policy direction, there will be uncertainty, the stress that comes with that uncertainty, and many appeals to resolve this uncertainty over countless claims.

As written, subsections 1.1 and 1.2 of Bill 105 suggest that an injured worker must request that the WSIB determine whether they were likely to work past age 65 (or 2 years after the date of the injury for workers injured after age 63) before the WSIB considers the issue. Without the proper policies and practices in place, many injured workers will inevitably miss out on the opportunity to receive LOE benefits beyond age 65, particularly non-unionized and unrepresented injured workers who struggle to navigate an already complex system. Therefore, the WSIB must implement policies which lead to injured workers automatically being actively advised (in plain language) of this benefit, what evidence or factors will be considered, and invite them to submit relevant information at the appropriate time.

Policy should include a provision that the deadlines set out in subsections 1.1 and 1.2 of Bill 105 shall be extended if an injured worker was not notified both in writing, and orally, of the provisions for LOE benefits beyond age 65, and the form for requesting that a determination be made.

Furthermore, as workers' compensation benefits have ended at age 65 since 1990, it will take many years before injured workers become broadly aware of the possibility of receiving LOE benefits beyond age 65. The WSIB should engage in a campaign to inform injured workers and the public of this change.

Proposal 2: Establish a rebuttable presumption for workers between ages 65 and 70

If Bill 105 is enacted as is, then WSIB can substantially avoid the evidentiary complexity, overwhelming increase in adjudication (and appeals), and unequal access to benefits by establishing a rebuttable presumption that an injured worker would have worked to age 70, or to 5 years after the date of the injury for workers injured after age 65.

Beyond age 70 (or 5 years after the date of injury for workers injured after age 65), the Board would make an individual determination, with no rebuttable presumption in place. As required by section 119, the decision must be based upon the merits and justice of the case, and if the evidence for or against the decision is approximately equal, the decision shall be resolved in the injured worker's favour.

Proposal 3: Outline clear assessment criteria

In determining whether an injured worker is likely to work beyond the established age, policy must provide guidance on what the WSIB should consider, including:

- The injured worker's financial circumstances. The WSIB should consider whether retirement is financially viable considering expenses and family obligations, affordability and cost of living, and whether the injured workers' is eligible for or in receipt of a pension.
- Situations in which a need to work longer is expected, for example:
 - an outstanding mortgage
 - financially supporting a child attending post-secondary education
 - financially supporting a family member with a disability
 - low-wage earners who would not be able to cover their basic expenses if they retired
- Employment patterns in the injured worker's field of work. This could include evidence specific to an industry or workplace regarding the impact of the economy, the impact of a workers' skill level or background, or that it is common in that industry or workplace to work past age 65/70.

In any event, clear, consistent, publicly available criteria must be applied uniformly across Ontario.

V. General fairness, transparency, and accountability

In addition to the above issue areas, the WSIB must ensure fairness, transparency, and accountability in its adoption of the changes proposed in Bill 105.

Proposal 1: Establish reporting requirements

The WSIB must conduct a mandatory independent review of the implementation of Bill 105 within three years of the Bill coming into force. The review must assess the impact of the changes on injured workers' claim outcomes and mental health, as well as system efficiency (including WSIB's Appeal Services and Workplace Safety and Insurance Tribunal caseloads and backlogs).

Regarding the post-age 65 LOE framework, the WSIB must publicly release annual data on how many injured workers were allowed to remain on benefits past age 65 and how many requests were received. It should also conduct an equity-impact assessment to evaluate the characteristics of the workers over age 65 who did or did not receive further benefits.

If the 72-month lock-in is removed, the WSIB must immediately publicly release comprehensive data pertaining to locked-in Schedule 1 and 2 workers, including:

- Actual amount of LOE benefits received by locked-in workers;
- Post lock-in labour market and employment outcomes; and
- Actuarial projections of long-term LOE obligations associated with locked-in claims.

Moving forward, the WSIB must provide annual public reporting that distinguishes between Schedule 1 and 2 employers regarding:

- The number of benefits reduced or terminated after “final” LOE decisions were re-visited (number of claims and total dollar amount);
- The number of claims where LOE was offset and sources of income leading to that offset;
- The number of resulting objections and appeals; and
- Relevant demographic information.

Proposal 2: Incorporate strong procedural protections

Strong procedural protections must be put in place when any reviews occur or decisions are made, including:

- Advance notice of any proposed reduction or termination, as well as age 65 LOE;
- Full disclosure of basis for the review or decision and evidence being relied upon; and
- Meaningful opportunity to respond before a decision is made.

VI. Summary

In summary, we are urging the WSIB to consult with the injured worker community – those who have the most to lose – on any policy changes the Board wants to implement if Bill 105 passes.

Financial considerations are not an issue and have no place in this analysis. The WSIB can afford to improve benefits and services to injured workers without risking its financial viability. There can be no surplus unless there is fair compensation.

It is imperative that the mental health of injured workers is factored into any new policies, particularly those related to removing the lock in. Indefinite/unexpected LOE reviews would be detrimental to the mental health and financial stability of injured workers. Injured workers need an end point to their LOE reviews and WSIB does not have the resources to regularly review LOE benefits in a fair and transparent manner.

Therefore, there needs to be a rebuttable presumption that no further LOE reviews are conducted once a Non-Economic Loss Award has been determined and Return-to-Work services are completed. The rebuttable presumption against LOE reviews should only be overcome in very limited circumstances, such as an actual return to work.

Income sources unrelated to actual employment income that are not explicitly prescribed by the government should not be offset. WSIB must clearly state any reporting obligations on injured workers, which should never include increases in employment income of 15% or more annually. Where there is an offset, the Board must use a worker’s actual pre-injury earnings rather than the maximum set out in s. 54 of the WSIA.

There should be a rebuttable presumption that an injured worker would have worked to age 70, or to 5 years after the date of the injury for workers injured after age 65. Beyond this, each case must be decided on the individual circumstances, with clear guidance on the criteria and evidence considered, for example an injured worker's financial circumstances and employment patterns in the injured worker's field of work.

The WSIB must ensure fairness, transparency, and accountability in its adoption of the changes proposed in Bill 105. To that end, it must conduct an independent review of the implementation of the Bill within three years of coming into force. Annual data must be released in the meanwhile so that the impact of the changes can be monitored.

We appreciate your time and thank you in advance for incorporating these recommendations as you draft new policies. We look forward to engaging in further consultation on WSIB's proposed policies.

Sincerely,

Lawyers, Paralegals, Community Legal Clinics, Unions, Injured Workers Groups and Worker Advocates Concerned with the Implementation of Bill 105

List of Endorsements Below