**WSIB FUNDING REVIEW:**

**FUNDING ONTARIO'S WORKPLACE SAFETY AND INSURANCE SYSTEM**

**Joint**
**SUBMISSION**

ONTARIO COMPENSATION EMPLOYEES UNION


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**Introduction:**

As leaders of OCEU/CUPE Local 1750 we make these submissions on behalf of the 3,500 employees of the Workers Safety and Insurance Board whose interests we represent. Our members have a unique contribution to make to the public debate over the issues under consideration by the WSIB Funding Review because our experience has shown that when something happens to affect the benefits, funding or costs of the WSIB system, something invariably also happens to our members.

When political decisions are made to cut benefits -- as happened in the mid-1990s -- it is not the decision makers who meet face-to-face with the injured workers who are directly affected, it is our members.

When financially unjustified political decisions are made to reduce WSIB premiums -- as happened repeatedly in the late 1990s -- it is our members who are expected to make these irresponsible decisions workable using fewer resources.

When ideology trumps common sense -- as it did in the 1990s, when the provincial government forced the WSIB to contract out both services and the management of those services -- it is our members' work that becomes a corporate profit centre; it is our members whose jobs get turned upside down; it is our members who are forced to stand aside as their clients' lives are ruined; it is our members who are left to clean up the mess when contracted-out costs spiral out of control.

Our members have a unique interest in the health of the WSIB system; they also have a perspective on the issues that may be of assistance to this funding review.

As the points above suggest, Ontario's workers' compensation system has been the victim of a series of ill-considered, politically driven and ideologically motivated experiments over the past 15 years. An a priori belief in the inherent superiority of the private sector over the public sector led to the contracting out of so much of the claims management process that the Board lost control of its claims costs. A belief that the high investment returns of the 1990s would continue indefinitely gave rise to a belief that the WSIB's unfunded liability could be eliminated despite substantial cuts in premium rates. An overriding faith in the ability of financial incentives to drive employers to improve their claims performance led to a costly experiment in individual experience rebates at substantial cost to the system with no measurable impact on employers' overall health and safety performance.

Ultimately, however, institutions are not the real victims of these failed experiments. The real victims are working people in Ontario whose vital interests are most significantly affected.

It is that recognition that leads to the fundamental principle that we believe must underlie every aspect of the work of the Review. The goal of the compensation system must be to ensure that workers who are injured at work or who acquire an occupationally related disease are compensated fairly and provided with appropriate and timely support and services to enable them to achieve their potential as participants in the workforce. The goal of the WSIB financing system must be to support that goal.

**Principles**

Along with the local unions representing employees within every public sector injury compensation system in Canada, our local union participated in the development of what has become known as the **Stanhope Manifesto**, named for the town in Prince Edward Island that hosted the 2002 meeting of CUPE, NUPGE and the CEU which developed the "Principles of a Fair and Comprehensive Compensation System". Those principles, subsequently endorsed at the federal level by the Public Service Alliance of Canada, set out 27 ideas which we strongly believe should form the basis for compensation reform in Ontario.

We have attached a copy of those principles as Appendix One to these submissions, for your information.

The principles address a broad range of the issues facing compensation systems in Canada. For the purposes of the Funding Review, the relevant principles are:

- Comprehensive coverage: all workers; all work-related disabilities, injuries or illnesses;
- Public management and delivery on a not-for-profit basis;
- Independence; arms-length decision making and premium setting; equitable treatment of all employers;
- Prevention: an appropriate model for compensation includes responsibility for prevention as well as for training of workers with respect to workplace hazards as well as with respect to their rights and obligations under health and safety legislation.

While these principles may seem too general to be applicable to a funding review, the fact is, had these three principles been respected in the past 15 years, there would not be a funding review under way today. Comprehensive coverage would have broadened the risk pooling base for the system, making it less vulnerable to the changing structure of Ontario's economy. Public management and delivery on a non-profit basis would have avoided the system's costly experiment with third party management and delivery of return-to-work services. Had decisions with respect to premiums been made by the WSIB using financial rather than political considerations, the system's unfunded liability would not have ballooned as it did in the late 2000s.

Unfortunately, WSIB funding is not the financial equivalent of a green-field building site. The principles cited above were not respected over the past 15 years. Costs were not managed effectively. Premiums were kept below the level needed for financial viability. Reliance on investment market returns as a substitute for premium income fell victim first to the return to earth of investment returns from the heights of the 1980s and 1990s and then to the financial market meltdown in 2008. As a consequence, the WSIB today has premium income that has repeatedly fallen short of accruing liabilities and a substantial unfunded liability related to claims arising from prior years.

Accordingly, in addition to the principles outlined above, we suggest a further set of principles that should govern the rehabilitation of the WSIB's finances.

The first key point is that there is no absolute "yes or no" solution. All of the available options for WSIB financial reform involve finding appropriate balances between competing and sometimes conflicting considerations.

First, the finances of the WSIB should be based on the broadest practicable pooling of risk. That implies: a move towards universal coverage, to spread claims risk among the broadest possible group of employers; the elimination of the self-funded schedule 2 category of employers and the folding in of their claims experience into the WSIB pool; a simplification of the rate categories to produce a better balance between risk pooling and experience rating; and a reconfiguration of the experience rating system so that a combination of rebates and penalties relative to standard premium rates produces an income-neutral outcome.

Second, in determining the overall financing model for the WSIB, a balance must be struck between objectives with respect to the unfunded liability and intergenerational and intersectoral equity among employers. For example, the adoption of a fully-funded insurance-based funding model raises fairness questions about the retirement of the existing unfunded liability. In analogous situations involving public employees' pension plans, conversion to full-funding-in-advance from government-controlled ad hoc funding involved a commitment on the part of the government to retire the pre-existing unfunded liability from sources other than current matched employer/employee contributions.

Third, changes in premium levels must be balanced against the impact of changes in payroll-based levies on the economy.

And finally, careful note must be taken of the relationship between WSIB premiums and benefits and other aspects of the health and social services, accident compensation and income security systems.

**Questions Posed by the Funding Review.**

**1. Funding**

***What should the WSIB set as its funding target?***

***What is a reasonable timeframe for the WSIB to reach its funding target, having due regard for the possible impact on premiums and/or benefits.***

Over the past several years, we have commissioned the economic consultants Hugh Mackenzie and Associates to conduct a series of studies of the WSIB. The financial review section of the most recent of those studies, updated to reflect 2009 data, is included in these submissions as Appendix Two.

The key findings relevant to the questions posed with respect to funding are:

- Premium income – even including the current surcharge for retirement of the unfunded liability – has fallen short of currently-accruing liabilities in most recent years; in other words, current premiums are too low to prevent the unfunded liability from continuing to grow, even if all other assumptions are met.
- Had a series of political decisions to reduce premiums not been made in the late-1990s, the unfunded liability would have been approximately $1.5 billion in 2009, rather than the $11.2 billion reported.
- Because no provision is made for currently accruing future occupational disease claims, successful occupational disease claims will be a continuing source of new unfunded liabilities in the future.

- The introduction of WSIB funding of Ministry of Labour occupational health and safety programs was not accompanied by a premium increase; on the contrary, it coincided with a series of premium cuts; as a result, this funding obligation contributed marginally but materially to the funding shortfall.
- Investment returns have fallen short of the returns assumed in the Board's actuarial valuations; far from achieving its original objective of reducing the unfunded liability, investment performance has actually served to increase the unfunded liability both in absolute terms and as a percentage of total liabilities.[1]
- At the funded ratio as of the end of 2009, the plan's assets would have to earn a return of nearly 14% per annum just to maintain the unfunded liability at the same absolute-dollar level.
- Even the funded ratio currently reported is achieved in part by utilizing a real investment return assumption that is the highest of any public compensation system in Canada. The increase in the real return assumption in 2008 had the effect of reducing the unfunded liability by approximately $750 million.
- Staff cuts in key areas have not helped the organization fulfill its mandate.

The achievement of a target of full funding would require some combination of a substantial increase in premium rates and investment returns consistently and substantially above the rate assumed in current actuarial estimates of liabilities. Neither of these conditions is likely to be met.

With premium rates already relatively high compared with other systems in Canada, the prospects for substantial further increases are relatively limited. On the investment return side, there is no basis for an assumption that long term real returns will match current assumptions.

Absent a source of revenue other than employer premiums or investment returns, full funding is not a realistic possibility, and would be impractical as a target.

In addition to being impractical, it is our view that full funding would be both inequitable and undesirable.

From an equity perspective, paying down a substantial unfunded liability from current premiums would result in a massive intergenerational transfer among employers. Current employers would be expected to pay higher premiums to pay off unfunded liabilities attributable to prior employers, many of which no longer even exist. It would also be very difficult to implement an unfunded liability surcharge in a way that would be consistent with the sectoral differentials built into the current premium structure. A significant proportion of the historical unfunded liability is attributable to industries that are substantially smaller than they were when the liabilities were accrued. The best examples of this continuing change can be found by looking at the employment in key manufacturing sectors, furniture, auto and steel all of which have declined relative to employment in areas which are predominantly not covered such as finance and services. Accordingly, the cost of

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[1] In fact, it is difficult to see how the strategy could have succeeded. Based on median return data for pension plans in Canada with more than $1 billion in assets compiled by RBC Dexia, a fund earning the median return from 1995 to 2009 would have earned 6.26% on a compounded annual basis, less than the 7% assumed in funding. Over that period, to achieve the assumed return net of investment management fees would have required the WSIB's investments to match the top quartile of Canadian pension plan returns ***in every year.*** (The top quartile return over 14 years, compounded, returned 7.7% ***gross of fees.)***

eliminating the unfunded liability would have to be distributed over a much smaller workforce base than the base that generated the liability in the first place.

It would also be undesirable, because it would establish a principled basis for WSIB funding – full actuarial funding – that cannot and will not be achieved.

What is needed is a basis for funding that is a reasonable balance between the pay-as-you-go model implicit in Meredith's original concept[2] and the need to stabilize contribution rates in the face of economic and financial market risk over the long term.

These considerations point to a framework of sustainable funding based on a funding policy similar to that adopted by the Canada Pension Plan.

WSIB funding would be based on the principle that all current employers should contribute on an equitable basis to the current costs of operating the system, with a reasonably-sized reserve fund maintained for risk management and contingency purposes.

The size of the fund should be determined dynamically, so that the reserve is sensitive to economic, financial market and WSIB-specific developments. For example, a reserve might be sized to cover a pre-determined number of years of the WSIB's annual cash obligations plus a reserve to cover potential occupational disease claims and be risk-adjusted to reflect investment market uncertainty.

The time to achieve the funding should be sensitive to the size of any premium increase required and reflect the role of the provincial government in the operation of the system. This framework gives rise to a number of possible options. In Ontario's pension legislation, unfunded liabilities may be retired over periods of five or fifteen years, depending on the financial health of the plan. At the other extreme, when the provincial government shifted to a full funding model for its plans for public sector workers in the early 1990s, it gave itself 40 years in which to pay off those plans' initial unfunded liabilities.

The initial unfunded liability concept is relevant here because the formal adoption of a funding strategy for the WSIB would effectively create a very large unfunded liability that would be difficult, if not impossible, to eliminate over a reasonable period of time..

## 2. Premium Rates

***Is the current WSIB premium setting methodology appropriate? If not, what changes would improve it to ensure that premium revenue covers costs?***

***Should premium rates increase until the WSIB's funding target is reached?***

In a sustainable funding model, premium rates should be set so as to cover current costs and maintain the required reserves.

Two broad approaches could be taken. One would be to set basic premiums at the level required to cover the WSIB's current year cash costs. In this model, the full amount of the current asset base of the WSIB would serve as the source of the required reserve funds.

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[2] Meredith, J. (1913). *The Meredith Report*. Queen's Printer, Ontario.

The other would be to set basic premiums at the level required to cover currently-accruing liabilities and grow the reserve to the required level. The effect of this approach would be to fund the full cost of future claims in advance as they are incurred, while leaving the unfunded liability for prior years' claims untouched. Other things equal this approach would result in a gradual reduction in the overall unfunded liability as the proportion of previously accrued liabilities that were fully funded when accrued grows over time.

Because these strategies do not provide for full funding in advance on an insurance basis, they would both be sensitive to the effect of structural changes in the Ontario economy on WSIB's revenue base.

In other words, premium rate policy must address the question of coverage. The only way to avoid the erosion of the WSIB's financial base due to structural changes in the economy is to follow the lead of most other provinces in Canada as well as a number of reviews of the system here in Ontario and broaden coverage to include all employees in the province. The most recent official review of WSIB coverage in Ontario was commissioned by the Board of Directors of the WSIB in 2002. An extensive consultation paper was issued[3], broad consultations with employers and other interested parties were conducted, and a final report was issued by the Coverage Review in October 2002.[4] That was followed up in November 2003 by a memorandum to the WSIB Board of Directors from the Chair of Coverage Review, Brock Smith, summarizing the recommendations from the Coverage Review.[5]

It recommended that coverage based on the inclusionary principle be replaced by coverage based on the exclusionary principle. In other words, the default would be for coverage, with exemptions and special provisions itemized.

It recommended full coverage, with no provision for the substitution of equivalent private coverage. It recommended the elimination of the Schedule 2 category of employers, who operate on a self-insured basis in favour of universal participation in a common plan. It recommended that coverage of independent operators be mandatory, and that the exclusion for executive officers be eliminated. It recommended that the exemption for "outworkers" – people who perform piece work at home or at another location away from the premises of the owner of the materials – be eliminated. It also recommended the deletion of the "casual" worker exemption.

The only substantive limitation on coverage was a recommendation that coverage for volunteers be restricted – largely limited to volunteers who work for municipalities in volunteer capacities such as in volunteer fire departments.

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[3] Consultation paper: "Coverage under the Ontario Workplace Safety and Insurance Act", WSIB, January 2002. Brock Smith.

[4] Report: "Final Report: Coverage Under the WSI ACT Report to the Board of Directors", WSIB, October 2002. Brock Smith.

[5] Memorandum from Brock Smith, Chair of Coverage Review to WSIB Board of Directors dated November 17, 2003 – WSIB BOD Minute #15 December 10, 2003 page 6569.

In 2003, The Coverage report was followed up by a specially commissioned review of the potential impact of expanding coverage on the provincial economy commissioned by the WSIB at the request of the Minister of Labour. The WSIB commissioned University of Toronto Rotman School of Management professor Douglas Hyatt to estimate the impact on employment of moving to universal WSIB coverage. [6]

As summarized in the Chair of Coverage Review's memorandum to the WSIB directors, "The impact study... concludes that the employment impact would be minimal in the long run. In the short run there would be dislocations for small business and community health and social assistance agencies."[7]

Hyatt's actual conclusion was stronger. Hyatt determined that: "extending WSIB coverage to previously uncovered industries is likely to have a small, but ultimately only temporary, adverse employment effect."

Hyatt identified approximately 1.3 million uncovered workers who could have been brought into the WSIB system in 2003 along with an enhancement of premium income of more than $200 million.

Even with sectoral experience rating built into the rate structure, a broadening of the employee base for the WSIB would spread overhead over a larger contributor universe, improve risk management and eliminate the subsidies of non-participants by participants inherent in the statutory obligations imposed on the WSIB.

As a final note with respect to coverage, it is worth noting that differences in economic structure and compensation coverage rates distort comparisons of premium rates among provinces. The relative weight of industries with different accident, injury and disease rates among workers covered by provincial compensation systems makes a significant difference in the average premium rates for those systems. The exclusion of a significant group of workers in Ontario whose claims experience would likely result in a much lower-than-average premium rate will inevitably make Ontario's WSIB premiums look higher than those of provinces with full coverage and/or an industrial structure that is less heavily weighted towards high-claims industries.

For example, the average premium rate in Ontario for 2011 is estimated to be $2.35 per $100 of earnings, with coverage of about 72% of potentially-eligible workers. Given that the excluded workers are largely in white-collar office worker groups, it would be reasonable to expect their premium rates to be similar to those of similar groups that are now covered. For example, if the new groups averaged the premium rate of the communications rate group in the current structure, we would expect to see a premium rate of about $0.35 per $100 of earnings. A move to universal coverage would result in a lowering of the average premium from $2.35 to $1.75 and cover an additional 1.9 million workers.

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[6] Douglas Hyatt, "Workplace Safety and Insurance Act Coverage Study", November 2003 commissioned by the Workplace Safety and Insurance Board, Ontario.

[7] Brock Smith (2003). memo to WSIB Directors. Ontario.

## 3. Rate Groups

***Is the WSIB's rate group structure appropriate, given the principle of collective, no fault liability?***

***What opportunities exist to improve the rate group structure?***

The overriding principle behind establishing rate groups and differential premium rates among groups should be to achieve the broadest possible pooling of risk among Ontario employers. Groups should be established on a basis that can be defined clearly and that groups together employers with similar risk profiles. The objective should be to establish the broadest possible groups consistent with the principle of fairness among employers. This would likely result in a much smaller number of much more broadly-defined rate groups.

As a general rule, a larger number of rate groups divides collective liability into smaller more individualized groups whereas a smaller number of rate groups results in an increased degree of collective liability. The latter approach better reflects the principles upon which the compensation system was built.[8]

WSIB should reduce the number of classifications and rate groups in order to simply the no-fault system and to broaden the risk pool. This would have the added benefit of reducing the volume of employer classification appeals which tend to bog down the appeal system and reduce service levels for worker appeals.

As a first step, the schedule 2 category of employers should be eliminated and folded into the schedule 1. In addition, the definitions of rate groups should be simplified and clarified to minimize opportunities for 'gaming' the system.

Some caveats should apply, however. First, the overhead of the system, including claims administration, investment management costs and statutory obligations, should not be experience rated. Second, consistent with the assumption that latent future disease and disability claims are unknown, there is no basis for assuming that any industry is more or less likely to be subject to such claims. Accordingly, premiums levied to support a reserve for future latency-related claims should not be experience rated. Third, contributions required to achieve funding targets should be considered system obligations, rather than individual employer obligations, and should not be experience rated.

## 4. Employer Incentive Programs

***Is the present design and operation of the WSIB's employer incentive programs appropriate? If not, how should they be changed?***

***What other incentives might be used to promote increased safety in the workplace and re-employment of injured workers while ensuring equitable treatment of employers and maintaining WSIB's premium levels?***

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[8]Meredith, J. (1913). *The Meredith Report*. Queen's Printer, Ontario.

We have no objection to incorporating incentives into the premium structure of the WSIB, subject to two expectations. First, incentives must be based on observable and verifiable data inputs that reflect the core objectives of the WSIB. As the value for money audit currently being conducted by KPMG for the WSIB is expected to show, many of the incentives currently provided for in the system merely provide employers with an opportunity to ‘game’ the system to save money, with no measurable impact on the core objectives of the WSIB system and in some instances providing for perverse incentives that actually detract from those core objectives.

Second, incentives must be fiscally balanced between rebates and surcharges. In the current system, the cost of rebates exceeds by a substantial margin the additional revenue from surcharges. In addition to the fact that logic suggests that there is likely to be an empirical balance between high-performing and under-performing employers, the effect of the current imbalance – employers with average performance end up subsidizing under-performers and providing the resources for the rebates paid to high-performers – violates the principle of fairness.

The design of incentive systems is critical; the design of the current system has contributed materially to a lack of confidence on the part of many of those who participate in the system as representatives of workers.

In general, rebates and penalties should be based on behaviours on the part of employers that can be quantified, objectively verified and are demonstrated to be reliably reflective of the WSIB’s objectives of preventing accidents and reducing harm. The current accident cost and frequency test, in and of itself, is not a reliable indicator of health and safety performance. It is, however, a reliable indicator of an employer’s ability or capacity to organize a better-than-average claims record.

One clear example of perverse incentives is the Second Injury Enhancement Fund (SIEF). This program provides relief where a WSIB claimant had a pre-existing condition. By providing claims cost relief to employers based on prior conditions, this program has the effect of reducing the re-employment incentive for the employer. If this program is to be continued, the conditions under which relief is provided should be restricted and the rules recast so as to be consistent with the letter and spirit of the Accessibility for Ontarians with Disability Act.

## 5. Funding for Occupational Disease Claims

***How should occupational disease claims be funded?***

***Should they be a collective liability for all employers or charged back to specific employers?***

***Should the WSIB establish a special fund for occupational disease claims?***

The WSIB makes no special provision for the accrual of potential future occupational disease claims, nor are such potential future liabilities taken into account in the WSIB’s actuarial valuations.

We believe that it should do so through the establishment of a reserve for potential future occupational disease claims.

Because the nature and timing of occupational disease claims is unknown and likely unknowable at the time of accrual, such a reserve should be supported by a general levy on all employers rather than charged back to specific employers or classes of employers.

While we believe that the WSIB should build and maintain a reserve for future occupational disease claims, we do not believe that funding for the actual costs associated with occupational disease should be limited to the amount contained in the reserve fund. A reserve fund should be prudential in nature, rather than serving as a funding envelope. In addition to the obvious problem with enveloped funding – the creation of two classes of claimants: accident claimants, whose claims would be fully funded; and disease claimants, whose claims would be funded only to the extent of the reserve – a separate envelope would require the establishment of a bright line between occupational disease and injury, a requirement that we consider to be a practical impossibility.

## 6. Indexation of Partial Disability Benefits

***Should the present indexation formula – that provides limited inflation protection for partially disabled workers – be replaced? And if so, by what?***

The WSIB's Friedland formula is an historical artifact, left over from the 1987 Ontario Pension Benefits Act's treatment of the issue of mandatory indexing of pension benefits. Although we are not in a position to prove the point, our strong suspicion is that the indexation of WSIB partial disability benefits is the only significant benefit to which a Friedland formula applies.

In addition to the obvious problem faced by workers who are partially or wholly financially dependent on a partial disability benefit – that the real value of their benefit is designed to erode over time – the lack of indexing raises a system-related issue.

The imbalance between the treatment of partial and total disability benefits creates an additional and powerful incentive for injured workers to focus on demonstrating that their disability merits a total disability benefit as opposed to a partial disability benefit, and rather than on the system's goal of returning to work consistent with their capabilities.

## Additional issues

### Ministry of Labour accountability for WSIB funds

WSIB funding of the health and safety programming of the Ministry of Labour was introduced in the late 1990s to create additional fiscal room for other priorities of the provincial government. This policy raises significant issues of principle. First, given the fact that WSIB coverage is limited to approximately 72% of Ontario's workforce, the funding of general government programs from WSIB premium income is a subsidy of non-contributing employers by contributing employers. This requirement also raises issues of accountability, since it puts the WSIB in the position of providing funding for universally available services without any influence or control over its expenditure or even any top-line budgetary control.

In a cash-strapped system tasked with managing a significant unfunded liability, a key recommendation in the recently released *Expert Panel Report on Occupational Health and Safety* calls for the Ministry of Labour to take on oversight for workplace safety. It suggests that the WSIB remain charged with raising funds from some of Ontario's employers, which will be used to pay for Prevention and inspectorate duties for all Ontario workplaces. Despite the fact that the WSIB will be responsible for the costs associated with the oversight of workplace safety, there is no mechanism through which the WSIB to influence or control how $227 million dollars for prevention and for health and safety will be used[9]; neither is their any mechanism for accountability to protect interests of the employers who pay.

At a minimum there must be transparent accountability so that stakeholders can have oversight along with WSIB.

The transfer of funds from WSIB to the MOL amounts to taxation without accountability -- since 100% of Ontario employers benefit from health and safety resources and services that only the 72% employers covered by WSIB actually pay for.  Of course, it’s a good deal for those who don’t have to pay yet reap the benefits and it helps the government’s balance sheet by getting a substantial expenditure off its books. But is it reasonable to expect those firms whose premiums fund the prevention system for free to firms that don’t pay?

**Prevention programming**

As noted above, Bill 160 proposes the transfer of health and safety prevention programming from WSIB to the Ministry of Labour while maintaining WSIB premiums as the funding source. In addition to raising issues of financial accountability, this change also runs the risk of blurring the WSIB’s mandate – what does the ‘road to zero’ mean as a mission for the WSIB when it ceases to have responsibility for prevention programs – and fragmenting the administration and delivery of preventive health and safety initiatives. Fragmentation will be unavoidable if prevention is hived off to a separate agency, because regardless of what agency is responsible for program delivery, the WSIB will continue to play a role in prevention through the design and delivery of its experience rating and premium rebate / penalty policies.

To add further to the complexity, the fact that the Ministry of Labour will continue to be responsible for health and safety inspections and enforcement means that the new approach will result in three separate agencies being involved in one way or another in prevention and enforcement, all funded by the WSIB and each accountable through its own governance framework.

**Responsibility for Rate Setting**

The severity of the WSIB’s current funding challenge is directly attributable to political interference by the provincial government in rate setting. The coincidence of a requirement to achieve full funding and mandated cuts in premium rates not only puts the WSIB in an impossible situation financially, it also puts the WSIB in the position of having to validate that financial impossibility by reducing benefits and services to claimants.

That is not acceptable. The provincial government should establish the expectations for the WSIB through its mandate, and then allow the agency to get on with its job without political interference.

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[9] This 227 million dollar estimate is calculated from various WSIB reports and includes: 190 million dollars for Health and Safety Associations, 27 million dollars for Health and Safety Inspectors and approximately 10 million dollars for other Prevention Administration costs.

## Issues Related to Re-employment

When certain conditions are met, employers have an obligation to re-employ an injured worker who has been unable to work as a result of a work-related injury or disease. The goal is to return the worker to his or her pre-claim job (with accommodation, where necessary) and where that is not possible, to identify suitable and available work that is most comparable in nature. Where re-employment obligations are not met, the WSIB may levy an administrative penalty equivalent to the cost of providing benefits to the worker.

In addition to the potential penalty, the experience rating system provides incentives to employers to provide re-employment opportunities. Given that fact, the duration of the re-employment obligation should be extended to match the recently-extended experience rating window (the period over which an employer's WSIB claims are compared with average claims to qualify for experience rebates). The basic re-employment obligations should be extended to six years (increased from two) from date of injury to match the experience rating window and to two years from the date of medical clearance to perform the duties of the pre-injury employment (increased from one).

## Issues Related to Enforcement

The WSIB currently allocates inadequate resources to the enforcement of the requirements of its own Act. Penalties for late filing charges are inadequate, at $250 per charge. Penalties should be increased to $1,000 per charge for small employers and up to $5,000 per charge for large employers.
Penalties and supportive resources should be allocated to the enforcement of employers' re-employment and other obligations. There is currently no penalty for ignoring or violating re-employment obligations and limited resources are allocated to compliance investigation and enforcement.

The WSIB no longer maintains a staff complement of Collections Investigators to identify employers operating in the underground economy and bring them into the system. Before it was eliminated, this function employed 12 people. When this function was active, it was essentially revenue-neutral – i.e. the staff earned back their employment costs and more through the premiums paid by underground employers identified and brought back into the system.

## Conclusion

There is no "magic bullet" solution to the WSIB funding issue. Those kinds of "solutions" have been tried, with disastrous results – results that have materially and significantly contributed to the current state of inadequate funding.

While it may be politically satisfying for governments to stand up and declare full funding as an objective and announce target dates, the unfortunate reality is that 'train has long-since left the station'. Achievement of full funding from the current starting point is unrealistic. To attempt to do so would be irresponsible, given the implications for employers of substantially higher WSIB-related employment costs, for Ontario workers of constant downward pressure on benefits and return to work programs, and for the WSIB's fundamental purpose of promoting healthy and safe workplaces, providing financial support to injured workers and supporting their return to work.

Fortunately, there is a viable alternative framework available for WSIB funding: the sustainable funding model best known in Canada as the basis for funding the Canada Pension Plan.

A sustainable funding model would reconceive the WSIB's fund as a risk management mechanism rather than as a vehicle for full advance funding of benefits as they accrue. Coincidentally, it would bring the funding of the WSIB closer to the model envisaged by Meredith in 1913 when the Ontario workers compensation system was established.

A sustainable funding model would be based on two key policy foundations: a clearly-defined method for establishing the annual premium rate; and a clearly-articulated basis for establishing a target for the size of the WSIB's reserve fund.

In our submissions, we discussed two general approaches to rate setting: coverage of current year cash costs; and coverage of currently-accruing liabilities. While at present, the two approaches would likely result in similar total premium obligations, the principles behind them would be quite different. Current cash cost coverage implies a collective current employer responsibility for the operation in total of the WSIB system. Accruing liability coverage implies individual employer responsibility for the eventual cost implications of its current operations and collective employer responsibility for the unfunded accrued liability from past employer operations as well as for the risks associated with the investment of the WSIB fund.

As the review notes, however, premium rates and funding strategies are not the only requirements for a renewed WSIB financial system.

Full coverage is essential if the finances of the WSIB are to be put on a solid foundation for the future. The current system results in a steady erosion of the WSIB coverage rate as industries that were legislated into the system when it was created shrink in size and those jobs are replaced by job growth in excluded industries and in new industries whose existence was not contemplated when the system was created.

Given the importance of occupational disease and other latent claims in WSIB operations, it is important that the potential for such claims in the future be recognized formally in the WSIB's financial model.

In a similar vein, more realistic (conservative) estimates should be used as the basis for WSIB funding in the future. In particular, the assumed rate of return on WSIB assets is clearly an outlier among Canadian compensation jurisdictions and likely unrealistically high given medium-term prospects for investment markets. At present, the real return assumed by the WSIB is 50 basis points above the next most aggressive assumption used in compensation in Canada, and well above the current norm for similar-sized pension funds.

Finally, with respect to the overall strategy for and control of WSIB operations, it is not good enough to say "never again" when it comes to political meddling in the operations of the WSIB.

Legislative protection is needed for the WSIB's right to establish premium rates sufficient to meet the policy goals set out in its legislation. This would prevent a repeat of the financial disaster visited on Ontario's compensation system in the past 15 years by politically motivated interference by the provincial government. It would also enable the WSIB to focus on the achievement of what every participant in the system accepts as its primary purposes – promotion of healthy and safe workplaces in Ontario; fair compensation of workers suffering from work-related sickness or injury; and comprehensive support for the reintegration of affected workers into the active workforce.

## Appendix One: Stanhope Principles

### Safe and healthy work

All people have the right to employment that is free of injury and illness and the threat of injury and illness.

### Coverage

Workers' compensation and health and safety laws should cover all workers.
All work related disabilities, injuries, or illnesses, including repetitive strain and workplace stress, should be covered under workers' compensation law and policy.

### Public system

Workers' compensation should:
Be publicly delivered
Be administered in a not-for-profit system, collectively-controlled through legislation
Receive appropriate support from provincial and territorial governments
Service should respect the individual needs of the injured worker and be provided in a non-bureaucratic fashion.

### Independent system

Government should remain at arm's length to allow for independent decision-making and rate setting under the terms of legislation.
Politicians should not exert any influence on workers' compensation boards to ensure the boards are nonpartisan. Boards should be composed of a balance of stakeholders.
All employers should be treated the same; special treatment should not be given to any employers.
The boards should not allow any inappropriate external attempts to influence the organization. Any such attempt should be publicly reported.

### Compensation

Workers have the right to be fully compensated if they are injured or become ill due to their work. They should be returned to meaningful employment. The help they receive should be provided in a manner that respects their individual capacity and treats them with dignity and respect.

Pension benefits should be provided to workers with permanent impairments arising from work-related injuries and conditions. These benefits should recognize and adequately compensate workers for their losses.
If a worker dies due to a work-related illness or injury, dependent family members should receive compensation.

Wage loss benefits should recognize all earnings lost due to work injury and illness. Benefits should be adjusted to inflation. There should be no waiting period for benefits.

### Rehabilitation

Workers' compensation boards should provide in-house vocational rehabilitation services to help injured workers return to employment. Such services should provide at least pre injury earnings.

## Appeals
Appeal procedures should ensure that injured workers' complaints are resolved quickly and fairly, and respect their rights to due process. Compensation systems should be staffed and workloads set at levels that allow this.

## Legislative review
When legislation and regulations for workers' compensation is reviewed, input of the public, frontline workers and their representatives shall be actively sought in the review process.

## Compliance
Workers' compensation boards should not allow employers to intimidate or discourage employees from filing workers' compensation claims. Boards should have the authority, ability, and responsibility to ensure employers comply with claims reporting requirements.

## Research
Workers' compensation boards should be pro-active in identifying conditions that are eligible for compensation.

Workers' compensation boards should conduct ongoing and thorough research on the impact of workplace injury and illness. Research should also be conducted on the adequacy of the compensation system to address the impact of workplace injury and illness.

## Prevention
Workers' compensation boards should be proactive in ensuring that all reasonable measures are taken to prevent workplace injuries.

Workers' compensation boards should ensure the education and training of all workers about workplace hazards and their rights under workplace safety and health legislation.

## Technology
Advances in technology should be used to enhance fair and timely compensation to injured workers.

Technology should be used to enhance injured workers' access to the system.

Technology should not be used to eliminate the duty of board employees to adjudicate all claims or assess employers.

Technology should be owned, operated, and controlled by the workers' compensation board that it serves.

## Board management
Staffing resources should be maintained at levels that ensure employees can meet the needs of stakeholders.

Workers' compensation boards should provide employees with a safe, healthy, and secure work environment. Board management should provide employees with the support they need to do their jobs effectively and efficiently.

**Appendix Two: WSIB funding -- Excerpt from Hugh Mackenzie & Associates financial review, March 2011**

**Review of the viability of the WSIB's unfunded liability reduction strategy**

The WSIB's strategy for unfunded liability reduction depends critically on two key assumptions: that current operating costs and currently accruing liabilities will be fully funded by current premium income; and that in combination, the special premium levy for unfunded liability reduction and investment returns in excess of those assumed in plan funding will be sufficient to eliminate the unfunded liability over a reasonable period of time.

Over a number of years, current premium income has not kept pace with year-to-year benefits costs and liability growth. As a result, the special premium for unfunded liability has in effect been used in whole or in part to cover current accruals.

What lies at the root of this persistent problem is the fact that WSIB premiums were caught up in the fixation with tax cuts that dominated the political agenda of the Conservative government that was elected in 1995. In a striking parallel to the government's uncontrolled experiment with the province's overall finances, despite the existence of an unfunded liability of just under $10 billion in 1996, premiums were reduced repeatedly between 1996 and 2003, from an average of $3.00 per $100 of payroll in 1996 to $2.13 per $100 of payroll in 2003. The WSIB estimates that, had premiums been maintained at the 1996 level, the unfunded liability would have been $3.7 billion at the end of 2008 instead of the estimated $11.5 billion reported in the 2008 WSIB Annual Report.[10]

The WSIB's plan for the elimination of the pre-existing unfunded liability and the validation of the government's premium-cut policy depended critically on the assumption that an active investment strategy would deliver returns in excess of the 7% per annum upon which funding is based. That has not been the case. Over the ten years ending in 2009, the WSIB's returns averaged only 4.04%. Rather than contributing towards unfunded liability reduction, investment returns have actually served to increase the unfunded liability relative to the assumed return. A 10-year return of 4% means that the fund is roughly 25% smaller than it would have been had the assumed return been earned.

This is not meant to suggest necessarily that alternative investment strategies would have performed better. Rather it calls into question the assumption that investment delivers sufficient excess returns to eliminate the unfunded liability without resort to further premium increases.

Unfortunately, the losses suffered relative to assumed returns in the past two years will be very difficult for the WSIB to dig its way out of. Investment losses reduce the asset base upon which future returns can be earned. Furthermore, the required return of 7% is based on the WSIB's liabilities, not its assets. Because the WSIB is only roughly 50% funded, the required return of 7% of liabilities must be earned on an asset base that is 50% of the liabilities. In other words, to avoid further increases in the unfunded liability in future years, the assets in the fund must earn roughly 14%.

[10] WSIB Chair's Consultation on Unfunded Liability, Slide 6. As noted in the consultation material, this estimate is actually an underestimate of the impact of the premium cut, since it does not take into account investment earnings on the higher premium income that would have resulted had premiums not been cut.

While the future of financial markets is indeed uncertain, one would be hard pressed to find market observers prepared to predict returns of that magnitude for any sustained period in the near future.

These concerns for the WSIB's future prospects under its current strategy are heightened by key assumptions used in its actuarial funding estimates, both of which would appear to be much more aggressive than justified by current conditions.

First, currently available data make it impossible to determine the impact of accruing occupational disease liabilities on plan finances. As a result, no provision is made in the WSIB's valuation for the emergence of future occupational disease claims. The fact that occupational disease accounts for roughly 70% of all death claims suggests that the annual financial impact of this omission is at least non-trivial and like contributes substantially to the continuing gap between current income and currently accruing liabilities.

Prior to 2008, the WSIB assumed an investment return of 7% nominal (in relation to non-indexed benefits) and 4% real (in relation to indexed benefits). These assumptions would have been considered aggressive among major Ontario pension plans even before the market collapse of 2008. By 2007, most large pension plans in Ontario had adopted investment return assumptions that were substantially more conservative than those maintained by the WSIB.

In 2008, the WSIB did make a change in its assumptions. It reduced its assumed rate of inflation from 3% to 2.5%. But in doing so, it left the assumed nominal investment return unchanged at 7%. The effect of these two changes was to ***increase*** the assumed real return on assets from 4% to 4.5%. While this has a positive effect on reported plan finances – the 2009 Annual Report indicated that a 1.0% reduction in the interest rate assumed in funding would increase estimated liabilities by $1.5 billion[11] – it has the effect of making an already-aggressive assumption regarding real investment returns even more aggressive.

## Part I – Financial Analysis[12]

1. Financial position of the fund

As Chart 2 shows, the WSIB's unfunded liability position improved slightly between 2004 and 2006 before deteriorating markedly in 2007 and 2008 and then stabilizing. The unfunded liability as of the end of 2009 was $11,202 million, wiping out all of the gains since the mid-1990s. This deterioration is evident despite the 2009 change in the assumed real return on the WSIB's assets from 4% to 4.5%, which gave the balance sheet a boost of roughly $750 million.[13]

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[11] WSIB Annual Report 2009. p. 60

[12] WSIB financial data are drawn from various WSIB annual reports.

[13] In 2004, the WSIB ceased its practice of smoothing asset values over a number of years. The effect of smoothing is to defer recognition of changes in asset values on the balance sheet. Because the change was introduced at a time of increasing asset values, it had the effect of improving the WSIB's apparent financial condition. At present, if the Board were to reintroduce asset value smoothing, it would have the effect of reducing the apparent unfunded liability, deferring the impact of the market collapse of 2007-8 to future years.

Chart 2: WSIB Unfunded Liability

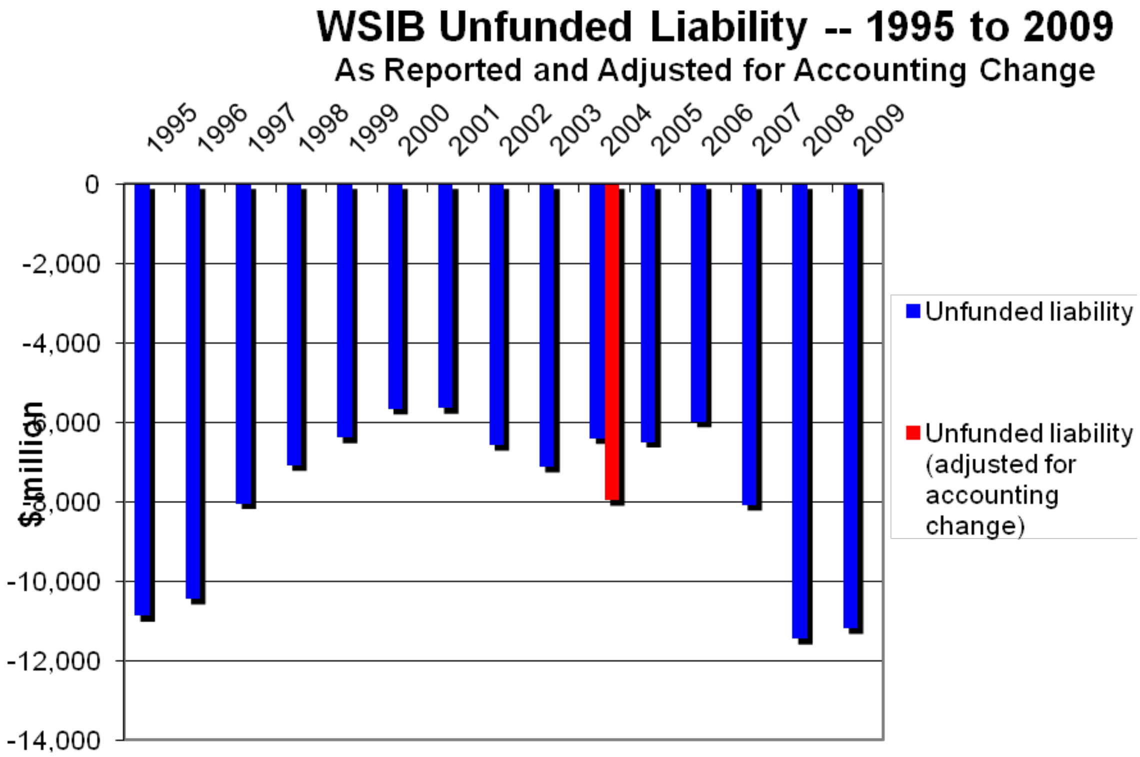


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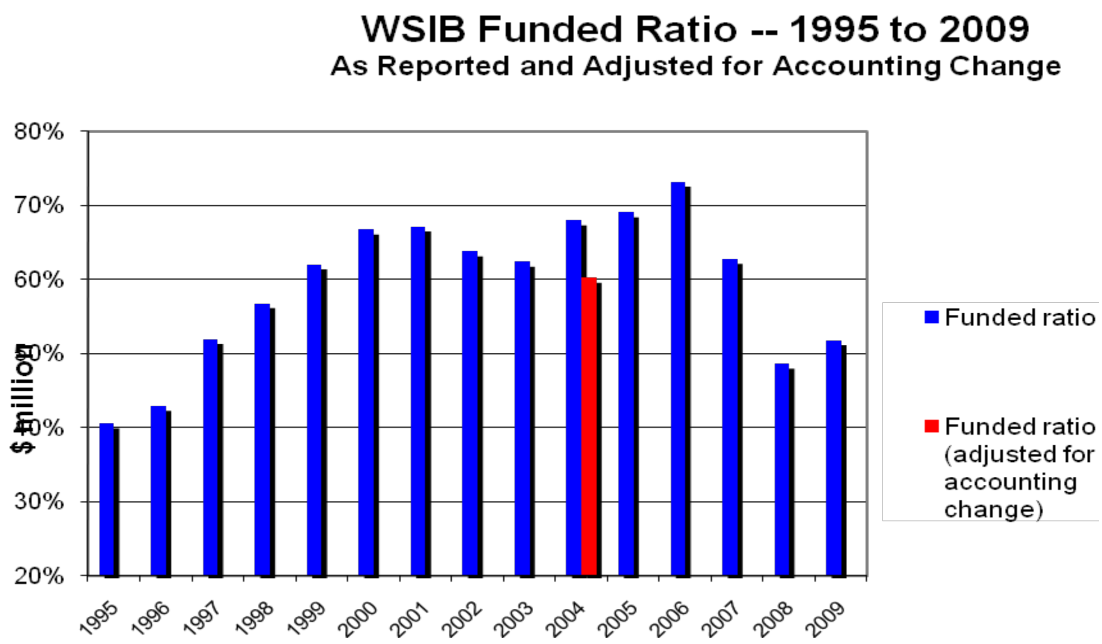
Chart 3 shows the WSIB's funded ratio over the period 1995 to 2006 with an estimate for 2007. It shows an improvement in the funded ratio to just over 73% in 2006, followed by an estimated deterioration in 2007 to its lowest level since the mid-1990s.[14]

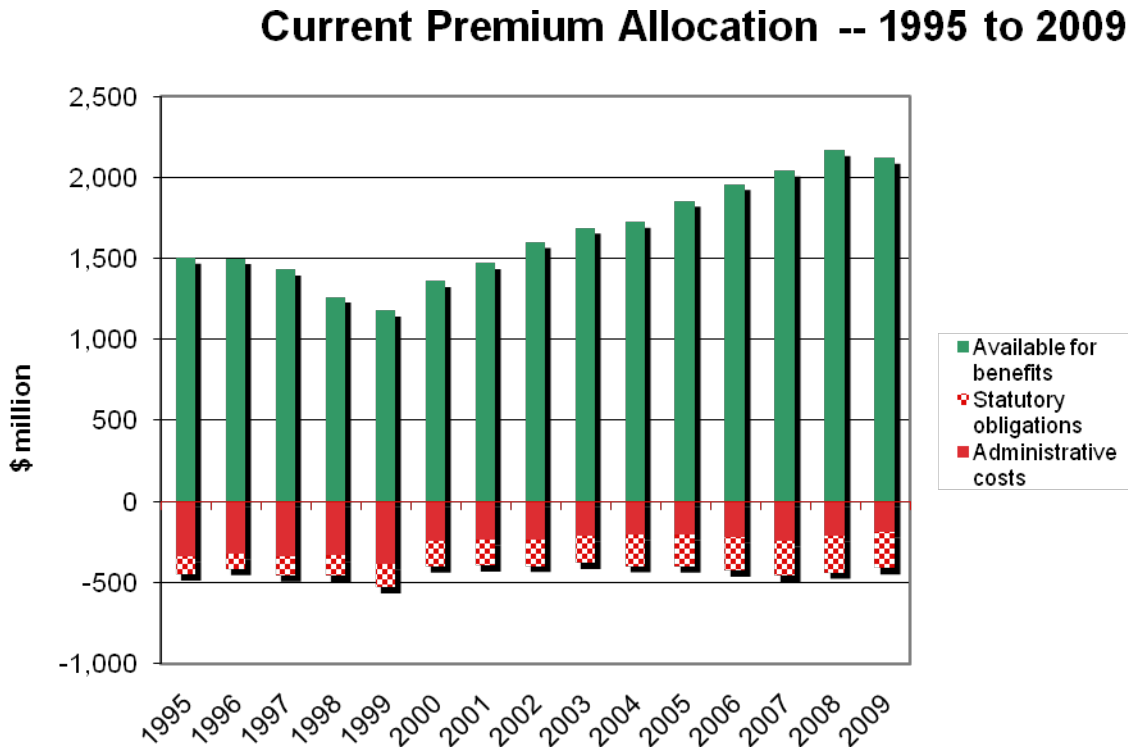
Chart 3: WSIB Funded Ratio




[14] The figures for the funded ratio in the chart are slightly lower than those reported by the WSIB in its annual reports. The difference is attributable to the fact that the WSIB counts the value of the physical assets it employs in its operations as assets in calculating its funded ratio. The chart above restricts the definition of assets to assets held for benefit payments.

More important for the longer-term financial health of the fund, regular premium income continued to fall short of the accumulation in liabilities.
Chart 4 shows the amount of premium income available for benefits, after allowing for administrative costs and statutory financial obligations. Without taking into account what is happening on the liability side of the equation, the trend appears to be positive.

Chart 4: Premium Revenue Available for Benefits




In addition to regular premium income, however, there are two other sources of income available for use in funding benefits: investment gains over and above the return assumed in funding; and the special premium earmarked for the reduction of the Board's unfunded liability.

Combining the effect of the increase in regular premiums and investment returns above assumed returns with the effect of net liability accrual produces a much different picture. Chart 5 compares the accrual of liabilities from year to year with the funds generated annually for benefit funding. It shows even before the market collapse of 2007 and 2008, despite positive investment experience and growing regular premium income, there was a gap between annual income and the rate of liability accumulation, which reached roughly $1 billion in 2006. With the market collapse, that gap ballooned to more than $3 billion by 2008. Even in the recovery year of 2009, the gap is still approximately $1.7 billion.
Chart 5: Income and Liability Accrual

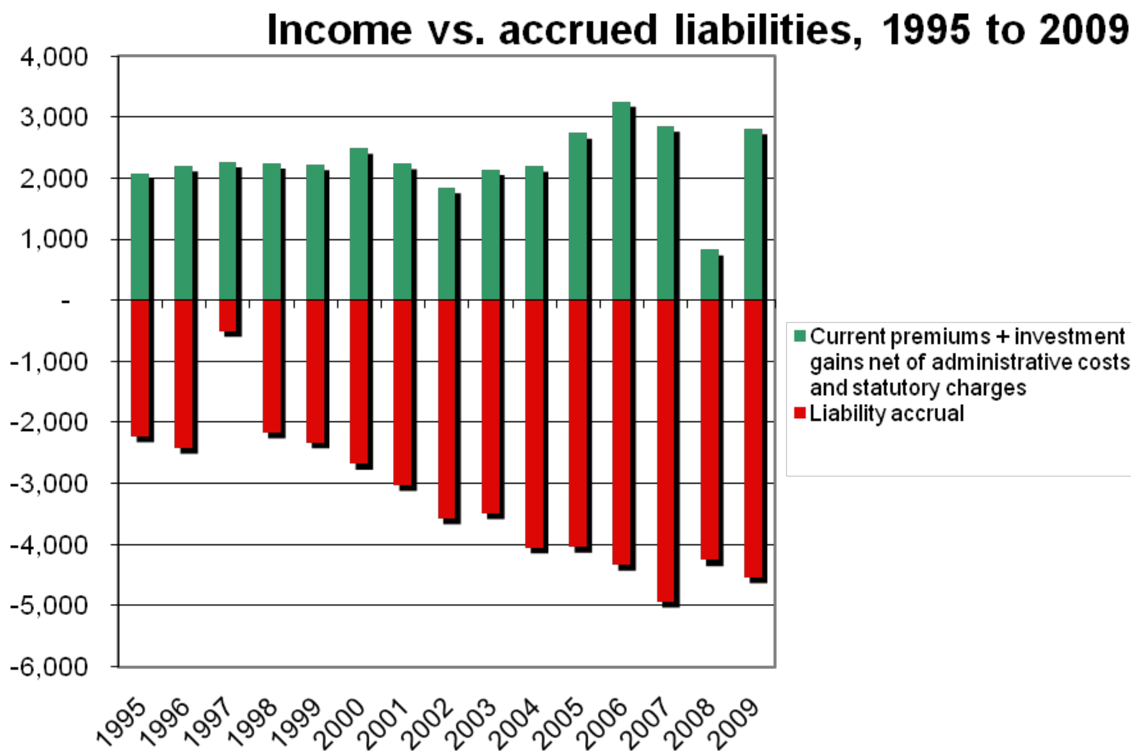
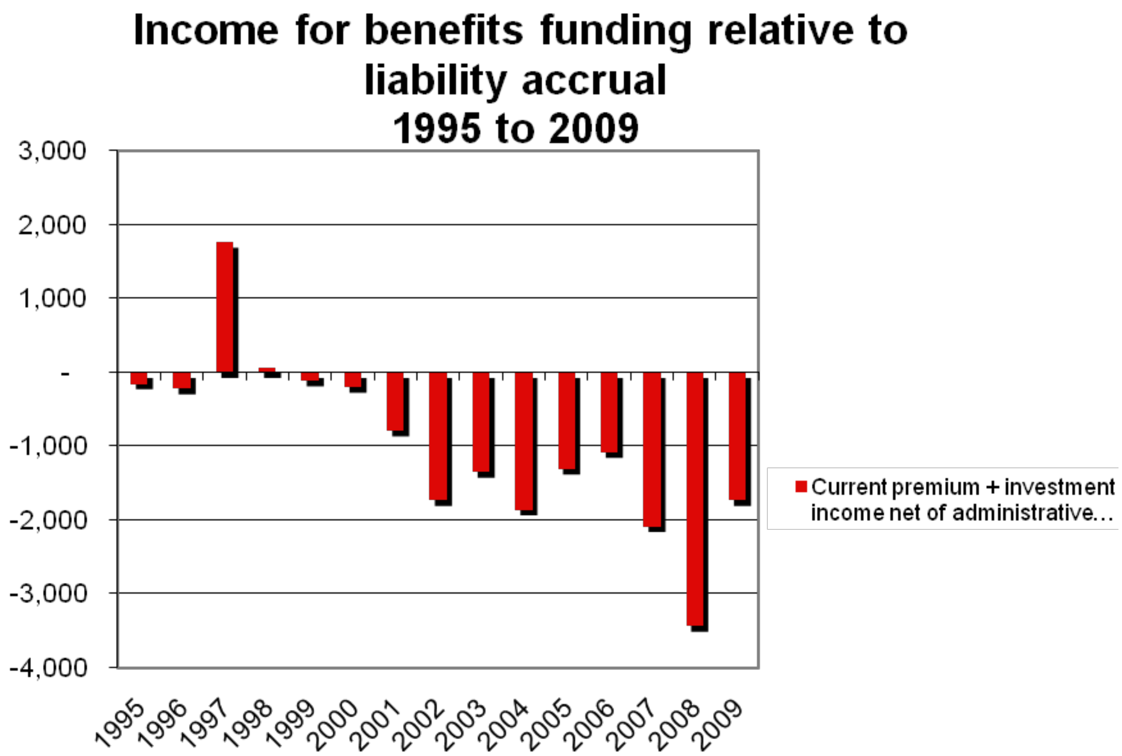



Chart 6 shows the net position – the difference between annual income available for benefits and the annual accumulation of liabilities.
Chart 6: Income Net of Liability Accrual



In 2006, when the gap between investment income and current premiums and liability accrual was about $1 billion, the special premium earmarked for unfunded liability reduction was sufficient to fill the gap and prevent the unfunded liability from growing. In 2007, 2008, and 2009 with special premiums still just under $1 billion, that was no longer possible.

What lies at the root of the gap between currently-accruing liabilities and current premium income is a series of premium cuts introduced in the mid-1990s by the newly-elected Conservative government. In a striking parallel to the government's management of the province's fiscal position generally, despite the fact that the Harris government "inherited" an unfunded liability of $10 billion, it proceeded to cut WSIB premium rates in every year it was in office. Average premiums dropped from $3.00 per $100 of payroll in 1996 to $2.13 per $100 in 2002. Premiums were increased in 2003 (to $2.19 per $100) and in 2006 (to $2.26 per $100), but remain roughly 25% below their 1996 level.

The impact of the premium cuts on funding was, not surprisingly, dramatic. According to data provided in the WSIB Chair's Consultation on the Unfunded Liability in Spring 2009, had premium levels been maintained at their 1996 level, the funded liability would have been $3.7 billion in 2008, not the reported $11.5 billion.[15]

Even that estimate is understated, because it takes no account of the fact that higher premium income would have been invested along with other WSIB assets, earning the same returns.

Using the investment return data provided by the WSIB, we estimate that even taking into account the disastrous year of 2008, accumulated investment returns on the premium shortfall would have generated a further $1,031 million in assets by 2009 and resulted in an unfunded liability of $1.5 billion in 2008, rather than the reported $11.2 billion.[16]

### 2. Funding Assumptions

The gap between current-year net income and current-year liability accrual would not be a problem if the Board were in a position to rely on a continuing stream of experience gains on the investment side of the board's operations. Indeed, the substantial improvement in the Board's finances between 1997 and 2000 can be explained entirely by the extraordinary performance of financial markets during that period.[17]

Compared to an assumed real return of 4%, real returns from government bonds were running in excess of 5% during that period, with stock markets performing substantially better than that. As the value of the Canadian dollar declined during that period, foreign investments generated particularly attractive returns.

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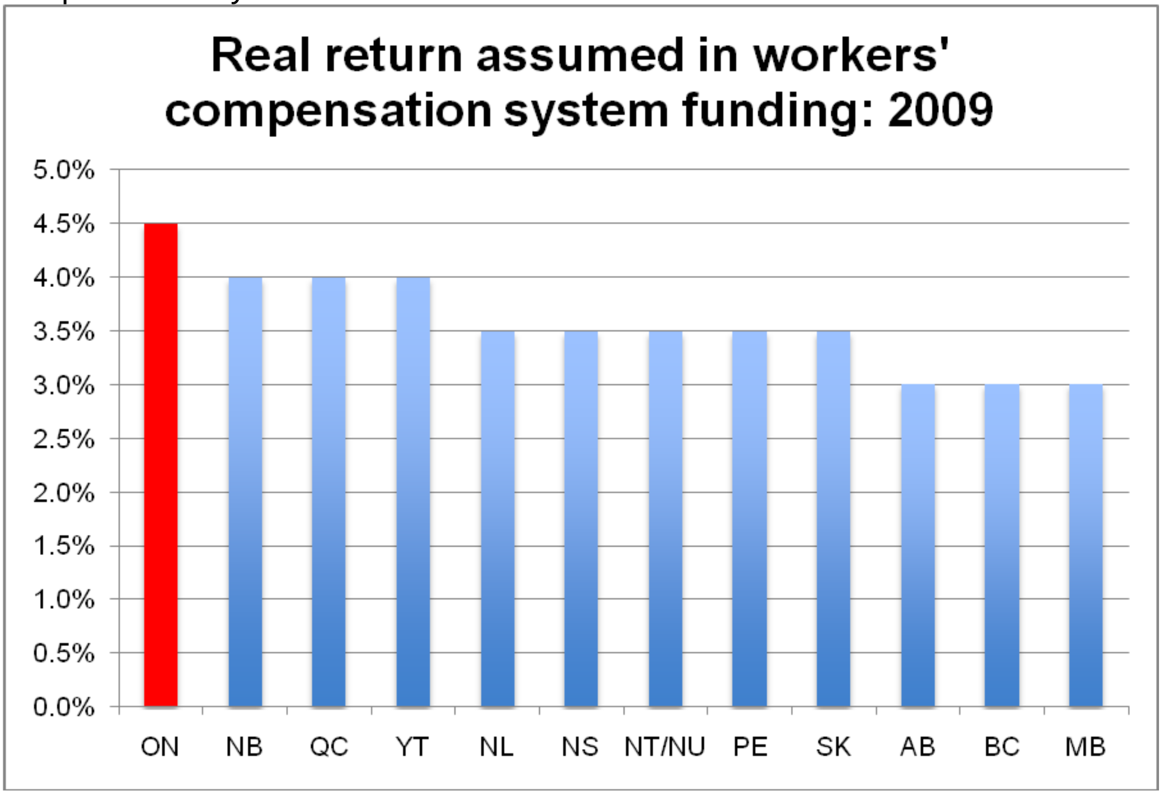
[15] WSIB, Chair's Consultation, Unfunded Liability, Spring 2009 slide presentation, slide 6.

[16] Incremental investment returns were estimated applying actual investment returns to incremental premium income, assuming that in-year incremental premium income earned half the annual return. Investment returns are reported by the WSIB in various publications. The data used in these calculations were drawn from the Chair's Consultation slide presentation, slide 7.

[17] The improvement from 1995 to 1997 is attributable primarily to cuts in benefits.

Chart 7: Real Return Assumption for Funding Purposes, Canadian Workers' Compensation Systems.



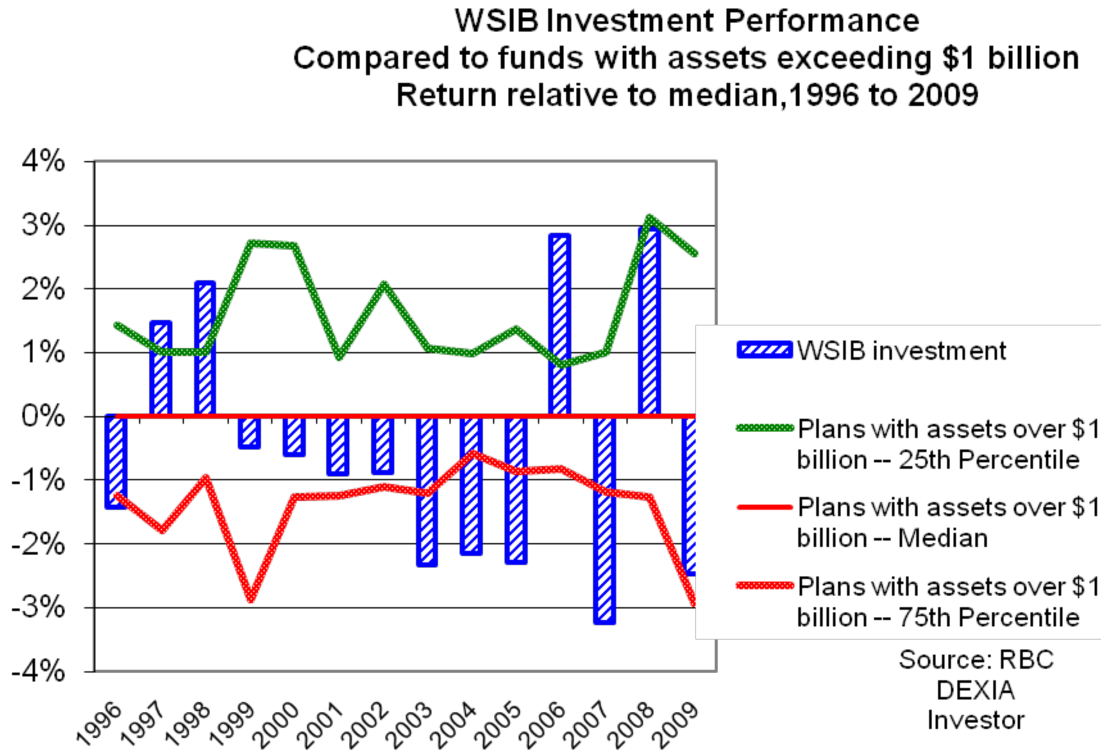

The problem facing the Board now is that whereas a 4% real return assumption would have been considered quite conservative in the 1995 to 2000 period, such an assumption would be considered to be quite aggressive now and in the intermediate future. Needless to say, the Board's decision to increase its real return assumption to 4.5% for 2008 heightens the problem. After an extended 20-year run well above its long-run average of 3%, the real return on long-term government bonds has dropped to the 2% range or below. Even before the chilling effect of fallout from the post-sub-prime credit crunch, expectations for investment market returns in the near-to-immediate future fell far short of the kinds of returns that had been typical in the 1990s. As chart 7 indicates, with Ontario's move in its 2008 valuation to a real return assumption of 4.5%, Ontario's real return assumption is a full 0.5% above that of the highest other provinces and 1% above the norm of 3.5%.[18]

As chart 8 illustrates, investment returns at the WSIB have generally tended to run in the middle of the pack and below among funds with assets in excess of $1 billion. There is neither reason to neither expect nor evidence to support investment performance at WSIB differing substantially from market returns. So what happens to the markets will happen to the WSIB.[19]

[18] Source: Association of Workers Compensation Boards of Canada, Key Statistical Measures, 2007

[19] Billion dollar funds returns, RBC Dexia

Chart 8: WSIB Investment Performance Relative to Other Funds




What this means is that, rather than contributing excess gains to fill part of the gap between current premium income and accruing liabilities and, in very good years, generating enough extra cash to reduce the unfunded liability, in recent years, investment returns have actually caused the financial condition of the Fund to worsen.

On the liability side of the balance sheet, the WSIB makes one key assumption that will virtually guarantee experience losses in liabilities over time. According to the Annual Report, in its financial projections, the board makes no provision for future claims related to occupational disease. While it is difficult to determine from the information released by the Board the relative significance of occupational disease claims in the board's accumulated liabilities, future occupational disease claims arising from current year employment will be greater than zero and thus will tend to push liabilities up relative to funding assumptions over time.

Prior to 2006, investment performance had been called upon to do a considerable amount of heavy lifting in the WSIB's finances. Indeed, superior investment performance is critical to the Board's financial plans. Investment experience gains are required if the Board is to cover future occupational disease liabilities. Investment gains are required, along with the special premiums, to fill the gap between regular premium income and liability accrual. And in the current financial structure, investment gains are necessary if the unfunded liability is to be reduced.

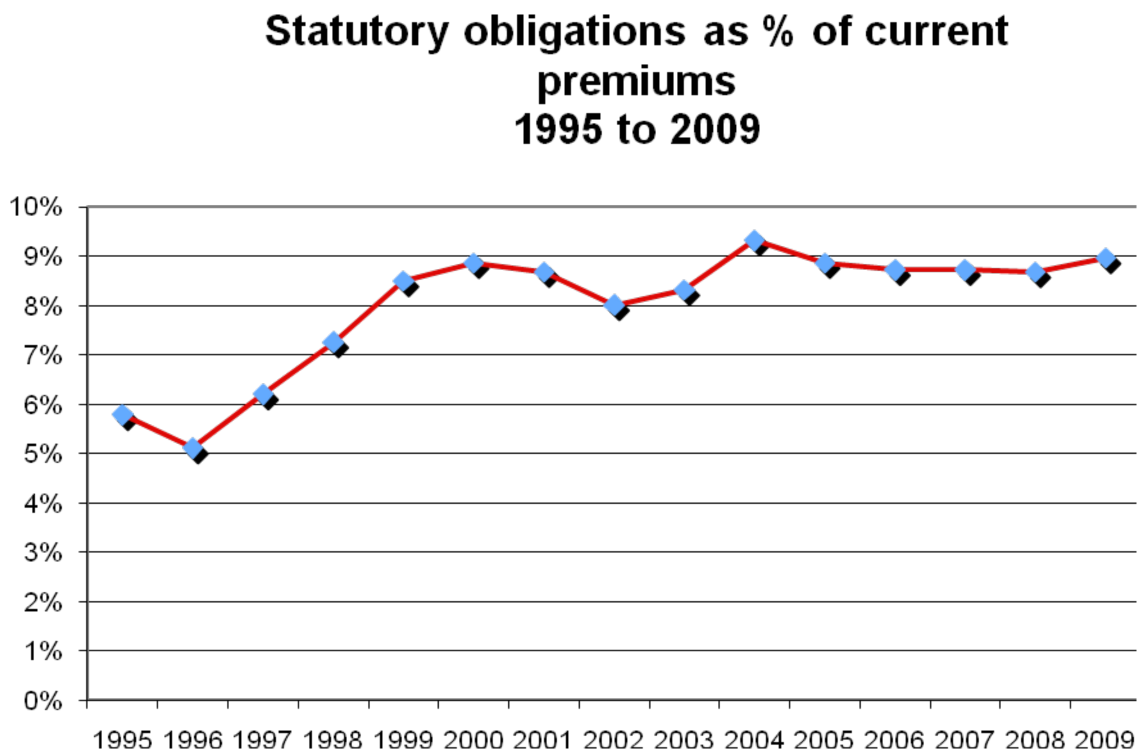
Good investment returns prior to 2007 served to mask the fact that the Board's premium income is insufficient to cover currently accruing liabilities and achieve its unfunded liability reduction goals. Ordinary investment returns in line with funding assumptions expose the inadequacy of premiums relative to accruing liabilities. And exactly as one would expect, the returns below the Board's aggressive real return assumptions realized in 2007 and 2008 led to a marked deterioration in the WSIB's funded status.

**3. Statutory obligations**

In addition to its responsibilities with respect to workers' compensation, the WSIB is required by statute to contribute towards the costs of the Government of Ontario's occupational health and safety programs. While this link between occupational health and safety programming and workers' compensation costs makes sense in principle over the longer term, this obligation is substantial, beyond the control of the WSIB itself and has steadily increased as a share of the Board's regular premium income.

Chart 9 shows the Board's statutory payments as a share of premium income, from 1995 to 2009.

Chart 9: Statutory Obligations as Share of Current Premium Income




Although the relative significance of statutory costs has stabilized since the steady increase between 2002 and 2004, those costs are consistently in the 9% range compared with the 5% to 6% range in the mid-1990s.

Between 2003 and 2009, the WSIB's statutory obligations increased by 33%; this compares with the increase in the Board's own administrative costs of less than 2% over the same period.

To establish transparency in this aspect of the WSIB's costs, premiums for and costs of statutory charges should be accounted for and reported on separately from the other components of the WSIB's operations.

## 4. Eliminating the unfunded liability – How realistic is it?

The WSIB's targets for unfunded liability reduction were always on the ambitious side, particularly given the fact that current premiums generally do not cover currently accruing liabilities. The market melt-down of 2007 and 2008 reinforces those concerns, for two reasons. First, it serves as a stark reminder of the risks associated with relying on higher-than-assumed economic returns for the funding of basic benefits. Second, the size of the losses incurred has put the finances of the WSIB into a deep hole from which it will be difficult to extract itself.

This latter point is not well understood, and so should be explained in more detail. In the wake of the market meltdown, the WSIB is approximately 50% funded. That means that the 7% return assumed in funding will be earned on an asset base equal to 50% of the liabilities, whereas the liabilities are by definition growing at 7%. So the assumed return for funding purposes would leave the WSIB at a permanent 50% funded ratio.

In addition, the fact that currently accruing liabilities exceed regular premium income means that at least a portion of the special premium for unfunded liability reduction will have to be used to cover currently accruing liabilities instead. In the past two years, for example, under funding of currently-accruing liabilities has soaked up most of the additional premium supposedly earmarked for the reducing of unfunded liabilities. These factors have a significant impact on the likely progress towards the goal of unfunded liability elimination.

For example, even if the investment return matches the 7% assumption and currently-accruing liabilities are fully covered by current premiums leaving the special levy for unfunded liability to be used for that purpose, it would take until 2024 to eliminate the unfunded liability. If instead only 75% of the amount earmarked for unfunded liability reduction is available for that purpose – a state that would be a significant improvement over the current situation – full funding is delayed until 2033.

A 7.5% return along with use of the full amount of a special premium for unfunded liability reduction growing at 2.5% per year is estimated to achieve full funding by 2022.[20]

These results underline the importance of being circumspect in making claims concerning unfunded liability reduction. They also underline the importance of a careful reassessment of current premium levels relative to current liabilities.

[20] Assumptions: funded ratio 2009 = 50%; special premium $1,007 million in 2009 growing at 2.5% per year; funding interest assumption 7%.