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November 18, 2011

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

RE: Follow up to WSIB Funding Review Stakeholder Meeting

Dear Dr. Arthurs:

The Ontario Chamber of Commerce (OCC) has followed the WSIB Funding Review with active interest and we thank you for inviting us to participate in your November 2-3 "What I'm Thinking" session. The purpose of this letter is to respond to what we heard.

Finding innovative solutions to the immense challenges facing the WSIB was the motivating force behind the OCC's formal submission to the Funding Review, dated March 21, 2011. It is our position that fixing an organization that has grown out of touch with its original mandate, industry best practices, and principles of good governance requires visionary thinking with respect to the key attributes of the system. In particular, achieving a winning model for Ontario is predicated on initiating an open and honest discussion with stakeholders about the design of WSIB's legislative framework, governance structure, administrative policies and procedures, and service-delivery model.

In our most recent formal submission dated June 15, 2011, the OCC emphasized the importance of exploring several innovative ideas to achieve a workplace safety insurance system that meets the needs of all stakeholders in Ontario's economy. The submission presented two proposals - debt issuance and annuitization - aimed at providing the Board with innovative tools to help bring down the Unfunded Liability (UFL). We were disappointed to hear that the Review Team did not find these proposals to be feasible.

At the WSIB Funding Review's recent stakeholder meeting, it was revealed (assuming an indexation change and new discount rate) that the UFL is approximately $14.4 or $16.6 billion, not $12.1 billion as the WSIB had previously estimated. The Auditor General (AG) has traced the Board's 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 steadily outstrip revenues over time. As a result, the AG concluded that significant structural changes are required to ensure that the Board adheres to principles of good governance.

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 administration of the workers compensation 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.

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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 if the outcomes of the Review are to succeed. Those changes are:

1. A reevaluation and rearticulation of 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. An amendment of 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 industry best practice.

3. An improved internal responsibility system

   The WSIB lacks the internal accountability mechanisms to ensure impartial compliance with policies and procedures. In order to achieve an internal culture of financial sustainability, the Board must adopt established principles of good governance.

The changes proposed above reflect the OCC's position that achieving a self-sustaining workers compensation system requires the government and WSIB to adopt a long-term strategic vision which has comprehensive institutional reform as a key component.

The OCC recognizes that these issues may exceed the stated Terms of Reference of the WSIB Funding Review. However, we would encourage that you acknowledge and reflect these concerns as part of your final report.

The Funding Review's recent stakeholder consultation covered four broad areas which will form the basis of your final report:

i. Funding Occupational Disease Claims
ii. Indexation for Partially Disabled Workers
iii. Rate Setting, Rate Groups and Employer Incentives
iv. Funding

i. Funding Occupational Disease Claims

With respect to funding occupational disease claims (ODC), the recent stakeholder meeting proposed a new structure for recognizing and assigning the cost of ODCs. One recommendation would divide new occupational disease costs between Schedule 1 employers and the sector. For example, if shift work was found to be an ODC, Schedule 1 employers would pay. If a chemical used by a sector led to an ODC, the sector would bear more of the responsibility. Drawing on the analsyis of the recently released WSIB Value for Money Audit conducted by KMPG in 2010, there is evidence that this type of model would place excessive demands on the WSIB at at time when the required level of expertise to administer this type of program does not exist.

Specifically the Value for Money Audit concluded "The Adjudication & Claims Administration Program's current claims administration roles and responsibilities and resourcing model does not include sufficient subject matter expertise to support adjudication decision makers. WSIB adjudication decision makers have difficulty applying complex adjudication policies and understanding and interpreting medical evidence to support adjudication decision making. This can result in inconsistent adjudication decisions and/or delayed adjudication decision making." [1]

This reinforces the OCC's recommendation that accompanying reforms to the design and operation of the WSIB and its legislative framework are needed in order to achieve a self-sustaining workplace safety and insurance system.

Furthermore, 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 the working conditions. Anything deemed not directly linked must be covered by other available government programs.

ii. Indexation for Partially Disabled Workers

On the topic of providing full indexation of benefits for partially disabled workers, employers do not support a change to benefit indexation as long as the UFL remains. Any future 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.

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 specifically trained to evaluate work injuries, allowing for the scientific separation of work injury and underlying condition. The claim should be severed after the work-related injury has received the proper treatment, at which time the worker would either return to work or be eligible for other support programs outside of the WSIB system.

iii. Rate Setting, Rate Groups and Employer Incentives

A new rate setting process was revealed at the recent stakeholder meeting whereby a Chief Actuary would be responsible for setting the average premium rate. This assumes that rate-setting is a purely technical exercise, and divorces the response to the problem from its cause. 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 comparable insurance coverage.

With respect to rate groups, the meeting recommended eliminating the current rate group structure to build 20-60 sectoral groups based on commonality of interest. The OCC believes nothing would be gained from this approach and 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 a better screening and classification of companies at the outset.

Cost based employer experience and merit rating programs are essentials of a sound insurance system. OCC supported the stated intention of the WSIB Funding Review to retain experience rating incentive programs. The stakeholder meeting revealed that an experience rating model would be tested and

[1] KPMG, ``WSIB Adjudication & Claims Administration (ACA) Program Value for Money Audit Report: Executive Summary", October 21, 2011

include current WSIB priorities including accident prevention and even return to work. Before OCC can comment further on this matter further details for a proposed experience rating program must be made available. At this point the OCC is concerned that the types of changes proposed by the WSIB Funding Review would involve increasing penalties without commensurate opportunities to have workplace programs result in positive benefits. Requiring that a corporate officer at each company be responsible for certifying health and safety compliance was also recommended. It is unclear how abuse would be prevented under these recommendations, except at the expense of creating enhanced WSIB powers, at an added cost to employers.

The Second Injury and 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. OCC believes that if the WSIB had effectively administered it's SIEF policy, this issue would not have surfaced as a financial consideration. There is no reason that a second injury program is incompatible with the goals and objectives of the *Workplace Safety and Insurance Act, (WSIA)* as is demonstrated by the inclusion of an SIEF policy at WorkSafe BC. OCC further recommends that the WSIB Funding Review recommend that SIEF or an equivalent mechanism be codified in the WSIA.

iv. Funding

Due to the Review Team's recent revision of the UFL to approximately $14.4 or $16.6 billion (as a result of increased entitlements), it was recommended that premium rates will need to increase in order to move the WSIB past the 'tipping point'.

There is zero tolerance for further increases to premiums among the private sector. Ontario's average employer premium rate is currently the highest of any jurisdiction in Canada. This is largely due to the huge surcharge attributed to the UFL. Employers have been forced to absorb the legacy costs of the UFL despite the fact that the rate of accident frequency in Ontario has been steadily declining. A potential outcome of increasing premiums is relocation on non-participation in WSIB, which is detrimental to financial sustainability and health and safety. It is critical to the longevity of the system to strike the right balance. This requires not only a frank assessment of the economic impacts of higher premiums, but a willingness to look for more balanced and comprehensive solutions.

The new funding model commits to full funding which is the OCC is supportive of. The OCC believes 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. In line with basic insurance principles, we recommend that the WSIB Funding Review recommend the adoption of 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.

At the stakeholder meeting you appropriately raised the issue of what costs should be allocated to the workplace safety and insurance system and what costs, if any, should more properly be assigned elsewhere. In particular you recommended that costs associated with the administration of health and safety programs in the province should be shifted to non-WSIB revenue sources. OCC agrees both with the principle you have established and the specific recommendation. In the case of health and safety, it is easily recognized that this is a societial "value" and benefits all workplaces: including those not covered under the WSIA.

As the OCC stated from the outset, strategically repositioning the workplace safety and insurance system to effectively fulfill its mandate requires policy-makers to recognize comprehensive legislative and institutional reform as fundamental components of change.

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 Sarah Elliott, Policy Analyst at (416) 482-5222, extension 233, or sarahelliott@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. Linda Jeffrey, 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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