Bill 59: An Act to modernize the occupational health and safety regime

Interprovincial Comparison and Recommendations

January 13, 2021

MORNEAU SHEPELL

In collaboration with:

MORENCY 50 ans SOCIÉTÉ D'AVOCATS

Purpose of Our Analysis

We believe that Bill 59 is an excellent opportunity to modernize the occupational health and safety regime with a view to both preventing and compensating occupational injuries and diseases.

In our opinion, there is a need to get employers and employees working together to prevent occupational injury and disease and to maintain the employment relationship when necessary, while keeping our public plan competitive with those in the other provinces.

Sylvain Lebel, ASA
Senior Vice President, Health & Productivity Solutions
Morneau Shepell
slebel@morneaushepell.com
514 531-2124

Bernard Cliche, Ad. E.
Consulting Partner
Morency Société d'avocats s.e.n.c.r.l.
bcliche@morencyavocats.com
418 651-9900

Purpose of Our Analysis

- This report offers a thorough analysis of the main features of Bill 59 and a comparison with the main provisions currently in force in other Canadian workers' compensation plans (Ontario, Alberta, British Columbia and Manitoba), primarily with respect to:
  - CNESST performance
  - Safety obligations
  - Return-to-work process
  - Compensation levels
  - Costs relief
  - Plan financing
  - Other features
- We also include a number of specific recommendations so that this Bill may achieve its intended objectives.

Objectives of the Ministry of Labour, Employment and Social Solidarity

Minister's Objectives

Minister's Objectives	Statements
Reduce the number of claims	Workplace safety is at the heart of this modernization.
Reduce the duration of claims	Improving support for workers and their employers will promote an early and sustainable return to work. The risk of occupational injuries becoming chronic will also be reduced.
Make the regime more efficient	A forward-looking vision to make the regime as efficient as possible for workers and organizations.
Reduce costs and have a healthy labour force	This is a key way to address government priorities by putting the health of Quebecers first, while increasing our collective wealth.

We fully support the Minister's stated objectives.

Minister's Objectives

To attain all of the Minister's objectives, the following areas need to be analyzed to determine if Bill 59 offers an appropriate response:

Areas for Analysis	Questions	Page
CNESST Performance	Where do we stand in comparison with the regimes offered by Canada's largest workers' compensation plans?	7
OHS Insurance Plan or Social Program	Are we adhering to the basic principles of a true insurance plan or looking instead at a social program?	14
Prevention	How is this implemented elsewhere in Canada?	29
Decision-making Process	Is it effective?	36
Treating Physician's Role	A return-to-work barrier or benefit?	42
Return to Work	How have some provinces broken down barriers to promote full cooperation between employers, workers and the Board?	50
Job Search Period	Why do other provinces with shorter job search periods have better outcomes than Quebec?	63
Compensation	Does this process adhere to the principles of insurance? Is it a barrier to returning to work?	70
Costs relief/transfer	Why is this concept central to Canada's workers' compensation plans?	75
Financing	Is the cost currently shared in an appropriate way? How is it shared in other plans?	83
Occupational Diseases	How do other provinces go about recognizing new occupational diseases? Is our compensation plan for hearing loss appropriate?	92
Domestic Workers	What approach is used elsewhere in Canada?	110

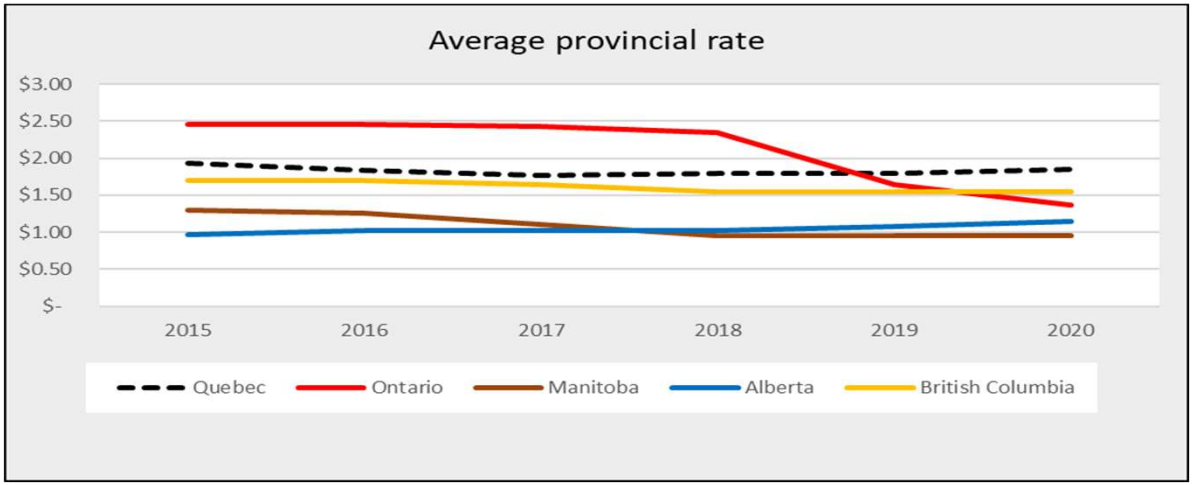
CNESST Performance

Where do we stand in comparison with the regimes offered by Canada’s largest workers’ compensation plans?

CNESST Performance

- In this study, we focused our comparisons on Canada's largest workers' compensation plans, i.e., Ontario, Alberta, British Columbia and Manitoba.
- All data comes from the following sources:
  - Association of Workers' Compensation Boards of Canada (AWCBC)
  - Annual reports or statistics from the various workers' compensation plans in Canada

CNESST Performance



The CNESST's provisional average assessment rate (2021) is currently the highest of any major workers' compensation plan in Canada (29% higher than Ontario and 55% higher than Alberta).

This difference in rates means that Quebec employers are paying $640 million more than employers in Ontario and over $1,008 million more than those in Alberta.

Definition: *The established average assessment rate, set prior to the beginning of the year, based on estimates of costs charged to employers. For assessable employers only.* ***Source:*** *AWCBC - Note: The average assessment rate is expressed per $100 of assessable payroll.*

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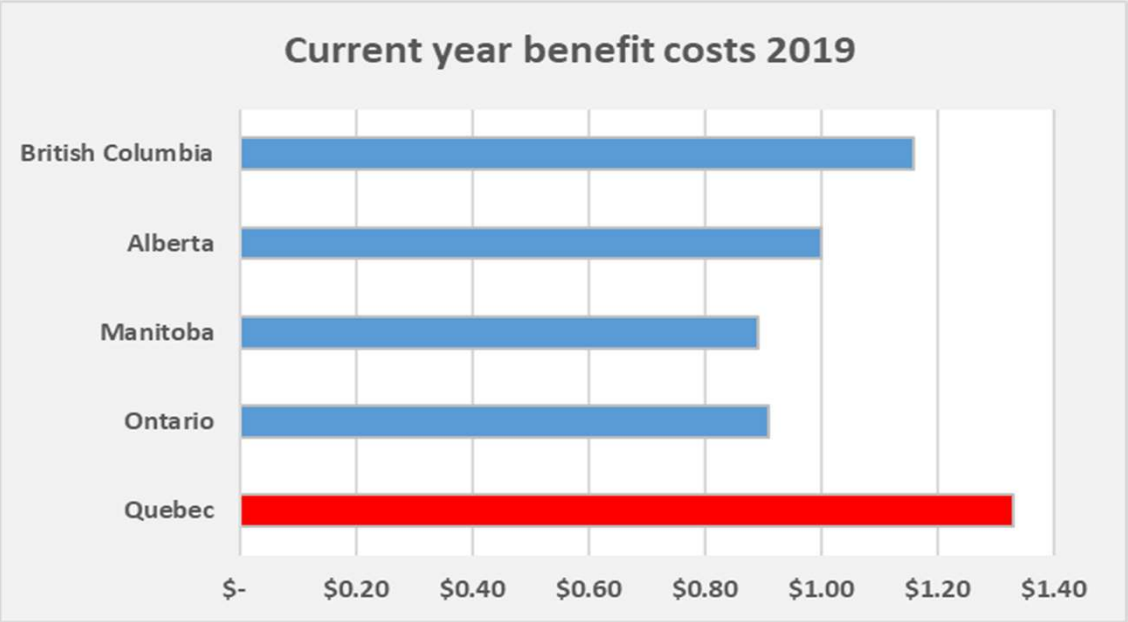
CNESST Performance



Quebec ranks last among Canada's major workers' compensation plans. The current year benefit costs are presently 43% higher in Quebec than in Ontario and 33% higher than in Alberta.

Definition: *Current year benefit costs per $100 of assessable payroll. Ratio of: (a) Current Year Benefit Costs Incurred for Assessable Employers; to (b) Assessable Payroll for Assessable Employers.* ***Source:*** *AWCBC*

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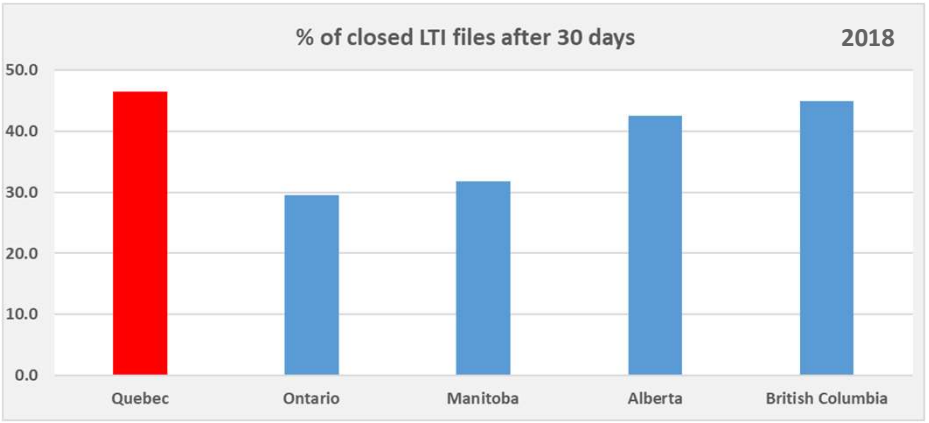
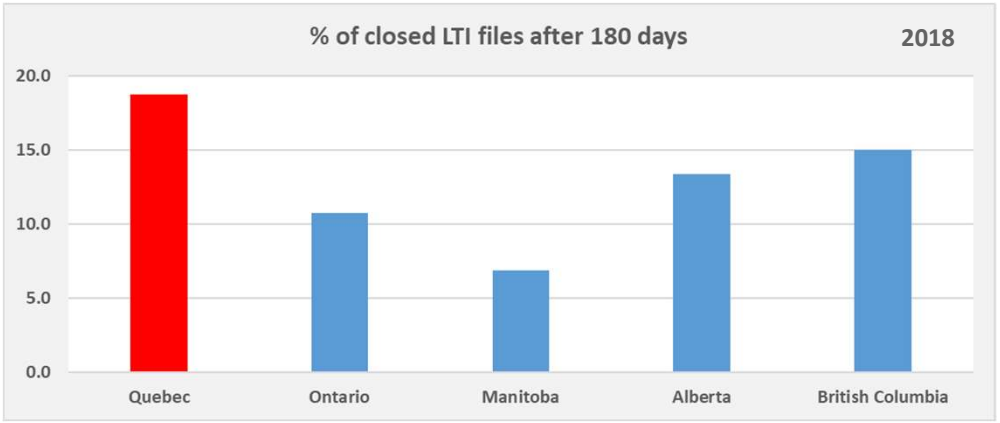
CNESST Performance





After 30 days, 46.5% of lost-time cases in Quebec are still active; by comparison, in Ontario the level is substantially lower at 29.6%.

After 180 days, the level of chronicity becomes very high. Too many of these workers will never be able to return to work. It is surprising to note that 18.7% of cases are still active in Quebec, compared to only 10.7% in Ontario. Once again, Quebec ranks last.

These statistics clearly show that the length of absence – and thus the associated costs – is markedly higher in Quebec than it is for Canada's other major workers' compensation plans.

Definition (30 days): *Percentage of Total Lost Time Claims that have received their last day of wage-loss benefits 30 days after the injury.*
Source: *AWCBC*

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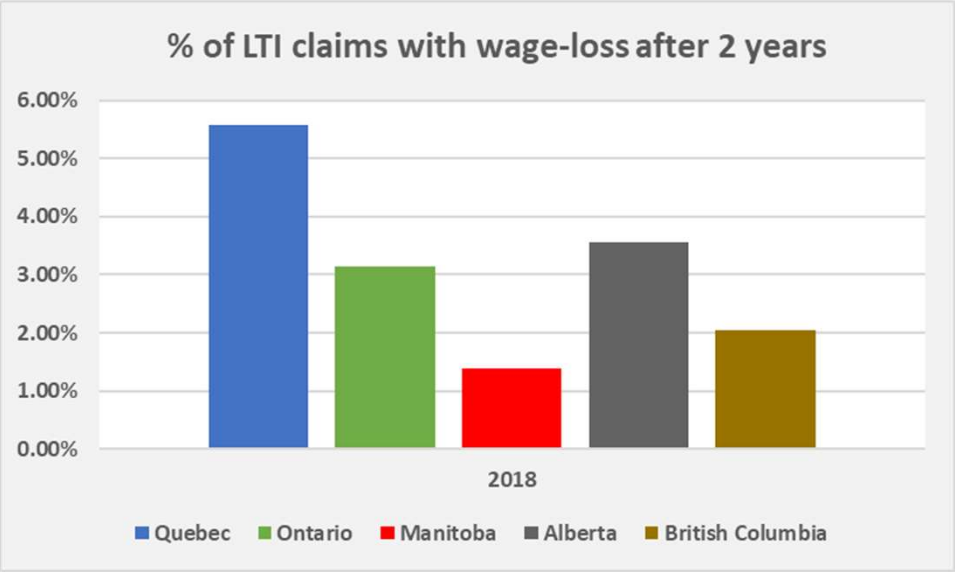
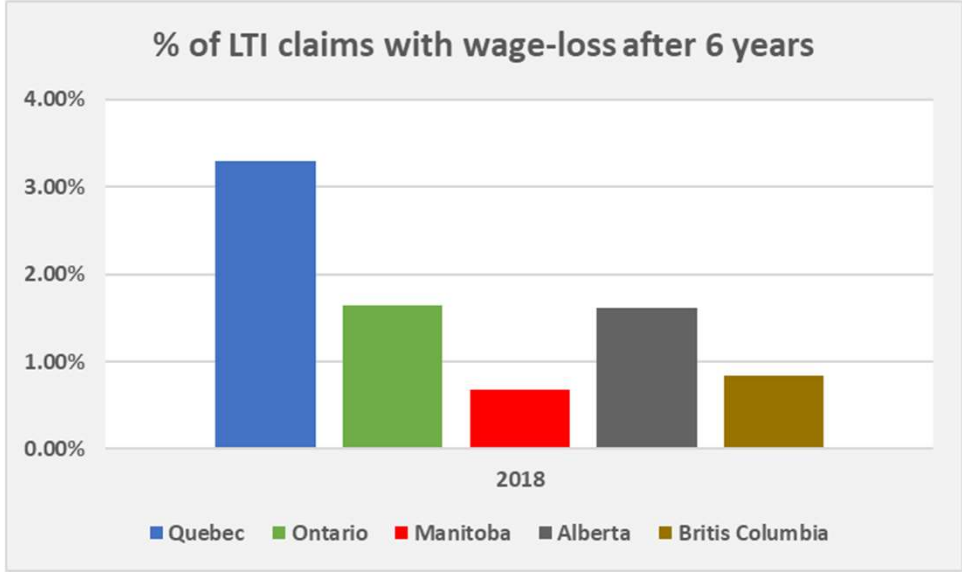
CNESST Performance





The percentage of lost-time cases in Quebec that are still active after 2 years and after 6 years is almost double the percentage in Ontario.

There is no reason for the percentage of high-chronicity cases to be so much greater in Quebec than in Canada's other largest provinces.

Definition (after 2 years): *Ratio of: (a) the number of Lost Time Claims receiving any type of wage-loss benefits for December 31 of the second calendar year after the injury year; to (b) the Total Lost Time Claims for that injury year. Source: AWCBC*

CNESST Performance

- An analysis of these statistics makes it clear that Quebec's return-to-work process is far from optimal compared with other large workers' compensation plans in Canada.
- Quebec has a much larger percentage of cases with a high level of chronicity (6 or more months of inactivity) than the other largest provinces.
  - The sizable impact on workers must be kept in mind since chronicity can lead to loss of the employment relationship.
  - Furthermore, this impact has a direct effect on Quebec's economy through an additional charge on the provincial average assessment rate.

We estimate this additional annual charge to be between $640 million and $1,000 million for Quebec employers as a whole, which is considerable.

Our study will look at the approaches that have been advocated elsewhere in Canada to promote the early and sustainable return of workers to their workplaces.

OHS Insurance Plan or Social Program

Are we adhering to the basic principles of a true insurance plan or looking instead at a social program?

OHS Insurance Plan or Social Program

- Background
  - The concept of workers' compensation had its origins in Germany, Great Britain and the United States between the late 1800s and early 1900s.
  - In Germany, Chancellor Otto Von Bismarck introduced a compulsory state-run accident compensation system between 1884 and 1886. This initial system was financed by workers and employers.
  - In the United States, between 1908 and 1915, several states enacted compensation legislation. The state of Washington enacted an exclusive mandatory system based on collective liability. Since compensation came under state jurisdiction, the U.S. developed a mixed bag of WCBs, mandatory insurance, self-insurance and combinations of such plans.

OHS Insurance Plan or Social Program

- Background – Canada
  - Workers' compensation in Canada had its beginnings in the province of Ontario. In 1910, Mr. Justice William Meredith was appointed to head a Royal Commission to study workers' compensation. His final report, known as the Meredith Report, was produced in 1913.
    - Recommendation to enact legislation accepting the concept of occupational risk based on the German model.
  - Basic concepts of the OHS insurance plan according to Meredith (Canada's founding father of workers' compensation plans).
    - The Meredith Report outlined a trade-off in which workers relinquish their right to sue in exchange for compensation benefits.
    - The report advocated for no-fault insurance, collective liability, establishment of a fund, independent administration, and exclusive jurisdiction. The system exists at arm's-length from the government and is shielded from political influence, allowing only limited powers to the minister responsible.

Source: *Traité de droit de la santé et de la sécurité du travail, Les Éditions Yvon Blais, 1993, Cliche, Lafontaine, Mailhot*

OHS Insurance Plan or Social Program

- Background – Quebec
  - 1907: A law is passed to establish a commission to study the recourse available following work-related accidents (Globensky Commission).

    Its mandate:
    - Carry out a critical study of workers' compensation legislation and case law in different countries;
    - Research fair and equitable rules to determine recourse and rights relationships;
    - Study the appropriateness of changing the basis of liability in our legislation;
    - Investigate whether it could be legitimate to require that workers be insured against work-related accidents at the expense of business owners or otherwise;
    - Suggest what it would take to legalize new forms of recourse.

Source: *Traité de droit de la santé et de la sécurité du travail, Les Éditions Yvon Blais, 1993, Cliche, Lafontaine, Mailhot*

OHS Insurance Plan or Social Program

- Background – Quebec
  - 1908: Presentation of the Globensky Report
    - Recommendation to pass a law under which accidents arising out of or in the course of work would entitle the victim or the victim's representatives to an indemnity paid by the business owner.
    - Recommendation to have frequent inspections of industrial establishments and rigorous enforcement of the applicable legislation.

Start of the process leading to acceptance of the concept of occupational risk in Quebec

Source: *Traité de droit de la santé et de la sécurité du travail, Les Éditions Yvon Blais, 1993, Cliche, Lafontaine, Mailhot*

OHS Insurance Plan or Social Program

- Background – Quebec
  - 1909: Passage of an act concerning liability for accidents experienced by workers in the course of their work and compensation for the resulting injuries.
    - Workers would receive a partial indemnity.
      - 50% of annual wages in the case of total permanent disability.
    - Employers assumed the costs.
  - June 1910: Commission of inquiry chaired by the Chief Justice of Ontario, the Honorable William R. Meredith
    - Research the legislation in force in Canada and abroad in the areas of employer liability and compensation payable to victims for injuries sustained at work.

Source: *Traité de droit de la santé et de la sécurité du travail, Les Éditions Yvon Blais, 1993, Cliche, Lafontaine, Mailhot*

OHS Insurance Plan or Social Program

- Background
  - December 1922: Passage of an act authorizing the creation of a commission to investigate certain working conditions in the province (Roy Commission)
  - March 1926: Passage of an act to amend and consolidate the Workmen's Compensation Act
  - Included:
    - Extend the scope of the law to a number of industries including corporations and the government;
    - Introduce the concept of a lifetime pension for permanent partial impairment;
    - Provide entitlement for reimbursement of medical expenses for a maximum of six months;
    - Simplify proceedings before a tribunal and abolish trials before a judge and jury.

Source: *Traité de droit de la santé et de la sécurité du travail, Les Éditions Yvon Blais, 1993, Cliche, Lafontaine, Mailhot*

OHS Insurance Plan or Social Program

- Background
  - March 1928: Two laws were passed:
    - the Workmen's Compensation Commission Act
      - Established an organization mandated to apply the Workmen's Compensation Act
      - Power to review agreements between employers and workers
    - the Workmen's Compensation Act
      - Applied to all employers except those with fewer than 7 employees, domestic workers, craftsmen and maritime transport
      - No provisions for occupational diseases
  - December 1930: A report was tabled favouring the inclusion of occupational diseases in the legislation.

Source: *Traité de droit de la santé et de la sécurité du travail, Les Éditions Yvon Blais, 1993, Cliche, Lafontaine, Mailhot*

OHS Insurance Plan or Social Program

- Background
  - April 1931: Workmen's Compensation Act (strongly influenced by the Meredith Principles)
    - Consolidation of the compensation plan for work-related accidents and occupational diseases;
    - Introduction of a compensation mechanism;
    - Inclusion of a rehabilitation process;
    - Creation of an "accident fund" financed by employers through an annual assessment based on the employer's classification and a rate determined by the Commission based on the employer's payroll;
    - Creation of two schedules:
      - Schedule 1: assessable employers required to pay into the fund;
      - Schedule 2: individually liable employers (self-insurers).

Source: *Traité de droit de la santé et de la sécurité du travail, Les Éditions Yvon Blais, 1993, Cliche, Lafontaine, Mailhot*

OHS Insurance Plan or Social Program

- Background
  - December 1979: Passage of the Act respecting Occupational Health and Safety
    - The Workmen's Compensation Commission becomes the Commission de la santé et de la sécurité du travail (CSST)
    - Worker health and safety: a basic right that is also guaranteed under the Charter of Human Rights and Freedoms
    - Creation of sector-based structures as part of the development and implementation of prevention mechanisms
    - Introduction of new rights such as preventive withdrawal for pregnant or breastfeeding women
  - May 1985: Passage of the Act respecting Industrial Accidents and Occupational Diseases
    - Compensation for actual loss of income resulting from a work-related accident and support for reintegrating the victim into the labour market
    - Workers are given new rights and new decision-making authorities are created
    - New financing provisions will be adopted in 1989

Source: *Traité de droit de la santé et de la sécurité du travail, Les Éditions Yvon Blais, 1993, Cliche, Lafontaine, Mailhot*

OHS Insurance Plan or Social Program

- Review of the basic principles of an OHS insurance plan
  - Risk coverage that **specifically targets industrial accidents and occupational diseases**.
  - A plan focused on hazard elimination **(prevention and safety)** and **an early and sustainable return to work**.
  - An **independent decision-making process** based on information received from the worker's medical professional **and** on all other sources of medical information, such as consulting physicians, therapists, specialized nurses, etc.
  - A plan that facilitates access to timely and effective treatment.
  - A return-to-work process that advocates full cooperation between the worker, the employer and the Board/Commission and encourages an ongoing employment relationship.
  - A punitive plan that includes consequences for non-cooperation **for both parties** during the return to work process.

OHS Insurance Plan or Social Program

- Review of the basic principles of an OHS insurance plan
  - A plan **that does not penalize** employers or workers for non-work-related situations (personal condition, third-party liability, undue delay in treatment, etc.)
  - A plan with assessment rates that are appropriate (principle of classification by economic sector), incentivizing (experience-based) and competitive (interprovincial comparison)
  - Fair and appropriate compensation:
    - Income replacement that reflects the worker's average wages at the time of the incident
    - For long-term and some other cases, the income replacement concept should be replaced by the concept of loss of earning capacity
    - Compensation **with no possibility of unjustified enrichment** to promote workplace safety and return to work (no over-compensation)

In our opinion, the current plan does not adhere to a number of the basic principles of an OHS insurance plan.

OHS Insurance Plan or Social Program

- The current plan includes several measures unrelated to coverage of workplace accident risk (social safety net)
  - Safe Maternity Experience Program
  - Intercurrent diseases
  - Inclusion of various categories of individuals on an equivalent footing with workers due to the lack of a specific employer, such as certain independent workers, various trainees, etc.

OHS Insurance Plan or Social Program

It is important to remember that the purpose of a workers' compensation plan, according to Justice Meredith, was to provide compensation for risks specific to industrial accidents and occupational diseases, not to compensate for social factors unrelated to work.

We need to ask whether all of these features, including those having nothing to do with work-related accident risk, should be financed by the CNESST regime or by other social mechanisms.

OHS Insurance Plan or Social Program

In our opinion, this modernization is a serious opportunity to return to the fundamental principles set out by Justice Meredith and grounded in the basic principles of a true insurance-oriented plan, all in keeping with the objectives of Bill 59.

Prevention

How is this implemented elsewhere in Canada?

Prevention

- Based on the current OHSA concept of priority groups, the government deems that only 25% of workers are covered by prevention mechanisms and 7% by worker participation mechanisms, while the compensation plan covers all of them.
  - In our opinion, the percentages for worker participation mechanisms are in reality much higher given the various financial incentive plans based on employer experience and established over 20 years ago.
    - Retrospective plans
    - Personalized rates
    - Safety groups
  - Many national and international organizations also have very strict internal prevention and safety regulations (e.g. OSHA standards) that require them to establish specific workplace safety measures despite the lack of certain obligations under current Quebec legislation and regulations.
  - The same goes for collective agreements negotiated between workers and employers.

Prevention

In this section, we are interested in comparing the application of prevention and safety obligations according to company size and accident risk level with Canada's largest workers' compensation plans, including federal businesses.

Quebec	
Current Regime	**Bill 59 Orientations**
The current **Act respecting occupational health and safety** sets out four prevention and safety mechanisms in establishments: • Prevention program • The specific health program for the establishment, which is included in the prevention program • Health and safety committee • Safety representative Furthermore, only some priority sectors are subject to these mechanisms. Currently, six priority groups are subdivided into 32 areas of economic activity. Priority groups 1 and 2 are for sectors where risks are typically higher than for other sectors, which are mainly service sectors and generally have lower risk. Groups 1 and 2 are subject to all prevention mechanisms; Group 3 must have a prevention program that includes the specific health program for the establishment. Groups 4, 5 and 6 are not subject to any prevention mechanisms. In practice, regardless of employer classification in a priority group, the financial incentives mean that a great many Quebec employers are subject to various prevention mechanisms under retrospective plans, personalized plans, and in safety groups.	Bill 59 seeks to extend the application of prevention and worker participation mechanisms to all sectors of activity, based on the size and risk level of the activities in each establishment. It states that "every employer must prepare and implement a prevention program specific to each establishment employing at least 20 workers during the year." However, the CNESST may adopt a regulation requiring an establishment employing fewer than 20 workers to prepare a prevention program. Bill 59 also provides for the creation of a joint health and safety committee formed of both employers and workers. Special provisions are made for the construction industry. In addition, safety representatives designated by workers are given further powers in addition to those they already have. Given that Bill 59 eliminates priority groups, it makes a provision for a regulation to determine the low, medium or high risk level of the different sectors of activity in Quebec. Naturally, the obligations placed on high risk sectors are more significant and must be implemented quickly.

Prevention

	Workers' Compensation Boards				
	Ontario	**Manitoba**	**Alberta**	**British Columbia**	**Federal**
H&S Representative required for all sites with:	**Rule:** - 6 - 19 workers (OHSA 8(1)) **Exception:** - 1 - 5 workers, only if a regulation governing designated substances applies to the workplace. (OHSA- Ontario Regulation 490/09) - If the minister orders it (no minimum number of workers) (OHSA 8(2))	**Rule:** - 5 - 19 workers (WSHA Section 41(1) A)) **Exception:** - At a construction project, notwithstanding the requirements for a safety and health committee (WSHA Section 41(1) B)) - If the director orders (no minimum number of workers) (WSHA Section 41(1) C))	**Rule:** - 5 - 19 workers (Alberta OHS Act, Part 3, Section 17(1))	**Rule:** - 9 - 19 workers (WCA, Part 2, Division 5, Section 45) Exception: - If an order has been received (no minimum number of workers) (WCA, Part 2, Division 5, Section 45)	**Rule:** - 19 or fewer employees (Canada Labour Code, Part 2, Section 136)
OHS Committee required for all sites with:	**Rule:** - 20 or more workers (OHSA 9(2)) **Exception:** - 1 - 19 workers, only if a regulation governing designated substances applies to the workplace. (OHSA 9(2)) - If the minister orders it (multisites) (no minimum number of workers) (OHSA 9(2))	**Rule:** - 20 or more workers (WSHA Section 40(1) A)) **Exception:** - If the director orders it (no minimum number of workers) (WSHA Section 40 (1) B)) *Director may issue a written order for more than one committee in a workplace or one committee for multiple workplaces, depending on the aspects taken into account and the decisions of the director (WSHA sections 40(5), 40(6) & 40(7))	**Rule:** - 20 or more workers (Alberta OHS Act, Part 3, Section 16 (1)) Exception: - If the director orders it (Alberta OHS Act, Part 3, Section 16 (1)) and multiple workplaces may be considered, since January 2020.	**Rule:** - 20 or more workers (WCA, Part 2, Division 5, Section 31(A)) Exception: - If an order has been received (no minimum number of workers and may have multiple workplaces or multiple committees at one workplace) (WCA, Part 2, Division 5, Section 31(B) & 32(1))	**Rule:** - 20 or more employees (Canada Labour Code, Part 2, Section 135)
Committee composition	**Rule:** - 49 or fewer workers, at least 2 members (OHSA, Section 9(6)(a)) - 50 or more workers, at least 4 members (OHSA, Section 9(6)(b)) *In all cases, at least half the members represent the workers (OHSA, Section 9(7))	**Not fewer than 4 and no more than 12 members**. At least half the representatives must represent workers (WSHA Section 40(8))	**Minimum 4 members**, with at least half representing workers (Alberta OHS Act, Part 3, Section 22 (1))	**Minimum 4 members**, with at least half representing workers (WCA, Part 2, Division 5, Section 33)	**Minimum 2 members** and at least half representing employees (Canada Labour Code, Part 2, Section 135.1)
Training required (Committee and H&S Rep)	At least **2 certified members** (1 employer rep and 1 worker rep), Part 1 and 2 completed and updated every three years (OHSA 9(12))	**No obligation**, but the employer must ensure the committee members are trained to competently fulfill their duties (WSHA Section 40(13)). Also, the employer must allow committee members or the safety and health representative to take safety and health educational leave every year. Time allowed for leave is the greater of 16 hours or 2 normal shifts. (WSHA Section 44)	**The committee's H&S representative and two co-chairs** must receive at least 6 - 8 hours of training from a certified agency. Also all committee members and the H&S representative are entitled to training time equal to the greater of 16 hours or 2 normal shifts (Alberta OHS Act, Part 3, Section 29 (4))	**H&S Committee members** must receive at least 8 hours of training (annually) on their roles and responsibilities (WCA, Part 2, Division 5, Section 41) and (OHS Regulation Section 3.27)	**Yes** and must be provided by the employer (their roles and responsibilities) (Canada Labour Code, Part 2)
Frequency of OHS meetings	At least once every three months (OHSA 9(33))	At least once every three months (inspection)	At least once every three months (Alberta OHS Act, Part 3, Section 27 (1))	At least once a month (WCA, Part 2, Division 5, Section 37(2))	At least 9 times a year (Canada Labour Code, Part 2, Section 135)

Prevention

- We agree with extending prevention mechanisms to all Quebec employers using principles that take size and risk level into account.
- It appears from our analysis that in the other Canadian provinces the prevention and safety obligations for employers with more than 20 employees do not require the presence of a safety representative along with a health and safety committee. Generally speaking, the safety representative is only required when there are from 5 to 20 employees, while above that number there is a health and safety committee instead. We should follow the example of the other provinces.

Recommendation 1

For employers with more than 20 employees, only a health and safety committee should be required.

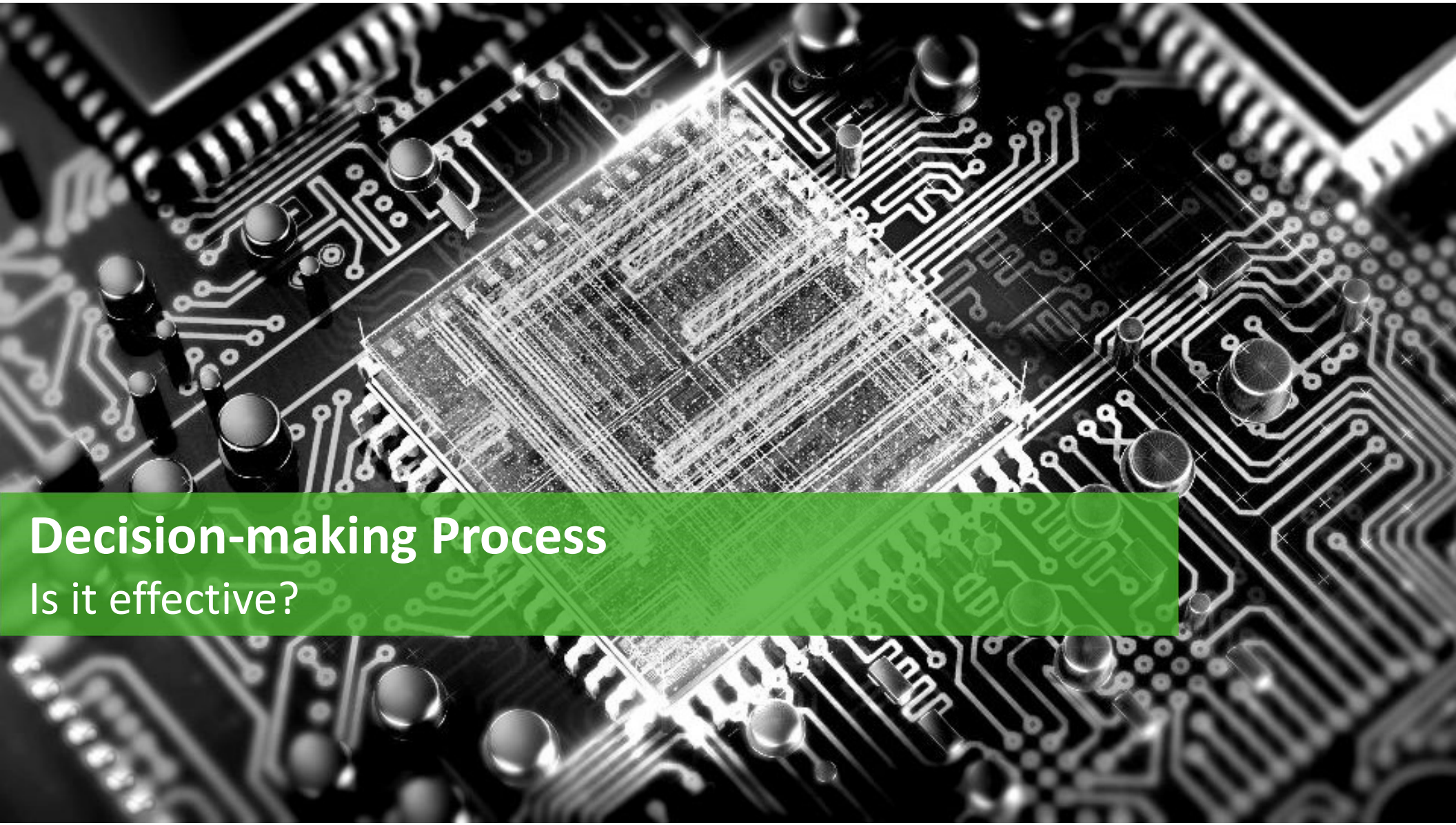
Prevention

- A great many Quebec organizations with more than 20 workers have had no employment injury claims in the past 5 years
  - On the other hand, a certain number of companies have had claims at a frequency that is clearly too high, even in low- or medium-risk industries
  - In our opinion, as well, the application of “wall-to-wall” prevention mechanisms for all companies will entail a lot of red tape for so-called agile small businesses.
- Why apply the same rules in all three risk categories, as set out in Bill 59, without taking the employer’s real risk level into consideration? It would be better to focus on delinquent companies than successful ones.

Prevention

Recommendation 2

The industry classification should also take into account the concept of employer risk based on past performance.



Decision-making Process

Is it effective?

Decision-making Process

- Basic principles of a decision-making process (adjudication)
  - Adjudication is the process used to determine eligibility for benefits and services under an insurance contract.
  - A decision-maker is the person who makes decisions regarding benefit entitlement.
  - Decision-makers collect relevant information and evaluate the evidence in order to make decisions.
  - Workers are entitled to receive benefits for injuries and diseases arising from accidents occurring within the context of their work.
  - The link with work is established when determining the initial entitlement. Decision-makers continue to evaluate the link between work and a worker's permanent disability and treatment for the duration of the claim.
  - The board/commission makes its decisions based on the merits and justice of each case.
  - When the evidence for and against an issue with respect to the worker's claim have equal weight, the worker receives the benefit of the doubt.

Decision-making Process

Quebec	
Current Regime	**Bill 59 Orientations**
The current compensation regime differs quite significantly from a typical insurance plan. Under the current Act, the CNESST decision-making officer is bound by the medical findings of the physician in charge of the worker in several different areas, including diagnosis, consolidation date, treatment plan, permanent impairment and functional disability. These provisions greatly limit the decision-making capacity of the claims agent, which is not the case in other Canadian provinces. In addition, the current Act prescribes various presumptions to facilitate the acceptance of employment injuries. These legislative provisions are supplemented by a schedule concerning occupational diseases and prescribing the acceptance of claims in certain special circumstances.	The decision-making process remains the same except for occupational diseases. Bill 59 significantly amends the current Act in that it prescribes the legislative adoption of a Regulation respecting occupational diseases. This regulation specifies the special conditions related to various types of work and opens the door, if those conditions are met, to the application of a presumption permitting acceptance of the claim. Section 30 would also be amended, since the CNESST will be allowed to adopt a regulation of unknown scope that will prescribe eligibility criteria in cases where the presumption of occupational disease does not apply. Furthermore, Bill 59 also provides for the creation of a scientific committee on occupational diseases mandated to analyze the causal relations between diseases and contaminants or the risks peculiar to a type of work. The Bill also creates a committee on oncological occupational disease with respect to eligibility concerning diseases caused by cancer.

Decision-making Process

Workers' Compensation Boards			
Ontario	**Manitoba**	**Alberta**	**British Columbia**
Decision-makers at the Workplace Safety and Insurance Board (WSIB) decide whether a worker is entitled to benefits and services under the Workplace Safety and Insurance Act (WSIA). They must establish that the worker's injury occurred due to a work accident while working, or that the worker is suffering from an occupational disease related to the nature of the person's work. Decisions about medical issues are based mainly on the information and opinions received from treating healthcare professionals. 1) Such healthcare professionals include physicians, surgeons, physiotherapists, chiropractors and registered nurses (extended class). 2) When the medical information is submitted to the WSIB, the decision-maker reviews it to ensure it is complete and clear within the context of the claim. The decision-maker continually assesses the medical information received in order to monitor the worker's recovery and the persistence of any work-related disability. Medical information on the worker's case may be received from various healthcare professionals (not just the attending physician). The medical information on the worker's injury or disease is an integral part of the WSIB decision-making process. In the event of a conflict between the medical information or opinions of healthcare professionals, the decision-maker must assess and weigh each report in order to make a decision. All decisions must be based on medical information relevant to the issue to be decided received from the healthcare professionals treating the worker, and on any other sources of medical information. The decision-maker may call upon a consulting physican to help answer questions about causality, the injury mechanism, pathology or the interpretation of medical information, or to clarify the relation between a diagnosis and the accident history, work environment or employment circumstances, or to address the impact of pre-existing conditions or other diseases not related to work on the work disability.	Decision-makers must assess each piece of evidence to determine its relevance, credibility and reliability, to help them decide on the importance of each aspect. Decision-makers may weight each aspect differently. When elements of the evidence contradict each other, decision-makers must decide whether the evidence as a whole is weighted more heavily towards one possibility than another. When evidence is balanced, the decision-maker must find more information or re-assess the quality and credibility of the evidence and "reweigh" it. In the investigative model, decisions must also be made impartially, but it is the decision-maker's responsibility to assess and evaluate the evidence. Workers and employers are required by law to provide their information, but they do not have to prove or refute their assertions. The Workers Compensation Board (WCB) decision-makers must continue to seek evidence until they are convinced that there is enough evidence to make a decision. The evidence may include: physical objects, oral or written testimony, eyewitness testimony, photographs or videos, emails or notes, medical reposts and lab tests or anything that could help prove or refute an assertion. This policy applies to all decisions of the WCB that could be reviewed or appealed. The investigative model is a key characteristic of the workers' compensation system. It is an adjudicative model distinct from the accusatory model used by the legal system. In a court, the parties must prove their own assertions and try to refute those of the other side. A judge or jury acts as an impartial arbiter. Although workers and employers do not bear the burden of proof with respect to workers compensation, they are required to cooperate with the efforts of the decision-maker to assemble the proof. In the absence of such cooperation, the WCA must make a decision based on the evidence they actually have. The standard of proof refers to the level of certainty that a decision-maker must have before being convinced that the facts are true. With respect to workers compensation, the standard of proof is considered to be the 'balance of probabilities'. This simply means that the evidence is evaluated on the basis of what is the most probable or the least probable, and what is most likely to be true versus false. This is a lower standard than the better-known "beyond reasonable doubt" standard of the legal system.	The decision-maker works closely with the worker, employer and medical professionals to gather the necessary information about the incident, work environment and injury. When all the information has been obtained, the decision-makers determine the worker's eligibility for compensation under the Workers' Compensation Act and the policies of the Alberta WCB. Decision-makers are also encouraged to use their discretion and reasonable judgement to guide their decisions and conversations in order to make the most appropriate and fair decision. There may be circumstances where the medical opinions seem to diverge. The Board will try to resolve any outstanding medical issues by consulting the treating physician. In some circumstances, the Board may ask a medical committee to resolve the medical issues that affect the worker's right to compensation.	Once the Board has received the reports from an injured worker, the employer and healthcare professionals, the Board can determine if the worker is entitled to benefits. The Board takes into account a number of factors to determine if an injury or disease was caused by work or the workplace environment. It gathers and reviews all the information available, including reports from the worker, employer and healthcare practitioners. If the Board is making a decision about a worker's compensation or rehabilitation and the evidence supporting different findings on an issue is evenly weighted, the Board must resolve that issue in a manner that favours the worker. The Board is responsible for the decision-making process and for coming to conclusions about the claim. However, this requires medical evidence, or sometimes opinions from other experts, on any issue that requires professional expertise. If the physicians have differing opinions, or there are other conflicts in the medical evidence, the Board does not automatically prioritize the opinions of one category of physician over another. The Board must analyze the opinions and conflicts for each issue and arrive at its own conclusions about the weight of evidence. The Board must first consider the reasons for the differences and ask itself if the relevant non-medical facts have been clearly established. The board may request advice to determine if the best medical evidence has been obtained and, for example, to find out if appropriate medical procedures can be instituted to assist in making the final decision.

Decision-making Process

- Outside Quebec, workers' compensation plan practices are very similar and align with the usual practices of private insurance companies for wage-loss insurance. In Quebec, insurers usually take an approach similar to the SAAQ, as well as Employment Insurance sickness benefits and the Quebec Pension Plan.
  - Decisions are made by the decision-maker based on all the information obtained and throughout the duration of the claim (eligibility, level of care, return to work, etc.).
- In our opinion, the CNESST's decision-making process does not adhere to insurance best practices for the principles of adjudication.
  - The current process is strongly influenced by the predominance of the treating physician, which slows down the normal adjudication process.

Decision-making Process

Recommendation 3

Establish a decision-making process that is similar to those used in the other provinces and that adheres to the basic principles of an insurance plan.

Treating Physician's Role

A return-to-work barrier or benefit?

Treating Physician's Role

- The Act respecting industrial accidents and occupational diseases (AIAOD) gives predominance to the opinion of the treating physician, which can only be overruled by an arbitration mechanism, a long and complex process.
- In addition to creating confusion and ambiguity about the treating physician's role, this situation does not encourage an early return to work and may even create conditions that favour long-term disability.
- The AIAOD provides for the treating physician to decide on administrative as well as medical matters. This situation distances the physician from his or her primary role, which is to provide patient care without interfering in the administrative process of adjudication.

Quebec is the only jurisdiction that allows the worker's physician to predominate in important matters such as diagnosis, consolidation date, care, treatment or permanent impairment and functional limitation.

In our opinion, this approach is actually a significant barrier to the return-to-work process and leads to an increase in litigation.

Treating Physician's Role

Quebec	
Current Regime	**Bill 59 Orientations**
The current Act {AIAOD} places greater weight on the opinion of the worker's treating physician with respect to diagnosis, treatments, care, functional disabilities and ability to work. This opinion may only be overruled by an arbitration mechanism. Section 46 of the current Act says that the worker is presumed unable to carry on employment until the employment injury suffered has consolidated. However, it is the worker's treating physician who decides when this consolidation has taken place. The employer thus has the obligation to prove that the worker is able to return to work. Note that the greater weight accorded to the opinion of the worker's treating physician extends to temporary assignment; in short, the physician's decision is very hard to contest.	The current role of the worker's treating physician as set out in the AIAOD does not change. The comments concerning the predominance of the role of the treating physician in the claims process remain the same with respect to Bill 59.

Treating Physician's Role

Workers' Compensation Boards			
Ontario	**Manitoba**	**Alberta**	**British Columbia**
The role of the treating physician is to diagnose and treat the disease or injury, to advise and support the patient, to provide appropriate information to the patient and the employer, and to work closely with the other healthcare professionals involved to facilitate the patient's resumption of the most productive work possible, in a safe and timely manner. The treating physician must also recognize and support the employer-employee relationship and the primary importance of this relationship in the employee's return to work. In addition, the treating physician must have a good understanding of the possible roles of a return-to-work coordinator and of other healthcare professionals and organizational personnel in assisting and encouraging the return to work. The role of the treating physician is governed by the College of Physicians. The College recognizes that it is important that a patient start every possible and relevant functional activity as soon as possible after an injury or disease. The physician must fill out Form 8 at the start of the process to facilitate case management. Among other things, the physician states the diagnosis, the recommended treatment plan and in particular the worker's functional disabilities.	Diagnose and treat the disease or injury • Advise and support the injured worker • Communicate the worker's capabilities to the worker and the employer • Work with the other healthcare professionals involved to help improve the situation of the injured worker and the worker's resumption of work in a safe and timely manner • Promptly complete the reports for the WCB and send them directly to the WCB	The role of the treating physician is to provide timely and appropriate care; to promptly (within 48 days of treatment) report the injury and treatment online at WCB-Alberta; to keep patients informed and educate them about the role they have to play in their recovery; to maintain regular contact with WCB-Alberta and keep updated on their patients' progress and help the Board plan the return to work; and to provide adequate reports to assess and advance the patient's claim. It is also important that that physician accurately inform the Board of what the patient said about how the accident occurred, as well as the patient's current complaints and any relevant prior history or concurrent state of health, in addition to relevant medical findings, diagnosis and treatment.	The role of the treating or consulting physician with respect to an employment injury is to provide reports on the injury in the form required by regulation or as directed by the Board. In addition, the first report containing all the information requested must be provided to the Board within three days after the first consultation with the worker. The physician must also provide a report within three days after the worker is, in the physician's opinion, able to resume work. Also, if treatment continues after the resumption of work, the physician must provide other adequate reports, and, without charge to the worker, provide the worker and the worker's dependants with all reasonable and necessary information, advice and assistance they need to make an application for compensation and to provide the certificates and proofs required for such an application. Every physician or qualified practitioner authorized under the BC WC Act to treat an injured worker is subject to the same duties and responsibilities, and any health care provided by the physician is subject to the direction, supervision and control of the Board. A treating physician who fails to submit prompt, adequate and accurate reports and accounts as required by the Act or by the Board commits an offence and that person's right to be selected by a worker to provide health care may be cancelled or the person may be suspended for a period determined by the Board.

Treating Physician's Role

- The role **should be** similar to that in the other workers' compensation plans
  - The role of the treating physician **should be** to diagnose and treat the disease or injury, to advise and support the patient, to provide appropriate information to the patient and the employer, and to work closely with the other healthcare professionals involved to facilitate the patient's resumption of the most productive work possible, safely and in a timely manner.
  - The treating physician must recognize and **support the employer-employee relationship** and the primary importance of this relationship in the employee's return to work.
  - The treating physician must also have a good understanding of the potential functions of a return-to-work coordinator as they exist in other provinces, and the roles of other healthcare professionals and organizational personnel to assist and encourage the return to work.
  - The physician is required to fill out the form describing the worker's functional limitations in order to quickly engage a level of employer-employee cooperation that can facilitate the return to work.

Treating Physician's Role

- The concept of the treating physician’s predominance does not exist in the other insurance plans, such as wage-loss insurance plans, the SAAQ, EI or QPP.
- In our opinion, this practice makes the plan and the return to work process less efficient while doing nothing to help workers recover more quickly.

Treating Physician's Role

Recommendation 4

We recommend elimination of the predominance of the treating physician's opinion.

The legislation should be revised and amended to specify, as in the workers' compensation plans elsewhere in Canada, that the CNESST is responsible for making administrative and medical decisions.

- If the predominance of the treating physician's opinion cannot be eliminated, it should be limited to the occurrence of the incident and not carry on throughout the decision-making process for the whole active duration of a claim, particularly with respect to the return-to-work process.

Treating Physician's Role

- In the other provinces, the treating physician has an obligation to determine the expected functional limitations as soon as the claim is made. This role must be governed by the College of Physicians and integrated with its standards of practice.

Recommendation 5

To improve and promote the earliest possible return to work, the treating physician must determine functional limitations as soon as the claim is made, as is done in Canada's other workers' compensation plans. This role must be governed by the College of Physicians

Return to Work

How have some provinces broken down barriers to promote full cooperation between employers, workers and the Board/Commission?

Return to Work

- In this section, we will demonstrate how some provinces eliminated various barriers to encourage an early and sustainable return to work.
  - Principle of employer-worker cooperation with the support of the board/commission
  - Penalties for non-cooperation (employer and worker)
- We would also like to refer to the Ontario experience. Ontario had one of the least efficient compensation plans in Canada for decades before deciding to make sweeping changes with a strong emphasis on optimizing the return to work for employees.

Return to Work

Quebec	
Current Regime	**Bill 59 Orientations**
Under the current Act {AIAOD}, the CNESST is required to prepare and implement, with the worker's cooperation, a personal rehabilitation program that may include a plan for physical, social and occupational rehabilitation. The role of the employer is not specified, even though the employer is a key player in the return to work. In the current situation, rehabilitation as part of a return to work often takes place within a conflictual framework. Ergonomists or other experts will examine the work station, with the worker often expressing doubts about the process. The return-to-work rehabilitation activities often end up, much later, before the Administrative Labour Tribunal (*Tribunal administratif du Travail)* .	Bill 59 considerably alters the rehabilitation measures. The CNESST is given a central role, diverging quite significantly from the joint approach that is foundational to the regime for compensating, rehabilitating and preventing occupational injuries. In fact, the physician in charge of the worker is given a role in the rehabilitation which the physician will surely not be able to fulfill. Furthermore, there is no provision for the employer to be consulted at every stage of the process, but rather only occasionally, or if necessary. Based most likely on the Supreme Court of Canada Caron ruling concerning the employer's duty to accommodate, the CNESST is given powers that greatly exceed the conclusions that may be drawn from that decision. It will no longer be the employer and worker who will try to work out a reasonable accommodation for anything more than trying to find equivalent or suitable work. Instead, the CNESST will set the framework; it seems the employers will not collaborate in the process. There is also a presumption that an employer is deemed able to reinstate the employee. The only way for employers to express their point of view is to demonstrate that a CNESST reinstatement decision would constitute an undue hardship. The concept of undue hardship imposes a very heavy burden on employers and is unfair, especially for small businesses. Lastly, the Bill provides for significant penalties, of a penal nature, for an employer who the CNESST deems to be recalcitrant. In effect, the rehabilitation process leading to the return to work is made much more complex, moving it into the sphere of labour relations and leaving very little room for the parties, and the worker, to come to an agreement. Furthermore, there are provisions for various penalties against the employer in this regard, but none regarding the worker.

Return to Work

Workers' Compensation Boards			
Ontario	**Manitoba**	**Alberta**	**British Columbia**
The Workplace Safety and Insurance Board (WSIB) has adopted the principle of "Better at Work" to guide its approach to case management and as a model for healthcare. -Work is important to overall well-being -Early intervention is key -Return to work enhances recovery and is part of the rehabilitation process -Barriers to return to work are often inappropriately 'medicalized' This approach recognizes the importance of timely access to quality healthcare, coupled with an appropriate and safe return to work (RTW), in order to promote optimal physical and psychological recovery. The medical professional treating the worker is required, under WSIA, to provide the WSIB with information on the worker's injury or occupational disease, any ongoing deficiency and functional abilities. The attending medical professional is required to provide the form outlining the worker's functional abilities and the employer is required to identify suitable work. The WSIB forms that the medical professional may complete, including the initial report (Form 8), contain sections to indicate the worker's functional abilities. Upon request, the medical professional(s) treating the worker will fill out the functional abilities form to help the worker and employer plan the RTW and identify suitable work, and the WSIB decision-makers determine whether the RTW is appropriate. The WSIB plays a direct role by providing support for the resumption of work. If the injured worker has not returned to work by 12 weeks after the date of the accident, the WSIB meets with the parties. Both workers and employers may receive significant penalties for non-cooperation: Penalty for non-cooperation by the worker = 50% reduction in compensation for lost earnings (if the non-cooperation is longer than 14 calendar days, the worker's compensation for loss of earnings may be reduced or suspended). Penality for non-cooperation by the employer = 50% of the compensation cost for the worker's loss of earnings (if it continues beyond 14 calendar days: 100% of the compensation cost for the worker's loss of earnings, plus 100% of the cost of the worker's career transition services, with the possibility of a total combined penalty for up to 12 months).	When a worker is injured or becomes ill at work, the goal of the Workers' Compensation Board (WCB) is to reduce the impact of the injury by helping the worker return to work, preferably with the same employer where the incident occurred. Most of the time, the worker, the employer and unioin representative (if any) will make their own arrangements. The WCB encourages such permanent or temporary provisions and will work with all parties to help the worker return to work safely. The WCB will only intervene in two situations: the first is when the worker or employer needs financial or technical assistance to help the worker return to work; the second is when the worker and employer do not agree on the whether the modified work is appropriate. -If a worker refuses to accept suitable work, the compensation for loss of earnings will be reduced or eliminated by the amount that the worker would have earned in the suitable work. -If the WCB determines that an employer has not fulfilled their obligations, it may impose an administrative penalty on the employer.	The intention of Workers' Compensation Board (WCB) is to have employers and workers work together to achieve the return to work or to a suitable job after an employment injury. In effect, when an employment injury leads to compensable restrictions that prevent a worker from performing the duties of their pre-injury job, the WCB, with the worker, the employer and union representative (if there is a collective agreement) will formulate an appropriate return-to-work plan to help the worker resume work with the employer. If for some reason the worker cannot return to work with the employer, the WCB will draft a plan with the worker to help the worker find suitable employment. The WCB will seek out and encourage injured workers to accept temporary assignments. To determine if the temporary assignment is suitable, the WCB will consult the worker, employer and physician to assess the proposal. The assessment is based, without being limited to, a detailed description of the temporary assignment, detailed medical information describing the worker's physical restrictions, and the medical requirements that must be taken into account. Both the employer and the worker must cooperate in a timely and safe resumption of work by maintaining communication with each other as soon as possible after the accident and throughout the period of the worker's recovery and disability. Penality for non-cooperation by the employer = administrative penalty that may equal the amount corresponding to the worker's average income in the year prior to the accident. The WCB may also pay this amount to the employee. Penalty for non-cooperation by the worker = reduction or suspension of the compensation payable to the worker, until the worker cooperates.	The WCB takes "A team approach to recovery. "For most people who have suffered an employment injury, recovering while working is the healthiest option. The Board may institute any measures it deems necessary to help the injured worker return to work, without regard to the date of the accident. Some of the care provided must, at all times, be submitted to the management, supervision and control of the Board. The Board also seeks to intervene in the return-to-work process in a timely manner and recognizes the importance of a quick return to work in the worker's rehabilitation. Penalty for non-cooperation by the employer = not applicable Penalty for non-cooperation by the worker = reduction or suspension of the compensation payable to the worker until the worker cooperates. The Board may also terminate career transition services.

Return to Work

Ontario's success since 2015

- In Ontario, the Workplace Safety and Insurance Board (WSIB) adopted the evidence-based principle of ***"Better at work"*** as their approach for case management and as their health care model.
  - Work is important to overall well-being
  - Early intervention is key
  - Return to work enhances recovery and is part of the rehabilitation process
  - Barriers to return to work are often inappropriately "medicalized"
- This approach recognizes the importance of prompt access to quality health care integrated with a return to suitable and safe work, to provide the best outcomes for physical and psychological recovery.
- This approach is currently used by most of the workers' compensation plans in Canada. It strongly promotes cooperation between the employer, the worker and Board/Commission staff.

Return to Work

Ontario's success since 2015

- The return to work policy was completely revised in 2015
  - This policy defines the responsibilities of the workplace parties, requiring cooperation in the work reintegration process and, if necessary, obligating the employer to re-employ an injured worker. The WSIB provides training and support for the workplace parties and makes sure they are meeting their obligations.
    - A Return to Work Specialist provides support for the employer and the worker in every case, starting at 12 weeks of disability.
  - Non-cooperation may give rise to significant penalties for workers and employers.

Return to Work

Ontario's success since 2015

- The decision-making policy was also revised:
  - Implementation of a rigorous adjudication process with trained and specialized officials;
  - Independent decision-making based on all information gathered from the treating physician, various therapists, specialized nurses, surgeons, etc.;
  - Access to consulting physicians to assist/support decision-making;
  - Decision-making process based on the evaluation of all the information obtained;
  - Ability to review decisions throughout the claim process.
- 90% of decisions are now finalized within 2 weeks (65% in 2008)
  - Timely appeals process, with 87% of cases settled within 6 months.

Return to Work

Ontario's success since 2015

- Implementation of a "fast track" principle for accessing health care
  - The WSIB created health care programs to give workers timely access to specialized health care in order to help both the worker's medical professional and WSIB decision-makers with respect to diagnosis, causality and treatment recommendations.
  - The goal of these programs is to provide quality health care and to help workers recover quickly from work-related injuries or diseases. These programs include:
    - Programs of Care
    - Low-back expert physician examiners
    - Regional evaluation centres
    - Specialty clinics services
  - The decision-maker, the employer and even the treating physician strongly encourage the use of these health care programs and their specialists to speed up the return to work.

Return to Work

Ontario's success since 2015

- Return to work at 100% of pre-injury earnings within 12 months: 88.4% (2019)
- 96% of people were able to find a job after completing a return-to-work plan
- The number of workers needing more support after 12 months was cut in half compared with 2008 (4% versus 9%)

Source *: By the Numbers: 2019 WSIB Statistical Report*

Return to Work

Ontario's success since 2015

- Financial results since 2015 compared with Quebec

Provisional Assessment Rate	Ontario	Quebec	%
2015	2.46	1.94	-21.1 %
2020	1.37	1.77	+35.0%
Funding	**Ontario**	**Quebec**	**%**
2015	79%	106%	+34.1%
2020	114%	125%	+9.6%

Ontario has made great strides in terms of interprovincial competitiveness.

Return to Work

- Similarly, in the other Canadian provinces the return-to-work concept focuses on a principle of cooperation and obligation for both the employer and the worker.
  - Employer's obligation to find a return-to-work solution for the worker that accommodates the worker's functional limitations
  - Worker's obligation to cooperate in the rehabilitation process
  - Support from a rehabilitation specialist provided by the Board/Commission
  - Penalties for non-cooperation of either party
    - Employer: penalty in the form of payment of the income-replacement indemnity
    - Worker: suspension of compensation payments

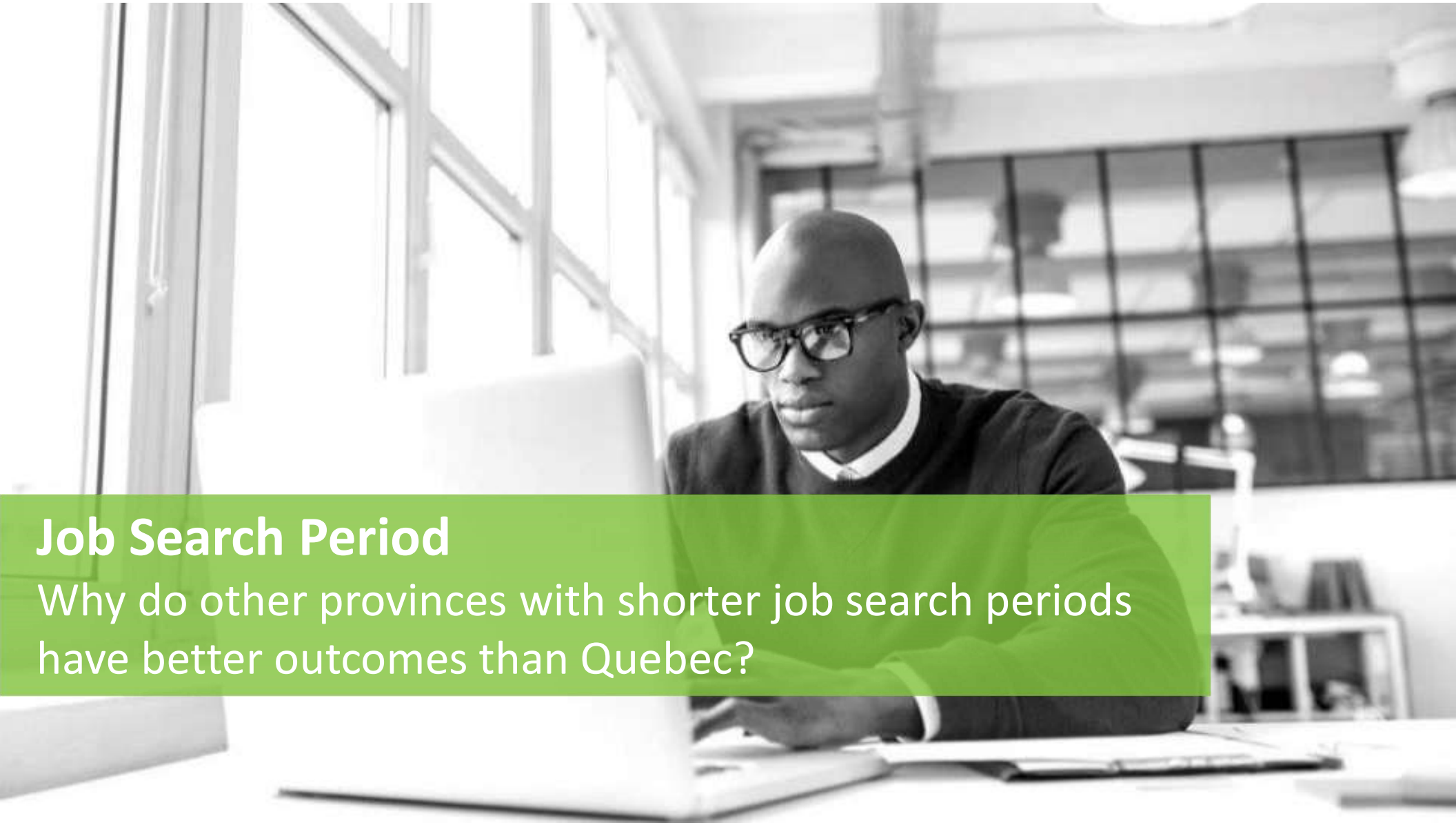
Return to Work

- The concept of cooperation in the context of the rehabilitation process is key within any wage-loss insurance plan. The concept of penalties for non-cooperation exists in Canada's other workers' compensation plans and in similar regimes, such as private wage-loss insurance plans, the SAAQ, EI and QPP.
- In our opinion, certain features of Bill 59 should be revised to create a real impact on workers' well-being and to encourage their return to work and the continuation of their employment relationship.

Return to Work

Recommendation 6

We recommend the implementation of a return-to-work process similar to Ontario's "Better at Work" concept. Employer-worker cooperation supported by the Commission, with penalties for non-cooperation (employer/worker).



Job Search Period

Why do other provinces with shorter job search periods have better outcomes than Quebec?

Job Search Period

- Sections 48 and 49 of the Act respecting Industrial Accidents and Occupational Diseases (AIAOD) stipulate that workers who are again able to carry on their employment or an equivalent employment after the expiry of the time prescribed to exercise their right to return to work are entitled to receive their income replacement indemnity for **one full year** in order to seek employment.
- The SECOR report has already analysed this measure specific to the Quebec plan and concluded that it is likely to discourage workers from returning to work.
  - The report showed that almost 80% of Quebecers covered by this component of the regime take the full 12 months of the indemnity.

Job Search Period

Quebec	
Current Regime	**Bill 59 Orientations**
Sections 48 and 49 of the AIAOD stipulate that workers who are again able to carry on their employment or an equivalent employment after the expiry of the time prescribed to exercise their right to return to work are entitled to receive their full income replacement indemnity for one full year in order to seek employment. The AIAOD does not provide for any supervisory structure to monitor the worker's job search activities during that year. In effect, the one-year job search indemnity is paid automatically to the worker without any obligation for the worker to report on their job search efforts.	Bill 59 amends Section 48, but maintains the one-year job search indemnity. Furthermore, Bill 59 establishes certain limits since it provides that where a worker who has suffered an employment injury is again able to do their job or an equivalent job after the expiry of the time prescribed to exercise the right to return to work, the worker's right to the income replacement indemnity is extinguished when the worker is reinstated in their employment or an equivalent job; when the worker refuses, without valid reason, to be reinstated in their job or an equivalent job or following a decision of the CNESST concluding that the reinstatement of the worker does not impose undue hardship on the employer. However, for the worker there is no obligation of any kind and no monitoring of the job search activities, and the CNESST is not bound by any legislative provision to monitor the worker's job-search efforts during that year.

Job Search Period

Workers' Compensation Boards			
Ontario	**Manitoba**	**Alberta**	**British Columbia**
There is no specific period. In effect, the case manager and RTW specialist decide on a case-by-case basis. The specialist writes up an agreement with the worker, who then signs it and commits to a collaborative job search process. In general, the period is less than four months. In 2015, the WSIB signed service agreements with several outside organizations to provide training in job-search techniques, as well as placement and training and job maintenance services, for injured or disabled workers who have transferable or newly acquired skills and need help finding work.	The minimum period allocated for job search assistance is determined by: i. The unemployment rate in Manitoba for the worker's level of schooling upon expiry of the written plan (such as, less than high school, high school, etc.) ii. A figure that represents the number of weeks it usually takes to find a job for each percentage point in the Manitoba unemployment rate, at the time when the worker will be starting the job search. This minimum period for the job search for each level of education is set out in Schedule A and represents the cumulative length of time for a worker's job search. The Schedule is revised every year to update the unemployment rates and their impact on the minimum job-search period. The period usually ranges from 12 (minimum) to 16 weeks and could be as much as 31 weeks depending on the worker's level of schooling. The worker must demonstrate their efforts and cooperation with the job search.	Job search assistance may be provided for a maximum total of 16 weeks, with a possible extension to a maximum of 44 weeks, if justified and depending on the duration of the worker's employment with the employer. When an extension is requested, the worker must demonstrate their efforts and cooperation with the job search.	Job search assistance may be provided for a cumulative total of 12 weeks. The Board can approve extensions of up to 26 weeks based on the following criteria: • The labour market data for the worker's geographic region and/or occupation support a higher average number of job-search weeks; • The seriousness of the injury and resulting disability are such that 12 weeks to find suitable employment will not be sufficient; or • The worker was actively seeking work and objective measures show that more than 12 weeks are required to find suitable work that will allow the worker to return to work in a comparable job category. Extensions beyond 26 weeks must be approved by the director of vocational rehabilitation services. The Board reserves the right to ask the worker to provide proof of their efforts to look for work.

Job Search Period

- In other provinces, the job search indemnity generally lasts for 12 to 16 weeks at most, not 52 weeks as in Quebec. The length of this job search period should be similar in Quebec.
  - In some provinces, the length may vary depending on the unemployment rate.
- Extensions could nonetheless be granted based on specific circumstances, such as:
  - The worker's cooperation in the rehabilitation process;
  - Genuine demonstration of willingness to search for work throughout the period.

Job Search Period

- It is incomprehensible that the AIAOD does not provide for any monitoring or follow-up of the worker's job-search activities during this 12-month period.
  - In effect, the income replacement indemnity is automatically paid to the worker for a year **with no obligation whatsoever** on the part of the worker to report on his or her job-search efforts.
- In our opinion, this period is far too long and it is incomprehensible that there is no obligation to demonstrate that a job search is in progress. This approach does not satisfy the Minister's objectives for an early and sustainable return to work. We are a long way from the "***Better at work"*** concept promoted by the majority of Canadian workers' compensation plans.

Job Search Period

Recommendation 7

The job search period should be similar to that in other Canadian provinces and job-search efforts should be rigorously monitored by the CNESST, with penalties for non-cooperation.

Compensation

Does this process adhere to the principles of insurance?

Is it a barrier to returning to work?

Compensation

- An important concept in any insurance regime is the incentive to promote workplace safety and an early and sustainable return to work.
- In keeping with this concept, the compensation plan must be designed to provide fair and adequate compensation.
  - The income replacement level needs to reflect the worker's average wage at the time of the incident. The common practice is to pay an amount slightly lower than the worker's net income (75% to 90% of net earnings in Canada) to preserve the incentive for workplace safety and return to work.
  - In some special cases, the concept of income replacement should be replaced by the concept of lost of earning capacity for long-term cases where the worker's wage level was insufficient at the time of the incident.
    - For example, a 20-year-old part-time worker who is also going to school and has lost the ability to work for the rest of his life.
  - Compensation must **not offer the possibility of unjustified enrichment**
    - For example, paying a compensation level initially intended for the short term that is significantly higher than what the worker actually earns.

Compensation

	Workers' Compensation Boards				
	Quebec	**Ontario**	**Manitoba**	**Alberta**	**British Columbia**
Compensation Level	90% of net earnings	85% of net earnings	90% of net earnings	90% of net earnings	90% of net earnings
Net Earnings	The worker's employer at the time of the worker's employment injury pays the net earnings for the part of the workday in which the worker became unable to perform their job duties because of the injury. For the first 14 days of disability, the worker receives 90% of net earnings for each day or partial day that the worker would ordinarily have worked, were it not for the disability. The worker's net earnings are equal to the gross earnings minus the usual at-source deductions withheld by the employer. The Act provides various methods for establishing the worker's annual gross income, which is used as a basis for calculating the indemnity and the income replacement. In general, a worker may establish a gross income higher than that of the job the worker was in at the time of the injury, if appropriate proof is provided.	Compensation payment for the first 12 weeks are based on average earnings for the most recent weeks. For longer compensation periods, the calculation may use average earnings over a longer period of time. If the nature or severity of the injury or disease completely prevents a worker from resuming any form of work, or if the worker is able to resume a form of work but the Board determines that no appropriate work is available, the worker is typically entitled to the full income replacement benefit on condition that the worker cooperate with healthcare measures and all aspects of returning to work. The worker will then be entitled to minimum replacement income (2020: $24,235)	Short-term income replacement: If the person is a regular worker, current income. If income fluctuates, average earnings for the past year. If net income is less than or equal to the minimum average earnings ($24,232 in 2020), the benefit rate will be 100% of net earnings. When a declared worker is involved in an accident that leads to that worker's death or a long-term loss of earnings capacity, Section 77 states that earnings may be adjusted. In such cases, the average earnings of the declared worker will be the higher of either: • the worker's average earnings calculated pursuant to Section 45; and • the average of the minimum average earnings The Board considers that a declared worker has suffered a long-term loss of earnings capacity after the worker has received 24 months of benefits for cumulative lost earnings.	If the person is a regular worker, current income. If income fluctuates, average earnings for the past year.	If the person is a regular worker, average of the past three months. If income fluctuates, average income for the past year.
Insurable Maximum (2021)	$83,500	$102,800	No limit	$98,700	$100,000
Minimum Compensation	Minimum of $27,248$ (40 hours @ $13.10)	No minimum	No minimum	No minimum	No minimum

Compensation

- In our opinion, the compensation level in Quebec is generally reasonable.
  - Reimbursement is slightly below what the worker earns (90% of net income).
- However, in the case of short-term incidents involving part-time workers, Quebec's regime opens the door to unjustified enrichment that is completely contrary to the basic principles of an insurance plan.
  - Paying an income replacement indemnity as if the worker was working a 40-hour week at minimum wage can lead to unjustified enrichment.
- The concept of unjustified enrichment does not exist in the other large provinces.
  - However, they do have income-adjustment measures that reflect the concept of loss of earning capacity for long-term or permanent cases.
- The concept of unjustified enrichment runs counter to the objectives of Bill 59:
  - Incentive to report an incident;
  - Incentive to prolong the claim;
  - Increase in plan costs.

Compensation

Recommendation 8

The CNESST should do away with the concept of minimum compensation for short-term cases and replace the whole thing by an adjustment after 6 to 12 months based on the concept of earning capacity for long-term or permanent cases.

Cost relief/transfer

Why is this concept central to Canadian workers' compensation plans?

Cost relief/transfer

- Canada's largest workers' compensation plans have policies aimed at taking third-party negligence or fault into account for occupational accidents so that employers do not have to pay additional assessments in such cases.
- Every Canadian province (except Nova Scotia) also has a policy covering pre-existing conditions.
- A pre-existing condition is any medical condition that existed prior to a work-related accident, and may include injuries, diseases, degenerative conditions and psychiatric conditions. The existence of a pre-existing condition must be confirmed by clinical evidence and may have been evident prior to or become evident subsequent to the work-related accident.

Cost relief/transfer

- Once the decision-maker establishes that the worker was injured in an accident arising out of or in the course of employment or has an occupational disease due to the nature of the employment, the claim is accepted. This is the case even if there is evidence of a pre-existing condition that may have increased the workers' susceptibility to an injury or disease. This is, in fact, an application of the "thin skull rule," which is well-established in Canada.
  - Generally speaking, workers are compensated for the full effect of the industrial accident or occupational disease even if the effects are more serious or the recovery time is longer than expected due to a pre-existing condition.
- On the other hand, the employer can request that cost assignments having an unfair impact be transferred to the general fund. The following tables show the legislative intentions and current applications in the other largest Canadian provinces.

Cost relief/transfer

Quebec	
Current Regime	**Bill 59 Orientations**
Currently, sections 326 and 329 of the AIAOD are the two fundamental provisions with respect to assignment of costs. These provisions have a dual purpose: one, to encourage the hiring and retention of handicapped workers and, two, to not unduly penalize employers with respect to their assessment. In Quebec, a worker's compensation is mainly provided by the CNESST, since under the terms of the AIAOD the CNESST does not really act as an insurer. In effect, when the AIAOD came into force in 1985 and the worker was placed under the charge of the physician, it completely changed the picture with respect to the CNESST's function as an insurer. The CNESST is basically bound by the treating physician, so the CNESST cannot, as other provinces do, draw on the expertise of several medical experts to accept or reject claims after they are reviewed. This means that employers are obliged to have frequent recourse to sections 326 and 329 of the AIAOD. Section 326 allows an employer to transfer costs if a third party not subject to the compensation regime is responsible for the employment injury or if the employment injury stems from an event that has the effect of "unduly burdening" an employer. Section 329 allows an employer to obtain the transfer of all or part of the cost of benefits, if a worker was handicapped prior to the injury or if the handicap played a role in the occurrence of the injury or in the period of disability. To date, administrative tribunals and higher courts have sided with the employer in their interpretation of the provisions of sections 326 and 329.	First, Bill 59 seeks to eliminate the terms "unduly burdening" in Section 326. Employers will thus be deprived of an important justification for the transfer of costs, particularly in the event of long hospitalization or surgery waiting periods, unusual events, etc. With respect to Section 329, Bill 59 introduces the possibility of adopting a regulation to specify the terms and conditions of the application of this provision. The scope of this regulation is unknown. Furthermore, Bill 59 would amend the concept of "already handicapped," giving it an excessively restrictive definition. From now on, a worker is already handicapped if, before the employment injury, the worker had a deficiency causing a significant and persistent disability and if the worker is liable to encounter barriers in performing everyday activities. This eliminates, in just a few words, all the jurisprudence of the administrative tribunals for the past 20 years.

Cost relief/transfer

Workers' Compensation Boards			
Ontario	**Manitoba**	**Alberta**	**British Columbia**
Third-party motor vehicle claims: may be transferred to another employer if the party at fault is a civilian. The costs are removed and transferred from the employer's account. Costs incurred due to third-party negligence may also be transferred - the amount must be at least $500 to continue. Pre-existing conditions: if a prior disability caused or contributed to a compensable accident, or if the period after the accident is extended or lengthened due to a pre-existing disease, the assignment of all or part of the compensation and medical expenses incurred may be reversed and transferred from the employer's account. A pre-accident handicap is defined as a condition that produced periods of handicap in the past that interrupted employment and required treatment. A pre-existing condition is defined as an underlying or asymptomatic condition that manifests only after the accident. The reversed claim costs are charged to the fund to which Schedule 1 employers contribute.	Transfer of costs due to third-part negligence: 1) Negligence by another covered employer 2) The WCB brings legal proceedings against the third party. A portion of the cost is reassigned when 1) a pre-existing condition affects the duration of the disability and/or the associated costs 2) the way in which costs are determined subjects the employer to an unequal charge 3) the claim was caused or significantly extended mainly due to a pre-existing condition 4) cumulative trauma or diseases with a long latency period 5) injury during a training placement 6) expenses for rehabilitation programs, for safety measures or a new injury due to the rehabilitation. The cost transfer is applied to the category of the employer to which the accident is attributed.	Transfer of costs to another employer due to negligence. A portion of the cost is reassigned when 1) the compensable accident aggravates a pre-existing condition 2) the pre-existing condition leads to a longer period or severity of disability 3) the disability period is extended due to a concurrent condition 4) recovery is extended due to an error in judgement by workers 5) delay in admission to hospital 6) payment of the earnings lost during the medical investigation to determine right to reimbursement, if the claim is rejected. Back injuries - if the medical evidence indicates that the compensable accident aggravated a prior condition, the Board will consider reducing the costs that exceed 8 times the weekly employment compensation rate. Costs are transferred to the sector of the employer. If employers in a given classification unit waive the cost relief (used to pay for claims that involve the aggravation of injuries from pre-existing claims), the levy required to fund these costs is removed. (Industry Custom Pricing).	Transfer of costs if a substantial compensation amount was awarded (more than $51,445 for 2020) following an injury or death caused by a serious failure to perform due diligence on the part of the employer or an independent operator belonging to another class or subclass, or having substantially contributed thereto. If there is cost relief, the transfer is made to the employer's rate group. Definition: a disease, a condition or a pre-existing disability are those that exist before the compensable prejudice and which are established by a confirmed diagnosis or medical opinion. For the cost relief to apply, there must have been at least 10 weeks of total temporary and/or partial temporary disability benefits, or the awarding of permanent disability benefits.

Cost relief/transfer

- It is imperative that Bill 59 retain the provisions with respect to cost relief/transfer so that employers are not unduly penalized under certain circumstances when the employer has no control over these costs.
- It must be remembered that the workers' compensation plan is paid for in full by Quebec employers and that cost assignment is simply a method of sharing these costs amongst the various employers who contribute to the CNESST's general fund.
  - Procedure for reversal of cost assignments so as not to penalize employers for longer-than-normal compensation periods due to pre-existing conditions;
  - Adjustment of cost transfer with respect to the concept of an unfair burden on the employer;
  - Extension of claim that is beyond the employer's control (e.g. delayed surgery, pandemic, medical error, etc.);
  - Claim generated by a third-party employer;
  - Exposure to substances/noise involving several employers;
  - Special cases, such as when workers left their jobs due to misconduct or various activities of a criminal nature.

Cost relief/transfer

- Their removal or amendment would lead to significant upward pressure on challenges to claim admissibility.
- Tightening the conditions for applying Section 329 of the AIAOD regarding pre-existing conditions would also put pressure on the hiring process for workers who are already disabled.
- The concept of unfairness to the employer is important and must be retained in a workers' compensation plan.
  - It would be even more unfair to assign some or all of the costs of an occupational injury to an employer under circumstances that are beyond the employer's control (third party, delay, etc.).
- Again, it must be kept in mind that the cost assignment process is just a way of sharing these costs relief/transfer paid by employers alone.
- Reviewing the concept of financing as related to cost relief/transfer would also be important.

Cost relief/transfer

Recommendation 9

We recommend retaining the current sections respecting cost transfer and relief (Sections 326 to 329).

Financing

Is the cost currently shared in an appropriate way? How is it shared in other plans?

Financing

- Currently, the cost of the regime is wholly paid by covered employers who share the responsibility for workers' compensation insurance, which adheres to the basic principles set out by Justice Meredith.
- However, one might ask whether this cost is currently shared in an equitable manner.
  - The Meredith Report of 1913 stipulates that the government's compensation costs should be separated from those of the private sector through the creation of two schedules (1 and 2)
- The following table illustrates how this principle of private/public cost separation works in the largest provinces. Except in Quebec, the governments pay their fair share of the plan costs.

Financing

	Workers' Compensation Boards				
	Quebec	**Ontario**	**Alberta**	**British Columbia**	**Manitoba**
Provincial Government	The plan is insured, the public sector **does not pay 100% of its costs.**	Self-insured plan, the sector pays 100% of its costs.	Insured plan, the sector pays 100% of its costs.	The public sector is self-insured. It pays 100% of its costs.	The public sector is self-insured. It pays 100% of its costs.
Healthcare Sector				The healthcare sector is insured. It pays 100% of its costs.	The healthcare sector is insured. It pays 100% of its costs.
Education Sector				The education sector is insured. It pays 100% of its costs.	The education sector is insured. It pays 100% of its costs. Teachers are covered by an external policy.
Safe Maternity Program	The public sector generates 65% to 70% of costs but is assessed at about 25% of the amount. It is estimated that $86 million to $98 million is transferred to the private sector.	No safe maternity program	No safe maternity program	No safe maternity program	No safe maternity program
Cost relief/transfer	Cost assignment under sections 326 to 329 {AIAOD} of the main government sectors (healthcare and education) is divided among the other employers subject to the retrospective plan. They would have greater than average recourse to the reversal of the assessment costs than other employers, which results in the transfer of costs from the public to the private sector.	Not applicable (self-insured)	All costs are divided among the employers in the classification unit	All costs are divided among the employers in the classification unit	All costs are divided among the employers in the classification unit

Financing

- Public sector costs are fully covered by the governments in Canada's largest workers' compensation plans
  - In several Canadian provinces, public-sector workers' compensation costs are self-insured (Ontario and partly in British Columbia and Manitoba)
  - Some plans are insured, but share the imputed costs among employers in the classification units specifically corresponding to the government
    - Thus the cost is shared among government employers

Financing

- In Quebec, there is a significant transfer of costs from the public sector to the private sector
  - **Safe Maternity Experience Program:** Currently, there is a flat assessment rate for all employers under provincial jurisdiction (public and private). Given that the government accounts for 65% to 70% of the cost of this program while representing about 25% of the insurable payroll, this clearly constitutes a cost transfer from the public sector to the private sector.
    - The Safe Maternity Experience Program cost $217.4M in 2019 (excluding administration expenses).
    - We estimate that the cost transfer to the private sector was between **$86M** and **$98M** in 2019 (not including program administration expenses).
  - **Cost relief/transfer:** In Quebec, the government is covered by the retrospective plan. It is one of the biggest users of the cost relief/transfer provisions. Given that the employers under the retrospective plan share these imputed costs, the private sector is on the receiving end of cost transfers from the public sector.

Financing

In our opinion, it is unfair that the majority of employers in Quebec have to absorb certain direct and indirect costs generated by the government.

This approach does not adhere to the concept of equitable sharing of costs in accordance with Justice Meredith.

Financing

Recommendation 10

The CNESST regime should be financed by means of an equitable split between the public and private sectors.
The government should cover 100% of the direct and indirect costs it generates.

Financing

- The financing of non-work-related employment costs should also be reviewed.
  - The For a Safe Maternity Experience Program, which is unique in Canada, should be paid for by Quebec's Parental Insurance Plan, not by the CNESST.
    - This would also make it possible to cover workers under federal jurisdiction, who are not currently eligible under the OHSA.
  - Medical cost assignment reversals for pre-existing conditions should not be charged to the employers covered by the CNESST, but should instead be covered by RAMQ
    - Why should employers cover medical expenses for a case that would ultimately be rejected by the CNESST or a tribunal? The same goes for a case where there are pre-existing conditions.

Financing

Recommendation 11

The cost of the For a Safe Maternity Experience Program should be covered by Quebec's Parental Insurance Plan, while medical cost assignments for pre-existing conditions should be paid by the Régie de l'assurance maladie du Quebec (RAMQ).

Occupational Diseases

How do other provinces go about recognizing new occupational diseases?

Is our compensation plan for hearing loss adequate?

Occupational Diseases – Recognition

- **The Regulation respecting Occupational Diseases (OD)**
  - Bill 59 seeks to have scientific advances reflected in the compensation for workers suffering from an OD and enacts a new regulation specifically for ODs.
  - For some workers, it could be difficult to receive compensation if the characteristic risks of their work are not associated with a recognized diagnosis.
  - Recent scientific discoveries may justify the addition of a diagnosis to the Regulation respecting Occupational Diseases.
  - Bill 59 provides for the application of a presumption through Section 29 of the Act for a disease determined by regulation.
  - Bill 59 also provides that in the absence of such a presumption, workers not presumed to be suffering from an OD can be considered to be suffering from an OD if they satisfy the eligibility criteria for the claim that may be prescribed by regulation as well as the requirements under Section 30 of the Act.

Occupational Diseases – Recognition

Quebec	
Current Regime	**Bill 59 Orientations**
The current AIAOD contains special provisions for occupational diseases. Section 29 AIAOD states that the diseases listed in Schedule I are characteristic of the work corresponding to each of those diseases and there is a presumption that such diseases are directly related to the particular risks of the corresponding work. Section 30 addresses occupational diseases that are not listed in Schedule I of the AIAOD. In this case, a worker having contracted a disease not listed in Schedule I out of or in the course of employment and not as a result of an industrial accident or of an injury or disease caused by such an accident is considered to have contracted an occupational disease if that worker satisfies the Board that the disease is characteristic of work he or she has done or is directly related to the risks peculiar to that work	Bill 59 provides for a scientific committee on occupational diseases, the *Comité scientifique sur les maladies professionnelles* (the Committee) whose mandate is to make recommendations to the Minister and the CNESST with regard to occupational diseases (OD), in particular by identifying and analyzing the research on OD, by analyzing the causal relations between diseases and contaminants or the risks peculiar to a type of work, and by producing written opinions on the identification of occupational diseases, etc. The Committee's scope of activity is very broad and exceeds that of the framework of the Act because the Committee may carry out any other mandate conferred on it by the Minister or the CNESST. In addition, Bill 59 states that for the purposes of its mandates, the Committee may consult any expert or public body or have any expert or public body carry out work for it (Section 348.2). Before filing its report, the committee on occupational oncological diseases must consult the opinions and recommendations of the *Comité scientifique sur les maladies professionelles* (Section 233.5) Public disclosure of opinions: the CNESST must make the Committee's recommendations and opinions public on its website not later than one year after receiving them (except that any Committee opinions and recommendations concerning a draft Regulation must be published prior to publication of the draft regulation – Section 348.3). Another new feature: the Regulation respecting occupational diseases, which determines the application of the OD presumption and the special conditions in relation to such diseases, and sets out the eligibility conditions.

Occupational Diseases – Recognition

- **Need to include an obligation to consider other contributing factors**
  - Bill 59 provides various ways for workers to qualify for compensation for an OD in reference to a regulation respecting occupational diseases, which could be amended and adapted to reflect scientific advances.
  - However, Bill 59 remains silent on the topic of other factors to consider in assessing OD eligibility, such as contributing factors that are not work-related.
  - Bill 59 should require that **the worker's overall health** be considered before deciding whether to recognize an OD.
  - More specifically, personal conditions and other contributing factors should be considered before a claim for an OD is accepted.

Occupational Diseases – Recognition

- **Scientific committee on occupational diseases: Introduction**
  - Bill 59 provides for the creation of the *Comité scientifique sur les maladies professionnelles*, a scientific committee on occupational diseases with a mandate to make recommendations to the Minister or the CNESST with regard to occupational diseases.
  - This Committee's recommendations take the form of written opinions and would be based primarily on the review and analysis of OD research and studies, along with the analysis of causal relationships between diseases and the contaminants or risks peculiar to a type of work.
  - The scope of this Committee is very broad, since it may carry out **any other mandate** conferred on it by the Minister or the CNESST.

Occupational Diseases – Recognition

- **Scientific committee on occupational diseases: Potential Abuses**
  - In our opinion, establishing this kind of committee opens the door to abuses, for the following reasons:
    - New scientific discoveries may be published in various places without necessarily reflecting a consensus within the scientific community and, consequently, any Committee recommendations based on such publications could result in the premature compensation of workers, since this compensation would not be based on scientific consensus or accepted evidence.
    - The qualifications for becoming a committee member are varied and the eligibility criteria are rather general (only a single criteria each for 4 of the 5 committee members).
    - The term of office is renewable and even though each term may not exceed 5 years, members remain on the Committee until they are replaced and there is no limit to the number of times they may be reappointed.

Occupational Diseases – Recognition

- **Recommendations regarding the scientific committee on occupational diseases**
  - That the Committee's role be limited and confined to the mandates listed in the Act without allowing the assignment of additional mandates conferred at the discretion of the Minister or the CNESST.
  - That the Committee not be allowed to delegate its work to experts or public bodies, which are moreover not specified in Bill 59.
  - If the Committee consults an expert or public body in the course of its work, that it do so using a list of experts or public bodies duly authorized by the CNESST Board of Directors.
  - That it be mandatory to hold public consultations before adding a new occupational disease to the Regulation, as is the case in British Columbia, for example.

Occupational Diseases – Recognition

- **Recommendations regarding the scientific committee on occupational diseases**
  - That, contrary to what is suggested in Bill 59, the Committee's written opinions be made public **immediately** on the Commission's website in accordance with transparency and access-to-information best practices.
  - That the terms of office for each member be limited to two (2) terms of no more than five (5) years each so as to comply with the rules of good governance.
  - That an additional qualifying condition for Committee members be added, i.e., requiring at least 10 years of practical experience, specifically including extensive knowledge of work environments.
  - That additional qualifications be met before a member can become Chair of the Committee, in particular, at least 10 years of practical experience, specifically including extensive knowledge of work environments.

Occupational Diseases – Recognition

Workers' Compensation Boards			
Ontario	**Manitoba**	**Alberta**	**British Columbia**
The WSIA has several definitions of an "occupational disease." It could be: - A disease resulting from exposure to a substance relating to a particular process, trade or occupation in an industry; - A disease peculiar to or characteristic of a particular industrial process, trade or occupation; - A medical condition that in the opinion of the Board requires a worker to be removed either temporarily or permanently from exposure to a substance because the condition may be a precursor to an occupational disease, The Lieutenant Governor in Council may also prescribe diseases by regulation for the purpose of application of the Act. Separately, the Act introduces a refragable presumption for firefighters. Two schedules to the WSIA govern the presumptions for occupational diseases: Schedule 3 lists 30 diseases and processes to which a worker may be exposed and for which it is presumed that the disease is due to the nature of the work, unless the contrary is demonstrated (refragable). Schedule 4 contains a short list of diseases and associated processes, where the disease is deemed to be the result of the nature of the work (irrefragable). The Board administers the Occupational Disease and Survivor Benefit Program.	Under the Workers Compensation Act, where an injury consists of an occupational disease that is, in the opinion of the Board, due in part to the employment of the worker and in part to a cause or causes other than the employment, the board may determine that the injury is the result of an accident arising out of and in the course of employment only where, in its opinion, the employment is the dominant cause of the occupational disease. Certain specific diseases such as gastrointestinal cancer following exposure to asbestos for a period of less than 20 years will be accepted if it is reasonable to conclude that the cancer developed during such employment. Cancer of the larynx may also be recognized as an occupational disease providing some conditions are met.	A presumption for firefighters is contained in the WCA for myocardial infarctions or certain cancers (24.1). The WCA also provides a presumption for the acceptance of post-traumatic stress disorder for several occupations (24.2). An Occupational Disease and Injury Advisory Committee is responsible for proposing recommendations to the Minister respecting amendments to the Act or its regulations in order to reflect the science on occupational diseases, injuries and conditions. The composition of the advisory committee is set out in the Act. The chair is the Director of Medical Services, Occupational Health and Safety, and the vice-chair is designated by the Board and is an employee of the Board who is a physician. The other members are designated by the Deputy Minister of Health, and by Alberta Health Services. The Minister may also appoint three members that are each selected from lists of at least three persons. One person must be nominated by one or more organizations that represent workers, one person must be nominated by one or more organizations that represent employers, and one person must be a member of the public. Interesting note: The WCB provides a description on its website of occupational diseases that have been accepted, listing the age, period and type of exposure.	The WCA takes scientific discoveries and advances into account by, for instance, extending the period in which a claim may be filed, i.e., within 3 years after the date that sufficient medical or scientific evidence, as determined by the Board, became available to the Board (Section 152 (1) (b,c)). The WCB holds public hearings to gather opinions from the public before adding new diseases to the list of presumptions.

Occupational Diseases – Recognition

Recommendation 12

12.1 That the application of Sections 29 and 30 of the Act be subject to the obligation to consider non-work-related contributing factors, such as but not limited to personal medical conditions.

12.2 That governance best practices be applied to the composition, mandate and opinions rendered by the scientific committee on occupational diseases.

12.3 That three additional members may be appointed to sit on the Committee, chosen from among the employers, the workers and the general public, respectively.

12.4 That a public consultation be held before any new occupational disease is added to the regulation.

12.5 That at least one member of the scientific committee on occupational diseases has 10 years of practical experience in occupational medicine, and that new requirements be added so that the Committee Chair is elected.

Occupational Diseases – Hearing Loss

- Work-related hearing loss has become the fastest-growing category of occupational injury in the past 10 years in terms of both the number of cases and the associated costs.
- In 2009, the CSST received 5,303 claims, with an acceptance rate of 88%. In 2018, 14,501 new claims were filed with the CNESST, with an acceptance rate of 86%.
- This increase in the number of cases is largely due to the aging of the population, but other factors include ease-of-access to information and improved hearing-aid technology.
- The increase in costs is directly proportional not only to the number of cases, but also to the cost of devices. Superior technology and the exclusive market given to audioprosthetists in Quebec to sell the devices are associated with substantially higher costs.
- Finally, given the significant number of claims from people over 70, this has a direct impact on the amount paid for permanent impairment, with associated amounts showing substantial growth.

Occupational Diseases – Hearing Loss

Quebec	
Current Regime	**Bill 59 Orientations**
Division IV of Schedule I of the Act respecting industrial accidents and occupational diseases provides for the presumption of occupational hearing impairment caused by noise to the extent that it is demonstrated that the work involved exposure to excessive noise. The concept of excessive noise has been defined by jurisprudence and has evolved over time and with increased medical knowledge. Generally speaking, the accepted exposure unit is 8 hours at 90 dBA.	The Regulation respecting occupational diseases under Section 238 of Bill 59 establishes eligibility criteria for a claim submitted by a worker suffering hearing impairment caused by noise. Sections 4 and 5 are very specific on this matter, as is Division IV on diseases caused by physical agents. In practice, the conditions governing the application of the presumption are detailed and very specific.

Occupational Diseases – Hearing Loss

- All WCBs in the country **except for the CNESST** have taken steps to deal with the increase in costs related to hearing loss.
- In particular, these include pricing agreements with medical equipment suppliers, adjustment factors that limit compensation to the damage caused by occupational noise, and entry barriers to maintain a balance between the compensation of workers and fairness with respect to the costs charged to the employers who underwrite the compensation plan.

Occupational Diseases – Hearing Loss

	Workers' Compensation Boards				
	Quebec	**Ontario**	**Manitoba**	**Alberta**	**British Columbia**
Exposure limit over 8 hours (dBA)*	90	90	85	85	85
Minimum continuous exposure	2 years	5 years	2 years	2 years	Not defined
Compensable limit for (PPI) (dBA)	30	26.25 bilateral	35	35	25
Minimum level for wearing hearing aids	No minimum	25	35	35	28-32
Data used to calculate permanent partial impairment (PPI)	500, 1k, 2k, 4k	500, 1k, 2k, 3k	500, 1k, 2k	500, 1k, 2k, 3k	500, 1k, 2k
Reduction in PPI to offset aging (presbyacusis)	No	Yes (0.5/year after age 60)	Yes (number of years after age 60 x 2)	No, but the claim is rejected if it is primarily due to other causes	No, but the claim is rejected if it is primarily due to other causes
Maximum coverage per hearing aid ($) - for both ears	No	$1000 - $1500	$1,000	$900	$615
Hearing aid replacement cycle	5 years	5 years	5 years	Only when required	Only when required
Deadline for filing claim	6 months after knowing	6 months after knowing	None	24 months after knowing	None
End of exposure to noise in relation to claim filing deadline taken into account by the Board	No	No	No	No	2 years
Worker's age taken into account by the Board	No	Yes	Yes	Yes	Yes

Occupational Diseases – Hearing Loss

- Some of the changes proposed by Bill 59 are welcome from the perspective of fair compensation and reduced claim costs.
- In some respects, however, we have a few recommendations:

	Recommendations
Window for filing a claim	Set a window of two (2) years following the end of noise exposure to file a claim for occupational hearing loss to allow for appropriate compensation and provide the contemporaneous evidence needed to maintain fairness in the plan.
Limiting known exposure in association with development of occupational hearing loss	That "the mandatory wearing of hearing protectors in the workplace" be removed as a Special Condition in Division IV- Diseases Caused by Physical Agents, of Bill 59, Schedule A, because it leads to an absurd result by potentially discouraging the use of hearing protectors by employers in an effort to avoid the application of the presumption.
Minimum deficit giving rise to benefits under the law	Under-threshold hearing loss should not give rise to compensation under the regime.

Occupational Diseases – Hearing Loss

	Recommendations
Presumption with respect to occupational hearing loss: exclusion of combined conditions	To promote appropriate compensation, occupational noise should be the main cause of hearing loss if the occupational disease presumption is to apply. The AIAOD should specify that in the case of a combined condition, the presumption is not applicable. To have a claim accepted in this situation, the worker would have to provide medical evidence.
Presumption with respect to occupational hearing loss: time limitation	For the presumption to apply, a worker should be able to provide an audiogram from the time the excessive noise exposure ended. The law should specify a window of no more than two years in this regard.
Change the frequencies listed in the Scale of Bodily Injuries Regulation for evaluating deficits and determining thresholds	In Chapter VI, Hearing (including outer, middle and inner ear) and in the section Functional Sequelae, Step 1, use the frequencies 500, 1,000, 2,000 and 3,000 Hertz (instead of 4,000 Hertz) to be consistent with medical consensus.

Occupational Diseases – Hearing Loss

	Recommendations
Definition of hearing loss	It would be advantageous to include such a definition in the law or refer to a regulation, instead of leaving the CNESST to develop internal policies which sometimes seem to be at odds with these recognized principles.
Evidence	Claim analysis should take into account the various materials available to the Commission, such as noise studies by any of the parties, hearing tests taken in the workplace, medical opinions submitted by the parties and medical histories.

Occupational Diseases – Hearing Loss

Recommendation 13

The legislators should act promptly to reduce the substantial increase in hearing loss claims and costs by limiting the window for filing a claim to two (2) years after the end of exposure, by limiting the application of the presumption for occupational hearing loss cases, by using the frequency of 3,000 instead of 4,000 to calculate bodily injury so as to align with the science and, above all, by compensating only over-threshold hearing loss.

Domestic Workers

What approach is used elsewhere in Canada?

Domestic Workers

Quebec	
Current Regime	**Bill 59 Orientations**
Domestic workers are explicitly excluded from the application of the AIAOD.	Bill 59 expressly provides that domestic workers are included in the definition of worker and may therefore be compensated under the AIAOD. "Domestic worker" is given a fairly broad definition as a natural person whose main duty, under a contract of employment entered into with an individual for remuneration, is to do housework or maintenance work, to take care of or provide care to a person or an animal, or to perform any other household employee task at an individual's dwelling, or to act as driver or bodyguard for an individual or perform any other task falling strictly within the individual's private sphere. Note that Bill 59 does not contain any special provisions for the financing of compensation for domestic workers.

Domestic Workers

Workers' Compensation Boards			
Ontario	**Manitoba**	**Alberta**	**British Columbia**
The WSIB provides coverage for domestic workers who are employed more than 24 hours a week by one employer. If the worker's hours vary--more than 24 hours most weeks, but 24 hours or less other weeks--the worker is continuously covered. Domestic workers who work 24 hours a week or less for a single employer, or more than 24 hours a week for two or more employers, but 24 hours a week or less for any one employer are not covered under the Act. Employers of full-time domestic workers must register with the WSIB and pay their assessments.	Private households or companies that usually and regularly employ individual(s) for domestic service for 24 hours or more per week. (If only one person works over 24 hours per week, they and any other domestic workers are included in the coverage, regardless of the hours worked by them). Examples of occupations hired for domestic duties include: cleaning staff or maids; nannies, au pairs or sitters to care for their own children; chauffeurs; butlers, gardeners; companions; nurses' aids or personal care attendants. The Workers Compensation Act excludes persons who are hired to do domestic work for less than 24 hours per week. Domestic workers employed for 24 hours per week or more (on average) are covered, and the employer must pay the assessment for such workers. If the domestic worker has regular hours, but is employed less than 24 hours a week and the employer wants to cover the worker under the WCB, the coverage is considered optional, but comes under the same classification code as for mandatory domestic service coverage.	Voluntary coverage. This sector describes the circumstances in which private homeowners employ persons to perform various (and primarily) "housework" tasks in the owner's home. Details: The work may be done on an hourly, casual, part-time or full-time basis - the activities would be or normally could be done by the home owner, such as: - cleaning - washing clothes - cooking - looking after children - lawn mowing - gardening, etc. This sector also includes live-in help, such as maids, nannies, chauffeurs, cooks, butlers, etc.	WorkSafeBC provides coverage for domestic work if the person works more than 8 hours per week. Coverage is optional if the person works less than 8 hours per week.

Domestic Workers

- The addition of coverage for domestic workers is in and of itself a positive development.
- The problem is how to ensure that there will be sufficient assessments paid to cover these claims.
  - Even now, many of these workers are working under the table and the laws are ineffective against non-compliant employers.
  - Even today, employers neglect to enrol their workers, and mechanisms for recovering these monies from the companies, whether bankrupt or otherwise, are ineffective.
  - Imagine how it would be with non-compliant individuals. The law must establish penalties and assessment-recovery mechanisms aimed at the company directors or private individuals who do not declare their domestic workers.
- What procedures will be used to recover assessments from a private individual if the worker has not been enrolled or declared?

Domestic Workers

- Financing
  - Bill 59 is silent on the topic of classification and assessment concepts.
    - It should be ensured that rate assessments are appropriate given the lack of data (payroll and experience).
    - Assimilating this new activity into an existing classification could be detrimental to the other employers in the unit if the risk is not properly established.
  - In our opinion, there is a risk of unjustified enrichment with respect to short-term claims due to a large proportion of part-time, low-wage work in this sector (see Compensation section).
  - This sector is also likely to cause increased use of the Safe Maternity Experience Program, which is one more reason to transfer this program to Quebec's employment insurance plan.

Domestic Workers

Recommendation 14

The addition of coverage for domestic workers must be framed to include only those paying the appropriate assessments.

Conclusion

Conclusion

The time has come to update Quebec's occupational health and safety regime.
This process must adhere to the fundamental principles on which the regime was originally built.

The *Act respecting industrial accidents and occupational diseases* is essentially an employer-financed insurance plan, with the employees being in some sense the insureds.
Compared to other provinces, the regime we have in Quebec seems to be the most generous overall.

In any case, the compensation fund for this insurance plan must be administered in a sustainable way while still allowing the plan to remain competitive with the other Canadian provinces.

As for the *Act respecting occupational health and safety*, it is based on labour-management cooperation, i.e., a joint effort between employers and workers to prevent employment injuries and, when necessary, to continue the employment relationship so vital to rehabilitation.

In that regard, as demonstrated by other Canadian provinces, it is important to avoid creating systems that are overly complex and time-consuming, especially for our small businesses. We have to focus on results and adapt our methods to reflect the real world.

In closing, we have prepared this study from an independent stance, drawing on our extensive experience, in the hope that it will be useful to our society.

Sylvain Lebel and Bernard Cliche, Esq.

Thank you!

Sylvain Lebel, ASA
Senior Vice President, Health and Productivity
Morneau Shepell
slebel@morneaushepell.com
514 531-2124

Bernard Cliche, Ad. E.
Consulting Partner
Morency Société d'avocats s.e.n.c.r.l.
bcliche@morencyavocats.com
418 651-9900

MORNEAU SHEPELL
PARTENAIRE EN SANTÉ MENTALE