March 21, 2011

Dr. Harry W. Arthurs
Chair
WSIB Funding Review
200 Front Street West
Toronto Ontario

RE: WSIB Funding Review

Dear Dr. Arthurs:

The Ontario Chamber of Commerce (OCC) is a federation of 160 local chambers of commerce and boards of trade in the Province of Ontario, representing 60,000 businesses of all sizes, in all economic sectors covering every area of the province. The OCC's mandate is to advocate strong and effective policies on issues that affect its membership throughout Ontario's business community.

The Ontario Chamber of Commerce has followed the Funding Review with active interest. We have long argued that the current system is in need of repair, and view reform as essential to achieving a viable workplace safety and insurance system. In our submission dated November 5, 2010 to the President of the WSIB, we communicated the importance employers place on considering the full range of potential policy alternatives, including successful models of privatization and market competition.

The Auditor General (AG) has traced the Board's $12 billion Unfunded Liability (UFL) to a political "balancing act" on the part of government. The AG pointed out that the Board's internal governance function is constrained by the government's political agenda, which has caused benefits to fluctuate independently from revenues, putting upwards pressure on premiums over time. As a result, the AG concluded that significant structural changes are required to ensure that the Board operates in accordance with principles of good governance.

In light of the AG's observations, the OCC was disappointed to learn that the WSIB Funding Review is limited to a narrow set of revenue and claims management considerations. The WSIB has identified six items for inclusion in the Review: funding; premium rate setting; rate groups; employer incentives; funding occupational disease claims; and indexation for partially disabled workers. While these issues have a bearing on the Board's financial situation, they cannot be considered in isolation from the more significant issue of a state legislated monopoly on insurance benefits. As long as the Board lacks the ability to influence expenditures, it will have difficulty getting the UFL under control.

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The top issues identified by employers mirror those identified by the Auditor General. As the AG pointed out, the existing balance of rights and responsibilities is affected by the design and governance of the workplace safety and insurance system. Employers concur that the WSIB is driven by political decision making at the expense of a coherent strategic vision. The WSIB was initially conceived as a no-fault income replacement scheme. However, due to the intervention of successive governments throughout the Board's history, it has grown to encompass numerous benefits and return-to-work programs which more closely resemble social welfare programs. This trend has been compounded by the Board's generous interpretation of established legislation. The result has been a climate of steadily escalating benefits, culminating in an unprecedented UFL.

At the Funding Review's recent consultation of technical experts, it was revealed that the key cost drivers stem from:

- Ontario's generous range of benefits (including survivor and old age benefits)
- a high persistency rate (perpetuated by a mandatory six year lock in)
- a benefits indexation rate of 3.5 percent
- skyrocketing drug and health care costs

Because premium rates are the main tool the Board has to influence its financial situation, employers have borne the brunt of the escalating UFL. However, raising premium rates alone is not the answer. The Board has relied so heavily on employer premiums that premium rates have reached the limits of what the private sector can realistically absorb. A fundamental realignment of benefits and premiums is required in order to achieve a sustainable financial position.

The second major issue identified by employers relates to the Board's organizational culture. Employers report an entrenched bias at the WSIB towards benefit entitlement. Employers feel that the review process is pre-disposed to approve, rather than objectively and consistently adjudicate, new claims. Employers perceive a tendency at the Board to favour employees, which has led them to question the Board's commitment to fairness and accountability. Employers believe there is much room for improvement in the current decision-making structure, such as appointing individuals with pertinent private sector experience to top leadership positions. This issue speaks to the need for a strengthened internal responsibility system to allow for the fair and impartial adjudication of claims – another issue which is altogether absent from the Funding Review.

Given that the reasons for the WSIB's financial crisis go far beyond the existing terms of the Funding Review, there are basic changes which must be enacted *a priori*. The OCC recommends that the government and WSIB take the necessary actions to:

1. Reevaluate and Rearticulate the WSIB's function

   Policy makers must weigh the relative merits of a social welfare model against those of a no-fault insurance scheme, and enact changes which will allow the Board to operate on the basis of the chosen model. The North American experience demonstrates that a no-fault insurance model is the ideal choice for Ontario. As such, all policy and financial decisions should be made by the WSIB, and the Board's operations should be independent from government.

2. Amend the Workplace Safety Insurance Act (WSIA)

   The current rules prevent the WSIB from operating on the basis of a sound business model. The WSIA must be rewritten to provide the necessary guarantees for the Board to operate as an independent no-fault insurer. There should be a clause in the WSIA requiring the statute to be subject to period review on an ongoing basis, to allow the Board to remain consistent with best practices in the insurance industry.

3. Improve the WSIB's internal responsibility system

   The WSIB lacks the accountability mechanisms to ensure impartial compliance with policies and procedures. There are no formalized channels for private sector input, and strategic and operational decisions often do not reflect private sector priorities. In order to achieve a sustainable financial position, the Board must adopt an internal culture of transparency and accountability. Creating a new direction for the organization starts with adopting an improved system of executive responsibility, including more rigorous selection criteria for the CEO and chairs, clearer performance agreements, and regular reviews of the Board's financial management by the Auditor General. In addition, the Board should consider implementing the Expert Advisory Panel on Occupational Health and Safety's recommendation to the Minister of Labour to establish a multi-stakeholder advisory body or an equivalent mechanism to facilitate structured private sector participation in the development of strategic priorities.

The changes proposed above reflect the OCC's position that achieving a self-sustaining workplace safety and insurance system requires the government and WSIB to adopt a long-term strategic vision which has comprehensive institutional reform as a key component. The following recommendations – which relate to the specific themes of the Funding Review – are premised on the view that, alongside the current review exercise, the WSIB must initiate an open-ended strategic review which factors in the larger context shaping the Board's activities and lays the groundwork for long-term change.

With a view to initiating an ongoing dialogue with decision-makers about the essential features of strategically repositioned workplace safety and insurance system, the OCC makes the following recommendations to the Funding Review. The OCC would be happy to work with the government and the WSIB to identify the specific technical requirements of each recommendation as necessary:

Funding

- The WSIB must determine what qualifies as full funding. The Board's ultimate target for full funding must be 100%. Short-term targets should be set every five years, and should be defined as a range (e.g. 70-80 percent), otherwise fluctuations in the asset values and changes in the discount rate could lead to significant volatility in premium rates year over year.

- The new funding plan must be amortized over a sufficient period of time to ensure premium rate increases (where necessary) are controlled, but a short enough period of time to reflect a strong commitment to full funding. The time frame for full funding should be 20-25 years. Shorter terms would put unreasonable upward pressure on premium rates.
- The funding plan must be formally reviewed at least every five years, with detailed progress reported annually, and an ongoing "organic" report continuously posted on the Board's website.
- The 7 percent discount rate is aggressive compared to the industry benchmark of 4 percent. Based on what employers have recommended for the pension system, the ideal range is 6-6.5 percent.
- Benefit payments for prior year claims account for the largest portion of operational revenue. The Board must find ways to minimize and contain outstanding claims. All past vested award benefits should be revisited to justify their existence, and adjusted or eliminated to the extent possible.
- The WSIB is still paying out pensions to people injured in the 1970s-80s. The WSIB should either pay out those pensions as a lump sum, or sell off the old Pensions as an annuity to Insurance companies, retaining only the NEL awards as part of the current scheme.
- In line with basic insurance principles, the Board should implement a "deductable" model whereby employers have the option to sustain 100% of gross earnings for a specified time period following the reporting of an injury with no impact to their experience rating. If implemented, this policy would decrease the total amount of claims, safeguarding against future increases to the UFL.
- Provided the WSIA is amended to give the Board full operational independence, the Board will be able to pursue the possibility of financing the UFL through debt issuance. As a longer-term strategy for bringing down the UFL, the Board should consider issuing investment grade bonds on capital markets, structured the same way as federal and provincial government bonds.

Premium Rate Setting

- The WSIB cannot achieve its premium rate targets without addressing the cost side of the equation. Employers do not support any rate increase until the Board conducts a full review of its business model and develops a balanced long-term strategic plan for financial sustainability.
- Premium rates should be benchmarked against other provinces and G-7 countries.
- Premium rates should reflect the actual performance of the rate group and be published in advance for each rate group.

Rate Groups

- Existing rate groups should not be collapsed or simplified.
- Employers would support a change to the existing classification system that allowed it to better meet the driving principle of employer fairness. However, support for any change must meet the following: a) an objective need for change; b) a plan to change similar to the 1988-1993 process; c) a full outline of various design options and reasons for same; and d) a clear outline of the objectives to be realized.
- There must be better screening and classification of companies at the outset.

Employer Incentives

- Experience and merit rating programs are essentials of a sound insurance system. Cost-based experience rating founded on the principle of "revenue neutrality" (with no surcharge or rebate off-balance) must continue. Subjective audit based systems are not supported.
- Prospective experience rating is a proven method for ensuring system equity and efficiency. Prospective experience rating should be pursued to harmonize Ontario's program with other provinces.
- The Second Injury & Enhancement Fund (SIEF) or an equivalent mechanism should continue, and employer access should not be restricted for any reason. The current design of SIEF is a good incentive for employers to hire individuals with past illnesses or disabilities. SIEF is purely redistributive and does not add to the costs of the system. Eliminating SIEF could lead employers to hire fewer previously injured workers, affecting employment and productivity levels.
- Employers do not support an extended New Experimental Experience Rating (NEER) window.
- The costs of long latency occupational illness claims should continue to be excluded from experience rating since employers have no control over these claims/costs.

Funding Occupational Disease Claims

- There needs to be a return to third party validation of occupational disease claims.
- Occupational disease claims must be supported by scientific evidence directly linking the claim to working conditions. Anything deemed not directly linked must be covered by other available government programs.

Indexation for Partially Disabled Workers

- Employers do not support a change to benefit indexation as long as the UFL remains. Any adjustment should not be arbitrary, and should reflect the comparable action being taken in the private insurance industry.

- As the rationale for indexation is linked to purchasing power erosion, indexation should be limited to instances of wage loss, thus removing inflation protection for pensioners not experiencing a wage loss.

The OCC has identified additional issues, related to the broad challenges identified above, which should also be the subject of independent review. We strongly urge the Review Team to also consider the following in its analysis:

Benefits/Indexation

- The Board must determine the proper level of benefits through benchmarking against other provinces and G-7 countries. The Board must immediately identify opportunities to cap or eliminate benefits.
- Claims should be contained to work injury needs only, and this should be reflected more strongly in the WSIA.
- All claims should be validated by a qualified professional. Ontario should adopt a Medical Model which recognizes a roster of doctors and clinics. These providers should be specially trained to evaluate work injuries, allowing for the scientific separation of work injury and underlying condition. This would allow the claim to be severed after the work-related injury has received the proper treatment, at which time the worker would either return to work or be transferred to the correct program outside the WSIB.
- The WSIB should stop payments on outstanding claims of Old Age Security (OAS) equivalency. OAS is strictly a social benefit, and should never have been linked to employment.
- Under no circumstances should Business owners who make provision for comparable personal insurance coverage be required to pay into WSIB.

Program Design/Delivery

- The fundamental principle of the Workplace Safety and Insurance System is net income replacement. This is also a fundamental insurance principle. Employers should not be required to fund an upgrading in life status. Under no circumstance should a worker's post accident income exceed pre-accident earnings.
- The practice of retraining injured workers for skills that will lead to higher paying jobs or jobs in a field unlike their previous employment should be discontinued.
- Employers should not be required to fund training in excess of the equivalent necessary to support re-integration.
- Employers should not be required to pay "relocation assistance".
- Reintegration should not lead to preferential treatment. Injured workers should not be entitled to any extra benefits over and above what is medically necessary or what is provided to other employees.

The OCC believes that tackling the above policies and practices will allow the WSIB to implement the types of changes required to strengthen and consolidate its financial situation over the long-run. However, these changes will not be complete without a more robust set of reforms to the design and administration of the WSIB. The OCC will continue to work with the government and the WSIB to identify the large-scale reforms needed to reconcile the performance of the WSIB with the needs and expectations of employers.

Thank you for taking the time to review our concerns. If you have any questions or comments, you may direct your staff to contact Kelly Pritchard, Policy Analyst at (416)-482-5222, extension 246, or kellypritchard@occ.on.ca.

Yours sincerely,

Len Crispino
President & CEO

cc: The Hon. Dalton McGuinty, Premier of Ontario
David Marshall, President, Workplace Safety & Insurance Board
The Hon. Steve Mahoney, Chair, Workplace Safety and Insurance Board
The Hon. Charles Sousa, Minister of Labour
Randy Hillier, MPP, PC Critic, Labour
Paul Miller, MPP, NDP Critic, WSIB
Tim Hudak, MPP, PC Leader, Leader of the Official Opposition
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