SOS: PRINCIPLES OF COMPENSATION IN DANGER OF EXTINCTION

Most if not all of these principles come from the humanitarian philosophy of the original compensation law. They are still in the law today BUT, they are not fully or often not partially applied by a WSIB that "looks to deny":

Remedial Legislation:

Workers' Compensation is "remedial legislation". This law is designed to bring about a remedy, i.e., help for the injured worker. As such it is supposed to be interpreted in a "large and liberal way" to provide for the injured worker. U of T professor Joan Eakin interviewed WSIB staff in the past and found that old claims adjudicators had words for this: "look to allow".

The basis for this is the "rule of liberal interpretation" in s.64 of the Interpretation Act which states that a law "shall be interpreted as being remedial and shall be given such fair, large and liberal interpretation as best ensures the attainment of its objects."
https://www.ontario.ca/laws/statute/06l21#BK74

Presumptions:

There are several presumptions in the law. An accident is presumed to be compensable if it happened at work, even if the details are unknown. Meredith offered the example of a sailor who falls into the sea and dies at night with no witnesses. The presumption is that it is compensable. Unless the contrary is shown, for example, the sailor left a suicide note indicating a highly personal distress. Other presumptions in the law are "un-rebuttable". If someone has asbestosis and worked with asbestos, it's compensable, no other questions asked or entertained.

The rebuttable presumption comes from s.13(2) of the Workplace Safety and Insurance Act which says "If the accident arises out of the worker's employment, it is presumed to have occurred in the course of the employment unless the contrary is shown. If it occurs in the course of the worker's employment, it is presumed to have arisen out of the employment unless the contrary is shown." The last sentence means that if the injury occurs while the worker is working, it is presumed to be cause by the work unless the contrary is shown.

The non-rebuttable presumption comes from s.15(4) of the Workplace Safety and Insurance Act about occupational disease which says "If, before the date of the impairment, the worker was employed in a process set out in Schedule 4 and if he or she contracts the disease specified in the Schedule, the disease shall be deemed to have occurred due to the nature of the worker's employment." This allows the government to add diseases to a regulation called "Schedule 4" when it is obvious that the disease was caused by work.

Benefit of reasonable doubt:

If the evidence to grant benefits – or to deny them, is "approximately equal", the decision goes in favour of the worker. For example there is a medical disagreement. One doctor says yes, the other says no. Both doctors have similar qualifications and have understood the facts of the case. In this case the injured worker gets a positive decision.

This comes from s.119(2) of the Workplace Safety and Insurance Act which says: "If, in connection with a claim for benefits under the insurance plan, it is not practicable to decide an issue because the evidence for or against it is approximately equal in weight, the issue shall be resolved in favour of the person claiming benefits.

Significant contribution test:

The injury does not have to be the only or the predominant cause of the disability. It must be "significant". There is no percentage number that is attached to significance, but it is interpreted as an "important" relationship – not the only one or the dominant one necessarily. An example: a worker has cancer and the evidence is that it is 1/3 related to work exposure, 1/3 to genetics, 1/3 to smoking. This case can be allowed since 1/3 is a **significant** contribution.

Like the thin skull principle, this comes from a legal principle used by the courts to award compensation for injuries caused by negligence before workers compensation existed. The courts held a person liable for damages if their negligence made "a material contribution" to the damage. The Workplace Safety and Insurance Act provides compensation when there is an impairment which is defined in s. 2 as "a physical or functional abnormality or loss (including disfigurement) which results from an injury and any psychological damage arising from the abnormality or loss." "Results from" is the type of causation that is required, not scientific certainty.

The WSIAT pensions leading case Decision 915 explained it this way: "a disability must be seen to have resulted from the compensable injury (and, therefore, to be compensable) if the injury made a significant contribution to the development of the disability. This is a principle which arises naturally from the plain meaning of the words "results from" and which is at least not more-embracing than the courts' concept of causation. It accords with the proposition that the breadth of the workers' protection for consequences of injuries was not intended to be reduced by the conversion from the common-law to the statutory system."

Thin Skull Principle:

This is a funny sounding but important legal principle. Two workers have the same injury: a piece of wood falls on their heads. One has a thick skull, the other a thinner skull. One recovers in 1 week, the thin skulled one has a longer recovery. Should his compensation be stopped by blaming his thinner skull? No! if the worker had no problem doing the work before, compensation should continue until recovery or as long as there is disability.

This was a long standing legal principle used by the courts in awarding compensation before workers compensation existed. A telling example was listed by the Roach Royal Commission in 1950 https://collections.ola.org/mon/25007/15417.pdf . A worker with diabetes has an injury when an object crushes the foot. This leads to a foot amputation. Is this compensable? The answer is yes. Pre-existing conditions, or body types and age, that did not interfere with working before injury do not affect compensation.

The WSIAT pensions leading case Decision 915 explained it this way: "The thin-skull doctrine also applies in workers' compensation cases and for two reasons. One reason is that permitting compensation to be denied or adjusted because of pre-existing pre-disposing personal deficiencies would very substantially reduce the nature of the protection afforded by the compensation system as compared to the court system for reasons that would not be understandable in terms either of the historic bargain or of the wording of the Legislation. The other reason is that in a compensation system injured persons become entitled to compensation because they have been engaged as workers.
https://www.canlii.org/en/on/onwsiat/doc/1987/1987canlii1258/1987canlii1258.html?autocompleteStr=915&autocompletePos=2

Merits and justice of each case:

The WSIB is to look at the injury to the individual worker, not the "average" worker or other co-workers. For example: a worker has a repetitive strain injury working on a machine. The employer says no other worker had a similar injury; they all work at similar machines, so do not compensate! These arguments are invalid. What is important is what happened to the one injured worker. The case is allowed.

This comes from s.119(1) of the Workplace Safety and Insurance Act which says "The Board shall make its decision based upon the merits and justice of a case and it is not bound by legal precedent."