



# Temporary Employment Agencies Consultation – Phase 2

Stakeholder Submissions

October 12, 2022 to November 16, 2022

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November 15, 2022

**Consultation Secretariat**

Workplace Safety and Insurance Board  
200 Front Street West  
Toronto, Ontario M5V 3J1

Dear Consultation Secretariat,

We are grateful that our industry has your attention and that the WSIB recognizes there is a serious issue with the proposed rate framework for Temporary Employment Agencies (TEAs).

We were pleased to learn that the WSIB supports the approach presented by TEAs. We strongly support WSIB's recommendation of amending Ontario Regulation 175/98 to allow for a new classification code for the supply of clerical labour and knowledge-based roles under Class L. We are in support of this new code having the same premium rates as Class L (currently set at \$0.22), which is more consistent with the low-risk nature of these roles.

The initial framework would have resulted in catastrophic financial impacts to the TEA community. The framework was simply not aligned with the risk and claim cost of the low-risk nature of the supply of clerical labour.

**Recommendation on the Proposed Modifications**

**New Class Code**

In the wording for the proposed modifications, the WSIB suggests that the new code would be similar to the activities included in the pre-2020 Supply of Clerical Labour Operations classification unit. We noted that the WSIB correctly identified that there would have been significant rate increases for TEAs that supply clerical labour (including certain knowledge-based job roles). We are concerned with the word "certain" being included. We believe that all knowledge-based job roles should be included in the new classification code or that the WSIB needs to be very clear in their definitions of what would not qualify under the new classification code. "Certain" does not provide the level of clarity required. It's ambiguous. It will cause confusion and opens the door for misuse.

Our recommendation would be to use the combination of job title, job description, and the job location to determine the associated level of risk for the role. The WSIB would need to clearly state that job location is part of the equation in determining the associated hazards and risk of the role. As an example, it is essential for the TEA to distinguish between an IT contractor working in a manufacturing facility in their office space, and an IT Contractor that needs to work in the middle of a manufacturing floor in order to perform their contracted services. Working on a construction site, on a warehouse floor, on a manufacturing floor, or an agricultural site would be considered high risk job locations and would require the TEA to report their insurable earnings under the client's rate class. In addition, the

WSIBs audit criteria would need to be clear on the level of documentation required for every job order (Example: Job title, job description, job location, and possible risk hazards.)

### **TEA's Internal Staff**

It is still unclear from the WSIB's proposed modification how this will be applied to the TEA's internal staff. The positions are also clerical in nature, have a low risk profile, and were considered as such in the pre-2020 Supply of Clerical Labour Operations classification unit. Our recommendation to the WSIB is that the proposed modifications include these workers and they are also moved to Class L.

### **Transition Plan**

If the proposed modifications are approved by the Ontario Government, we recommend that the transitional plan for TEAs be based on the transition plan that was developed for non-TEAs. We are recommending that TEAs would generally increase a maximum of three risk bands per year towards their projected rate and would move directly to the projected rate if it was a decrease.

### **Experience Rating**

Originally, under the rate framework, TEAs were required to rebuild their experience. We recommend that TEA's experience from 2020 to 2023 be considered when transitioning to Class L. For those TEAs who have earned it, they deserve the recognition of a lower claim cost history.

### **Conclusions**

These proposed modifications are a step in the right direction. With further clarity, we think that the amended regulation will address the issues that we have been calling to the WSIB's attention since this framework was rolled out in the Fall of 2019.

Thank you for allowing us the opportunity to participate in this process.

Sincerely,

Kathryn Tremblay  
Co-Founder and CEO  
Altis Recruitment

Cindy Spence  
Chief Financial & Operating Officer  
Altis Recruitment

November 15, 2022

VIA E-MAIL

Consultation Secretariat  
Workplace Safety and Insurance Board  
200 Front St. West, 17th Floor  
Toronto, On  
M5V 3J1

Dear Consultation Secretariat

**RE: Submissions of the Association of Canadian Search, Employment & Staffing Services on the Proposed Rate Framework**

### **Introduction**

The Association of Canadian Search, Employment & Staffing Services (ACSESS) is the only association representing the staffing industry in Canada. ACSESS represents over 1000 staffing service offices across Canada. ACSESS members provide placement and executive search services, and temporary and contract staffing to the public sector and virtually every type of business.

The mission of ACSESS is to promote the advancement and growth of the employment, recruitment and staffing services industry in Canada. It also serves as Canada's only national advocate for ensuring professional ethics and standards in this industry. All member companies pledge annually to uphold the Association's Code of Ethics and Standards which promotes ethical treatment of employees and clients, and adherence to all applicable laws including human rights and occupational health and safety legislation.

ACSESS members have worked closely with OHS and Workers' Compensation boards across the country to improve worker safety and to reduce accidents. As you are aware, ACSESS has been actively involved with senior representatives of WSIB in shaping policy which improves the performance of the staffing industry as a whole.

ACSESS has made a number of submissions to the WSIB Rate Frame Reform Consultation and is now accepting the WSIB's invitation to respond to the proposed new system for clerical and knowledge workers employed by staffing agencies.

### **Comment on Proposed Rate Framework for Staffing Agencies**

ACSESS has carefully reviewed the proposed rate framework and is pleased to indicate that it fully supports the WSIB's proposal to amend O.Reg. 175/98 to allow for a new classification code for clerical and knowledge support workers. This new regulatory approach allows for the establishment of rates that reflect the actuarial risk associated with this type of work.

ACSESS fully supports the WSIB's robust audit and enforcement program that has been implemented to detect fraud. It will be critically important for the WSIB to monitor potential fraud arising out of these changes and to pursue prosecutions against employers that aren't following the law. ACSESS remains deeply committed to taking steps to fight against staffing agencies which don't respect the employment and workplace safety laws of Ontario and Canada.

### **Transition**

Many staffing agencies are paying premiums of \$0.13 under the system that is currently in place. These agencies will now be subject to a significant premium increase when they are moved to Class L and assigned a rate of \$0.22.

ACSESS supports the WSIB's proposal. However, as a matter of fundamental fairness, ACSESS submits that staffing agencies should be subject to the same transition policy that has applied previously to all other Schedule 1 employers. ACSESS supports limiting rate band adjustments to no more than three risk bands per year towards a particular employer's projected rate and a move directly to the projected rate if there is a decrease.

Specifically, staffing agencies that started supplying workers to new premium rate setting classes in 2021 are assigned 2022 rates, as are agencies that commenced operations in 2021. Staffing agencies that commenced assigning workers in 2020 are subject to 2020 class premium rates.

### **Staffing Agency's Own Internal Staff**

ACSESS notes that there is no reference to a staffing agency's own internal workers in the WSIB consultation materials. ACSESS recommends that these workers be subsumed into the proposed changes and assigned to Rate Class L. Obviously, staffing agency workers generally perform low risk clerical work and will fit squarely into the new system for low risk workers.

It will also be administratively easier for the WSIB to classify all clerical employees in the staffing industry in the same manner.

All of which is respectfully submitted.

Yours Very Truly,

Mary McIninch, B.A, LL.B (Membre du Barreau du Québec)  
Director of Government Relations/Directrice des Affaires Publiques  
Association of Canadian Search, Employment and Staffing Services  
Association Nationale des Entreprises en Recrutement et Placement de Personnel

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



Via email: [consultation\\_secretariat@wsib.on.ca](mailto:consultation_secretariat@wsib.on.ca)

November 10, 2022

Consultation Secretariat  
Workplace Safety & Insurance Board  
200 Front Street West  
Toronto ON M5V 3J1

Dear Consultation Secretariat:

**Re: Phase Two – WSIB Consultation of the proposed modification  
to the rate setting approach for TEAs**

The Board has commenced a Phase II consultation on “**Temporary Employment Agencies proposed rate setting modifications.**” The CEC appreciates the opportunity to participate in this consultation project. In the consultation paper under consideration, the Board advises:

**TEA industry perspective**

*The key concern raised by the TEA industry related to the potential for significant rate increases applied to their clerical labour* (including certain knowledge-based job roles, like IT professionals).

Under the pre-2020 classification system, that labour was generally classified under the Supply of Clerical Labour Operations classification unit, which was assigned a \$0.13 rate in 2019.

The rate setting approach for TEAs that the WSIB originally planned to introduce in 2020 was designed to generally align TEAs’ rates with the rates of their clients’ classes. *However, the implication of that approach for TEAs that supply clerical labour to higher risk classes is they could be subject to significant rate increases* (emphasis added).

The Board presents this commentary as the exclusive reason for the proposed change. What the Board does not mention is that increases in WSIB premiums for TEA supplied clerical labour has been a *planned and intended outcome* of WSIB rate framework (RF) policy since the inception of the RF project. This was the entire reason for the current approach in the first place.

The issue of TEA WSIB premium rates, and all of the ramifications therein, traces back more than a decade. In 2012, the Harry Arthurs **Funding Fairness** report broadly introduced this issue (at p. 114). A more elaborate narrative was set out in 2014’s **Pricing Fairness** (at pp. 20 – 21 and 24). By the early 2010s, it was generally accepted that the Board’s premium treatment of TEAs promoted undesirable business organizing and recruiting decisions.

This issue attracted legislative reform in 2013 through the introduction of **Bill 146, Stronger Workplaces for a Stronger Economy Act, 2013**, which died on the order paper on May 2, 2014 due to the calling of the 2014 election. The bill’s ideas were resurrected after the 2014 election in **Bill 18, An Act to amend various statutes with respect to employment and labour** on July 16, 2014, passing this time and securing Royal Assent on November 20, 2014. **Bill 18** amended the WSIA s. 83 and to this time, is the current rendering of that section. However, **Bill 18** (the current WSIA s. 83(4)), required regulations to render it operable. Section 83(4) regulations have never been tabled.



CEC presented this position in a response to 2013's *Bill 146, Stronger Workplaces for a Stronger Economy Act, 2013*:

**CEC strongly adheres to the principle that workplace safety and insurance costs should be the same for the same risk, an “apples-to-apples” or “level playing field” approach if you will.**

**All temporary labour should be assessed based on the risk of the client employer, ensuring principled premium assessment.**

We still adhere to this position.

Concurrently, the focus was recalibrated away from legislative reform and towards WSIB policy and regulatory reform. The RF project was maturing and ready for public consultation commencing in 2015. The Board addressed this issue in its 2015 public consultation document, “[Rate Framework Reform, Paper 3: The Proposed Preliminary Rate Framework,](#)” **March, 2015 (Paper #3)**. In **Paper #3**, at pages 21 – 22, the Board writes:

### **Summary of Current Approach**

TEAs are often classified differently from their client employers because their classification is based on their business activity, not the business activity of their client employers. As a result, the premium rates TEAs pay for their workers are lower, in some cases, than the premium rates client employers pay for their workers. This could create an incentive for client employers with relatively higher premium rates to use TEA workers, rather than hire their own workers, to reduce their premium costs (premium cost avoidance).

Additionally, the costs of a TEA worker's injuries are attributed to TEAs for experience rating purposes. It is conceivable that the client employers may use TEA workers to perform dangerous and/or unsafe work to avoid the experience rating consequences of injuries (claims cost avoidance).

These issues call into question the fairness of how TEAs are classified and experience rated by the WSIB. The WSIB would consider how to address these issues under the proposed preliminary Rate Framework.

### ***Proposed Preliminary Rate Framework***

#### **Premium Cost Avoidance**

The proposed preliminary Rate Framework recommends that TEAs and their client employers would need to be classified in the same class in order to mitigate the premium cost avoidance issue. If this occurs, their premium rates would be similar in many cases.

TEAs are expected to pass along their premium costs to client employers as part of their fee. If TEAs and client employers have similar premium rates, there would be minimal financial incentive for client employers to use TEA workers to avoid premium costs.

To allow TEAs and client employers to be classified in the same class:

- the WSIB would seek to amend Schedule 1 of O. Reg. 175/98 to indicate that supply of labour to a class (regardless of what activities are performed) is considered a business activity of that class; and
- TEAs would be allowed to have a separate premium rate linked to each class they supply.

We supported the WSIB RF solution first proposed in 2015, and which now represents current WSIB policy. Board policy effectively sets the TEA clerical labour premium rate at the same level as if the labour was hired directly by the client employer.

The Board now seeks to rewind that solution back to its pre-RF state. The Board's proposal would reignite the original policy dilemma that gave rise to the current policy in the first place.<sup>1</sup> We do not support the proposed approach as presented by the Board.

However, we advance a proposition that respects the Board's current goal while remaining true to the Board's original principled solution.

If it is the case, as the Board asserts, that higher premium rates for TEA clerical labour "*would be misaligned with the low-risk nature of those activities,*" then that is as true for client employers as it is for TEA employers. The insurance risk is the same. The risk does not change with the name of the employer.

The root issue is clearly driven by the rules linked with ancillary operations, first through the now repealed s. 6 of **O. Reg. 175/98** and now with Board policy **Document Number 14-01-01, Classification Structure**.

Rather than create an exception only for TEA clerical labour, the ancillary operations rules should be modified by striking "*administration related to an employer's operations including management, payroll, human resources, information technology, training and clerical services,*" from the ancillary labour list. Those functions, in a manner identical to the proposed approach for TEAs, would then be assigned the new classification code for clerical labour.

In this manner, the immediate objective is realized. TEA clerical labour premiums are set in a manner commensurate with the inherent insurance risk.

Significantly, and in the context of the policy debate active since at least 2015, this approach also resolves the originating policy concern – the potential motivational implications of differing rates for essentially the same labour.

In our view, this is the only manner in which the Board is able to fairly resolve the immediate concern while remaining true to the original challenge. It is therefore our immediate suggestion that the Board withdraw the current consultation document and reexamine the issue taking into account the points we have raised.

A revised policy consultation document should be drafted and released to a broad employer audience. This document should include suggested revisions to Board policy and **O. Reg. 175/98**. We would be pleased to present specific advice on the consultation method, however the general approach deployed during the rate framework consultation exercise should be adopted. The process should include the development and release of the aforementioned consultation document to a broad employer audience, a public consultation meeting (in-person or hybrid) followed by a report on the consultations and a final WSIB proposal.

As always, we are happy to engage in a meeting to address these issues at your convenience. Please reach out to me directly at [pariser@rescon.com](mailto:pariser@rescon.com)

Sincerely,

  
**Andrew Pariser, CEC Chair**

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<sup>1</sup> We ask that the Board consider the historical and contextual analysis set out in the November 4, 2022 submission [presented by L.A. Liversidge, LL.B.](#) The CEC supports and adopts this analysis and the positions set out therein.

**FINK & BORNSTEIN PROFESSIONAL CORPORATION**

Barristers & Solicitors

Richard A. Fink B.A., LL.B, L.L.M.\*

Alan G. McConnell B.A. (Hons.), M.A., LL.B.\*\* Josh Kirshenblat B.A. (Hons.), J.D.\*\*

**466 Dupont Street, Toronto Ontario M5R 1W6**

**Tel: 416-537-0108 Fax: 416-537-1604**

October 19, 2022

**VIA EMAIL**

Jeffery Lang  
President  
Workplace Safety & Insurance Board  
200 Front Street West  
Toronto, Ontario  
M5V 3J1

Dear Mr. Lang:

**RE: WSIB Temporary Employment Agency (TEA) Consultation Launch**

As an employer and worker advocate in WSIB matters, we support putting employment agencies under the same heading as the industry they provide workers too. Employers are using the temporary agencies as the workforce of the agency comes at a cheaper price, because they pay lower assessment rates.

From a worker's perspective there is no meaningful work to return to, in a return to work plan after an injury, because the employment agency has limited employment options. From the employer's perspective, they are induced to take on workers with less training and skills, in order to compete with their corporate competitors. This situation makes my clients more vulnerable to failures to comply with the Ontario Occupational Health and Safety Rules.

Yours very truly,

**FINK & BORNSTEIN  
PROFESSIONAL CORPORATION per:**

*Pamela Hughes-Ford per:*

Richard A. Fink

RAF/phf

cc. Doug Ford (via email to: [premier@ontario.ca](mailto:premier@ontario.ca))

cc. WSIB Secretariat (via email to: [consultation\\_secretariat@wsib.on.ca](mailto:consultation_secretariat@wsib.on.ca))

cc. Steve Mantis (via email to: [smantis@tbaytel.net](mailto:smantis@tbaytel.net))

cc. John McKinnon (via email to: [john.mckinnon@iwc.clcj.ca](mailto:john.mckinnon@iwc.clcj.ca))

\* Recognized as a certified specialist by the Law Society of Ontario in the area of Workplace Safety & Insurance

\*\* Practicing in Association

November 10, 2022

VIA E-MAIL

Consultation Secretariat  
Workplace Safety and Insurance Board  
200 Front St. West, 17th Floor  
Toronto, On  
M5V 3J1

Dear Consultation Secretariat,

**RE: Submission of Hays Specialist Recruitment (Canada) Inc. on the “Temporary Employment Agencies proposed rate setting modifications”**

My name is Travis O’Rourke, and I am the President of Hays Specialist Recruitment (Canada) Inc. (“Hays Canada”), a subsidiary of Hays plc. I previously provided a submission in response to the consultations by the Workplace Safety and Insurance Board (“WSIB”) on rate setting for temporary employment agencies (“TEAs”). This letter serves as a related response on the TEAs proposed rate setting modifications published on October 12, 2022 (the “modifications”).

We want to thank WSIB for the continued attention to this topic and the associated affect the proposed changes would have on our industry. We have reviewed the modifications and appreciate the efforts that have been made to take into account the concerns Hays Canada and other TEAs specifically with respect to the unfair consequence of increased premiums on TEAs.

**Increasing Premiums on January 1, 2023**

WSIB has continually stated that in 2023 TEAs premium rates will be set using the same approach as all other businesses as they were in 2022. Hays Canada takes the position that such an increase with absolutely no proven increase in associated risk is unreasonable and will result in even further decrease to the small profit margins most TEAs currently earn. As stated in my earlier related submission, many of our multi-year contracts do not include the ability for Hays Canada to price-in risk or adjust premium increases mid contract. Therefore, any year over year increase in premiums may make the difference between a profitable and unprofitable contract. In turn, this affects the income of our internal employees responsible for placing these workers in these contracts and may result in less assignment workers placed with end clients.

In more general terms, Hays Canada is concerned about the possible negative impact that continued premium increases may have for the province of Ontario. Specifically, the increased reliance on remote work now means that Ontario based employers are not limited to hiring workers who are local to the business. If the cost of hiring Ontario based workers continues to rise above the cost of those located in other provinces or countries, many Ontario employers may look to hire outside of the province to save on cost. Therefore, any avoidable cost that does not need to be borne by employers in Ontario, such as an increase to WSIB premiums with no actual



association to an increased risk, should be actively avoided. In turn, this will continue to promote investment in Ontario by keeping workers local and alleviate any risk to industry within the province.

Again, it cannot be understated that an increase to the premiums is in no way related to an increase of risk. Many of these workers will be performing the same activities for the same end client on January 1, 2023 as they did on December 31, 2022. Therefore, as there is no increase to the risk profile of these workers, there is no clear reason on why the premiums must increase. Any increase of the premiums will result in adverse effects for our business, our employees and our workers. In short, increasing the premiums on January 1, 2023 will further deter the goal of TEAs to maintain competition, conduct productive and fair businesses, keep workers working, and keep everyone safe and protected in a way that is relative the activities they are performing.

### **Low Risk Clerical and Knowledge Worker Category**

Hays Canada agrees with the modifications proposed by WSIB to create a new classification code for the supply of clerical labour that would be added to Class L. This new classification will better align our rates with those rates of our clients that is proportional to the low-risk nature of these positions. Further, if this new code is aligned with the pre-2020 rate assignment (\$0.22), TEAs will be competing on a fairer basis when up against consulting and others for the placement of employees. Additionally, this aligns Ontario with many other jurisdictions, such as those in the United States, where a specific definition of low-risk employees is used.

While agreeing to this modification, Hays Canada also proposes that the previous WSIB transition regime would apply. This would limit rate band adjustments to no more than three for any given year. This safeguards TEAs by allowing them to plan for multi-year contracts with predictable and minimal increases. Practically this would mean that TEAs that opened in 2021 or that began supplying workers in 2021 and were therefore subject to those rate setting classes are assigned 2022 rates. Any TEAs that assigned workers in 2020 are continued to be assigned 2020 rates.

As the modifications state that an amendment to Ontario Regulation 175/98 would be required to allow the exception to be implemented, Hays Canada supports a continuation of the moratorium on rate increases until the new category is available. This would demonstrate to TEAs the commitment of WSIB to push the new category forward and provide some financial safeguards until the amendment is concluded.

Thank you for your attention to this submission.

Sincerely,

*Travis O'Rourke*

Travis O'Rourke

President, Hays Specialist Recruitment (Canada) Inc.

November 16, 2022

WSIB Consultation Secretariat  
200 Front Street West  
Toronto, Ontario  
M5V 3J1

Sent by email to: [consultation\\_secretariat@wsib.on.ca](mailto:consultation_secretariat@wsib.on.ca)

Dear Consultation Staff,

Re: Temporary Employment Agency Rate Setting Consultation

Injured Workers Community Legal Clinic is a legal aid clinic with a province-wide mandate. We have specialized in the area of workers' compensation since 1969. As a legal aid clinic, our services are provided without charge to people with little or no income. In addition to legal advice and representation, our mandate includes community development, public legal education and participation in law and policy reform.

Thank you for the opportunity to comment on the proposed policy. We support the WSIB's approach to align Temporary Employment Agency (TEA) rates with the rates of their clients' classes. However, it is our position that the proposed modification to create an exception for "clerical labour" is not appropriate.

In our previous submission, we cited the research showing how the growth of TEAs has negatively reconfigured labour markets. Employers are motivated to use TEAs to provide their workforce because of reduced wages and WSIB rates. TEA workers perform the most dangerous work for low wages and no benefits with few protections. Furthermore, research shows how TEA workers are at greater risk of occupational disease and accidents compared to permanent workers, due to less training, little familiarity with the workplace and the propensity for their exposure to more dangerous working conditions. In short, employers outsource workplace injury risk to TEAs.<sup>1</sup> Other employers are compelled to take on TEA workers to keep up with their competition. The TEA industry is producing a 'race to the bottom' for working conditions and wages. The first purpose of the Workplace

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<sup>1</sup> MacEachen, Ellen, et al, "Workers' Compensation experience-rating rules and the danger to workers' safety in the temporary work agency sector". Policy and Practice in Health and Safety. Page 77-79.

Safety and Insurance Act stated in section 1 is to promote health and safety in workplaces. Given the documented impact of the TEA industry this is not a class of employers that merits consideration for special policies to sustain artificially low WSIB rates.

The WSIB's proposed exemption is an invitation for "clerical work" to become the Trojan Horse of TEAs, supplying most labour under the blanket category of "clerical". There are no steps proposed for the WSIB to confirm that the workers are actually performing clerical work, nor are there proposed consequences for a TEA or a client where the TEA supplies "clerical labour" to a client that uses the workers in non-clerical work. These are for profit companies that will naturally take these opportunities to minimize costs and maximize profits. In short, this proposal lacks an audit and enforcement mechanism and establishes financial incentives for TEAs and their client employers to characterize work as clerical.

According to the Ontario government, there were 2,257 TEAs provincially operating in 2021, employing well over 100,000 full-time workers. This is a significant number of workers. Meanwhile, due to a lack of resources, the WSIB is only able to complete a few hundred annual audits of all workplaces in the province. We applaud the excellent work of the Compliance Department at the WSIB. However, even if there were audit and enforcement mechanisms in the policy, the Department, it does not have the resources to adequately review and enforce this new proposal for "clerical workers" to ensure that TEAs and their clients are providing accurate information to the Board.

In closing, we strongly urge the Board to align TEA rates with the rates of their clients' classes, with no exceptions for "clerical work." There is no reason to defer this issue further.

Thank you for considering our submission.

Sincerely,  
INJURED WORKERS COMMUNITY LEGAL CLINIC  
per:

A handwritten signature in blue ink that reads "John McKinnon". The signature is fluid and cursive, with the first name "John" being larger and more prominent than the last name "McKinnon".

John McKinnon  
Executive Director  
[john.mckinnon@iwc.clcj.ca](mailto:john.mckinnon@iwc.clcj.ca)



360 Bay Street Suite 1010 Toronto ON M5H 2V6 CANADA  
T. 416 603 6518 <http://www.intercastglobal.com/>

Consultations Secretariat  
Workplace Safety Insurance Board  
200 Front St West  
Toronto, ON, M5V 3J1

**Re: Feedback to WSIB TEA Consultation and New WSIB category for IT professionals**

Intercast is a Canadian based, global leader in providing Cybersecurity and Risk Management contingent workforce to multinational organisations in Financial Services, Retail, Education and the Public Sector.

All of our consultants work remotely 99% of the time and take on very little risk of injury in the workplace. Their main role is to create policies that safeguard the data of the institutions that are Intercast clients.

Increasing the premiums will have a negative impact on everyone; The consultant, The client and Intercast- as a small business that pays taxes in Canada.

WSIB increases will put less dollars in the workers pocket, which puts more pressure on the individual (in an inflationary environment this is compounded).

WSIB increases will force the talent to take international contracts and contribute to a brain drain of cyber security in Ontario. Which will result in more Canadian cyber attacks and data breaches.

WSIB increases will force Intercast to invest in doing business *outside of Ontario* resulting in local economic loss and more importantly a loss of an in-demand service (cyber security staffing).





We endorse the plan to create a low-risk clerical and knowledge worker category. And we would like to request a continuation of the moratorium on rate increases until this new category is available.

Regards,

*David Machlis*

David Machlis,  
Managing Director  
Intercast Staffing Ltd.

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**WSIB Consultation**  
**Temporary Employment Agencies**  
*Proposed Rate Setting Modifications*

**This is a giant step backwards.**  
**There is a fairer road forward.**

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*Presented to:*  
**WSIB Policy and Consultative Services**

**November 4, 2022**

**WSIB Consultation**  
**Temporary Employment Agencies**  
***Proposed Rate Setting Modifications***

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**A. Opening Commentary**

1. The Board completed a preliminary consultation mid-year (Phase I), and has now commenced Phase II on “[Temporary Employment Agencies proposed rate setting modifications](#).” I thank you for the opportunity to participate in the Phase II consultation project.

2. In the consultation paper under consideration, the Board advises:

**TEA industry perspective**

*The key concern raised by the TEA industry related to the potential for significant rate increases applied to their clerical labour* (including certain knowledge-based job roles, like IT professionals).

Under the pre-2020 classification system, that labour was generally classified under the Supply of Clerical Labour Operations classification unit, which was assigned a \$0.13 rate in 2019.

The rate setting approach for TEAs that the WSIB originally planned to introduce in 2020 was designed to generally align TEAs’ rates with the rates of their clients’ classes. *However, the implication of that approach for TEAs that supply clerical labour to higher risk classes is they could be subject to significant rate increases* (emphasis added).

3. The Board presents this commentary as the exclusive reason for the proposed change.

4. Respectfully, this is a remarkable and puzzling U-turn.

5. Absent is any acknowledgement that increases in WSIB premiums for TEA supplied clerical labour has been a *planned and intended outcome* of WSIB rate framework (RF) policy since the inception of the RF project from at least 2015.

6. Also absent from the consultation paper is an outline of the principled policy objectives driving the current approach, let alone the elaborate history of the legislative, regulatory and policy reform journey traveled over many years to implement those objectives.

7. Other than increased premiums for TEAs supplying clerical labour, which as noted was not only the expected but desired policy goal, the Board has offered no principled hypothesis for the proposed approach.

8. While at first blush the casual observer may conclude that assessing clerical labour with a premium reflecting the insurance risk of clerical labour only makes sense, the intricacies of the WSIB premium setting process requires a more complex analysis.

9. I posit that the overriding policy objective is not, and ought not to be, exclusively the insurance interests of TEAs, but rather, the insurance interests of *all* employers.
10. The proposed approach will defeat a longstanding equitable policy objective and in a relative sense, result in the over-charging of non-TEA clerical labour. In so doing, this will undermine a long-sought social policy objective of promoting safe and secure full-time employment in Ontario.
11. In this paper I will provide the policy context and founding principles against which the proposed approach must be assessed.
12. While I did not respond to the Phase I consultation, I have engaged on this issue in the early days of the broader rate framework consultations 2013 – 2016, and was engaged in the legislative and regulatory reforms from 2013’s **Bill 146**, 2014’s **Bill 18**, and **O. Reg. 470/16** which amended **O. Reg. 175/98** into its current form (with respect to the classification of and premiums for TEAs).
13. I will conclude this paper with an assertion that the proposed changes offend the foundational organizational principles behind RF. I will argue that if they proceed, the employer classification and premium scheme is needlessly and improperly thrown out-of-plumb, all the while defeating important policy goals.
14. However, I will present a curative remedy, consistent with the originating organizing thesis, based on sound principle that will achieve the result set out in the proposed approach, and maintain system integrity.

**B. Historical Context – *Why the Board developed the current approach - there was a principled reason***

1. There were two primary inter-related policy reasons for the Board’s current policy choice.
2. One was to avoid a “*duck and cover*” approach by farming out risky employment to TEAs. This problem was addressed at some length in a series of articles appearing in the Toronto Star commencing in 2017.<sup>1</sup> However, this was not a new policy worry in 2017. In 2012, **Funding Fairness**<sup>2</sup> broadly introduced this issue (at p. 114), with a more elaborate narrative set out in 2014’s **Pricing Fairness**<sup>3</sup> (at pp. 20 – 21 and 24). By the early 2010s, it was generally accepted that the Board’s premium treatment of TEAs promoted undesirable business organizing and recruiting decisions.

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<sup>1</sup> See for example the Toronto Star article published under the banner, “**Undercover in Temp Nation**,” Toronto Star, September 8, 2017, <https://projects.thestar.com/temp-employment-agencies/>, last accessed October 30, 2022. The Star has published a series of several dozen related articles since.

<sup>2</sup> Harry Arthurs, *Funding Fairness: A Report on Ontario’s Workplace Safety and Insurance System* (Ontario: Queens Printer for Ontario, 2012)

<sup>3</sup> Douglas Stanley, *Pricing Fairness: A Deliverable Framework for Fairly Allocating WSIB Insurance Costs*, February 2014.

3. This concern sparked legislative and regulatory reform commencing in 2013 with the introduction of [Bill 146, Stronger Workplaces for a Stronger Economy Act](#) on December 4, 2013. An omnibus bill, in the context of TEAs and WSIB premium reporting, **Bill 146** proposed to shift the cost accountability of an accident from the record of the TEA to the record of the client employer:

2. Section 83 of the Act is amended by adding the following subsections:

**Temporary help agency worker**

(4) For the purposes of this section and despite section 72, if a temporary help agency lends or hires out the services of a worker to another employer who participates in a program established under subsection (1), and the worker sustains an injury while performing work for the other employer, the Board shall,

(a) deem the total wages that are paid in the current year to the worker by the temporary help agency for work performed for the other employer to be paid by the other employer;

(b) attribute the injury and the accident costs arising from the injury to the other employer; and

(c) increase or decrease the amount of the other employer's premiums based upon the frequency of work injuries or the accident costs or both.

4. While I supported the general aim of **Bill 146**, I strongly opposed the **Bill 146** methodology, explaining that the bill would actually benefit TEAs with no or little impact for the client employer (see [The Liversidge e-Letter, December 20, 2013](#), pp. 3-5). **Bill 146** would inadvertently usurp the very goals it was chasing. It was a mess.
5. **Bill 146** moved slowly for second reading on February 19, 2014 with the 2<sup>nd</sup> reading debate continuing on April 16, 2014. The House rose on May 2, 2014 for the June 12, 2014 election campaign and **Bill 146** died on the order paper.
6. The bill's ideas though were quickly resurrected after the 2014 election in [Bill 18, An Act to amend various statutes with respect to employment and labour](#)," on July 16, 2014 passing this time and securing Royal Assent on November 20, 2014. **Bill 18** amended the WSIA s. 83 and to this time, is the current rendering of that section.

**Experience and merit rating programs**

**83** (1) The Board may establish experience and merit rating programs to encourage employers to reduce injuries and occupational diseases and to encourage workers' return to work.

**Same**

(2) The Board may establish the method for determining the frequency of work injuries and accident costs of an employer.

**Same**

(3) The Board shall increase or decrease the amount of an employer's premiums based upon the frequency of work injuries or the accident costs or both. 1997, c. 16, Sched. A, s. 83.

**Regulations re temporary help workers**

(4) The Lieutenant Governor in Council may make regulations,

(a) defining a temporary help agency for the purposes of this section;

(b) requiring that, despite section 72, if a temporary help agency lends or hires out the services of a worker to another employer who participates in a program established under subsection (1) and the worker sustains an injury while performing work for the other employer, the Board,

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**Proposed WSIB Rate Setting Modifications for TEAs**

- (i) deem the total wages that are paid in the current year to the worker by the temporary help agency for work performed for the other employer to be paid by the other employer,
  - (ii) attribute the injury and the accident costs arising from the injury to the other employer,
  - (iii) increase or decrease the amount of the other employer's premiums based upon the frequency of work injuries or the accident costs or both, and
7. There was, however, one marked difference between **Bill 18** and **Bill 146**. **Bill 18** (the current WSIA s. 83(4)) required regulations to make it operable. No s. 83(4) regulations have ever been proclaimed turning this reform into a rather toothless tiger.
8. Interestingly, on March 8, 2018, just before the June 2018 election, the (then) Minister of Labour advised the Toronto Star that with respect to the latent s. 83(4), the “*government will proclaim legislation written three years ago but never enacted.*”<sup>4</sup> The regulation didn't materialize. The election occurred. A new government was in power.
9. Since its enactment the now anachronistic WSIA s. 83(4) has been flapping in the proverbial wind, and is likely to so continue until one day removed in a future WSIA housekeeping amendment.
10. Statutory reform though was not the only game in town.
11. The extensive WSIB **RF** project commenced after the release of the 2012 **Funding Fairness** report. Following significant design development, the RF project was maturing by 2015 and ready for a full public debate. The premium treatment of TEAs was an integral part of that debate.
12. Before introducing the Board's 2015 RF proposals, it is necessary to discuss the concept of “ancillary operations.” The premium treatment of “ancillary operations” is a core element to the question of fair premium rates for TEAs and other employers.
13. Up to December 31, 2019 “ancillary operations” rules were set out in **O. Reg. 175/98**, s. 6 (the relevant portions are excerpted below; follow the link for [O. Reg. 175/98 as it was up to December 31, 2019](#)):
- 6. (1) For the purposes of calculating an employer's premiums, an operation of the employer that is ancillary to a business activity of the employer shall be deemed to be part of that business activity. O. Reg. 175/98, s. 6 (1).
  - (3) An operation is ancillary to a business activity if it supports or is incidental to the business activity and it falls within any one of the following paragraphs:
    - 11. **Administration related to the employer's operations.**

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<sup>4</sup> March 8, 2018 Toronto Star, “*New law to make employers accountable for temp worker injuries,*” <https://www.thestar.com/news/gta/2018/03/08/new-law-to-make-employers-accountable-for-temp-worker-injuries.html>, last accessed October 31, 2022.

14. As a result, for every Schedule 1 employer, the premium rate for clerical labour was set at exactly the same premium rate the company paid overall for all of its workers.
15. Consider these examples for 2015:<sup>5</sup>
- a. Company A is in the home building business and is assessed under WSIB Rate Group (RG) 764 Homebuilding, attracting a premium rate of \$9.10/\$100 of payroll. Company A employs 20 clerical staff (accounting/clerical etc.) at an average salary of \$75,000 each, for an aggregate administration salary of \$1,500,000. As a result of **O. Reg. 175/98**, s. 6, Company A must submit \$136,500 in WSIB premiums for the administrative staff.
  - b. TEA Company Z provides temporary administrative /clerical labour. If TEA Company Z were to supply Company A with \$1,500,000 in administrative/clerical labour, TEA Company Z would be assessed very differently. TEA Company Z would be assessed under RG 956, attracting a premium rate of \$0.21/\$100 of payroll. TEA Company Z would contribute \$3,150 or \$133,350 less for the same labour, doing the same work, with that labour still working on the premises of Company A.
16. The Board addressed the potential implications of this result front-on in its public consultation document, "[Rate Framework Reform, Paper 3: The Proposed Preliminary Rate Framework,](#) **March, 2015 (Paper #3)**. In **Paper #3**, at pages 21 – 22, the Board writes (highlight added):

**Summary of Current Approach**

TEAs are often classified differently from their client employers because their classification is based on their business activity, not the business activity of their client employers. As a result, the premium rates TEAs pay for their workers are lower, in some cases, than the premium rates client employers pay for their workers. This could create an incentive for client employers with relatively higher premium rates to use TEA workers, rather than hire their own workers, to reduce their premium costs (premium cost avoidance).

Additionally, the costs of a TEA worker's injuries are attributed to TEAs for experience rating purposes. It is conceivable that the client employers may use TEA workers to perform dangerous and/or unsafe work to avoid the experience rating consequences of injuries (claims cost avoidance).

These issues call into question the fairness of how TEAs are classified and experience rated by the WSIB. The WSIB would consider how to address these issues under the proposed preliminary Rate Framework.

***Proposed Preliminary Rate Framework***

**Premium Cost Avoidance**

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<sup>5</sup> 2015 is chosen as it is the year the WSIB published public consultation documents on Rate Framework, particularly **Paper 3: The Proposed Preliminary Rate Framework**, which will be discussed later.

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**Proposed WSIB Rate Setting Modifications for TEAs**

The proposed preliminary Rate Framework recommends that TEAs and their client employers would need to be classified in the same class in order to mitigate the premium cost avoidance issue. If this occurs, their premium rates would be similar in many cases.

TEAs are expected to pass along their premium costs to client employers as part of their fee. If TEAs and client employers have similar premium rates, there would be minimal financial incentive for client employers to use TEA workers to avoid premium costs.

To allow TEAs and client employers to be classified in the same class:

- the WSIB would seek to amend Schedule 1 of O. Reg. 175/98 to indicate that supply of labour to a class (regardless of what activities are performed) is considered a business activity of that class; and
- TEAs would be allowed to have a separate premium rate linked to each class they supply.

17. In ironic unintended support of the Board’s policy worry, at least one TEA through its website has actively promoted the very behaviours the Board has attempted to curtail, suggesting that hiring through a TEA reduces the client employer’s WSIB costs, going so far as to suggest TEA employees should not be hired permanently or risk increasing WSIB premiums.<sup>6</sup>

18. During the WSIB 2015 consultation, many employer associations expressed support for the Board’s then proposed approach. It is noteworthy that these associations would represent at the very least potential buyers of TEA services. The WSIB has [posted the submissions on its website](#). These included but would not be limited to:

Ontario Trucking Association (“*OTA supports the proposal . . .*”, submission page 4)

Cement Finishing Labour Relations Association (“*All temporary labour should be assessed based on the risk of the client employer, ensuring principled premium assessment,*” submission page 19)

Group of power supply companies (Hydro 1, OPG *et al*) (“*The Group does support the proposed direction of incorporating increased rates by the TEAs. . .*”, submission page 4)

Greater Toronto Hotel Association (“*The Associations support this recommendation,*” submission page 16)

Ontario Restaurant Hotel & Motel Association (“*The Associations support this recommendation,*” submission page 16)

Construction Employers’ Council and the Mechanical Contractors Association of Ontario.

19. The approach set out in **Paper #3** became the approved policy position of the WSIB and is the “current approach.” The Board proceeded to amend **O. Reg. 175/98** (several times as will be seen), develop and enact policies over the course of several years, and proceeded with the system design introduced in 2015’s **Paper #3**.

20. It can only be concluded that the Board was convinced of the rectitude of its policy position and put in motion extensive administrative effort and resources to implement that position.

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<sup>6</sup> See “**A hiring strategy that actually reduces your WSIB premiums and NEER surcharge risk,**” <https://www.pivotalolutions.com/hiring-strategy-that-actually-reduces-your-wsib-premiums-and-neer-surcharge-risk/>, last accessed October 31, 2022.



21. [O. Reg. 470/16](#) (filed December 16, 2016), deleted s. 6 of [O. Reg. 175/98](#) effective January 1, 2019 (later adjusted to be deleted January 1, 2020 as per [O. Reg. 349/17](#), filed August 31, 2017), to coincide with the commencement of the new RF classification and employer premium pricing model.
22. While removed from [O. Reg. 175/98](#), the ancillary rules survived essentially intact but in the form of WSIB operational policy, specifically, "[Operational Policy, The Classification Structure, Document Number 14-01-01, Section: Ancillary operations.](#)"

**Ancillary operations**

The WSIB will not separately classify the employer's operations that are ancillary, i.e., incidental to the employer's business activity.

Activities that are incidental to an employer's business activity and are therefore not a business activity in their own right include:

- administration related to an employer's operations including management, payroll, human resources, information technology, training and clerical services

23. This immense amount of administrative effort to officially pave the way forward for the current approach, establishes the depth and breadth of the Board's fidelity to this approach.

**C. Why is the Board proposing a change?**

1. The only reason offered in the consultation document is TEAs' concerns over increased premiums. From the Board's document:

The WSIB continues to support the objective of generally aligning TEAs' rates with the rates of their clients' classes. However, significant rate increases for TEAs that supply clerical labour (including certain knowledge-based job roles) would be misaligned with the low-risk nature of those activities. As a result, it is reasonable to introduce an exception for clerical labour.

2. As already introduced, unexplained is that today's proposed policy "remedy" was yesterday's policy "dilemma."
3. The Board has not explained why TEAs should experience a lower rate than the client employer rate for the exact same labour. No principled policy focused argument has been offered. The reverse has been well-argued by the Board itself for years.
4. A review of the June 2022 [Phase I consultation submissions](#) shows that essentially TEAs lamented the higher premiums and unions, injured workers and community legal clinics cried foul that the Board was even reviewing this policy. The United Steelworkers District 6 (starting at page 41) said it best and quite succinctly (at United Steelworkers submission page 2, bundle page 43):

The consultation document also stipulates that the rate setting approach introduced in 2020 was designed to rectify that very issue. No reason has been provided for not having this rate framework

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**Proposed WSIB Rate Setting Modifications for TEAs**

implemented other than TEAs don't like it, which quite frankly isn't sufficient to ignore the regulations as there is no reason that justify such an action.

5. I tend to agree.

**D. A conundrum returns to WSIB premium pricing**

1. The current approach remedied the “cheap apples versus expensive apples” problem reflected in the example set out at para. B-15. All of the apples were made “expensive apples.”

2. The proposed approach reignites the original policy dilemma. The conundrum returns. The proposed approach is incongruous to the triggering quandary described by the Board in 2015.

3. If it is the case as the Board asserts that higher premium rates “*would be misaligned with the low-risk nature of those activities,*” then that is as true for client employers as it is for TEA employers. The insurance risk associated with clerical labour is the same for client employers as it is for TEA employers. The risk does not change with the name of the employer.

4. The root issue is clearly driven by the rules linked with ancillary operations, first through s. 6 of **O. Reg. 175/98** and then with Board policy **Document Number 14-01-01, Classification Structure**.

5. The Board initially sought to price all apples the same, and achieved that by increasing the price of the TEA apples. However, if the TEA apples are too expensive as the Board now attests, the only principled policy remedy is to lower the price of all apples to the same low price, i.e., the actual inherent insurance risk for the provision of clerical labour.

6. Rather than create an exception only for TEA clerical labour, the ancillary operations rules should be modified by striking “*administration related to an employer's operations including management, payroll, human resources, information technology, training and clerical services,*” from the ancillary labour list. Those functions, in a manner identical to the proposed approach for TEAs, would then be assigned the new classification code for clerical labour.

7. In this manner, the immediate objective is realized. TEA clerical labour premiums are set in a manner commensurate with the inherent insurance risk.

8. Significantly, and in the context of the policy debate since 2012, this approach also resolves the originating policy concern – the potential motivational implications of differing rates for essentially the same labour (low TEA clerical premium rates versus higher client employer clerical premium rates).

9. This is the only manner in which the Board is able to fairly resolve the immediate concern while remaining true to the original challenge.

**E. The consultation document reintroduces an ongoing problem – the scarcity of research backed policy proposals**

1. In his 2012 report, **Funding Fairness**, Dr. Arthurs presents some insightful and helpful closing commentary in **Chapter 10, “Reflections on the Review”** (at pp. 115-116). I excerpt some of his comments:

In the future, it (WSIB) will have to deal with issues that have not yet appeared on its agenda, with criticisms from stakeholders and others that it has not yet had to respond to, and with challenges to existing concepts, processes and structures that will often require fundamental changes in the way it thinks about things. In this final chapter of my report, I briefly reflect on what the WSIB might learn from the experience of the Funding Review that might better prepare it to deal with issues of comparable importance in the future.

. . . . .

. . . I have come to suspect that the inability of the WSIB to answer my questions means that it has not been asking similar questions of itself. And if it has not been asking such questions, it has not been giving adequate attention to important issues that all institutions ought to be concerned about: are our policies producing the intended results? Are those policies based on sound assumptions? are those assumptions likely to change? Can the same results be achieved more humanely or efficiently by different means? If, indeed, it has not been regularly asking and answering such questions, the WSIB would not be unique. Many public agencies — especially those with heavy caseloads — find themselves in a similar position. In part this is because, if resources are chronically inadequate (as they are), spending money on research seems self-indulgent. In part it is because such organizations have a natural tendency to fixate on the mechanics of service delivery rather than on renewing their systemic architecture. *But in part it is because consequential decisions at the WSIB often appear to be taken (or not taken) in response to external criticism and internal crises, real or imagined, rather than in response to well-informed, long-term analysis* (emphasis added).

. . . . .

*The WSIB must be, and must be seen to be, proactive rather than reactive.*

2. I will not repeat an outline of my critiques. They are embedded throughout this report. However, the arguments against the Board’s current approach to TEA premium setting have persisted since at least 2015. The arguments for the current approach have been on-the-record long before that.
3. RF implementation, for a host of reasons, was delayed. Unquestionably, the Board had before it a luxurious amount of time to develop, assess and table in-depth analysis to prove its basic theses. Yet, it didn’t. In response to a new wave of old criticisms, the Board retreated a long-established protocol. *Why?* The policy was simply about to deliver what was intended.
4. One of three things has possibly happened.
  - a. *One*, the Board concluded that this major plank of RF design was simply wrong, and thus was wrong from the get-go. Since the Board had more than ample opportunity to review, revisit, adjust or retrench from this policy, this is an unlikely explanation. Moreover, at several junctures, over many years, and as most recently as 2021, the Board initiated numerous regulatory and/or policy changes to promote this policy. This is not a likely explanation.

**L. A. Liversidge, LL.B.**  
**Barrister & Solicitor, Professional Corporation**

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**Proposed WSIB Rate Setting Modifications for TEAs**

- b. *Two*, a new compelling argument or new compelling evidence was presented to call the original policy into question. No such evidence has been disclosed. No new arguments have been presented. It was not only known and expected that clerical TEA premiums would rise, *this was the intended outcome of the policy!* That this was about to come to fruition was not a surprise. It was desired. This is not a likely explanation.
  
- c. *Three*, with increased premiums on a more immediate horizon, old arguments of rate hikes were repackaged and wrapped in a greater urgency, energizing a renewed lobbying effort. The consultation document reports that the TEA industry's core concern is with increasing rates, the expected and desired result since 2015. This is a plausible explanation but runs counter to my direct and personal experience with the Board's principled response to lobbying efforts.
  
- 5. Perhaps there is a fourth explanation. Current events may reflect nothing more than a sober second thought. If this is so, and it may well be, the igniting catalyst should be fully disclosed by the Board. It hasn't been.
  
- F. The current consultation paper should be withdrawn and a new discussion commenced**
  
- 1. A wider discussion encompassing the alternative suggestion I have set out in this paper should ensue. Only the proposal presented in this paper, setting the premium for all Ontario clerical labour at the same rate, bridges the originating principles with the currently desired outcomes.
  
- 2. It is therefore my immediate suggestion that the Board withdraw the current consultation document and re-examine the issue taking into account the points I have raised. Should the Board decide to proceed with policy reform, a revised policy consultation document should be drafted and released to a broad employer audience. This document should include suggested revisions to Board policy and **O. Reg. 175/98**.
  
- 3. I would be pleased to present specific advice on the consultation method, however the general approach deployed during the rate framework consultation exercise should be adopted. The process should include the development and release of the aforementioned consultation document to a broad employer audience, a public consultation meeting (in-person or hybrid) followed by a report on the consultations and a final WSIB proposal.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED**

**L.A. Liversidge**  
**November 4, 2022**

**From:** [Dave Holek](#)  
**To:** [Consultation Secretariat](#)  
**Subject:** consultation on "Temporary Employment Agencies proposed rate setting modifications"  
**Date:** Wednesday, November 23, 2022 1:01:06 PM

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The WSIB Board has now commenced a Phase II consultation on "**Temporary Employment Agencies proposed rate setting modifications**." We thank you for the opportunity to participate. In the consultation paper the Board advises:

. . . significant rate increases for TEAs that supply clerical labour (including certain knowledge-based job roles) would be misaligned with the low-risk nature of those activities. As a result, it is reasonable to introduce an exception for clerical labour.

It was our understanding that this is precisely the result the Board sought to achieve as far back as 2015. It is also our understanding that this is the exclusive reason for the proposed change. If it is the case as the Board asserts that higher premium rates "*would be misaligned with the low-risk nature of those activities*," then that is as true for client employers as it is for TEA employers. The insurance risk associated with clerical labour is the same for client employers as it is for TEA employers. The risk does not change with the name of the employer.

The solution seems obvious. Keep things as they are or initiate the appropriate policy and regulatory adjustments to ensure that all clerical labour is assessed at the same low rate commensurate with the insurance risk for that labour. We ask that you withdraw the current consultation document and re-examine the issue.

Thank you for your consideration.

David Holek  
President, General Manager  
Lekter Industrial Services Inc.  
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[dholek@lekter.net](mailto:dholek@lekter.net)

Sent from [Mail](#) for Windows 10

**From:** [Jeff Spitzig](#)  
**To:** [Consultation Secretariat](#)  
**Subject:** Temporary Employment Agencies proposed rate setting modifications  
**Date:** Tuesday, November 15, 2022 9:47:42 AM  
**Attachments:** [image001.png](#)

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Dear Consultation Secretariat:

**Re: Phase Two – WSIB Consultation of the proposed modification to the rate setting approach for TEAs**

The Board has now commenced a Phase II consultation on “*Temporary Employment Agencies proposed rate setting modifications.*” We thank you for the opportunity to participate. In the consultation paper the Board advises:

... significant rate increases for TEAs that supply clerical labour (including certain knowledge-based job roles) would be misaligned with the low-risk nature of those activities. As a result, it is reasonable to introduce an exception for clerical labour.

It was our understanding that this is precisely the result the Board sought to achieve as far back as 2015. MCAO supported the Board’s approach at the time (see **October 2, 2015 MCAO Submission to the Rate Framework Review, pp. 29-30**).

It is also our understanding that this is the exclusive reason for the proposed change. If it is the case as the Board asserts that higher premium rates “*would be misaligned with the low-risk nature of those activities,*” then that is as true for client employers as it is for TEA employers. The insurance risk associated with clerical labour is the same for client employers as it is for TEA employers. The risk does not change with the name of the employer.

The solution seems obvious. Keep things as they are or initiate the appropriate policy and regulatory adjustments to ensure that all clerical labour is assessed at the same low rate commensurate with the insurance risk for that labour. We ask that you withdraw the current consultation document and re-examine the issue. MCAO supports the views set out in the November 10, 2022 submission from the CEC.

Thank you for your consideration.

Jeff

Jeff Spitzig  
Managing Director  
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(905) 629-0344 ext 8261  
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Visit the MCAO website at [www.mcao.org](http://www.mcao.org)



November 16, 2022

Consultation Secretariat  
Workplace Safety and Insurance Board  
200 Front Street West  
Toronto, Ontario M5V 3J1

Dear Consultation Secretariat:

On behalf of the National Association of Canadian Consulting Businesses (“NACCB”), I would like to thank the WSIB for its continued efforts to understand the different segments of workers that exist within the broader temporary employment agency (“TEA”) industry and for listening to our concerns regarding the initially proposed changes to the rate framework.

We believe that the recently concluded stakeholder consultation on the TEA industry was transparent and open-minded to all viewpoints.

We have reviewed in detail [the proposal](#) published on October 12, 2022. We believe it is a fair and balanced solution that takes into account our concerns that the original approach was going to unfairly raise rates for our member firms.

### **Protecting against abuse and misclassification of low-risk and high-risk**

The WSIB will need to enforce this new regime to protect against bad actors and ensure a level playing field for market participants. We consider that the proposed TEA licensing framework will help curb bad actors, and accordingly, the NACCB wholeheartedly supports this new regime.

Ontario is not the only jurisdiction with a worker compensation regime that will have a special code for clerical labour supplied by our TEAs. The American model works well and is fair to both workers and companies, and we suggest that the United States serve as a model for the WSIB to help design their own system.

The NACCB recommends the WSIB follow the work environment criteria model used in the United States. This would tailor premiums based on the environment in which the Knowledge Worker is operating to account for changes in risk profile. Specifically, this would account for Knowledge Workers performing “on-site” work for an End Client in a higher-risk setting, as well as Knowledge Workers under contract in low-risk settings. Knowledge workers that spend a large amount of time on site, for example, those working with architects or engineers, would then be captured in a manner that reflects their actual risk.

The NACCB believes that the abovementioned U.S. model and current WSIB enforcement tools will allow the WSIB to enforce this regime effectively across the entire TEA ecosystem.

### **Transition**

Most members of the NACCB are currently paying premiums under the previous regime’s codes of \$0.13 which will be moved to the new Class L code of \$0.22. NACCB agrees with the move to the new rate; however, we would like to suggest that the previous [WSIB transition regime](#) would continue to apply.



The NACCB recommends the WSIB follow the previously proposed model limiting rate band adjustments to no more than three for any given year (effectively limiting adjustments to 5-10% annually).

Under this model, TEAs that began supplying workers to new premium rate setting classes in 2021 or 2022 are assigned to the 2022 rates, as are TEAs that first opened in 2021. TEAs that began assigning workers in 2020 are assigned 2020 class premium rates.

### **Internal Employees**

We have noticed that the consultation is silent on the classification of internal employees to TEAs that help place workers. The NACCB would like to confirm that the TEA employees will be classified in the same Class L rate band as the Knowledge Workers that our members place at their clients. This would confirm the low-risk work environment for TEAs and remove any confusion around the classification of internal employees and external (Knowledge Worker) employees. We recommend and would support this action being taken.

In conclusion, I would like to thank the WSIB for their continued efforts and we look forward to answering any questions or addressing any concerns.

Sincerely,

Michael Leacy  
Chair  
National Association of Canadian Consulting Businesses

**From:** [John Salameh](#)  
**To:** [Consultation Secretariat](#)  
**Subject:** Feedback on the proposed modification to the rate setting approach for TEAs - from Nexus Systems Group Inc.  
**Date:** Wednesday, November 16, 2022 6:47:54 PM

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To Whom it may concern:

My name is John Salameh and I am the Co-Founder and Managing Director of Nexus Systems Group Inc. We are a \$75 million staffing agency for technology (IT) professionals called Nexus Systems Group Inc. We place professionals with some of Canada's largest companies to provide specialized technical skill and support on short and long-term projects. In general, professionals in this industry are highly educated and well-paid, with the average IT contractor earning \$164,000 annually. I am writing in to provide feedback on the proposed modification to the rate setting approach for TEAs.

Under the previously proposed scheme, Ontario staffing companies for knowledge-based IT professionals potentially face new rate premiums that are up to 25 times higher than the amounts they currently pay. The current WSIB rate for IT professionals is \$0.13 for every \$100 of insurable earnings, which is identical to other provinces. Under the proposed scheme IT professionals are grouped with high-claims workers like waste management and remediation workers, security guards, chimney cleaners, and landscapers and unlike the high-claims workers, IT professionals are white collar workers with exceptionally low claim history. Historically, the claims for IT professionals are extremely low compared to premiums paid, with a ratio of approximately 0.1% over the past 10 years. Still, IT professionals are being transferred to a new classification that will increase annual WSIB premiums per worker from \$120.38 to \$3,339.00.

There are currently approx. 55,000 contract Knowledge Workers including IT professionals working in Ontario that represent \$4.4 billion in revenue to the province. Their work is completely mobile and can usually be performed from any location. My/our concern is that, under the new scheme, companies will pursue contractors in lower-cost jurisdictions because the

costs are too great in Ontario. Companies like RBC and TELUS, and even the federal government, can move work to lower-cost provinces like British Columbia and Quebec. This presents a significant risk to the thousands of established Knowledge Workers in Ontario.

I am writing to endorse the proposed plan put forward by the WSIB creating create a low risk clerical and knowledge worker category as was put together and shared to your members. In addition, requesting a continuation of the moratorium on rate increases until the new category is available

If you have any questions about these recommendations, my business, or the industry please do not hesitate to reach out.

Sincerely,

John-Eric Salameh



SYSTEMS GROUP INC.

John-Eric Salameh | Managing Director | Nexus Systems Group

**Office Line: 647-557-0673** | Mobile: 416-899-2727 | Switchboard: 416-622-1414 ext 221 | Toll Free: 1-844-822-0541



**WSIB Temporary Employment Agencies  
proposed rate setting: Phase 2 feedback**  
**Workplace Safety and Insurance Board**



Ontario Federation of Labour Submission

November 2022

## **Introduction**

The Ontario Federation of Labour (OFL) is the central labour organization in the province of Ontario. The OFL represents 54 unions and speaks for more than a million workers from all regions of the province in the struggle for better working and living conditions.

With most unions in Ontario affiliated, membership includes nearly every job category and occupation. The OFL is Canada's largest provincial labour federation. The strength of the labour movement is built on solidarity and respect among workers.

We commit ourselves to the goals of worker democracy, social justice, equality, and peace. We are dedicated to making the lives of all workers and their families safe, secure, and healthy. We believe that every worker is entitled, without discrimination, to a job with decent wages and working conditions, union representation, free collective bargaining, a safe and healthy workplace, and the right to strike.

Organized labour, as the voice of working people, promotes their interests in the community and at national and international forums. We speak out forcefully for our affiliates and their members to employers, governments, and the public to ensure the rights of all workers are protected and expanded.

### **OFL's response to the TEA proposed rate setting consultation (Phase 2)**

The proposed approach by the Workplace Safety and Insurance Board (WSIB) goes against the interests of workers and is contrary to what should be done as per S. 83(4) of the *Workplace Safety and Insurance Act, 1997*.

The proposal, which mimics the requests of the TEA industry for "clerical" workers, would amount to the continuation of the previous approach. It would allow employers to continue using temporary workers to evade responsibility for hosting unsafe workplaces. The tragic deaths of five workers at Fiera Foods, four of whom were temporary workers, is a glaring example of the need to eliminate the use of TEAs in the compensation system.

Under the guise of "clerical" work, the TEAs and employers are trying to continue gaming the system. The issue is the lack of clear classifications for TEAs, and the work assignments from the client employer and their mislabelling of job seekers. We are continuing to struggle with this issue even when supporting workers access compensation, because of the ping-pong between TEAs and client employers.

Here is one of many real examples:

A worker was looking for a childcare job after completing her ECE course. She looked for a job for the last six months and realized employers do not hire directly and use several TEAs. She signed up with a very well-known TEA, focused on

childcare and caregiving assignments. This TEA hires her as a “contract, self-employed” worker, and offers assignments through an online app that pays \$19.00/hr, with no deductions or contributions.

In the winter, she is injured at a daycare she was regularly working at for a few months. She slipped and fell on the ice in the playground and broke her right arm. She informed her employer and agency. The agency told her to go home. When she asked about filing for workplace compensation, the employer told her that since she is not directly hired, she would have to communicate with the TEA. After communicating with the TEA, she found that they do not consider her as an employee, since she was labeled as self-employed. She was unable to file for compensation. She later started receiving less and less assignments and was unable to file for any form of benefits. This severely impacted her income, along with her physical and mental health.

While the injury occurred at the workplace, we see here and in many other cases that workers are manipulated by both the TEA and client employer to prevent reporting, culpability, and ultimately, compensation. All too often, we see workers reassigned by their employers to TEAs after they are injured at their host employer, no longer able to make a claim because they are not at the “workplace” anymore; a devious way of claims suppression that leaves workers without compensation, despite their injuries.

A report called [“Working and Hurting in Little Bangladesh: Precarious Work, Health and Return to Work” \(November 2022, Premji et al\)](#) discusses how many of the TEA practices are apparent violations under the Employment Standards Amendment Act (Temporary Help Agencies), and provides four recommendations to the provincial government.

Last year, the WSIB reduced the average premium rate to employers by 5%. This year, the WSIB surplus rebate to employers took over \$1 billion out of the compensation system. When will the WSIB genuinely consult the worker community to address the needs of injured, ill, and fallen workers? When will workers and their widows be justly compensated before billions are arbitrarily handed over to employers?

[It is time the WSIB undertook a consultation to address the needs of workers, as part of a workers’ compensation system that was originally designed to avoid costly and weighty litigation, and make workers whole.](#)

cj/COPE343



November 15, 2022

Consultation Secretariat  
Workplace Safety & Insurance Board  
200 Front Street West  
Toronto ON M5V 3J1  
Submitted via email: [consultation\\_secretariat@wsib.on.ca](mailto:consultation_secretariat@wsib.on.ca)

Dear Consultation Secretariat:

**Re: Phase Two – WSIB Consultation of the proposed modification to the rate setting approach for TEAs**

The Board has commenced a Phase II consultation on “**Temporary Employment Agencies proposed rate setting modifications.**” The Ontario Mining Association (OMA) appreciates the opportunity to participate in this consultation project. In the consultation paper under consideration, the Board advises:

**TEA industry perspective**

***The key concern raised by the TEA industry related to the potential for significant rate increases applied to their clerical labour*** (including certain knowledge-based job roles, like IT professionals).

Under the pre-2020 classification system, that labour was generally classified under the Supply of Clerical Labour Operations classification unit, which was assigned a \$0.13 rate in 2019.

The rate setting approach for TEAs that the WSIB originally planned to introduce in 2020 was designed to generally align TEAs’ rates with the rates of their clients’ classes. ***However, the implication of that approach for TEAs that supply clerical labour to higher risk classes is they could be subject to significant rate increases*** (emphasis added).

The Board presents this commentary as the exclusive reason for the proposed change. What the Board does not mention is that increases in WSIB premiums for TEA supplied clerical labour has been a *planned and intended outcome* of WSIB rate framework (RF) policy since the inception of the RF project. This was the entire reason for the current approach in the first place.

The issue of TEA WSIB premium rates, and all of the ramifications therein, traces back more than a decade. In 2012, the Harry Arthurs **Funding Fairness** report broadly introduced this issue (at p. 114). A more elaborate narrative was set out in 2014’s **Pricing Fairness** (at pp. 20 – 21 and 24). By the early 2010s, it was generally accepted that the Board’s premium treatment of TEAs promoted undesirable business organizing and recruiting decisions.

5775 Yonge Street, Suite 1201, Toronto, Ontario M2M 4J1

(416) 364-9301 | [www.oma.on.ca](http://www.oma.on.ca)

This issue attracted legislative reform in 2013 through the introduction of **Bill 146, Stronger Workplaces for a Stronger Economy Act, 2013**, which died on the order paper on May 2, 2014 due to the calling of the 2014 election. The bill's ideas were resurrected after the 2014 election in **Bill 18, An Act to amend various statutes with respect to employment and labour**, on July 16, 2014 passing this time and securing Royal Assent on November 20, 2014. *Bill 18* amended the WSIA s. 83 and to this time, is the current rendering of that section. However, *Bill 18* (the current WSIA s. 83(4)), required regulations to render it operable. Section 83(4) regulations have never been tabled.

Concurrently, the focus was recalibrated away from legislative reform and towards WSIB policy and regulatory reform. The RF project was maturing and ready for public consultation commencing in 2015. The Board addressed this issue in its 2015 public consultation document, "[Rate Framework Reform, Paper 3: The Proposed Preliminary Rate Framework,](#)" **March, 2015 (Paper #3)**. In **Paper #3**, at pages 21 – 22, the Board writes:

### **Summary of Current Approach**

TEAs are often classified differently from their client employers because their classification is based on their business activity, not the business activity of their client employers. As a result, the premium rates TEAs pay for their workers are lower, in some cases, than the premium rates client employers pay for their workers. This could create an incentive for client employers with relatively higher premium rates to use TEA workers, rather than hire their own workers, to reduce their premium costs (premium cost avoidance).

Additionally, the costs of a TEA worker's injuries are attributed to TEAs for experience rating purposes. It is conceivable that the client employers may use TEA workers to perform dangerous and/or unsafe work to avoid the experience rating consequences of injuries (claims cost avoidance).

These issues call into question the fairness of how TEAs are classified and experience rated by the WSIB. The WSIB would consider how to address these issues under the proposed preliminary Rate Framework.

### **Proposed Preliminary Rate Framework**

#### **Premium Cost Avoidance**

The proposed preliminary Rate Framework recommends that TEAs and their client employers would need to be classified in the same class in order to mitigate the premium cost avoidance issue. If this occurs, their premium rates would be similar in many cases.

TEAs are expected to pass along their premium costs to client employers as part of their fee. If TEAs and client employers have similar premium rates, there would be minimal financial incentive for client employers to use TEA workers to avoid premium costs.

To allow TEAs and client employers to be classified in the same class:

- the WSIB would seek to amend Schedule 1 of O. Reg. 175/98 to indicate that supply of labour to a class (regardless of what activities are performed) is considered a business activity of that class; and
- TEAs would be allowed to have a separate premium rate linked to each class they supply.

OMA generally supports the WSIB RF solution first proposed in 2015, and which now represents current WSIB policy. Board policy effectively sets the TEA clerical labour premium rate at the same level as if the labour was hired directly by the client employer.



The Board now seeks to rewind that solution back to its pre-RF state. The Board's proposal would reignite the original policy dilemma that gave rise to the current policy in the first place.<sup>1</sup> We do not support the proposed approach as presented by the Board.

However, if the Board seeks to proceed with this initiative, we advance a proposition that respects the Board's current goal while remaining true to the Board's original principled solution. If it is the case, as the Board asserts, that higher premium rates for TEA clerical labour "*would be misaligned with the low-risk nature of those activities,*" then that is as true for client employers as it is for TEA employers. The insurance risk is the same. The risk does not change with the name of the employer.

The root issue is clearly driven by the rules linked with ancillary operations, first through the now repealed s. 6 of **O. Reg. 175/98** and now with Board policy **Document Number 14-01-01, Classification Structure**.

Rather than create an exception only for TEA clerical labour, the ancillary operations rules should be modified by striking "*administration related to an employer's operations including management, payroll, human resources, information technology, training and clerical services,*" from the ancillary labour list. Those functions, in a manner identical to the proposed approach for TEAs, would then be assigned the new classification code for clerical labour.

In this manner, the immediate objective is realized. TEA clerical labour premiums are set in a manner commensurate with the inherent insurance risk.

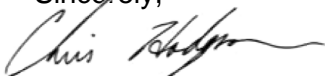
Significantly, and in the context of the policy debate active since at least 2015, this approach also resolves the originating policy concern – the potential motivational implications of differing rates for essentially the same labour.

In our view, this is the only manner in which the Board is able to fairly resolve the immediate concern while remaining true to the original challenge. It is therefore our immediate suggestion that the Board withdraw the current consultation document and reexamine the issue taking into account the points we have raised.

A revised policy consultation document should be drafted and released to a broad employer audience. This document should include suggested revisions to Board policy and **O. Reg. 175/98**. We would be pleased to present specific advice on the consultation method, however the general approach deployed during the rate framework consultation exercise should be adopted. The process should include the development and release of the aforementioned consultation document to a broad employer audience, a public consultation meeting (in-person or hybrid) followed by a report on the consultations and a final WSIB proposal.

As always, we are happy to engage in a meeting to address these issues at your convenience. Please reach out to me directly.

Sincerely,



Chris Hodgson  
Ontario Mining Association President

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<sup>1</sup> We ask that the Board consider the historical and contextual analysis set out in the November 4, 2022 submission [presented by L.A. Liversidge, LL.B.](#) The ORHMA supports and adopts this analysis and the positions set out therein.



November 8, 2022

Consultation Secretariat  
Workplace Safety & Insurance Board  
200 Front Street West  
Toronto ON M5V 3J1

Submitted via email: [consultation\\_secretariat@wsib.on.ca](mailto:consultation_secretariat@wsib.on.ca)

Dear Consultation Secretariat:

**Re: Phase Two – WSIB Consultation of the proposed modification  
to the rate setting approach for TEAs**

The Board has commenced a Phase II consultation on “**Temporary Employment Agencies proposed rate setting modifications.**” The Ontario Restaurant Hotel & Motel Association (ORHMA) and the Greater Toronto Hotel Association (GTHA) appreciate the opportunity to participate in this consultation project. In the consultation paper under consideration, the Board advises:

**TEA industry perspective**

***The key concern raised by the TEA industry related to the potential for significant rate increases applied to their clerical labour*** (including certain knowledge-based job roles, like IT professionals).

Under the pre-2020 classification system, that labour was generally classified under the Supply of Clerical Labour Operations classification unit, which was assigned a \$0.13 rate in 2019.

The rate setting approach for TEAs that the WSIB originally planned to introduce in 2020 was designed to generally align TEAs’ rates with the rates of their clients’ classes. ***However, the implication of that approach for TEAs that supply clerical labour to higher risk classes is they could be subject to significant rate increases*** (emphasis added).

The Board presents this commentary as the exclusive reason for the proposed change. What the Board does not mention is that increases in WSIB premiums for TEA supplied clerical labour has been a *planned and intended outcome* of WSIB rate framework (RF) policy since the inception of the RF project. This was the entire reason for the current approach in the first place.

The issue of TEA WSIB premium rates, and all of the ramifications therein, traces back more than a decade. In 2012, the Harry Arthurs **Funding Fairness** report broadly introduced this issue (at p. 114). A more elaborate narrative was set out in 2014’s **Pricing Fairness** (at pp. 20 – 21 and 24). By the early 2010s, it was generally accepted that the Board’s premium treatment of TEAs promoted undesirable business organizing and recruiting decisions.

This issue attracted legislative reform in 2013 through the introduction of **Bill 146, Stronger Workplaces for a Stronger Economy Act, 2013**, which died on the order paper on May 2, 2014 due to the calling of the 2014 election. The bill’s ideas were resurrected after the 2014 election in **Bill 18, An Act to amend various statutes with respect to employment and labour**, on July 16, 2014 passing this time and securing Royal Assent on November 20, 2014. **Bill 18** amended the WSIA s. 83 and to this time, is the current rendering of that section. However, **Bill 18** (the current WSIA s. 83(4)), required regulations to render it operable. Section 83(4) regulations have never been tabled.



Concurrently, the focus was recalibrated away from legislative reform and towards WSIB policy and regulatory reform. The RF project was maturing and ready for public consultation commencing in 2015. The Board addressed this issue in its 2015 public consultation document, "[Rate Framework Reform, Paper 3: The Proposed Preliminary Rate Framework,](#)" **March, 2015 (Paper #3)**. In **Paper #3**, at pages 21 – 22, the Board writes:

#### **Summary of Current Approach**

TEAs are often classified differently from their client employers because their classification is based on their business activity, not the business activity of their client employers. As a result, the premium rates TEAs pay for their workers are lower, in some cases, than the premium rates client employers pay for their workers. This could create an incentive for client employers with relatively higher premium rates to use TEA workers, rather than hire their own workers, to reduce their premium costs (premium cost avoidance).

Additionally, the costs of a TEA worker's injuries are attributed to TEAs for experience rating purposes. It is conceivable that the client employers may use TEA workers to perform dangerous and/or unsafe work to avoid the experience rating consequences of injuries (claims cost avoidance).

These issues call into question the fairness of how TEAs are classified and experience rated by the WSIB. The WSIB would consider how to address these issues under the proposed preliminary Rate Framework.

#### ***Proposed Preliminary Rate Framework***

##### **Premium Cost Avoidance**

The proposed preliminary Rate Framework recommends that TEAs and their client employers would need to be classified in the same class in order to mitigate the premium cost avoidance issue. If this occurs, their premium rates would be similar in many cases.

TEAs are expected to pass along their premium costs to client employers as part of their fee. If TEAs and client employers have similar premium rates, there would be minimal financial incentive for client employers to use TEA workers to avoid premium costs.

To allow TEAs and client employers to be classified in the same class:

- the WSIB would seek to amend Schedule 1 of O. Reg. 175/98 to indicate that supply of labour to a class (regardless of what activities are performed) is considered a business activity of that class; and
- TEAs would be allowed to have a separate premium rate linked to each class they supply.

ORHMA and GTHA responded to WSIB **Paper #3**. In our submission of October 2, 2015 ORHMA & GTHA (found [here](#) – go to page 185 of the bundle of submissions) we presented this position (at page 16 of the ORHMA & GTHA submission):

#### **All temporary labour should be assessed based on the risk of the client employer, ensuring principled premium assessment.**

ORHMA & GTHA supported the WSIB RF solution first proposed in 2015, and which now represents current WSIB policy. Our position remains the same. Board policy effectively sets the TEA clerical labour premium rate at the same level as if the labour was hired directly by the client employer.



The Board now seeks to rewind that solution back to its pre-RF state. The Board’s proposal would reignite the original policy dilemma that gave rise to the current policy in the first place.<sup>1</sup> We do not support the proposed approach as presented by the Board.

However, we advance a proposition that respects the Board’s current goal while remaining true to the Board’s original principled solution.

If it is the case, as the Board asserts, that higher premium rates for TEA clerical labour “*would be misaligned with the low-risk nature of those activities,*” then that is as true for client employers as it is for TEA employers. The insurance risk is the same. The risk does not change with the name of the employer.

The root issue is clearly driven by the rules linked with ancillary operations, first through the now repealed s. 6 of **O. Reg. 175/98** and now with Board policy **Document Number 14-01-01, Classification Structure**.

Rather than create an exception only for TEA clerical labour, the ancillary operations rules should be modified by striking “*administration related to an employer’s operations including management, payroll, human resources, information technology, training and clerical services,*” from the ancillary labour list. Those functions, in a manner identical to the proposed approach for TEAs, would then be assigned the new classification code for clerical labour.

In this manner, the immediate objective is realized. TEA clerical labour premiums are set in a manner commensurate with the inherent insurance risk.

Significantly, and in the context of the policy debate active since at least 2015, this approach also resolves the originating policy concern – the potential motivational implications of differing rates for essentially the same labour.

In our view, this is the only manner in which the Board is able to fairly resolve the immediate concern while remaining true to the original challenge. It is therefore our immediate suggestion that the Board withdraw the current consultation document and reexamine the issue taking into account the points we have raised.

A revised policy consultation document should be drafted and released to a broad employer audience. This document should include suggested revisions to Board policy and **O. Reg. 175/98**. We would be pleased to present specific advice on the consultation method, however the general approach deployed during the rate framework consultation exercise should be adopted. The process should include the development and release of the aforementioned consultation document to a broad employer audience, a public consultation meeting (in-person or hybrid) followed by a report on the consultations and a final WSIB proposal.

As always, we are happy to engage in a meeting to address these issues at your convenience. Please reach out to us directly.

Sincerely,

Tony Elenis  
President & CEO  
Ontario Restaurant Hotel & Motel Association (ORHMA)

Emily Dickson  
Vice President of Operations  
Greater Toronto Hotel Association (GTHA)

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<sup>1</sup> We ask that the Board consider the historical and contextual analysis set out in the November 4, 2022 submission [presented by L.A. Liversidge, LL.B.](#) ORHMA & GTHA support and adopt this analysis and the positions set out therein.

Consultation Secretariat  
Workplace Safety and Insurance Board  
200 Front Street West  
Toronto, Ontario M5V 3J1

October 31<sup>st</sup>, 2022

Dear Consultation Secretariat,

Thank you for this opportunity to comment on WSIB's consultation process regarding the premium rates applied to TEAs.

I am the Chief Operating Officer of Procom Consultants Group. We are an IT services and recruitment firm founded in Toronto and specializing in providing services for high skill technology and business consulting engagements across Canada and the United States.

Across the Ontario economy we support large and small private sector organizations, as well as all levels of government in adopting new digital technologies to improve organizational performance and global competitiveness. In this way, our work supports prosperity throughout the province of Ontario, and serves to attract high paying, high quality jobs to the Ontario economy.

### **Background and Impact of the 2020 Pricing Framework**

Some aspects of our business operate as a Temporary Employment Agency ("TEA", as regulated in Ontario), and as a result we have been very concerned with the 2020 change in WSIB's pricing approach as it pertains to industry pricing for TEA engagements.

Under the prior rate framework, our community of knowledge workers were recognized as being engaged in a highly safe occupations, and were assessed a rate of \$0.13, which is amongst the lowest rates WSIB offered.

Despite being assessed with amongst the lowest rates WSIB offers, between 2015-2021, the cost of claims across our industry sector amounted to only 12.8% of the premiums collected. For Procom itself, we remitted over \$1.4 million in premiums between 2015-2021, with an actual claims rate less than 1.65% of the premiums we paid.

Any workplace injury is regrettable and something we take very seriously, however I respectfully submit that this claims history is a demonstration of the low risk profile of our industry, and the significant priority we place on ensuring a safe workplaces.

The WSIB rate framework proposed in 2020 would have resulted in price increases ranging from 300%-2,500%. These increases would dramatically increase the costs to our industry and will have a direct harm on our business, our clients and professional knowledge workers in Ontario.

## Support for Proposed Modification to 2020 Pricing framework

I have reviewed the modifications proposed by WSIB following Phase 1 of this consultation process<sup>1</sup> and would like to voice my support for the new approach proposed by WSIB.

We strongly support the WSIB's concept of creating a new classification code associated with Class L for the supply of clerical labour and knowledge based job roles that can be applied independently of the classification of the client. Likewise, we are strongly in favor of this new code having a lower pricing profile, consistent with the very low risk profile present in this community of workers.

In supporting the proposed modifications, I would like to also request an extension to the moratorium on rate increases granted by WSIB on the original 2020 pricing framework for TEAs until the new classification code added to Class L is available.

I would also like to respectfully request that for professional staffing firms, our own internal workforce should also be recategorized to Class L, recognizing the nature of the work we perform – data processing and clerical tasks in a professional office setting – is consistent with the activities of the other Class L groups.

## Recommendation with respect to the Proposed Modification

Within the announcement, I noted that the new classification will be applied to “*certain* knowledge based job roles” (my emphasis added).

For this passage of the proposed modification, I would like to respectfully suggest that the determination of which knowledge workers are eligible for new Class L classification code is driven by the nature of the hazards present in a specific worker's workplace as opposed to something applied broadly by categories of job titles.

As an example, Project Managers are a category of knowledge worker who might frequently be required to attend a construction site or factory floor (where meaningful workplace hazards are present), or have duties limited to working in a professional office (where risk is low). Unless the presence of workplace risk is the criteria used to assess the worker's eligibility for the new Class L code, it will be difficult to apply the exception in a manner consistent with WSIB's intended objectives for the new industry based pricing framework.

My experience is that these scenarios are possible across many categories of knowledge work, and regulating eligibility by job title is likely to cause confusion and inappropriate risk assessments.

Rather than regulating eligibility by job title, I respectfully suggest the proposed regulation focus instead provide eligibility to *any* clerical or knowledge worker placed in a low risk office environment, and not

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<sup>1</sup> <https://www.wsib.ca/en/TEAconsultation>

available to workers placed in safety sensitive worksite or have duties that involve frequent visits to safety sensitive worksites.

Finally, with respect to transitioning TEAs to this new rate, I would suggest that you use the [Special risk bank movement](#) approach that the WSIB has previously developed with respect to maximizing annual increases during the transitional period.

### **Conclusion**

I appreciate the opportunity to participate in WSIB's consultation process and the common sense approach to regulation that is emerging in response to the issues our industry has experienced.

Yours truly,

A handwritten signature in black ink that reads 'Kent McCrea' in a cursive script.

Kent McCrea

Chief Operating Officer

October 14, 2022

VIA E-MAIL

Consultation Secretariat  
Workplace Safety and Insurance Board  
200 Front St. West, 17th Floor  
Toronto, On  
M5V 3J1

Dear Consultation Secretariat,

**Re: IT Professionals in Ontario and WSIB Rates**

I am the founder and CEO of S.i. Systems ULC, a \$600 million staffing agency for IT professionals across Canada, with more than half of our workers in the great province of Ontario. There are hundreds of other IT staffing companies in Ontario and together we represent 24,600 active IT contractors in the province generating \$3.9 billion in revenue. The workers we engage on behalf of our clients are highly skilled and earn an average pay rate of \$164,000 per year.

We fully agree and support the WSIB release “Temporary Employment Agencies proposed rate setting modifications” posted October 12, 2022. The significant rate increases for TEAs supplying clerical labour, including knowledge-based roles, originally proposed was misaligned with the low-risk nature of clerical labour. Any rate increase for clerical and knowledge workers in particular is unnecessary for the following reasons:

The clerical category is fully funded and has declining rates. The rates for TEA in this group have declined from \$0.21 for every \$100.00 of insurable earnings in 2011 (through to and including 2016) to \$0.20 in 2017, \$0.19 in 2018, and \$0.13 in 2019 as the WSIB achieved full funding for this TEA category. This year our premium is \$0.12 per \$100.00 of insurable earnings. The rate drop is due to WSIB achieving full funding in Rate Group 956, i.e., they eliminated the unfunded liability and liabilities for existing claims.

IT staffing companies in the clerical category are currently over charged at existing rates and subsidizing other TEA employers. For example, WSIB's records indicate that for my company, S.i. Systems ULC, my total claim costs from 2012 to December 31, 2019 were only \$372.00, whereas premiums paid in the same time period totaled \$589,389.98.

We submitted a Freedom of Information Request (#22-098) to WSIB on March 11, 2022 seeking information about the premiums paid and accident costs incurred by multiple companies that conduct IT staffing in Ontario from 2015-2021. Attached to this email is the full excel file provided by WSIB for reference and the summary table provided by WSIB is in Appendix I at the end of this submission. Here is our analysis of the data:

Claims costs for the 41 firms was reported as 34 professional staffing firms and 7 mixed staffing firms (clerical and non-clerical). The total Claim Costs for the 41 firms who participate in IT staffing, including the 7 high-cost mixed staffing firms with non-clerical staffing was \$3,994,363. This is made up of



\$3,028,481 in non-clerical claim costs and only \$965,882 in clerical claim costs. Clerical claim costs represent only 3.09% of the premiums paid or a cost to revenue ratio of 3.09%.

It is important to note that the claims costs of the 7 mixed staffing firms was estimated into clerical and non-clerical claims costs in order to provide an accurate analysis, as they claim in both categories. This information was not provided by WSIB however we derived estimations as follows:

- Non-clerical premiums are calculated as  $[\$3,028,481 \div \$3,276,382] \times 100 = 92.4\%$ . We estimate \$23,074,384 of the premiums are allocated for non-clerical staffing.
- Clerical premiums are calculated as  $[(\$247,901 \div \$3,276,382) \times 100] = 7.6\%$ . We estimate \$1,897,893 of the premiums were allocated for clerical staffing
- Therefore, the 7 mixed staffing firms paid 92.4% of their premiums for non-clerical staffing, and only 7.6% of their premiums for clerical staffing using our estimation methodology. In reality it is likely that the non-clerical staffing premiums are much lower and the clerical staffing premiums are correspondingly higher. WSIB actuaries can verify as they have full access to the data.

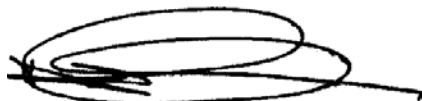
In summary this analysis of 41 representative firms involved in professional staffing and IT staffing verifies our position that TEA with professional staffing (clerical and IT) and mixed staffing (non-clerical) have an approximate cost to revenue ratio of 12.8%. TEA with professional staffing (clerical and IT only) have a lower approximate cost to revenue ratio of only 11.8%

This means we as an industry have been overpaying our premiums and funding other categories. We agree with WSIB that there be no further increase in rates for clerical and IT knowledge workers, and this rate category decline lower based on actual low claim amounts.

IT staffing can be done anywhere, and the sector is highly sensitive to cost pressures. Hence, firms tend to be vigilant about the costs of doing business in each province. Note that most other Canadian provinces have workplace insurance around 13 cents per \$100 insurable earnings for clerical rates.

Our industry supports the WSIB in implementing a new rate category for clerical and IT workers reflective of the true cost of workplace insurance for clerical and knowledge workers. We also respectfully request continuation of the existing moratorium on rate increases until the new category is in place.

Respectfully yours in all matters,



Derek Bullen  
Chief Executive Officer  
S.i. Systems ULC

**From:** [Peter Sundiata](#)  
**To:** [Consultation Secretariat](#)  
**Subject:** 2023 Rate Guidance  
**Date:** Thursday, November 10, 2022 4:03:14 PM

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Hello. My name is Peter Sundiata. I am president of a boutique IT staffing agency, SWGi. We place IT professionals within both Public and Private sector organizations.

The IT Professionals we place are low risk, highly paid, and work in an office, oftentimes in their home offices.

We have been following with great interest the discussion of where our IT professionals should be placed under WSIB's classification structure. We strongly support moving clerical, including our IT professionals, under Class L. We feel this change will greatly support the continued growth of our industry in Ontario and will help create even more of these highly paid jobs in the Ontario IT sector.

Please feel free to reach out should you wish to know more.

Thank you.

Sincerely,

Peter Sundiata  
President  
Direct: 416-342-6180  
[psundiata@swgi.ca](mailto:psundiata@swgi.ca)  
Let's get connected: <https://www.linkedin.com/in/petersundiata/>

SWGi (Sundiata Warren Group Inc.) [www.swgi.ca](http://www.swgi.ca)



**From:** [Geneva Collier](#)  
**To:** [Consultation Secretariat](#)  
**Cc:** [Carolyn Mitchell](#); [Carolyn Eckersley](#)  
**Subject:** WSIB TEA CONSULTATION PHASE 2: In Support of Low Premiums for IT Professionals (Knowledge-Based Job Roles) & Streamlined Ruling Process for Independent Operators  
**Date:** Wednesday, November 16, 2022 9:31:33 AM  
**Attachments:** [image001.png](#)

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Consultation Secretariat  
Workplace Safety and Insurance Board  
200 Front St. West, 17th Floor  
Toronto, ON M5V 3J1

## BY EMAIL

Dear WSIB Consultation Secretariat:

*Re: In Support of Low Premiums for IT Professionals (Knowledge-Based Job Roles)*

As Managing Partner of Systematix IT Solutions Inc. I am writing you to provide our thoughts on the WSIB's proposed actions with respect to WSIB rates for Temporary Employment Agencies (TEAs).

We strongly support:

1. The **realignment of the rates for clerical workers** to reflect the low-risk nature of the activities, particularly as it relates to resources contracted out as IT knowledge-workers.
2. **No increase on premiums until a new category is in place** as any increase will have a significant, negative impact on the financial viability of our current contracts and overall business.
3. **A continued moratorium on premiums until a new rate class is created** to preserve our ability to fairly compete for new business with consulting firms that are in a lower rate classification.
4. The **streamlining of the ruling process for independent operators** who are subcontracted through a business-to-business relationship to deliver IT professional services to non-associated third-party customers.

Below you will find the context and further explanation of our position on these four statements.

### Background and Context

Founded in 1989, Systematix IT Solutions Inc. is wholly Canadian owned IT professional services company operating primarily in the National Capital Region. Systematix Ottawa provides IT consulting services for applications and systems being used by Canadian Government departments and crown agencies to enable their mandates. To do so, Systematix (as principal contractor)

subcontracts to highly skilled professional consultants (independent operators) who are retained to provide knowledge worker IT services to non-associated third-party customers in low-risk work settings.

When setting categories and considering classifications, just as the WSIB needs to differentiate between high-risk and low-risk workers, Systematix suggests it should differentiate more clearly between TEAs and consulting (professional services) companies. Staffing agencies provide human resources to fill roles (often on short notice) with suitable workers/ temporary employees for short, medium and long-term assignments. Consulting firms provide the services of professionals to solve a problem or deliver a solution, providing advice and/or expertise while taking responsibility for the work performed, outcomes and deliverables.

As reported in the WSIB Temporary Employment Agency Consultation Phase 1 – Stakeholder Submissions, Systematix is not alone in the belief that it is quite limiting and possibly misleading for WSIB to group TEAs (staffing) with consulting firms (professional services). Further, all consulting firms are not viewed equally by WSIB. In their submission the National Association of Canadian Consulting Businesses stated that firms like Systematix “...*compete with consulting organizations and systems integrators – such as large consulting firms like Deloitte, KPMG and others – who also provide staff on a time and materials basis but are not deemed a TEA despite providing similar services. Consulting firms have their own rate classification, much lower than that of the average End Client. This gives consulting firms a competitive advantage as they provide services at their own assigned rate while TEAs must align with End Clients, increasing the cost for TEA engagements and reducing margins....*”

To be clear, Systematix is not an employment agency but rather a consulting firm that subcontracts to independent IT professionals. It is the position of both Systematix and our subcontractors that these IT professionals are independent businesses, and that these autonomous entities should be considered independent operators by the WSIB.

### Supported Actions

#### 1. Creation of a Low-Risk Rate Category That Includes IT Knowledge Workers

The creation of a new category for low-risk clerical work including IT knowledge workers will better align the rates with the low-risk nature of the work. Systematix maintains that the objections raised to this new category have been made by companies operating in higher risk settings such as factory floors, in mines etc. who have a vested (self) interest in having low-risk knowledge workers be assessed with high premiums which in turn subsidizes their own premiums. This is particularly unfair when considering the astoundingly low volume and value of WSIB claims by knowledge workers, particularly when compared to claims for operators in high-risk settings. The new category is needed to correctly and fairly assess premiums based on the true nature of the work.

#### 2. Preserve Current Rate Structure Until New Category is in Place

The planned increase to premiums slated for January 1, 2023 will be detrimental to the profitability of our existing business. All our contracts have multi-year terms, and none include provisions to increase our bill rates for any reason. This means any increase in WSIB rates cannot be passed along

and must be absorbed by Systematix. Accordingly, firms like ours may not be able to keep current contracts financially viable, resulting in loss of service to our Government of Canada clients and loss of revenue for the consultants subcontracted to deliver the services.

### 3. Maintain the Moratorium on Premiums Until New Category is in Place

Any increase in premiums will substantially harm our company in terms of being able to compete for new business. Currently niche professional service companies like Systematix vie for business against large multinationals such as CGI, Deloitte and PwC who are classified as consulting firms. Under the established rate framework, the WSIB does not require these firms to pay premiums based on their client's rate class, but TEAs are required to do so. Without being considered in consulting class like our competitors and/or the new rate category in place, the increase in premiums will disadvantage Systematix and other similar sized professional services entities operating in Ontario. A continued moratorium on premiums is key to levelling the playing field and enabling fair competition until the new rate category is in place.

### 4. Streamline the Ruling Process for Independent Operators

The relationship between consulting firms and their independent consultants (subcontractors) has been mischaracterized to the extent that it is treated like that of employer-employee, wherein the consulting firm is expected to remit WSIB premiums for unrelated business entities. Leaving aside the fact that it is up to these independent operators to make their own business decisions (including buying optional WSIB insurance), one firm cannot compel another to participate in such a process. In support of the WSIB Rate Reform Goal 4 (efficiency and effectiveness for the employer community) and in keeping with the Ontario Government's principle of fostering business by reducing red tape, we are asking the WSIB to consider streamlining the Independent Operator Ruling Process. That is, when a consulting firm retains an independent professional IT consultant, have the consulting firm provide WSIB proof of its business relationship by submitting:

- i. **Proof of Separate Operating Entity** (as registered with the Government of Canada)
  - a. Subcontractor Incorporation Name and HST Number - both of which can be validated on the Government of Canada website
- ii. **Proof of Business Arrangement**
  - a. A copy of the fully executed professional services contract between the Consulting Company (Principal Contractor) and the Independent IT Consultant (Subcontractor) that clearly outlines the legal relationship between the parties, providing that:
    - i. The contract demonstrates a clear intent and commitment to operate as independent entities;
    - ii. The contract defines the scope of service and terms of the engagement to prove, among other things, that the subcontractor is an IT knowledge worker;
    - iii. The contract defines the legal relationship at law between the Sub-Contractor and Principal Contractor as one of an independent contractor and not that of an employer-employee; and,
    - iv. The contract clearly outlines the parties' respective obligations, particularly that the Subcontractor, as an independent corporation, provides its services inclusive of all taxes and levies payable as well as all costs and deductions

related to CPP contributions and EI premiums or other employer responsibilities such as Workers' Compensation.

In this way the business relationship is properly documented and the consulting firm is not unfairly paying WSIB premiums on workers who are not under their control because these workers operate as wholly autonomous, independent businesses.

As for the Independent Operators, we have observed that the current WSIB Ruling Process is lengthy and excessively time consuming, taking these consultants /subcontractors on average at least eight (8) hours (non-billable, unrecoverable expense) for gathering documentation, accounting, completing forms and assembling the submission for review by the WSIB. Further, it seems excessive to require the submission of so much sensitive information such as a detailed curriculum vitae, financial documents (invoices), professional certifications, copy of a degree etc. given they are not applying for WSIB insurance, and indeed opting out of it. Surely this demonstrates the need to relieve this unnecessary administrative burden from independent operators, consulting firms and the WSIB.

We thank you for your consideration of our submission.

Respectfully,

**Carolyn Mitchell**

Managing Partner

333 Preston Street, Suite 920, Ottawa (ON) K1S 5N4

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[www.systematix.com](http://www.systematix.com)



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**systematix**

October 31<sup>st</sup>, 2022

Workplace Safety and Insurance Board  
200 Front Street West  
Toronto, Ontario, M5V 3J1

Att: Consultation Secretariat

I am writing on behalf of Systematix Technology Consultants Inc., as it pertains to the expected generation of a new WSIB classification of "Low Risk Clerical and Knowledge Worker", as discussed in your press release labelled "TEA proposed rate setting modifications".

Knowledge Workers (and the IT industry in general) do not work in dangerous environments. They do not utilize heavy equipment. They do not generate any physically dangerous byproducts. They are 'white collar' workers in the truest sense of the phrase, but without them, Ontario Businesses will face detrimental impacts to their operations.

Increasing our premiums unnecessarily, in what appears to be a subsidy of other higher risk categories, will significantly impact our ability to operate and supply these workers to Ontario Business.

IT Knowledge Workers rely on organizations like Systematix to find and procure them work, and as Canada's most tenured supplier of these resources, we know that our services are required and utilized by all Ontario businesses, including the WSIB and the Province themselves.

As per the Honourable Minister of Labour's discussions with our industry, and your suggested 'new classification solution', this illustrates a welcome understanding of how Ontario works, and our Nationally (with Ontario at the forefront) \$84 Billion Industry.

We wholeheartedly support the generation of the new and reasonable "Low Rick Clerical and Knowledge Worker" classification and therefore request a continuation of the moratorium on rate changes until you create the new category.

Our position and recommendation on the matter is respectfully submitted.

Sincerely,

Terry Smith  
Managing Partner  
Systematix Technology Consultants Inc.

5975 Whittle Rd #110  
Mississauga, ON, L4Z 3N1  
Tel: (416) 650-9669  
Toll free: 1 (877) 890-8794

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HUNT · GATHER · THRIVE

November 16, 2022

VIA EMAIL to [consultation\\_secretariat@wsib.on.ca](mailto:consultation_secretariat@wsib.on.ca)

Consultation Secretariat  
Workplace Safety and Insurance Board  
200 Front St. West, 17th Floor  
Toronto, On  
M5V 3J1

RE: WSIB Rate Framework Reform Consultation

To Whom It May Concern,

Tundra Technical Solutions ("Tundra") provides professional and clerical consulting and staffing services, primarily related to IT. Tundra was founded in Ontario in 2004, and since then has expanded across Canada and into the United States. Our head office remains in Toronto, and a significant portion of our client base and IT worker population are located in Ontario.

Thank you for the opportunity to provide our opinion on the new rate setting approach for temporary employment agencies currently being evaluated by the WSIB. As you are aware, stakeholders in our industry have expressed concerns that this approach in its proposed form places an unfair burden on companies like Tundra that provide primarily high-skilled IT staffing and consulting services. The new rate setting framework, as proposed, would have significant negative consequences for our business, our clients, and our assignment employees in Ontario. We are encouraged that the WSIB has suspended the introduction of these changes and is re-evaluating how the framework will be applied.

If these changes are implemented on January 1, 2023 (or at any point in the future), they would have a devastating impact on Tundra's ability to operate in the province. In some cases, our premiums would increase by as much as 3,000%. This is completely out of proportion to the risk associated with the professional services provided by Tundra, a company with an excellent safety record that employs workers in low-risk professional and clerical roles. In effect, Tundra and companies like it would be required to subsidize coverage for workers in high-risk occupations.

It is not economically feasible for Tundra or its clients to pay the proposed rates; as IT and clerical work can easily be offshored or performed by workers in other provinces, imposing such an exorbitantly high cost on local assignment employees would put Ontario workers at a severe disadvantage compared to workers in other jurisdictions where workers compensation coverage is significantly less expensive. The result, we fear, will be fewer jobs for Ontario workers.

Tundra Technical Solutions  
4711 Yonge St. Suite 700 Toronto, ON M2N 6K8  
Main Line: (416) 915-7878  
Toll Free: 1 (866) 988-6372  
[www.tundratechnical.com](http://www.tundratechnical.com)



# TUNDRA

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Tundra supports the solution that is currently being considered to create a separate class category for low-risk clerical and knowledge worker occupations. We understand that this approach has been implemented successfully in other jurisdictions. We hope that the WSIB adopts this sensible solution and maintains the present suspension of rate increases until this new clerical and knowledge worker rate class becomes available.

Sincerely,



Micah Williams  
President  
Tundra Technical Solutions

Tundra Technical Solutions  
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Submissions from the  
UNITED FOOD AND COMMERCIAL WORKERS  
(UFCW) LOCALS 175 & 633  
to the Workplace Safety and Insurance Board (WSIB)  
Consultation Secretariat

Regarding:  
WSIB Temporary Employment Agencies: Proposed rate  
setting modifications  
Consultation

November 1, 2022

## INTRODUCTION

UFCW Locals 175 & 633, (the Union) represents more than 70,000 workers across the province of Ontario in most workplace sectors, notably retail, industrial, healthcare and hospitality. We strive to provide our members with the highest quality service and assistance; including strong collective agreements that improve the conditions for our members. In recent years, some Employers that employ our members also have found themselves in need of the use of temp agencies, largely due to retention issues. With our member representation, we always hope that some benefits will trickle down to temp workers to help keep them safe. Therefore, we appreciate the Workplace Safety and Insurance Board (WSIB) providing us the opportunity to put forward our feedback in regards to Temporary Employment Agencies – proposed rate setting consultation.

### Temporary Employment Agencies (TEA)

It is well established that TEAs are utilized as an avenue for risk avoidance by Client Employers. We have seen in many industrial settings, that the use of TEAs has amplified and it could easily be associated with the fact that Client Employers are not held accountable for the health and safety of temporary employees as WSIB premiums are pushed back onto the Agency. Even though the Ministry of Labour has the authority to charge two employers under the Act for their responsibility in workplace injuries, the WSIB does not have the same reach. Therefore, Client Employers continue to employ TEAs in dangerous and onerous jobs to avoid claim costs.

### Rate Framework - current

Now, we appreciate the position of the TEAs that primarily represent workers in clerical or knowledge staffing, that being assigned the rate classification of the Employer that their temp workers service is challenging to track multiple rate classifications, and some appear to be inappropriately assigned, but it does not amount or necessitate a new classification or reduction in their rating. The goal of the new rate framework – which like this process – used a time consuming and lengthy process with stakeholder input to confirm how Employer's will continue to fund Ontario's compensation system.

It seems unnecessary, and pandering to a choice few Agencies, that this consultation even exists. The rate framework is already in place and well established. All Employers report premiums on their industry classification, and therefore, TEAs report based on the nature of the Client Employers work environment. The rate framework establishes that if multiple premiums exist the premiums are paid based on the highest rate.

The Rate Framework (Archived): Key Goals (<https://www.wsib.ca/en/rate-framework-archived-key-goals>) explicitly states that “consideration should be given to the merits, potential variations and *implications*” when establishing the goals of the rate framework. By entertaining the idea of deferring and changing the framework for TEAs willfully ignores the WSIBs own objection as the

*implications* of this change will have a direct impact on workers who perform precarious work with the direction of TEAs.

We find it hard to believe that with the existing rate framework and rate classifications that TEAs representing primarily clerical workers cannot be determined. On its face, this should be rather simple as other Employer's (with clerical staff) fit into their appropriate category under the current rate system. WSIB defines the assignment of class rate based on "the premium rate for a given class based on the collective risk profile for all the businesses within the class and your class's shared responsibility to maintain the insurance fund." It is extremely unclear why the WSIB is wasting time and money on one small group of exceptions, to the point that they need to amend Regulation 175/98 with the government. To be clear, there are far more important and pressing issues to be amended, edited, and revisited.

Therefore, your proposed modifications to create a new classification code for clerical labour opens the door for small business Employers, as well as larger Employers that utilize TEAs regularly to keep up with employee retention, to start demanding adjustments to the rate classification. But it would seem that you have thwarted that notion by announcing a "20-year low after the Workplace Safety and Insurance Board (WSIB) announced that it's freezing premiums for 2023." <sup>1</sup>

## **Recommendations**

- Cease the deferment of the rate framework and begin payments from TEAs at the increased rate which is more aligned with the rates of their Client Employers
- Implement a flat rate premium system which would address both claim suppression, as well as aggressive Employer claim management
- Stop reducing premium deductions for Employer's – with the added financial stability we should see an improvement to adjudication of claims and the WSIB can provide workers with the benefits they need
- Stop rewarding Employer's with bonuses or rebates for less claims which logically and always results in claim suppression and creates a culture of incentive programs that bribe workers to not report
- For all workplace accident, injuries and illnesses, the carriage of the claim should be assigned to the Employer where the accident/illness occurred and not the TEAs

If the WSIB is truly trying to keep their Employer stakeholders happy, then you can look at assisting certain TEAs that provide clerical workers to client Employer's in different more creative ways, instead of reducing their claim costs. One consideration would be a joint payment plan

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<sup>1</sup> <https://www.hcamag.com/ca/specialization/workplace-health-and-safety/wsib-freezes-20-year-low-premium-for-ontario-businesses/424670>

between the TEA and the Client Employer for WSIB rate classification. In doing this, they are both responsible for the health and safety and compensation coverage.

## **CONCLUSION**

The Union offers this submission under the principal that the needs of Ontario's workers, especially those who have suffered a workplace injury or illness, should be our primary concern; not continuing to line the pockets of Employers. Given the historic high level of claims and low level of compensation provided to workers, it is objectively clear to the Union that the Rate Framework is flawed and inconsistent and simplifying the system would have greater effect on Employers and workers. At the end of the day, this is a compensation system not just an insurance plan.

Respectfully submitted by:

*The United Food and Commercial Workers (UFCW) Locals 175 & 633*

Contact:

Sarah Neath

Coordinator and Workers Representative

sarah.neath@ufcw175.com



WSIB Temporary  
Employment Agency  
Rate Setting – Phase Two  
Consultation Submission

Sylvia Boyce, USW D6 Health, Safety and Environment Coordinator &  
Andy LaDouceur USW Local 2251 WSIB Committee

**Introductory remarks:**

Since this is Phase two of the consultation, and we participated in Phase one, we will skip the customary introductory paragraphs.

**Background:**

The WSIB noted that there were 21 submissions in Phase one: with 6 from the TEA perspective and 15 from the worker perspective. Proposed modifications to Regulation 175/98 were made in the Phase two consultation document.

**Comments:**

Based on the six submissions from the TEA perspective, the WSIB is proposing to essentially abandon the previous consultation regarding rate setting by opting to propose amendments to Regulation 175/98 to appease a subset of TEAs. The WSIB is ignoring all input from the worker perspective and has been failing to perform its primary function of administering the Act (which includes the regulations). Reacting to the complaints of a small group of employers in this fashion sets a dangerous precedent.

It is acknowledged in the Phase one consultation paper that,

“TEAs’ rates were significantly less than the rates of their clients and in some cases, creating an incentive for some clients to use TEA workers to reduce their premium costs.”

The Phase two consultation document, in an attempt to justify the proposed amendments to Regulation 175/98, highlights how much of an incentive there could be in that respect. It noted that TEAs were paying \$0.13 and that a potential client employer in Class D2 would be paying \$3.51, and that difference in premium rates is the incentive for employers to continue to use TEAs. Even at the proposed rate of \$0.22 for TEAs supplying “clerical labour” a large incentive remains for employers to use workers from a TEA. The affected TEAs have complained to the WSIB and inexplicably the WSIB is proposing regulatory changes to appease them.

Phase one consultation paper also stipulates that the rate setting approach introduced in 2020 was designed to rectify that very issue of eliminating the incentive to use TEAs based on the significant savings in premium rates. The current version of Regulation 175/98 is meant to accomplish that, and the complaints from the affected TEAs are proving that the intended goal is what they’re trying to avoid. Therefore, we maintain our position that no reason has been provided for not having the current rate framework implemented

other than TEAs don't like it, which quite frankly isn't sufficient to ignore the regulations as there is no reason that justifies such an action.

Nothing in the proposed amendments to the regulation addresses potential abuses by either TEAs or their client employers, such as claiming to supply only "clerical labour" but assigning other duties to the workers. For far too long TEAs exploited a loophole in the compensation system by paying rates that were significantly less than the businesses utilizing those workers, so it's not a stretch to suggest that they are now seeking another loophole to exploit to their benefit. The current framework eliminates that loophole and incentive to misclassify work as "clerical labour" by levelling the playing field with respect to premium rates for employers.

In our submission for Phase one of this consultation, we asserted that the WSIB was demonstrating a bias favouring employers and the current proposed amendments to Regulation 175/98 substantiates that assertion. The primary reason for suggesting a change in the regulation is the financial impact it would have on certain TEAs, but the financial impact on injured workers has never been factored into WSIB decisions and policies regarding determining post-injury earnings. Injured workers have lost their homes, life savings, and more but the WSIB hasn't initiated a consultation to rectify these injustices for injured workers. By initiating and continuing this consultation regarding premium rates for TEAs the WSIB has proven our assertion regarding bias.

**Conclusion:—**

Our position remains that the WSIB must follow the Act including the regulations and stop this unnecessary consultation. There should be no further reprieve from the prescribed rate setting method for TEAs. WSIB is the very agency charged with administering the WSIA and they shouldn't need a consultation to remind them of their legislative obligations.

Respectfully submitted on behalf of USW District 6 on November 16, 2022, by

*Sylvia Boyce and Andy LaDouceur*



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# WILLIAM JOHN YOUNG PROFESSIONAL CORPORATION

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Licensed Paralegal  
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October 20, 2022

Consultation Secretariat  
Workplace Safety and Insurance Board  
200 Front Street West  
Toronto, Ontario M5V 3J1

Dear Consultation Secretariat,

**Re: Temporary Employment Agencies (TEAs) proposed rate setting modifications**

In the past two decades, I have represented multiple TEA providing knowledge workers such as IT professionals on various WSIB revenue issues. I attended the IT Staffing TEA event organized by Derek Bullen last year to discuss WSIB rates and other concerns personally with the Honorable Minister McNaughton. It was a very productive event. Having followed the recent announcements, I endorse the WSIB proposal to create a new classification code for the supply of clerical labour and see merit in the new classification code being added to Class L entitled "Professional, scientific and technical."

I am writing at this time to address two issues that are not specifically mentioned in the "**Proposed modification**" paper published online. Those issues are the classification and rating of in-house workers and the exact modification the WSIB wants made to the wording of section 2(4) of Regulation 175/98 (copy attached).

**Classification and Rating of TEAs' In-house Workers**

The WSIB's proposed solution to the classification and premium rate applicable to clerical labour supplied to third-party, non-associated employers is elegant and makes perfect sense. The staffing industry providing low risk knowledge workers also broadly supports that change.

The proposal is silent though on the WSIB's intention for the classification and rating of in-house clerical labour that would include workers engaged in the following administrative activities.

**Re: Temporary Employment Agencies (TEAs) proposed rate setting modifications**

- Accounts receivable
- Accounts payable
- Accounting
- Human resources
- Management
- Information technology for the TEA
- Sales

TEAs' in-house workers are currently classified in NAICS code 561320 entitled "Temporary help services," which is included in Class M entitled "Administration, services to buildings, dwellings and open spaces." In 2022 the current premium rate for Class M is \$1.67 for every \$100.00 of insurable earnings. Class M includes but is not limited to the following business activities.

NAICS Code	Class/Subclass	NAICS Title
561613	M	Armoured car services
561710	M	Exterminating and pest control services
561721	M	Window cleaning services
561722	M	Janitorial services (except window cleaning)
561730	M	Landscaping services
561740	M	Carpet and upholstery cleaning services
561791	M	Duct and chimney cleaning services
562110	M	Waste collection
562210	M	Waste treatment and disposal
562910	M	Remediation services
562920	M	Material recovery facilities

The aforementioned business activities involve far greater risk of injury in contrast to the risks faced by in-house office workers performing administration work for TEAs that supply clerical labour. Class M no doubt makes sense for TEAs that supply non-clerical labour of a variety of types. However, if the WSIB is prepared to grant classification in Class L for the supply of clerical labour, in-house clerical labour employed by TEAs that supply clerical labour should also attract the same classification in Class L.

We acknowledge that the WSIB is no doubt well aware of the issue of classification for TEAs' in-house administrative workers. We simply want to ensure that not only the issue is addressed, but that it also receives the same classification and rating treatment that the WSIB has proposed for clerical labour supplied to clients, i.e., classification in Class L.



**Re: Temporary Employment Agencies (TEAs) proposed rate setting modifications**

**Section 2(4) of Regulation 175/98**

The WSIB's "Proposed modification" paper published online mentions that "an amendment to Ontario Regulation 175/98 would be required to allow the exception to be implemented and the WSIB would engage with the Ontario government on this issue." So, we understand that the WSIB policy experts are well aware of the need to amend section 2(4) of Regulation 175/98 to implement the WSIB's proposal. However, we would like to be informed of the proposed amendments and how they would specifically impact the issue of the issue of classification for TEAs' in-house administrative workers.

Class M and a premium rate of \$1.67 is reasonable for the in-house clerical labour employed by TEAs that supply truck drivers, construction workers, and other forms of non-clerical labour. But it would be unreasonable for the in-house administrative workers of TEAs to remain in Class M.

Thank you for your consideration of this submission.

Sincerely,



William John Young  
President

William John Young Professional Corporation

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**From:** Roy Laird <[rlaird@windleyely.com](mailto:rlaird@windleyely.com)>  
**Sent:** Friday, October 21, 2022 5:31 PM  
**To:** Kendra Holliday-Bryant <[Kendra\\_Holliday-Bryant@wsib.on.ca](mailto:Kendra_Holliday-Bryant@wsib.on.ca)>  
**Cc:** Don Morrison <[donm@windleyely.com](mailto:donm@windleyely.com)>; Lauren Walls <[lwalls@windleyely.com](mailto:lwalls@windleyely.com)>; Amanda Wilson <[awilson@windleyely.com](mailto:awilson@windleyely.com)>; Nicole Circelli <[neydt@windleyely.com](mailto:neydt@windleyely.com)>; Barb Forster <[barbf@windleyely.com](mailto:barbf@windleyely.com)>; Alison Gallant <[agallant@windleyely.com](mailto:agallant@windleyely.com)>; Huili Wu <[hwu@windleyely.com](mailto:hwu@windleyely.com)>  
**Subject:** Re: TEA's - new Rate Framework Consultation 2022

**CAUTION:** This email originated from outside the organization. Do not click any links or open any attachments, unless you recognize the sender and know that the content is safe. If you are unsure or believe that you were the target of a phishing attempt please contact IT Security at [ITSecurity@wsib.on.ca](mailto:ITSecurity@wsib.on.ca) as soon as possible.

Hi Kendra,

Thank you for including Windley Ely in the 2022 iteration of the TEA **new Rate Framework** discussion. To summarize Windley Ely's position on the **new Rate Framework**, regarding TEA's, WE remain as at Summer 2015 - attached please find our stakeholder consultation response from back then (30SEP2015), for your review.

Specifically regarding Phase 2 of the Board's current stakeholder engagement, WE are pleased to see that the Board is maintaining the current approach (which does align with Jeff's recommendations) to Rate Setting, and we are also equally pleased to see that a new Class in L will be created for strictly low-risk TEA Clerical work (in line with the previous Rate Group 956). That is a very good/fair "add" for the TEA Industry and WE applaud this change.

Lastly, WE would ask the following.:

- While the Board is amending **Ontario Regulation 175/98** to add the new Class L Classification, WE request that WSIB also have Section 83(4) of the **Workplace Safety and Insurance Act** removed (attached, for your reference).

Submitted, respectfully, for the Board's consideration,

Sincerely,  
Roy



**Roy Laird**

Sr. Manager / Financial Analytics Lead / Paralegal  
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October 2<sup>nd</sup>, 2015

Consultation Secretariat  
200 Front St. West, 17th Floor  
Toronto, On M5V 3J1

Re: Submission to the Workplace Safety and Insurance Board – Rate Framework Modernization Consultation

Dear Consultation Secretariat,

### **Introduction**

Before discussing our thoughts on the WSIB Rate Framework Reform, we would first like to recognize the work the WSIB has done in providing transparency into both the proposed changes and the rationale supporting them. Over the past 6 months, we feel the WSIB has done an excellent job in encouraging engagement on this topic through its dedicated website and its willingness to come meet with various groups of employers. These efforts have not gone unnoticed or unappreciated and we encourage a similar approach through the remainder of this process and all future changes the WSIB may undertake.

This submission is focused on the treatment of Temporary Employment Agencies (“TEAs”) and their clients. It is a summary and an elaboration on the content that was presented to Jean-Serge Bidal of the WSIB’s Office of Strategic Revenue Policy on October 14<sup>th</sup>, 2015. While we understand the WSIB has not published a formal proposal for many of the areas discussed in this submission, the objective of this submission to provide feedback on some of the potential ideas that have been mentioned through this consultation process as well as propose an alternative approach to experience rating that we believe fulfills the WSIB’s objectives.

### **WSIB’s Objectives**

The WSIB has outlined a number of key objectives when tackling the treatment of Temporary Employment Agencies in the Rate Framework Reform. Our understanding is that the WSIB was looking to address 3 key issues within the current system:

1. **Classification Arbitrage:** Currently, the majority of temporary workers in non-clerical roles are classified as Rate Group 929. In the current system, all employers in the same rate group pay the same premium rate. This results in a potential arbitrage opportunity where industries that have rates that are higher than Rate Group 929 can save on premiums by using temporary workers instead of hiring their own.
2. **Claim Cost Arbitrage:** Currently TEAs are treated identical to regular employers and as such are responsible for their own claim costs. This creates a potential incentive for employers to use TEAs, especially for dangerous tasks, as they will be able to avoid claim costs being charged to their own experience rating. Even with TEAs that have a charge back mechanism

for claim costs to their client this incentive could still exist. Many TEAs are smaller than their respective client employers and given the mechanics of the current experience rating system the financial impact of these claims would be smaller. A side effect of this is also that because Rate Group 929 serves multiple industries and many TEAs due to their size have a greater degree of collective insurance you potentially have industries subsidizing one another.

3. Lack of Return to Work (“RTW”) incentives: As client employers are not responsible for the claim costs directly, there is less incentive for client employers to participate in RTW. As many TEAs are limited in the RTW options they may have available to them, without the client employer’s participation, there often times is not enough suitable modified work.

We agree that these issues are present in the current system in place at the WSIB and agree that they should be addressed in the upcoming changes. However, in terms of the guidance given by the WSIB on the mechanism by which they will address these issues we have some concerns which we will discuss in this submission. We will also propose an alternative approach.

### **Proposed WSIB approach to achieving their objectives**

To address the Classification Arbitrage issue the WSIB has proposed that TEAs would be the exception to the one classification per employer rule. Instead, TEAs would have multiple classifications; one for each classification present in their client base as well as potentially one for the employees the TEA has associated with its internal operations. The TEA would then remit payroll and pay premiums based on which classification the temporary worker was employed.

When looking at potential solutions to the Claim Cost Arbitrage and RTW incentive issues, the WSIB has not been as concrete with a proposed approach. At one point, Bill 18 looked to amend the Workplace Safety and Insurance Act to attribute the accident cost of a temporary worker’s claim directly to the client employers. This was subsequently taken out and the WSIB was given authority to make changes in the future to address these issues. Recently, throughout this consultation process the WSIB has mentioned it is in the process of doing so and evaluating ways of attributing temporary worker claim costs to client employers.

While the WSIB has not put forward a formal proposal for allocation of claim costs, our respective clients have significant concerns. When evaluating even the concept of allocation of temporary worker claim costs, several issues arise:

1. Confidentiality issues: There are several areas where potential confidentiality issues arise when looking at charging claim costs to the client employers:
  - a. Worker’s wage information: Claim cost information contains a workers’ wage information which the client employer is not entitled to know.
  - b. Competitive information: Temporary workers often times work at multiple employers. Claims that have concurrent employment could potentially have other wage information from other employers exposed to clients. This is an especially large issue for TEAs as it could be used to determine rate cards at other clients.
  - c. Worker’s personal information: If the client employer is expected to manage the claim and has access to the claim file, a workers’ personal information such as

address, SIN, phone number would also be given to a party that is not his / her actual employer.

2. Loss of ability to manage worker / control your claim costs: If a client employer is being charged claim costs, it is currently unclear who would be responsible for managing the claim (e.g., providing modified work). If the onus is to still lie with the TEA, then the client employer is now financially responsible for something they have very little control over. If instead the client employer is expected to manage the claim, then the TEA potentially loses the ability to manage their own employee and the client employer is expected to be able to manage a worker that they don't really have any authority over.
3. Administrative burden and uncertainty: This could potentially add significant administrative overhead to the current process of using TEAs which is counter to one of the business purposes that TEAs fulfill which is making things easier for their clients. It creates a lot of uncertainty in the WSIB policies and could potentially require more exceptions to be made which would further confuse employers. An example, for the scenario where a client employer contracts for its temporary workers through a separate shared services legal entity. Would the claim costs be charged to the shared services company? Would the WSIB have to rule on who the ultimate client was?

### **Our alternative approach**

While we believe the issues the WSIB have identified are legitimate and worth addressing, using claim cost allocation as a mechanism to address these has too many potential pitfalls and would be detrimental to TEAs as well as their clients and would threaten the business value TEAs' create. We propose an alternative mechanism to address these issues within the constraints of the new classification and experience rating changes proposed by the WSIB.

The key principles of our approach are:

- **Account Structure / Classification:** In addition to having multiple classifications, TEAs would have multiple accounts, one for each client employer. Each account would have the same classification as the client employer, similar to the proposed approach by the WSIB to address the classification arbitrage issue.
- **Premiums:** Premiums would be paid by the TEA similar to today with TEAs recovering these premiums through their standard mechanisms with their clients (i.e., averaging these costs into the bill rate).
- **Claim Costs:** Claim costs would be charged to the TEA into the account that is associated with that particular client employer. This would result in employers' bearing the financial impact of their claims as the premiums associated for this account would reflect claim cost performance in the new experience rating framework.
- **Experience Rating:** Each account that a TEA has would be experience rated independently. In addition, we propose that each account inherits the actuarial predictability of the client employers corresponding WSIB account. This would result in the financial impact of the

claim being identical to if the claim occurred with a regular worker. The reason this work is because of the linear nature of how claim costs impact premium rates in the new experience rating model. For example, a large employer that has an actuarial predictability of 100% has a high cost claim with a regular employee that increases his adjusted risk profile by 2% (e.g., from a 1 to 1.02). Ignoring the potential rounding impact that the risk bands have, this claim would typically move a large employer's target rate up by 2%. If instead, this happened to their TEA, the premium base associated with the TEA's client account is smaller. In this example, the TEA has 10% of the premium base. Because the expected claim costs are proportional to premium base and the TEA inherits the 100% actuarial predictability of our client employer, this claim will make the adjusted risk profile of this TEA client account 20% higher which in turn would move the TEA's target rate up by 20% but as the premium base is 10x smaller we get the same financial impact of 2%.

We believe that this approach addresses all the WSIB's objectives for TEAs and their respective clients but without the many issues identified with allocation of claim costs. In addition, it provides a number of additional benefits to all parties:

- **Transparency into performance:** As each client employer has a separate account at the TEA, the premium rate associated with the client employer account at the TEA will provide a very clear indicator into performance. This will further incentivize all parties to lower claim costs and potentially use WSIB performance as a source of competition in the TEA industry.
- **Worker is treated more fairly:** Under claim cost allocation, the worker is treated like a liability. Their responsibility is passed back and forth depending on whether or not they are injured. In this model they maintain continuity with their TEA.
- **Simpler process for the WSIB:** In the WSIB proposed approach, the TEA has one account per classification which leads to ambiguity in reporting a claim. If the TEA is reporting a claim and has multiple clients in the same classification they would need to somehow specify which client it needs to be linked to, which would be a unique part of the reporting process that only TEA claims would need. In this model, each account is associated with a single employer so they can report as normal. If the WSIB was planning on having the client employer report TEA claims then there is the further issue of confidentiality as the client employer would need personal information from a worker that isn't their own including address, SIN and payroll.



## Conclusion

Again we applaud the overall approach the WSIB has taken during the consultation to date. We agree that there are a number of issues in the current system that should be addressed in the proposed changes. However, we believe that use of claim cost allocation as a mechanism to address these concerns presents a number of issues and would significantly and unnecessarily negatively impact the TEA industry and their clients. We believe that a more viable solution exists through the combination of account structure, classification and experience rating as outlined in this submission.

We encourage the WSIB to explore this and other alternative approaches and to engage the various employer stakeholders to develop an optimal solution for all parties.

Sincerely,



Jeff Tung,  
Partner, Windley Ely  
On behalf of our clients

Sincerely,



Stacey Duggan,  
Chief Operating Officer, The Staffing Edge  
On behalf of our members

## Windley Ely

Founded in 1998, Windley Ely (“WE”) is a leading Canadian workers’ compensation outsourcing services provider, dedicated to providing workplace injury solutions that will reduce operating costs and improve corporate visibility. We provide services coast-to-coast and to a diverse clientele including some of the nation’s largest employers and most recognizable brand names in retail, logistics, transportation and manufacturing. In Ontario alone, our client base employs over 150,000 workers that report their claims to the WSIB. Our clients represent some of the highest performing companies in their Workers’ Comp rate groups.

## Staffing Edge

For 20 years, Staffing Edge has supported independent staffing agency entrepreneurs across Canada by providing a suite of services which include payroll, technology, workplace safety, injury and claims management, Occupational Health and safety compliance and a variety of other services. We are responsible for assisting with 8,000+ temporary and contract workers across Canada. Our clients represent some of the most successful temporary staffing businesses in Canada who rely on our services to provide the freedom to focus on their core business as well as the tools to achieve success.

### **Experience and merit rating programs**

**83** (1) The Board may establish experience and merit rating programs to encourage employers to reduce injuries and occupational diseases and to encourage workers' return to work.

#### **Same**

(2) The Board may establish the method for determining the frequency of work injuries and accident costs of an employer.

#### **Same**

(3) The Board shall increase or decrease the amount of an employer's premiums based upon the frequency of work injuries or the accident costs or both. 1997, c. 16, Sched. A, s. 83.

### **Regulations re temporary help workers**

(4) The Lieutenant Governor in Council may make regulations,

(a) defining a temporary help agency for the purposes of this section;

(b) requiring that, despite section 72, if a temporary help agency lends or hires out the services of a worker to another employer who participates in a program established under subsection (1) and the worker sustains an injury while performing work for the other employer, the Board,

(i) deem the total wages that are paid in the current year to the worker by the temporary help agency for work performed for the other employer to be paid by the other employer,

(ii) attribute the injury and the accident costs arising from the injury to the other employer,

(iii) increase or decrease the amount of the other employer's premiums based upon the frequency of work injuries or the accident costs or both, and

(iv) deem the other employer to be an employer for the purposes of sections 58 and 59 in such circumstances as may be prescribed;

(c) prescribing circumstances for the purposes of subclause (b) (iv);

(d) requiring that, if a temporary help agency lends or hires out the services of a worker to another employer who participates in a program established under subsection (1) and the worker sustains an injury while performing work for the other employer, the other employer notify the Board of the injury;

(e) for the purposes of a notice required by a regulation made under clause (d), governing the notice, including prescribing the manner in which notice of an injury is to be given, the period of time within which notice is to be given and the parties to whom copies of the notice must be given; and

(f) prescribing penalties for failure to comply with requirements prescribed under clauses (d) and (e). 2014, c. 10, Sched. 5, s. 2.

**Section Amendments with date in force (d/m/y)**

2014, c. 10, Sched. 5, s. 2 - 06/04/2018



## **WORKERS' HEALTH AND SAFETY LEGAL CLINIC**

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15 November 2022

*Via Electronic Mail*

Temporary Employment Agencies Proposed Rate Setting Modifications Consultation  
Consultation Secretariat  
Workplace Safety and Insurance Board  
200 Front Street West  
Toronto Ontario  
M5V 3J1

**RE: Temporary Employment Agencies Proposed  
Rate Setting Modifications Consultation**

To Whom It May Concern:

The Workers' Health and Safety Legal Clinic ("the Clinic") appreciates the opportunity to make further submissions on the classification of temporary employment agencies in the business of supplying clerical labour. These submissions are in response to the Workplace Safety and Insurance Board ("the WSIB" or "the Board") decision to stage a second phase consultation for the benefit of this subset of the temporary employment agency ("TEA") industry.

*Who We Are*

The Clinic is a community legal clinic funded by Legal Aid Ontario. Our mandate is to provide legal advice and representation to non-unionized low wage workers in Ontario who face health and safety problems at work. We also advocate for systemic change and law reform to improve health and safety legislation and protections for workers.

*Overview*

With respect, the response and proposal from the WSIB is disappointing as it essentially adopts the proposals from the TEA industry. The WSIB chose to focus solely on satisfying the TEA industry rather than creating or fashioning a solution acceptable to all stakeholders in recognition of the need for promoting health and safety across the Province of Ontario. These submissions will address the legitimacy of the concerns raised by the TEA submissions and propose other solutions to address said concerns, notwithstanding their questionable validity.

### *Recognising Risk in Classification*

TEA submissions raised a concern with respect to the disparity between premium rates for the supply of clerical labour and the premium rates of client employers. A TEA employer is in a unique position in the compensation scheme. The WSIB classifies employers based on the nature of their business activity.<sup>1</sup> The class premium rate is based on each class' share of responsibility for the costs generated to maintain the insurance fund.<sup>2</sup> The TEA does not fit this structure. When the structure is based on claim costs or risks of the business activity, the TEA is not the same as the client employer. The TEA does not have the same risk because it is not in that business, they simply supply labour. The TEA's workers are in the place (and the relative danger) controlled by the client employer, not the TEA.

Further, there is no undertaking to ensure classification is correct. There is no guarantee that every TEA is on-site ensuring that workers are engaged solely in "clerical" labour.

The purpose of ensuring that the TEA industry was classified as the client employers was to prevent the gaming of the classification system. The WSIB fails to recognise that by accepting the proposed approach from the TEA industry, it permits the system gaming to continue unabated. Employers would be able to continue using the TEA industry for cheaper premium rates effectively farming out responsibility for accidents and workplace health and safety. This is unacceptable and amounts to a reversal by the WSIB to end the protection of bad employers.

### *Recognising Risk in Business Activity*

In one submission supporting a lower premium rate for the TEA industry, the discrepancy between premium rates was cited. Specifically, the comparison was made between Class L at \$0.22 versus Class D2 at \$3.51. As noted above, the premium rate is set by the relative risk of the business industry.

It should be noted that Class D2, according to the WSIB Safety Check website, recorded more claims<sup>3</sup> than Class L for 2022<sup>4</sup> even though there were far more employers registered in Class L. If the purpose of keeping varying premium rates is to reflect the relative risk of the nature of the business when workers are placed in those businesses by the TEA, the TEA should pay the same premium. When a TEA places a worker in a higher risk setting, it should come as no surprise that the TEA pays according to the risks associated with the client employer's business.

Submissions from the TEA industry also decried the practice of placing workers with different client employers resulting in having to pay premiums at various rates. The majority of those other rates were higher than the greatly desired Class L. Permitting "clerical" TEA employers to hide claim costs in Class L will not protect workers from the dangers of the job found in client employers. Accepting the TEA proposal does not protect the health and safety of workers and it does not discourage the use of a TEA to offset claim costs. The spectre of Fiera Foods hangs over the entirety of the TEA industry. The client employer's premium rate reflects the nature of the workplace, not the TEA industry. If these client employers were so risk-free and had low accident rates that would be reflected in the class premium rate.

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<sup>1</sup> [WSIB Policy Document 14-01-01](#)

<sup>2</sup> [WSIB Policy Document 14-02-02](#)

<sup>3</sup> [https://safetycheck.onlineservices.wsib.on.ca/safetycheck/explore/provincial/CL\\_D2?lang=en](https://safetycheck.onlineservices.wsib.on.ca/safetycheck/explore/provincial/CL_D2?lang=en)

<sup>4</sup> [https://safetycheck.onlineservices.wsib.on.ca/safetycheck/explore/provincial/CL\\_L?lang=en](https://safetycheck.onlineservices.wsib.on.ca/safetycheck/explore/provincial/CL_L?lang=en)

### *The WSIB Cannot Open the Floodgates for Ancillary Operations*

The consequence of accepting the arguments made by the TEA industry has the danger of adversely impacting the entire classification system. It would also be contrary to the relevant WSIB policy.

Ancillary operations, those activities which are incidental to the business activity but are not an activity in and of themselves, are covered by *The Classification Structure* policy.<sup>5</sup> Simply put, the premiums for the office staff of a business are at the same rate as those workers undertaking the work. A construction company pays the same premium rate on the wages of the administrative assistant as it does for the bricklaying employee.

The arguments made by the TEA industry would open the door to similar arguments for all employers. If the WSIB allowed the TEA industry to have a special clerical rate, it would definitely be the first step in attempting to separate out ancillary operations for all employers. It would not take long for other employers to demand similar treatment for in-house ancillary staff. With respect, the WSIB and the current government have already rewarded employers with rate reductions and premium rebates. The next step in the long game to having employers pay less appears to be isolating ancillary operations and reducing premiums further. This is contrary to the applicable policy and further defunds the compensation system.

### *Alternative Approaches*

As part of the stakeholder submissions, a number of different approaches were suggested. Those suggestions were not addressed or considered. The classification system addresses the relative risk of the industry in question. There is no valid reason why workers engaged in that level of risk should benefit employers who farm out this type of labour. Other options should be considered before giving the TEA industry their stated goal – a discount that led to the situation at Fiera Foods.

### *Alternative Approach # 1 – Address Classification Deficiencies*

In addition to competition between companies, the TEA industry faces stiff competition from other businesses. The industry submissions allege that lower rate “consultants” offer the same services but pay premiums at the Class L level.

There is no response from the WSIB to address this alleged inequality.

Instead of lowering the bar on premium rates for the industry, the WSIB should be open to addressing the classification of consultants and consulting work. This would resolve the issue of competition. By re-evaluating consultancy work the WSIB, together with the TEA industry, can craft a premium rate group that correctly defines the services offered where applicable.

### *Alternative Approach # 2 – Transfer of Costs*

The WSIB has the power to create an experience rating program to encourage employers to reduce injuries.<sup>6</sup> This power was used when the Fatal Claim Premium Adjustment Policy was implemented. It was accepted that the WSIB had the power to adjust premiums.<sup>7</sup>

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<sup>5</sup> Supra, note 1.

<sup>6</sup> *Workplace Safety and Insurance Act, 1997*, S.O. 1997, c. 16, Sched. A, as amended, [s. 83\(1\)](#).

<sup>7</sup> *Ibid*, s. [82](#).

The WSIB already has a policy to transfer costs between employers.<sup>8</sup>

In addition, the WSIB could lobby the Government to implement a regulation in keeping with s. 83(4).<sup>9</sup> That subsection contemplates the drafting of a regulation that would transfer the costs of a TEA to the client employer. The Phase Two Consultation is inadequately silent as to why the WSIB has chosen not to lobby the Government for a power it could use to so easily resolve the question of TEA claim costs. This lack of commitment to making the right employer responsible for health and safety of workers under their care undercuts any assertion that health and safety matters to the WSIB.

### *Conclusions*

Without having to reprint the evidence from the previous consultation, there should be no doubt that the TEA industry has been used to hide bad employers from the consequences of their actions. The Phase Two Consultation essentially seeks approval to allow the TEA industry to continue providing cover in “clerical” labour. This disparity between the premium rates of the TEA and the client employer does not accord with the notion that these are low-risk jobs.

The answer to the issues raised by the TEA industry is to not give in to its demands. The WSIB has the power to address the problem by making the client employers take responsibility either indirectly through the classification of TEA employees, or directly through transfer of costs. Only when the WSIB commits to recognising that this is more than a financial question for the TEA industry but a question health and safety for workers, will it live up to its statutory purpose to “To promote health and safety in workplaces.”<sup>10</sup>

Thank you again for the opportunity to make further submissions. I look forward to the Board’s final decision mindful of the need to protect the health and safety of workers, the integrity of the compensation scheme, the validity of the classification system, while addressing the issue of claims avoidance, claim suppression, and cost reduction on the backs of injured workers.

Yours truly,

*John Bartolomeo*

John Bartolomeo  
Lawyer/Co-Director

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<sup>8</sup> [WSIB Policy Document No. 14-05-01](#).

<sup>9</sup> *Supra*, note 6 s. [83\(4\)](#).

<sup>10</sup> *Supra* note 6, [s. 1\(1\)](#).