

# RESEARCH REPORT

## **Policy Conditions Surrounding Compulsory Workplace Safety and Insurance Coverage in Ontario's Construction Sector**

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## Executive Summary

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This research study investigated circumstances of the policy development of compulsory Ontario Workers' Safety and Insurance Board (WSIB) coverage for self-employed workers under the Workplace Safety and Insurance Act, 1997 classification, *Compulsory Coverage in Construction*.

We asked, "What environmental factors led to requiring all construction workers to have WSIB coverage?" Using a Policy Advocacy Coalition Framework, we examined arguments made by stakeholders for and against compulsory coverage for all construction workers, including independent contractors, and how the policy decisions were made.

Our findings are laid out in two parts. Part 1 details the policy environment prior to 2008 when compulsory coverage in construction was introduced as an amendment to the Workplace Safety and Insurance Act, 1997. Here, we identify key contributing issues of the underground construction economy and WSIB's unfunded liability. Related to the underground construction economy, some construction companies hiring workers under the table and not paying WSIB premiums were seen to create unfair competition for other construction companies who abided by the rules. There was also a perception that, because of this unfair competition, those companies that paid WSIB premiums paid more than their fair share. The WSIB's unfunded liability was cited to justify efforts to expand WSIB coverage and bring in more premium payers. Underlying both issues was employer dissatisfaction with paying insurance premiums. A backdrop for the policy debate was the province of Ontario facing early signs of market slowdown and the 2008 economic recession, as well as the impending (2010) Harmonized Sales Tax, which would elevate construction costs. In addition to the underground construction economy and WSIB's unfunded liability, we also identify four policy issues that appear to have contributed to the compulsory coverage policy change. These were WSIB changes to construction premium plans, WSIB's policy of last employer occupational disease responsibility, WSIB return to work and re-employment obligations, and new criminal negligence legislation introduced by the 2004 Westray Bill.

In Part 2 of the findings, we identify ways that compulsory WSIB coverage for construction workers in Ontario appears to have created policy solutions. Employee status was no longer an insurance coverage issue, the scope of clearance certificates was expanded, the need for named insurers was removed, and the problem of uninsured workers was removed.

In all, our analysis proposes that compulsory coverage for construction workers was brought about by WSIB, political, business and trade union policy actors forming coalitions around the issue of compulsory construction coverage by WSIB. Balancing construction employers' desires to both avoid liability and minimize premium costs appeared to be driving factors in WSIB adopting the decision to expand compulsory coverage in Ontario to all construction workers. Environmental factors including economic conditions (e.g., recession) and financial policy (e.g., HST) also shaped stakeholder positions.

## Compulsory Workers' Compensation Coverage for Construction

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Compulsory workers' compensation coverage in the construction industry in Ontario became law on November 27, 2008, when *Bill 119 (S.O., 2008, c.20)* received Royal Assent to amend the *Workplace Safety and Insurance Act, 1997*. Although the law passed in 2008, compulsory coverage was not set to be enforced until 2012. Ultimately, implementation was delayed until 2013.

A business' WSIB coverage is proven (and theoretically enforced) via a WSIB clearance certificate that is issued to businesses in good standing with WSIB. Under the WSIB policy, Clearance Certificates in Construction (14-02-19), Independent Operators and Sole Proprietors (and partners and executive officers) in construction are automatically considered covered workers:

*“Deemed workers and deemed employers: Every IO [Independent Operator], SP [Sole Proprietor], partner in a partnership and EO [Executive Officer] of a corporation carrying on business in construction is a deemed worker, unless they are exempt under this policy. When a person is a deemed worker, the respective IO, SP, partnership or corporation carrying on business in construction is the deemed employer. Deemed workers and deemed employers in construction are subject to the rights and obligations of workers and employers under the Workplace Safety and Insurance Act, 1997, except where indicated in policy<sup>1</sup>.*

## Method of analysis: Advocacy coalitions and key events

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This report draws on the Advocacy Coalition Framework approach to make sense of how policy actors and key events played a role in the expansion of compulsory coverage to independent operators in construction.

The Advocacy Coalition Framework analysis considers policy actors' overarching and core policy beliefs as factors in creating “advocacy coalitions”, which are groups with shared policy goals (Weible et al., 2009). This approach also considers the impact of significant events that may shift the beliefs, priorities or allegiances of actors. These events may be external environmental events/conditions, or events internal to the policy advocacy coalition.

For this analysis, policy players were identified according to whether they were in favour of, or against, the compulsory construction coverage policy change.

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<sup>1</sup> <https://www.wsib.ca/en/operational-policy-manual/clearance-certificate-construction>

## Findings

In the next two sections, we lay out our findings. Part 1 details the policy environment prior to 2008 when compulsory coverage in construction was introduced as an amendment to the Workplace Safety and Insurance Act, 1997. Here, we identify two key policy issues (underground economy and unfunded liability) and four contributing policy issues. In Part 2 of the findings, we identify ways that compulsory WSIB coverage for construction workers in Ontario appears to have created policy solutions.

### *1. Part 1: Policy Environment and Issue Identification*

This section of the report describes the policy environment prior to 2008 when compulsory coverage in construction was introduced as an amendment to the *Workplace Safety and Insurance Act, 1997 (S.O. 1997, c. 16, S.A)*. Although the amendment did not take force until January 2013, it was passed in 2008 and the activities informing this policy change took place during several years prior. For a timeline of relevant events covering the 1990s – 2013, see Appendices A and B.

The policy environment preceding the 2008 amendment (that resulted in the 2013 compulsory coverage policy in construction) was dominated by construction stakeholder discourse about two key policy issues: the underground economy and the WSIB unfunded liability. Contributing issues that were not directly related to the expansion of compulsory coverage, but nevertheless played a role as they fed into employer concerns about WSIB premium costs, are also detailed. These are WSIB premium plans, occupational disease responsibility, new criminal negligence legislation, and WSIB re-employment obligations.

#### *1.1. Key Policy Issues*

### **Underground Economy and Taxation**

The underground economy in the Ontario construction sector was a key issue behind stakeholder interest in compulsory coverage for construction workers.

Taxation in the pre-2008 years elevated concern about the underground economy. The introduction of GST in 1991 prompted employer tax evasion efforts, which increased activity in underground economy (Tedds, 2005). In 1993, the Canadian Federal Government began the Underground Economy Initiative with involvement of the Canada Revenue Agency<sup>2</sup>, potentially elevating population awareness of the underground economy. The WSIB took a tough stance on fraud to encourage compliance with the law, and in 1998 reported that their fraud unit recovered \$10.8 million from 437 charges (314 charges against employers, 63 charges against workers) (Cameron, 1998). The Harmonized Sales Tax (combining the Provincial Sales Tax, or PST, and the Goods and Services Tax, or GST), planned for 2010, was also described by the

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<sup>2</sup> <https://www.canada.ca/en/revenue-agency/programs/about-canada-revenue-agency-cra/internal-audit-program-evaluation/internal-audit-program-evaluation-reports-2008/underground-economy-initiative-information.html>

Canadian Home Builders' Association as a threat that would increase the underground construction market (Dupuis, 2009).

The underground economy factored into policy stakeholders' arguments for the expansion of WSIB insurance coverage in three ways:

*First*, business organizations that advocated for compulsory coverage argued that collecting premiums from businesses currently operating "under the table" would increase WSIB revenue. According to a 2002 report in the Daily Commercial News and Construction Record, the Provincial Building and Construction Trades Council of Ontario estimated the WSIB was losing about \$350 million in premiums [time frame unspecified] due to the underground construction economy (Cameron, 2002b). A 2004 report (also in the Daily Commercial News and Construction Record) cited a Council of Ontario Construction Associations bulletin as finding potential for \$35 million per year in premiums:

"The council says that with new tools, like its agreement with the Canada Revenue Agency, the WSIB is on track to bring in 4,000 construction employers with new assessments valued at \$35 million per year" (Cameron, 2004a).

Although the two accounts cited above show a discrepancy between \$350 million in premiums vs. \$35 million, what is relevant is that in each account the same sentiment about lost revenue is expressed. Later, in the 2008 Standing Committee on Social Policy hearings about Bill 119, the International Union of Painters and Allied Trades Ontario Council cited \$350 million in unpaid WSIB premiums lost due to approximately 40% of companies in the construction industry not paying their share (Standing Committee on Social Policy, 2008).

Expanded WSIB coverage as a solution to underground construction industry activity was suggested in a report commissioned by the Ontario Construction Secretariat (Armstrong et al., 2004). The report, entitled "*Attacking the Underground Economy in the ICI Sector of Ontario's Construction Industry*", was by Tim Armstrong (former chair of the Labour Board, former Deputy Minister of Labour and former Deputy Minister of Economic Development and Trade) and John O'Grady (Prism Consulting).

A *second* way that the underground economy factored into policy stakeholders' arguments for the expansion of WSIB insurance coverage was that it would promote a more level playing field for businesses. Stakeholders noted that legitimately operating businesses that paid WSIB premiums were placed at a disadvantage when competing with companies not paying premiums. This was because underground companies, who avoided WSIB costs, could afford to charge less for their services than legitimate operations and so they unfairly undercut legitimate operations when bidding on the same jobs (O'Grady, 2004).

A *third* argument for the expansion of WSIB insurance coverage was that the cost of companies not paying WSIB premiums ultimately fell on those companies that paid the premiums:

“Industry experts have estimated that 100% of the construction-related costs associated with the WSIB system are currently paid by 61% of the companies involved in the industry” (International Union of Painters and Allied Trades, Ontario Council at the (Standing Committee on Social Policy, 2008)

According to the Council of Ontario Construction Associations, the inclusion of more contractors under WSIB lowered premium rates in 2004. The Council of Ontario Construction Associations took the position that further expanding the requirement for coverage would lower premiums:

"COCA [Council of Ontario Construction Associations] has always said that requiring payment to WSIB for everyone exposed to hazard on a construction site will reduce rates," the [Council of Ontario Construction Associations] said" (Cameron, 2004a).

### **WSIB's Unfunded Liability**

The WSIB's unfunded liability was the second key policy environment that supported stakeholder interest in compulsory coverage for construction workers. Prior to the introduction of the Workplace Safety and Insurance Act (WSIA) (1997), the issue of WSIB's unfunded liability began to be mentioned in reports, and this would later factor into the discussion around compulsory coverage for construction workers.

Following a significant report, called “Reshaping Workers’ Compensation For Ontario” by Paul Weiler (Weiler, 1983), the Ontario Legislature Standing Committee on Resources Development made several recommendations for Workers’ Compensation reform (Standing Committee on Resources Development, 1983). Included in the committee’s recommendations was a focus on the unfunded liability:

“An immediate study should be conducted by the WCB to determine whether the *unfunded liability* should be reduced and, if so, by how much. This study should be based on the principle that WCB funding and the financing of the unfunded liability are the exclusive responsibilities of employers” (Standing Committee on Resources Development, 1983).

In 2008 – a notable *25 years following the 1983 recommendation* – the issue of unfunded liability became part of the debate about compulsory coverage for construction workers. For example, during 2008 hearings about the proposed WSIA amendment, Council of Ontario Construction Associations president Ian Cunningham spoke about how additional revenue from increased premiums was expected to reduce the amount of the unfunded liability:

“It is our understanding that the WSIB is anticipating that this new mandatory system will generate \$70 million in net new revenue for the WSIB once it is up and running. [...] [COCA Council of Ontario Construction Associations] is eager to review the WSIB’s full working papers projecting the capture of the estimated 90,000 independent operators

into the system and the premiums they will be paying. We trust that the WSIB has used a conservative approach in projecting this new income into their calculations of the *unfunded liability*" (Standing Committee on Social Policy, 2008, emphasis added).

Media reports also mentioned the compulsory coverage for construction workers as related to WSIB's unfunded liability. According to the Canadian Press newswire, the bill was a "cash grab" by WSIB to address an "unfunded liability [that] grew to \$8 billion last year" (Canadian Press NewsWire, 2008).

### *1.2. Contributing Policy Issues*

Contributing issues that were not directly related to the expansion of compulsory construction coverage by WSIB, but nevertheless played a role are detailed below. These four issues are detailed below: WSIB premium plans, occupational disease responsibility, new criminal negligence legislation, and WSIB re-employment obligations.

#### **WSIB Premium Plans**

The expense to employers of *WSIB premium rates* was raised as a concern at the 2008 Standing Committee hearings on the WSIA Amendment Act 2008 by both small business owners and larger companies. Although generating more WSIB revenue from having more premium payers was described above as a factor relevant to the expansion of coverage, WSIB revenue also varied by how premium rates were historically decided. Rate-setting schemes may have informed what alternatives to expanding coverage were considered favourable by some interested parties. For instance, small businesses could have more resistance to rate hikes based on the impact. Prior to 2008, two changes to rate-setting schema illustrate how companies within the construction sector sometimes had divergent interests.

#### *CAD-7 to Merit Adjusted Premiums*

In 1999 and 2000, the WSIB began looking at modifying the construction industry premium program. Smaller construction companies were responsible for most fatalities (Cameron, 2000). These smaller companies would be among the approximately 72% of construction employers who were to be moved from the CAD-7 plan (which covered all construction sector companies) to the Merit Adjusted Premium (MAP) plan (which covered all small businesses). The MAP was to be implemented for construction employers with premiums of \$1k-25k (Cameron, 1999). Larger construction companies with premiums higher than \$25k would remain on the CAD-7 plan (Cameron, 1999). A key effect of the MAP program was the incorporation of a rebate or surcharge directly into the employer's own premium rate. Thus, the impact of the WSIB policy changes for premiums affected small construction businesses, not larger ones.

#### *2003 CAD-7 and Experience Rating*

Under pressure from industry advocates regarding premium costs, the Council of Ontario Construction Associations and the WSIB (with employer input) developed a strategic plan in 2000 to address concerns about the cost of construction sector premiums (Frame, 2004). A Joint Advisory Implementation Group consisting of WSIB and construction industry employers and employees was formed in 2003 to implement changes from the Council of Ontario



Construction Associations -WSIB strategic plan (Frame, 2004). The CAD-7 change that was put in effect in 2003 was a gradual increase of the multiplication factor for experience rating, which is a formula based on the difference between industry averages and the severity and frequency of actual accidents (Bender, 2004). The idea behind experience-rated premiums is financial rewards (rebates) for safe performance and higher charges (surcharges) for businesses reporting higher accident rates. Premiums that incorporate consideration of actual unsafe performance seemingly pointed away from the notion of “distributed risk” and toward a movement focused on individual business accountability. With respect to compulsory coverage for construction workers, holding independent contractors accountable for their own work safety and practices by expanding compulsory coverage was likewise a financial accountability mechanism.

### **Occupational Disease**

Construction employers felt that construction worker occupational disease costs were often unfairly passed on to them.

In the construction industry, where workers were often employed by several employers over time, a concern of the Provincial Building & Construction Trades Council of Ontario was WSIB’s practice of *holding the last employer responsible* for any future Occupational Disease (except asbestos) claims (Cameron, 2002b). Once experience-rating was factored into premiums, this could mean severe financial consequences for employers who were held liable for employees who had also worked as independent contractors or in the underground economy. For employers, individuals who went on to work as independent contractors without coverage represented a liability to their last employer, despite any subsequent sources of exposure.

### **Criminal Negligence**

On March 31, 2004, the federal Westray Bill (Bill C-45), which amended the Canadian Criminal Code, established new legal duties for workplace health and safety. It included new *potential to criminally charge organizations and their representatives* (i.e., CEOs and managers) for violations that resulted in injuries or death. Effectively, construction corporations and the individuals involved in managing them could then be held liable as individuals for workplace accidents and fatalities (Canadian Centre for Occupational Health and Safety, 2021).

The introduction of criminal liability for occupational accidents in 2004 could have spurred employers to limit their legal liability, by hiring workers as self-employed contractors rather than as employees. In this context, compulsory coverage for construction workers took pressure off employers to be responsible for health and safety coverage of workers on their sites.

### **Return to Work and Re-employment Obligations**

In the construction sector, where chains of sub-contracting are common, return-to-work policies shifted to reduce pressure on employers to re-employ injured workers, if they were

sub-contracted. This policy may have been a push factor towards increased use of contracted workers in construction and other sectors.

From 1986 to 1992, a Task Force on Vocational Rehabilitation examined ill and injured workers' return-to-work performance (Ontario Workplace Tribunals Library, 2009). Subsequently in 1992, Ontario regulation entitled, *Reinstatement in the Construction Industry, O. Reg. 259/92*, laid out stipulations for return to work and accommodation of construction workers, with specific criteria for unionized and non-unionized workers.

This regulation was unchanged from May 12, 1992 to February 21, 2008. On February 22, 2008, the regulation was changed to the *Return To Work And Re-Employment - Construction Industry, O.Reg. 35/08*. The 2008 regulation came into force in September 2008. (During transition from Feb. until September 2008, Reg 259/92 continued to apply to any new injury<sup>3</sup>). Within the regulation, a note regarding "control of the workplace" explained the limitations of construction employers' responsibility to re-employ the worker:

“(2) Paragraph 2 of subsection (1) does not require the employer to accommodate the workplace to the needs of the worker *if the employer does not control the workplace*” (*Return To Work And Re-Employment - Construction Industry, O.Reg. 35/08*).

This section was not included in the previous regulation, *Reinstatement in the Construction Industry, O. Reg. 259/92*. While this has no explicit mention of self-employed workers (i.e. independent contractors), the change in regulation appears to recognize issues of liability related to *contracting and sub-contracting* in the construction industry. Via the above section, a company that is contracted by another business is relieved of the responsibility to re-employ a worker. This highlights the potential for contracting work to alleviate re-employment obligations that arise out of direct employer-employee relationships.

## *2. Part 2: Policy Solutions*

Compulsory WSIB coverage for construction workers in Ontario appears to have created a number of policy solutions. This section describes four policy issues that we propose were resolved with mandatory coverage, which took force in 2013.

### *2.1. Employee Status Questionnaire*

Compulsory coverage for construction workers removed the sometimes-challenging issue of determining employee status.

Prior to compulsory coverage for independent operators, a workers' status as employee or independent operator was key to determining if a worker was entitled to workers'

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<sup>3</sup> <https://www.ontario.ca/laws/regulation/080035#BK24>

compensation coverage as laid out in the WSIA<sup>4</sup>. This was determined by a questionnaire to establish the type of relationship as employer-employee or contractor-independent operator:

“Since Jan. 1, 1992, the WSIB has used industry-specific questionnaires to determine who is a worker or an independent operator. An "organizational test" to determine the business relationship between independent operators and principal contractor has been adopted. The test examines whether the person supplying labour is part of the principal contractor's organizational structure or a separate enterprise” (Cameron, 2002b).

Similar types of questionnaires or ‘tests’ have been used widely in Canada and the USA to determine worker classification where it is in question; however, they have become increasingly problematic in the complex “gig economy” where elements of true worker independence are blurred (e.g., by technological or corporate controls) (Purse, 2021). Whereas industries with murky worker status sometimes resort to costly court cases to determine worker classification (Purse, 2021), the *compulsory WSIB coverage for Independent Operators in construction likely helped avoid the need for such legal measures*.

## *2.2. Clearance Certificates*

Compulsory coverage for construction workers expanded the scope of WSIB clearance certificates, drawing in independent contractors. Prior to the expanded compulsory coverage that came into effect in 2013, the method for ensuring workers had workers’ compensation coverage was via WSIB Clearance Certificates provided to businesses. Following WSIB policy 14-02-19, “Clearance Certificate in Construction”, principal contractors should ask for clearance certificates from sub-contractors to ensure the contractor has appropriate illness or accident coverage for workers and the primary contractor cannot be held liable for accidents or illnesses occurring with the contractors’ workers<sup>5</sup>.

Blaney McMurty Barristers and Solicitors provided a succinct summary of changes and how they were to be enforced:

“Under this new system of mandatory coverage in the construction industry there will be two primary changes. The first of these will be the requirement for independent operators, executive officers and partners in a partnership working in construction to secure and pay for WSIB coverage effective at the beginning of next year [January 2013]. The second change will *require any person who directly retains a construction contractor or subcontractor to obtain a WSIB-issued*

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<sup>4</sup> *Explanatory note:* Under the Labour Relations Act (LRA) in Canada, there are three statuses of worker: Employee, Dependent Contractor, and Independent Contractor; however, under the Employment Standards Act (ESA) there are only two statuses of worker: Employee and Independent Contractor (Doorey, 2022). Under the ESA, “employee” is usually interpreted broadly (Doorey, 2022). As the WSIA defines inclusion criteria for non-construction independent operators’ insurance via an organizational test, neither the LRA or ESA (often used to define employee status) are critical for determination of inclusion under workers’ compensation in Ontario

<sup>5</sup> <https://www.wsib.ca/en/operational-policy-manual/clearance-certificate-construction>

certificate confirming that the contractor or subcontractor is registered with the WSIB and in compliance with its payment obligations under the Act” (Siegel, 2012).

### 2.3. Named Insurance

Compulsory coverage for construction workers solved the challenging issue of insurers needing to have *names of insured employees* in a context where construction employment was often fleeting, and workers could be working for several employers at once.

According to a speaker at the 2008 Standing Committee on Social Policy hearings about the WSIA amendment Act, a named insurance program was a sensible solution that, to date, had been avoided by the WSIB:

“The other solutions are out there. *Named insured is a solution*. Your government, I guess, decided to truncate the process that was going on at WSIB to try to look into named insured. My goodness, named insured is done everywhere. Employment insurance, your health insurance, every type of insurance that's out there names the risk that they're insuring. *Only the WSIB insures payroll*” ( Vice President Judith Andrew, Canadian Federation of Independent Business Ontario at the Standing Committee on Social Policy, 2008).

An unnamed insurance system was described as increasing potential for fraud, as this allowed employers to pay premiums for only a portion of their workforce and exclude injured workers from coverage. The alternative of “named insurance” was mentioned during the 2008 Standing Committee on Social Policy hearings about the WSIA Amendment Act, when a Ontario Home Builders' Association spokesperson said:

“I just want to reiterate that we've put forward ideas, we've indicated that we support the named insured as a requirement of payment to our subtrades, and we've put forth that we agree that every worker on a construction site has to carry a card indicating which insurance he's covered under, whether it be WSIB or whether it be private insurance, and it would have to be private insurance that would be approvable.” (Frank Giannone, Standing Committee on Social Policy, November 17, 2008).

However, the reality of implementing this type of insurance in an industry where employment relationships were transient was described as impractical. The challenging logistics of the proposed alternative to named insurance were highlighted by Ron Johnson of the Interior Systems Contractors Association of Ontario:

“I have been on a number of different construction association types of committees to help develop that named-insured system. The challenge you face is that logistically it's just not possible. I heard Mr. Tory in his press conference, and I talked to him about this as well. Quite frankly, it's very easy to say you

want a named-insured system, and that's what you support. I challenge you, and I will help: Try to develop one. When you've got employees in the construction sector bouncing around from employer to employer five, six, 10, 12 times a year” (Standing Committee on Social Policy, 2008).

#### *2.4. Self-insured*

Some employers pushed against the requirement for all workers to have WSIB coverage, citing relative convenience of private insurance. Compulsory WSIB coverage for construction workers handily removed employers’ need for this argument, as construction workers themselves became responsible for paying WSIB premiums, alleviating construction businesses of this expense.

Arguments put forward *against* the requirement for all workers to have WSIB coverage centred largely on a preference for private insurance. Some independent operators and small businesses pointed out that private insurance covered workers both off and, on the job, whereas WSIB insurance was limited to work-related illness and injuries only. This issue was emphasized during the Standing Committee on Social Policy hearings November 17, 2008 when Canadian Federation of Independent Business Ontario Vice President Judith Andrew stated:

“WSIB insurance covers working hours, for one thing. When our members are buying insurance for the leaders of their companies, they're getting insurance that covers 24 hours a day. It covers them for a serious illness. [...] The product the WSIB offers is completely impractical for our members. They want to buy coverage somewhere else. If the government really thinks the WSIB insurance is so great, why don't you make it great so that people actually want to buy it, not force them to buy it?” (Standing Committee on Social Policy, 2008).

Those in favour of WSIB insurance countered that private insurer coverage was unreliable because private insurers would be less likely than WSIB to accept a worker’s accident claim (Standing Committee on Social Policy, 2008). However, the claim approval ratio for WSIB compared to private insurance was not discussed. NDP MPP Paul Miller raised the issue of unreliable private insurance during committee hearings:

“I don't know about you, but I've had dealings with insurance companies, and it's been questionable at best. A lot of times it's hard to get your money out of them for various reasons. They'll take your premiums, but then, when you want to collect it, it's a difficult situation, and I think everybody in this room has probably dealt with that” (Standing Committee on Social Policy, 2008).

Speakers opposed to compulsory coverage protested about the lack of choice of insurers. They suggested that there should be WSIB exceptions for businesses that could demonstrate equivalent insurance protection. One small business owner stated:

“That's the other thing that really irks me with this. I am being forced to buy a product I don't want from a monopolistic organization I do not agree with - in

the way that they manage their affairs - to solve a problem I don't have” (Renovator and contractor Harold Kuehn, Standing Committee on Social Policy, 2008).

It was suggested that WSIB compulsory insurance for construction workers was not about worker support but instead a reflection of a growing WSIB monopoly market:

“Ontario's WSIB is doing what any self-respecting monopolist would do: It is aiming to grow its monopoly power, its clout and its money. WSIB efforts to find an ill-informed, unsuspecting Minister of Labour willing to sponsor mandatory coverage legislation have persisted through successive Ontario governments and WSIB leaders” ( Canadian Federation of Independent Business Ontario Vice President Judith Andrew, to Standing Committee on Social Policy, 2008).

Ultimately, despite employer groups’ arguments against obligatory WSIB coverage, the legislation passed with construction workers themselves became responsible for paying WSIB premiums.

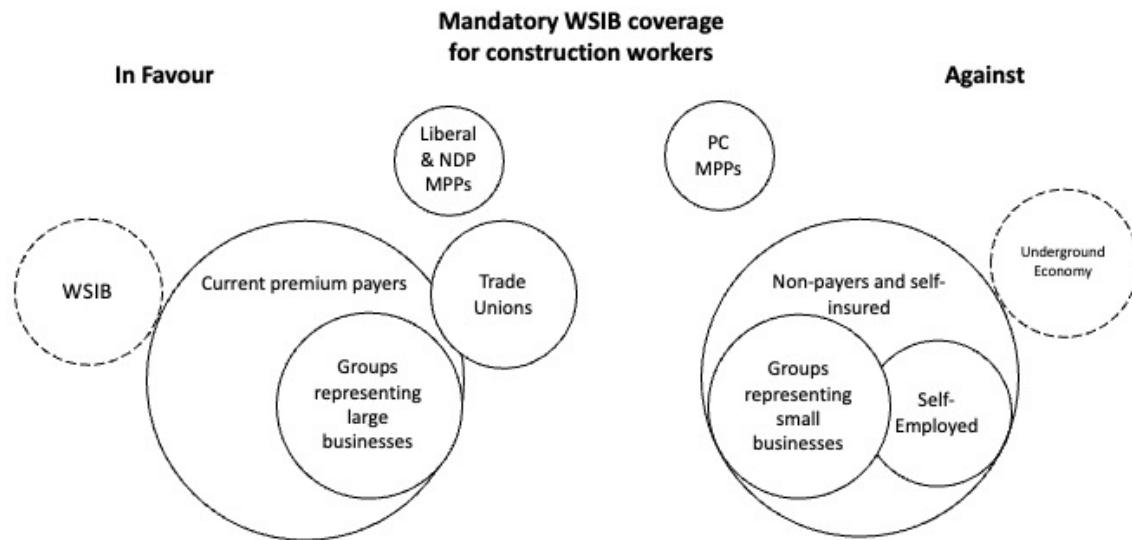
## Conclusions

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The key interest parties engaged in WSIB insurance coverage for construction workers were construction companies, unions, business groups, and politicians. Advocacy coalitions in relation to compulsory construction coverage by WSIB are depicted in Figure 1, below. Parties that appeared to be in favour of mandatory coverage were WSIB, trade unions, some vocal NDP and Liberal MPPs, large businesses, and business groups that represented larger employers (e.g. Council of Ontario Construction Associations, Millwrights Regional Council of Ontario, Provincial Building and Construction Trades Council of Ontario). Parties appearing to resist a change to mandatory construction coverage included business groups representing smaller employers (e.g. the Ontario Home Builders' Association, the Muskoka Builders' Association, and the Canadian Federation of Independent Business), independent operators, and some vocal Conservative MPPs.

The WSIB was not publicly engaged in political debates or hearings about the issue. It is important to note that a voice not addressed in this report is that of construction business employees (although employees were nominally included in the 2003 Joint Advisory Implementation Group). As this party was not represented in documented history on the mandatory construction coverage policy change, we were unable to assess how closely employees’ perspectives align with an advocacy coalition.

**Figure 1: Advocacy Coalitions in relation to compulsory construction coverage by WSIB**



We find that there was *not one specific reason* for the mandatory coverage construction sector WSIB policy change. To examine reasons for this policy change, we considered policy-issue relevant events that would have influenced the formation of policy or the positions of informal policy advocacy coalitions (Sabatier, 2007; Weible et al., 2009). The key events raised in this review include the underground economy as affected by introduction of GST and WSIB’s unfunded liability. Related contexts were criminal negligence introduced by the Westray Bill and WSIB policies on construction sector premium rates, employer responsibility for return to work, and occupational disease.

Significant occupational health and safety events also may have had an effect on the positions of stakeholders. For instance, in 2000, two worker deaths at an Ontario construction site (Brennan, 2002) were widely publicized. Media coverage often focusses on severe injury or death; that is, “shocking” or exceptional workplace accidents (Barnetson & Foster, 2015) and such broad attention to workplace incidents can impact societal perspectives of workplace health and safety, including shaping perceptions of what parties are responsible (Barnetson & Foster, 2015). This awareness may have placed increased pressure on stakeholders involved in the mandatory coverage policy change process. Similarly, the widely known 2009 Christmas Eve tragedy in Toronto, Ontario, wherein a scaffolding collapse led to the death of four Metron workers (Stewart et al., November 18, 2020) might have reinforced the importance of WSIA reform and reinforced the WSIA Amendment Act of 2008.

In all, our analysis proposes that compulsory coverage for construction workers was brought about by WSIB, political, business and trade union policy actors forming coalitions around the issue of compulsory construction coverage by WSIB. Balancing construction employers’ desires to both avoid liability and minimize premium costs appeared to be driving factors in WSIB

adopting the decision to expand compulsory coverage in Ontario to all construction workers. Environmental factors including economic conditions (e.g., recession) and financial policy (e.g., HST) also shaped stakeholder positions. The mandatory construction coverage solved a number of policy problems: employee status was no longer an insurance coverage issue, the scope of clearance certificates was expanded, the need for named insurers was removed, and the problem of uninsured workers was removed.



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## Appendix A: Government policy activity and legislation pre-1990 – 1997

	Pre 1990	1990	1991	1992	1993	1994	1995	1996	1997
<b>Government policy activity</b>									
Weiler reports (Ontario Workplace Tribunals Library, 2009)									
Vocational Rehabilitation Task force 1986 -1992 (Ontario Workplace Tribunals Library, 2009)									
Service delivery – operational review (Ontario Workplace Tribunals Library, 2009)									
Premier’s Labour Management Advisory Committee									
Underground Economy Initiative <sup>6</sup>									
Royal Commission on Workers’ Compensation (incomplete) (Ontario Workplace Tribunals Library, 2009)									
Report on New Directions for Workers’ Compensation Reform forms basis for Bill 99 Workers' Compensation Reform Act 1996 (Ontario Workplace Tribunals Library, 2009)									
<b>Legislation</b>									
<b>Workers’ Compensation Act, R.S.O. 1980, c.539</b>									
Workers’ Compensation Amendment Act, 1984 (No. 2), S.O. 1984 c. 58									
Workers’ Compensation Amendment Act, 1989, S.O. 1989, c. 47									
<b>Workers’ Compensation Act, R.S.O. 1990, c. W.11</b>									
Reinstatement in the Construction Industry, O.Reg 259/92 (1992) (Repealed 2008)									
Bill 165-An Act to Amend the Workers’ Compensation Act and the Occupational Health and Safety Act, S.O. 1994, c. 24 <sup>7</sup>									
Bill 15- Workers’ Compensation and Occupational Health and Safety Amendment Act, 1995, S.O. 1995, c.5 <sup>8</sup>									
<b>Workers' Compensation Reform Act, 1996<sup>9</sup></b>									
<b>Workplace Safety and Insurance Act, 1997, S.O. 1997, c. 16, S.A</b>									

<sup>6</sup> <https://www.canada.ca/en/revenue-agency/programs/about-canada-revenue-agency-cra/internal-audit-program-evaluation/internal-audit-program-evaluation-reports-2008/underground-economy-initiative-information.html>

<sup>7</sup> Industrial disease changed to occupational disease

<sup>8</sup> Changes to: purpose of act, make-up of board, required annual reviews,

<sup>9</sup> Name of Workers’ Compensation Board becomes Workplace Safety Insurance Board; WSIB takes on roles of Workplace Health and Safety Agency (under OHSA) and acquires several new “powers and duties... The additional powers include the right to obtain payment from a successor **employer**”. (See section 139 of the new Act.) <https://www.ola.org/en/legislative-business/bills/parliament-36/session-1/bill-99>

## Appendix B: Legislation, policy and related issues pre-1990 – 2013

	Pre 1990	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013
<b>Legislation</b>																									
Workplace Safety and Insurance Act, 1997, S.O. 1997, c. 16, S.A																									
Criminal Negligence: Westray Bill (Federal) <sup>10</sup>																									
Reinstatement in the Construction Industry, O.Reg 259/92 (1992) (Repealed 2008)																				11					
February 22, 2008, regulation was changed <sup>12</sup> to: <i>Return To Work And Re-Employment - Construction Industry, O.Reg. 35/08</i> . Feb. 2008 regulation was not considered in force until September.																									
Workplace Safety and Insurance Amendment Act, 2008 (Not enforced until 2013)																									
<b>Government policy activity</b>																									
Introduction of GST increases activity in underground economy (tax evasion); evidenced by federal Underground Economy Initiative (Tedds, 2005)																									
Ontario to introduce new law that “would reportedly extend WSIA coverage to some 90,000 individuals in the construction industry currently not subject to mandatory coverage”(Anonymous, 2008)																									

<sup>10</sup> The **Westray bill** or Bill C-45 was federal legislation that amended the Canadian *Criminal Code* and became law on March 31, 2004. The Bill (introduced in 2003) established new legal duties for workplace health and safety and imposed serious penalties for violations that result in injuries or death. *The Bill provided new rules for attributing criminal liability to organizations, including corporations, their representatives and those who direct the work of others*

<sup>11</sup> Repealed (No longer in effect)

<sup>12</sup> Ontario regulation entitled *Reinstatement in the Construction Industry, O. Reg. 259/92*, laid out stipulations for return-to-work and accommodation of construction workers, with specific criteria for unionized and non-unionized workers. This regulation was unchanged from May 12, 1992 – February 21, 2008.

	Pre 1990	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013
Introduction of HST planned for 2010 described as threat of increasing underground construction market (Dupuis, 2009)																									
Auditor’s report on Unfunded Liability of the Workplace Safety and Insurance Board (Office of the Auditor General of Ontario, 2009)																									
MLTSD safety blitz in construction industry (Government of Ontario, 2011)																									
<b>WSIB policy activity</b>																									
Plans to modify construction industry premium program from CAD-7 to experience rating (Bender, 2004)																									
Under pressure from <b>COCA</b> , WSIB with employers and employees create strategic plan to address concerns re: Construction premiums with concern independent contractors do not pay share; revenue loss (Frame, 2004)																									
Joint Advisory Implementation Group ( <b>JAIG</b> ) formed to implement changes from strategic plan (Frame, 2004)																									
Beginning of “CAD-7 enhancements” affecting premium rates (Experience rating)(Bender, 2004)																									
<b>Related issues</b>																									
WSIB Fraud unit recovers \$10.8 million, 437 charges (314 charges against employers, 63 charges against workers) (Cameron, 1998)																									
Approx. 72% of construction employers [premiums \$1k-25k] will be moved to the Merit Adjusted Premium (MAP plan); 10% [premiums > \$25k] to remain on CAD-7 plan; <b>COCA</b> opposed (Cameron, 1999)																									
“Smaller contractors in Ontario have a worker fatality rate that is close to triple that of the larger firms” (Cameron, 2000)																									

	Pre 1990	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013
Two worker deaths at construction site (elevator shaft fall - concrete from a broken form above) (Brennan, 2002)																									
COCA (non-residential construction industry) claims WSIB premium system penalize companies that legitimately report all workers on payroll; blame insurance system with unnamed workers (Cameron, 2002a)																									
Provincial Building and Construction Trades Council of Ontario "...position that the current legislative framework which excludes independent operators from compulsory workplace insurance coverage has negatively impacted the construction industry" (Cameron, 2002b)																									
COCA "... wants it made <b>mandatory</b> for every person who is actively engaged in construction to have WSIB-provided coverage" (Cameron, 2004a)																									
"The Residential Construction Council of Ontario (RESCON) is pushing to have its builders moved out of the Workplace Safety and Insurance Board (WSIB) homebuilding rate group" (Cameron, 2004b)																									
Frame (president of COCA) calls for "... full-scale attack on cash-only businesses" in construction and mandatory coverage for independent contractors (Procter, 2006)																									
WSIB Premiums and underground economy (Canadian Press NewsWire, 2006)																									
Graphic WSIB Safety ad campaign (Hurley, 2006)																									
Recession (ultimately decreases construction industry activity and thus employment and WSIB premiums collected)																									
Crown v. Metron (2009 scaffolding collapse) (Stewart et al., November 18, 2020)																									



	Pre 1990	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013
Tony Dean Expert Advisory Panel on Occupational Health and Safety (est. Jan. 2010) Report published with recommendations regarding construction (Dean & Expert Advisory Panel on occupational health and safety, December 16, 2010)																									
Construction companies: exempt companies perceived as having an unfair competitive advantage compared with those paying premiums (Siegel, 2012)																									
WSIB Unfunded Liability positioned by Canadian Federation of Independent Business as reason for WSIB seeking to increase incoming premiums (Ferguson, January 1, 2012).																									
Criminal charges laid against Metron <sup>13</sup>																									
Appeal denied, charges upheld against Metron and Individual liable <sup>14</sup>																									

<sup>13</sup> <https://www.canlii.org/en/on/oncj/doc/2012/2012oncj505/2012oncj505.html>

<sup>14</sup> R. v. Metron Construction Corporation, 2013 ONCA 541 (CanLII), at para 52, <https://canlii.ca/t/g0bl3#par52> , retrieved on 2022-07-24