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Wednesday 24 February 2010

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Mercredi 24 février 2010

**Standing Committee on
Public Accounts**

Organization

2009 Annual Report,
Auditor General:
Workplace Safety
and Insurance Board

**Comité permanent des
comptes publics**

Organisation

Rapport annuel 2009,
Vérificateur général :
Commission de la sécurité
professionnelle et de l'assurance
contre les accidents du travail

Chair: Norman W. Sterling
Clerk: Katch Koch

Président : Norman W. Sterling
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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
PUBLIC ACCOUNTSCOMITÉ PERMANENT DES
COMPTES PUBLICS

Wednesday 24 February 2010

Mercredi 24 février 2010

The committee met at 1232 in committee room 1 following a closed session.

The Chair (Mr. Norman W. Sterling): The meeting will come to order. My name is Norman Sterling. I welcome our many guests today. We are going to deal with two very small matters of business prior to undertaking our hearings with regard to the workmen's compensation liability of the Workplace Safety and Insurance Board hearing.

ELECTION OF VICE-CHAIR

The Chair (Mr. Norman W. Sterling): I have the duty to elect a new Vice-Chair to our committee. Are there any nominations?

Mr. Paul Miller: I'd like to nominate Peter Shurman.

The Chair (Mr. Norman W. Sterling): Thank you, Mr. Miller. Any further nominations? If not, I declare the nominations closed and declare Mr. Shurman elected Vice-Chairman of the committee. Congratulations, sir.

Mr. Peter Shurman: Thank you.

The Chair (Mr. Norman W. Sterling): We don't require any speech.

Mr. Peter Shurman: No speech. You just have to push the button.

APPOINTMENT OF SUBCOMMITTEE

The Chair (Mr. Norman W. Sterling): Mr. McNeely has a motion.

Mr. Phil McNeely: I move that a subcommittee on committee business be appointed to meet from time to time at the call of the Chair or at the request of any member thereof to consider and report to the committee on the business of the committee;

That the presence of all members of the subcommittee is necessary to constitute a meeting;

That the subcommittee be composed of the following members: the Chair as Chair, Madame Gélinas, Mrs. Sandals and Mr. Shurman; and

That substitution be permitted on the subcommittee.

The Chair (Mr. Norman W. Sterling): Any discussion? All those in favour of the motion? Carried.

2009 ANNUAL REPORT,
AUDITOR GENERAL

WORKPLACE SAFETY
AND INSURANCE BOARD

Consideration of section 3.14, unfunded liability of the Workplace Safety and Insurance Board.

The Chair (Mr. Norman W. Sterling): We'll now move to our main business, and that is examining section 3.14 of the Auditor General's 2009 report, the unfunded liability of the Workplace Safety and Insurance Board.

We have three witnesses presently sitting in front of us: Mr. Steve Mahoney, chair of the board; Mr. David Marshall, president and chief executive officer; and Ms. Cynthia Morton, Deputy Minister of Labour.

I believe Mr. Mahoney would like to open with a few remarks. Then we'll be turning it over to Mr. Marshall. Lastly, we will hear from the deputy minister, Ms. Morton.

Mr. Steve Mahoney: Mr. Chair and members of committee, I have a few brief comments to make. Before I begin, however, staff will be introduced as required in answering questions at a later time, but I would like to acknowledge one of my members of my board, Mr. Louis Girard, who is here in the audience today as well.

We do welcome the opportunity to appear today to respond to the auditor's report regarding the WSIB's financial position and the unfunded liability.

I'm particularly pleased to introduce to all members the newest member of our team, our new president and CEO, David Marshall. David brings to us very impressive financial credentials. He also brings an experienced public administrative skill set that will serve us well. David has held many key federal government positions, including assistant Auditor General and deputy Receiver General for Canada. As a certified general accountant, he has also held senior roles in the Toronto and New York banking sectors.

In the short time that David has been with us at the WSIB, I have been very impressed with his thoughtful absorption of the mechanics—somewhat complicated, as I'm sure you all know—of the WSIB and Ontario's complex health and safety system. His experience and leadership in facing the challenges of such a large organization come to us at a very important juncture in our history.

In this regard, and before I hand over to David for the main part of our presentation, I would like to point out that he's already initiating important change within the organization to realign our operations to better meet the needs of our clients, the injured workers, and our premium ratepayers, the employers of the province of Ontario.

Having just completed a comprehensive, year-long consultation myself with stakeholders across Ontario, I can tell you that this critical examination of our programs and policies has provided valuable feedback to me, to our board of directors and our new president and, I believe, to the entire organization. My report on that consultative process is now on our website, available for all to see. We'll be continuing the ongoing dialogue with all stakeholders so that we can move forward together in creating a sustainable financial future for Ontario's workers' compensation system as we continue working together on the road to zero: zero injuries, zero illnesses and zero fatalities.

After, as you have said, Mr. Chairman, Mr. Marshall presents, I believe the deputy has some additional remarks, and then we will be happy to answer your questions.

The Chair (Mr. Norman W. Sterling): Thank you. Mr. Marshall.

Mr. David Marshall: Good afternoon. It's a pleasure for me to be here today. I welcome this opportunity to present to your committee some of my initial views on the financial situation at Ontario's Workplace Safety and Insurance Board.

With your permission, Mr. Chair, I've provided members of the committee two small charts, which I will refer to in the course of my remarks, and I take it that those are available to members. Yes? Thank you.

It's been one month since I began work here as president and CEO of the WSIB. In that time, I've learned a lot and met a lot of excellent and knowledgeable staff. Some of them are here today to help me answer your specific questions.

Starting in my first week, I've begun meeting with several stakeholder groups representing both workers and employers. Early on, these meetings have helped me understand the need to keep driving forward on things like reducing the stigma for injured workers, and have assisted me in understanding the rich and colourful history of a host of other issues. I'd like to express my appreciation for the time these stakeholders have taken to spend with me, and I trust that I can continue to draw on their experience and knowledge going forward. After all, the WSIB belongs to the workers and employers of Ontario as much as it does to anyone else.

I've come into this role as president and CEO of the WSIB with a clear mandate from the minister. It is to build a sound financial plan for our organization and address the unfunded liability; to ensure stability for workers, employers and stakeholders; and to ensure we have a WSIB that is, and is seen to be, value-added.

My background as a banker and businessman and my experience in senior government roles will, I hope, assist

me in this task. I suppose it doesn't hurt that I also worked for the Auditor General of Canada for several years.

I've reviewed our Auditor General's report on the unfunded liability. I must say, I find Jim McCarter's report to be extremely helpful in setting out some of the key issues and getting us to think about where we are at this particular juncture. It deals, of course with the issue of the unfunded liability at the WSIB.

Let's examine for a moment the existence of an unfunded liability in the general scheme of things. For starters, the employers covered by the WSIB fall into two categories: schedule 1 employers, who comprise a majority of commercial businesses; and schedule 2, who comprise mostly municipalities and other government entities.

There is no unfunded liability for the schedule 2 employers. Why? Because schedule 2 is a pay-as-you-go system. Each year, the participants pay the full medical, wage loss, rehab and return-to-work costs of all injuries paid for in that year by the WSIB.

Schedule 1 employers, on the other hand, enjoy, in effect, a smoothing-out of these costs. That's another way of saying they're not paying the full tab for the injuries caused. Another way to express this is that at any point in time, if you don't charge for the full cost, you will carry a liability. In this case, it's the unfunded liability at the WSIB.

Whether we should collect the full amount of current and future liabilities in each year from employers, or whether we should collect only enough to be viable and leave the rest to be reinvested by employers to create economic wealth, is a matter of debate. There are arguments on both sides of the issue.

One might ask if the existence of an unfunded liability poses a threat to the financial viability of the insurance system. Let's see if history is any guide. Over the last 25 years, the average funding ratio—per year which is another way of expressing the amount of money WSIB has on hand to fund future liabilities—has barely been above 50% on average over that whole period, yet all obligations during that time have been met.

Even today, the system is not in crisis. From the figures I've seen, the WSIB is financially able to meet its obligations as far into the future as one can reasonably see, and that means for at least a quarter-century or more.

You heard from the Auditor General that the existence of an unfunded liability is the result of a complex set of interactions among at least four key levers: premiums, coverage, the level of benefits paid, and the amount earned on investments.

In my view, it would be dangerously simplistic and probably plain wrong to jump to the conclusion that the existence of an unfunded liability is caused by any mismanagement at the WSIB. I'm sure our Auditor General is not suggesting that.

Now let's look at the record. The WSIB, in agreement with stakeholders, set a target in 1984 to eliminate the unfunded liability by 2014. I'd ask you now, if I may, to

look at chart one in front of you. That is the 25-year historical record of the unfunded liability. If you look at the chart, you'll see that, indeed, excellent progress was made over the last 25 years. In fact, in 2006—if you go down the left-hand column and then look over to the right—the funding ratio was as high as 73%, up from where it started in 1985 at about 31%. So you can see a steady, pretty good trajectory to getting the fund into balance. In 2006, the 73% ratio is as high as it has ever been in the last 25 years. Certainly, at that level of funding, few people would have been concerned. Indeed, at that stage, projections show that the fund was entirely on track to reach full funding by 2014, even with the increases in benefits that were enacted in 2007. That's a credible record.

You'll also notice from the chart that the WSIB fund suffered a sharp setback in 2007 and 2008, which has thrown the path to full funding entirely off track. What caused the setback? Well, I think the main drivers are known. During the economic downturn of 2007 and 2008, investment returns fell, payrolls and premiums fell, injured workers couldn't find work to go back to, and the impact of absorbing even a modest increase to injured workers' pensions was harder to absorb than when it was first introduced.

In early 2009, it became clear that the system had not built up enough reserves to deal with this setback, and that the goal of full funding for 2014 was not attainable under the circumstances.

What is clear is that we now need a plan to get the system to better financial health and ultimately to build in a cushion to protect the system when economic turbulence like this hits. So how do we do that? What issues are facing this system that need to be addressed?

Let's start with worker benefits. Decisions about worker benefit rates are in the hands of our legislators. Some stakeholders have told me that increased benefits for injured workers are an issue or that our benefit levels are too high. Frankly, I disagree with that. I believe the WSIB benefit package as it stands today is quite reasonable and in fact is quite comparable to what other jurisdictions are paying. Between 1995 and 2007, inflation rose by almost 29%, while many of our worker benefits increased by only 2.9%.

I do, however, think we need to look at the funding levers and systemic issues that are driving cost pressures to the system. These pressures include premium revenues, claims costs, health care costs and claims duration.

Let me turn for a moment to premium rates. The premiums paid by employers in the system are the WSIB's primary source of revenue. Since 1999, the WSIB's premium rates have been among the most stable in the country, and, on average, premium rates are 12.7% lower now than they were 10 years ago. But this break for employers has come at a cost to the system. Had we left premium rates at \$3, as they were in the mid-1990s, we would have balanced the books as early as 2006. Conversely, from what I can see, even if premium rates had only been adjusted for inflation over the past 10

years, we would be in a surplus position today. This means that the WSIB has effectively been deferring costs, leaving the money in the hands of the employers to invest and grow their businesses.

In terms of the number of employers who are covered by the WSIB, the Auditor General has pointed out that Ontario, at some 72% coverage, has the lowest coverage of the workforce of any of the provinces. As the composition of employment changes, the group of employers covered by the WSIB is shrinking relative to the group not covered. This is a serious issue and obviously will need to be looked at in conjunction with the government.

I will now turn your attention to claims costs. Keeping injuries and hence claims costs down is to a very large extent in the hands of Ontario's employers, together with employees. The principal measure we have been using to gauge performance in this area is the number of lost-time injuries. By this measure, employers have been doing a good job in reducing overall lost-time injuries. The rates, in fact, have dropped by 40% over the last decade. Good-performing employers have been given bonuses and poorly performing employers have had to pay a surcharge. The net result between the two is that employers overall have received bonus cheques worth more than \$1 billion over the past 10 years.

But the overall lost-time-injury figure doesn't tell the whole story. Some serious injuries and fatalities are not doing nearly so well and indeed are troubling. Some, such as deaths from occupational disease like cancer, are actually going up. As well, a whole industry and complexity has grown up around counting the number and massaging the number.

As a former banker, I've asked the question of why bonus cheques have been handed out while the cost of claims has gone up. In my view, and I will admit it is an early reading on my part, the incentive scheme that is inherent in the lost-time-injury number and the experience rating of employers relative to that number is in need of a serious overhaul.

1250

More importantly, workers are staying on benefits longer because they are failing to return to work. We call this phenomenon the duration of a claim. The longer an injured worker stays off work, the more it costs, both financially and in human terms.

We've noticed that since 1998, duration levels have been rising sharply, and, not so surprisingly, so has the average cost of benefits. Studies by the Institute for Work and Health and, more recently, by the firm of KPMG found that the key drivers for the increase in duration of claims are unintended effects of legislative changes in 1998 that caused the WSIB to be less involved early in the life cycle of a claim, behaviours on the part of employers resulting from the way financial incentives were structured, and health care costs, specifically addictive narcotics prescribed more often and earlier in the life of a claim.

Also contributing to increased benefit costs has, of course, been a sharp increase in the average age of

workers at the date of injury. There has been a sharp increase of almost 50% of claims coming from workers who are 45 years of age or older.

WSIB has been responding to these phenomena, and we'll be glad to discuss these actions with you, should you desire us to do so.

I've discussed premiums and benefits and I'll now turn to investments. My review indicates that the long-term investment performance of the WSIB fund has been quite satisfactory. As the AG points out, the WSIB investment fund had a long-term average return of 6.6% at the end of 2008 compared to a target of 7%. This long-term average has now increased to 7.6% at the end of 2009. So it has delivered what it has promised.

There has been some volatility, as the AG has said. At 56% in equities, the fund carried more exposure to the stock market than other similar funds in other provinces. In fact, in early 2008 the WSIB, under the guidance and approval of our investment committee, revised the strategy to reduce volatility while still targeting the long-term return of 7%. The real challenge for the investment fund, I submit, is not how it has been managed but the fact that it has been too small relative to the outstanding liability and needs to be built up.

Let me talk about the challenges ahead. The system of worker compensation is, by its nature, a complex one. Trends and unintended effects take a long time—often years—to become evident. For example, the unintended effect of changes to legislation, the impact of occupational diseases and the effect of an aging workforce all can take years to identify and correct.

I'd ask you to turn to the second chart before you, the one that is titled, "Total Costs for 2009 Injuries, Illnesses and Fatalities." Do you see that one? It's the horizontal chart. This chart was prepared by a firm of actuaries that advises several workers' compensation boards across Canada.

On the left-hand side, the firm has listed short-term disabilities, long-term disabilities, the cost of vocational rehabilitation, health care costs and survivor benefits, for a notional total of \$100 or full cost, and on the right-hand side the incidence of those costs over time. You'll notice that in the first line, for short-term disabilities, 44% of the cost of an injury like that for benefit payments will be incurred in the year in which that injury occurs. Most of it will be incurred just after the first year and then it trails off. But if you look at the second line, for long-term-type disabilities, you'll notice that only 1% of the total benefit cost of that injury will be visible in the first year and a full 70% of that cost will have to be paid 11-plus years out after the injury has occurred. There is an extremely long tail to serious-type injuries, and they take a long time to reverse in terms of their cost impact.

I've examined the current inventory of claims which make up the unfunded liability at the end of 2008. I found that older claims, especially those that are locked in, make up over two thirds of the current liabilities. In fact, many of them—some 130,000 of them—date before 1990. We can do little to change them except manage

them to completion. That leaves only about one third of claims that are relatively more current and that we can influence. I say "relatively" because even among these claims there are many that stem from serious or long-term injuries that could be under benefits for some 40 years into the future.

You will appreciate that there is no magic wand we can wave to reduce our liabilities. We can and must pay extreme attention to how we are filling the inventory going forward. We must try to prevent injuries, especially serious injuries, from occurring in the future, so that the inventory does not fill with claims today that will burden the fund six, 10 and 20 years into the future. We need to get these workers back to work safely and avoid high benefit costs and health care costs. We need to work collaboratively to keep duration levels down. We need to restore confidence in the system. Along with employers and workers, WSIB has a key role to play, and we intend to play it.

Purely in terms of administrative costs at the WSIB, I really believe this is not a significant factor in the overall picture. The Auditor General has certainly not pointed out a serious problem in this area. The managers at WSIB have contained administrative expenses virtually flat over the last five years. My chief financial officer assures me that we are in full compliance with government's rules on expenses and procurement. I've also asked that all consulting and professional service contracts be posted on our WSIB website for all to see.

Some folks have suggested that we take a serious look at privatizing the WSIB program, allowing employers to find a private insurer. We could, of course, look at this. But I must tell you that some of the studies I've seen show clearly that the costs of private insurance for the level of benefits provided by our system would be far greater and carry far greater financial risk than what is being experienced today.

In conclusion, I would say that eliminating the unfunded liability or at least achieving an acceptable level of funding to ensure a financially sound system is a complex challenge, but we must tackle it. While there are grounds for debate as to whether we should maintain full funding or leave money in the hands of employers to be invested, I believe the current level of unfunded liability is not healthy and must be brought down. I believe the current system does not provide sufficient reserves to cushion bad economic times, does not permit us to reduce premiums, and poses a constant downward pressure on workers' benefits.

Of course, any plan requires a system-wide approach that balances the needs of all the different players. My goal is to collaboratively build a long-term financial plan with measurable benchmarks and milestones, and to do it as quickly as I can. Everything is on the table for consideration. The chair's recent round of consultations will be an important guide, and I am looking forward to continuing to work closely with him as we tackle these issues.

Truthfully, there has already been a whole raft of studies, reviews and audits done, and comments from all

sides received. However, no amount of studying will change the fact that in the end, some tough decisions will have to be made.

I have received nothing but the strongest support from my chair and the board and senior staff of the WSIB, from the Minister of Labour and from officials in the ministry. I look forward to working with you and our stakeholders to find the right balance on this journey.

The Chair (Mr. Norman W. Sterling): Thank you.

Ms. Morton, Deputy Minister of Labour.

Ms. Cynthia Morton: Thank you for inviting me to speak with you today following the chair's and CEO's remarks regarding the financial situation of the province's workers—I used to work in the system; I keep calling it the Workers' Compensation Board, but it is in fact the Workplace Safety and Insurance Board—and responding to the Auditor General's concerns about the board's unfunded liability.

1300

I'm going to speak to you today briefly around the role of government with respect to the WSIB. We have a role in four areas: One is the appointment of board members and the CEO, the second is the agency oversight through an MOU, and the third and fourth are the legislative provisions with respect to setting benefit levels and coverage.

In selecting Mr. Marshall as the board's new president and CEO, the government has appointed someone with financial expertise and someone who understands both the private and the public sector challenges.

As a former federal Deputy Minister of Public Works, assistant Auditor General of Canada, and a member of the private banking industry, Mr. Marshall is regarded by Minister Fonseca as the ideal candidate for working with the chair, the board of directors and the stakeholders of the WSIB to ensure a sound plan to address both service delivery and financial priorities.

Mr. Marshall has a clear mandate, as important to government as it is to the chair and the board of directors, to improve the WSIB's efficiency and effectiveness, and to address its finances, specifically its unfunded liability.

The Ministry of Labour has been supporting the Ministry of Finance in reviewing the Auditor General's comments with respect to Public Sector Accounting Board principles about what constitutes the definition of a trust in chapter 2 of the Auditor General's report, and the appropriate accounting treatment of the WSIB. I understand that you will be discussing those issues directly with the Ministry of Finance at a later time; therefore, this will not be the subject of my remarks today on behalf of the Ministry of Labour.

What I can provide you with today is some information about the expectations of the ministry and Minister of Labour with respect to the future planning of the WSIB to ensure its financial sustainability. I will also try to assist in setting out how legislative oversight of the ministry interacts with the WSIB's responsibility for planning and delivery of services, and our respective leadership roles in the workers' compensation system of Ontario.

It is indeed a complex, 100-year-old relationship between the ministry and the workers' compensation system, and it is constantly evolving. My personal relationship with the system here and in British Columbia now spans 25 years in public service—I started when I was very young—including my time as a vice-president and general counsel of the Workers' Compensation Board in Ontario in the early 1990s and as a member of the board of directors in BC in the mid-1990s.

It is, I believe, rightly noted by the Auditor General in his report that, "Workplace safety and insurance systems operate in a" very "complex business environment because they serve a number of stakeholders with competing interests and views pertaining to the key" issues "of insurance benefits, coverage, and premium rates." For example, in the chair's recent consultations, labour groups spoke of concerns about inadequate benefit levels, the non-reporting of injuries and the lack of return-to-work opportunities, whereas business groups, on the other hand, focused on maintaining affordable premium rates.

In the midst of these sometimes competing priorities, the Auditor General has rightly noted that "it is incumbent on" both "the WSIB and ... government to try to balance such views against the need to maintain financial stability."

At this point, I'd like to review with you briefly the statutory and operational relationship between the Ministry of Labour and the WSIB. This relationship is established pursuant to the Workplace Safety and Insurance Act as well as through other governance and accountability requirements that apply to all agencies that any ministry may oversee.

Under subsection 159(2) of the Workplace Safety and Insurance Act, "the board has the powers of a natural person," which include the authority to set premium rates, to consider and approve its operating and capital budgets, to set investment policies and to make program changes.

The board of directors of the WSIB is responsible for governing the day-to-day operations of the agency in terms of program delivery and in terms of administration of the insurance fund on behalf of employers and workers. That having been said, I believe all members present would confirm that there is much public expectation around the need for openness, transparency and government oversight with respect to the practices of government agencies, boards and commissions. The Minister of Labour is accountable to the Legislature for the WSIB and therefore has an important oversight role to play.

The government's agency establishment and accountability directive, which I'll call the AEAD from here on, sets out those accountability frameworks in which ministries and agencies are expected to operate. A key instrument for that accountability and oversight contained in AEAD is a requirement that there must be a memorandum of understanding in place for all government agencies.

The memorandum of understanding is a very significant document for the ministry and the WSIB. It sets out mutual responsibilities, accountability relationships and mutual expectations between the agency and the ministry. Section 166 of our legislation, the Workplace Safety and Insurance Act, also establishes a legislated requirement that we have a memorandum of understanding in place and that it's renewed every five years.

The most recent memorandum of understanding was signed between the chair of the WSIB and Minister Fonseca in November 2009. Both the act and the MOU require the board to submit to the minister each year a five-year strategic plan, as well as an annual statement of priorities for administering the act and regulations, and an annual report for the minister to review and table in the Legislature.

Mr. Marshall has told you that—and I believe his chart demonstrates that—in fact, in 2006-07, the funding ratio was the best it had been for 25 years. Until recently, the WSIB's strategic and business plans submitted to the minister anticipated the successful retirement of the unfunded liability by 2014. This goal did, in fact, come into question only last year because of the impact of the economic downturn on the investment portfolio and a reduction of revenues recovered from employer premiums as workers were laid off.

The memorandum of understanding has emphasized a requirement for sound management practices and controls required within the agency. In this regard, it lists government directives to which the WSIB is bound. As Mr. Marshall has noted, these include the government's travel, meal and hospitality directive, as well as the new elements of the procurement directive announced last fall by the Premier, which restrict single-sourcing of consulting contracts and prohibit the payment of meals and hospitality to consultants. The WSIB was asked for, and has provided to the ministry, an attestation of its compliance with these policies and the directives.

These generally describe the legislated parameters that define the respective roles and responsibilities between the ministry and the WSIB. I'd now like to speak to the other legislated roles the Ministry of Labour has that are addressed in the Auditor General's report.

As noted already by Mr. Marshall, the Auditor General has identified four levers that affected the unfunded liability: level of benefits, number of workers covered, premium rates and investment returns.

The government has a role in two of these areas and levers: setting benefit levels and indexation rates under the Workplace Safety and Insurance Act, and approving the regulation that sets out which industries and employers are covered.

First, if we may review the issue of legislated benefit levels as a lever affecting the unfunded liability: It is our experience that it is not the type of legislated benefits that is unusual in Ontario, relative to other jurisdictions. Rather, it is the length and cost of these allowed claims that is affecting the unfunded liability. The length of time injured workers stay on benefits, coupled with very high

health and drug costs, is increasing the financial pressure on the system beyond anticipated levels.

It is a critical expectation of the minister that, under the leadership of the board, all parties must do a better job of getting workers good health care, effective return-to-work assistance, labour market re-entry assistance and worthwhile employment when they are able to return to work. The minister has expressed this expectation to the chair and the new CEO. We will monitor the work of the WSIB to ensure this remains a key priority of the board and that the outcomes are successful.

The ministry knows the WSIB has in its sights improved service delivery and financial outcomes. These are not simple goals. Beneath the return-to-work focus lie issues of psychological and physical damage caused to workers by injury and accidents, coupled perhaps by excessive or inappropriate medication and perhaps insufficient access to training or rehabilitation in the time and form most useful for encouraging a worker to find a new career path.

Further, we also know injured workers face a stigma when seeking work, so to find them meaningful opportunities to return them to the workforce can be challenging. There is much work to do. The minister is willing to give the WSIB any and all support necessary to help the board achieve these changes, and we will be monitoring its progress. The recent labour market re-entry audit has been embraced by the WSIB, and implementation of its recommendations will be the subject of oversight.

As an example of government attempting to strike a fair balance in difficult times when exercising its legislated role to establish benefits, the government recently approved an increase of 0.5% to reflect the impact of inflation on workers' benefits. One consideration in making this decision was to reduce the impact on the unfunded liability. This, I believe, is a reflection of government's commitment to managing the interests of stakeholders in a fair and balanced way.

1310

I would add that as the ministry works with the WSIB on a strategy to ensure fiscal sustainability, we will review the overall issue of benefits that the Auditor General has raised and we will determine whether our legislative framework is sound or whether it requires modification.

The final legislated lever noted by the Auditor General and by Mr. Marshall as being within the government's purview is the extent of coverage of employers and workers under the legislation.

I would note that there have been recent amendments to the Workplace Safety and Insurance Act which extend coverage to many more independent operators in the construction industry. These will be fully in effect in 2012. This is a major step by Ontario toward expanded coverage in the high-risk industry of construction. This change will extend protection to about 90,000 more individuals.

To conclude, everyone here, I believe, recognizes the strong opinions of business and labour, and injured

workers, about the connectedness between premium rates, incentives to get workers healthy and back to work, and the reduction we have seen in lost-time injuries.

The chair and CEO have committed to a review, which the minister supports, of the way in which the WSIB sets premium rates. We will be examining this work of the WSIB in the months ahead.

We in government are currently examining our options on the legislated levers of benefits and coverage. The WSIB is working on a fiscal strategy and reviewing its rate-setting strategy. By the fall of this year, the ministry and the WSIB will have a framework to move forward with a plan to tackle the unfunded liability.

We at the ministry and the WSIB are exploring and establishing performance measures through which we will all be able to measure how well the system is doing to remain sustainable, with regular and public reports on achieving these performance measures as we go—and, as David Marshall has noted, setting benchmarks and establishing ways to measure progress.

The ministry wishes to ensure that the WSIB is aware of, and is engaged in, a meaningful dialogue with us and its stakeholders on the components of a viable and fair workers' compensation system for the future. The Ministry of Labour has increased its monitoring of the situation through a heightened sharing of information with the WSIB's new CEO and senior management team.

I would like to point out that this relationship between government and the WSIB has worked, and will continue to work, with the goal of operating an accountable and enduring workers' compensation system. Despite its difficulties and debates, there does appear to be consensus among stakeholders that no other model of compensation exists that would provide the same certainty to workers, without the potential for huge liabilities on employers, where workplace injuries or fatalities occur.

As partners with the board and others in Ontario's health and safety system, we are maintaining an effective workplace injury and fatality prevention program, a program that has provided positive results for the people of Ontario. And we want to make it better. That's why Tony Dean is chairing an expert advisory panel to review the province's occupational health and safety prevention and enforcement system. He will lead a panel of safety experts from labour groups, employers and academic institutions to recommend options to the minister for improving the system that focus on injury prevention.

As Deputy Minister of Labour, my team and I will work with the president of the board of the WSIB and his team, and our mutual workplace stakeholders, to ensure the long-term financial sustainability of the workplace health and safety system for future generations of workers and employers.

The Chair (Mr. Norman W. Sterling): Thank you very much for your presentations. We'll now go to questions. Mr. Shurman, you are first.

Mr. Peter Shurman: Thank you very much for all of the presentations.

Deputy Minister, this unfunded liability which we're exploring today and which is of growing concern to a number of interest groups—the Auditor General has said that this could be legitimately integrated with the consolidated financials of the province or, in other words, added to the provincial debt on some level. Is that a fair statement, and is that something that has been discussed at the ministerial level and/or with the board?

Ms. Cynthia Morton: It is the subject of ongoing discussions currently between the WSIB, the Ministry of Labour and the Ministry of Finance. As I said, I believe the Ministry of Finance is scheduled to come and speak to that issue in April with this committee. It reflects, I think, the Ministry of Finance's assessment, based on the Auditor General's advice, of whether the trust provisions apply to the WSIB as much as they do to other private and public sector trusts that have been recognized and reflected in the CRF.

Mr. Peter Shurman: That comes down to kind of an existential question: What is this? Is it a trust? Is it a corporation? Is it a—what? What's your opinion, and what are your opinions?

Ms. Cynthia Morton: My opinion is largely uninformed because it is—

Mr. Peter Shurman: That's not editorial, by the way.

Ms. Cynthia Morton: It is one, really, that has to be dictated by looking at auditing and accounting principles that the Ministry of Finance and the Auditor General are going to have further conversations about. We speak to the control levers in the Workplace Safety and Insurance Act and how we exercise them. We think we exercise them in a way that does allow the workers' compensation system to make the important decisions it must in terms of its fiscal strategy and its service delivery.

If we need to change them, then we're certainly open to that conversation. I think we'll be back with a plan with respect to the role of government and the workers' compensation system by the fall that addresses all of these issues that have been raised by the Auditor General.

Mr. Peter Shurman: Okay. Let me move on to the issue that you alluded to, Mr. Mahoney. You talked about the fact that you had held consultations with stakeholders. To some lesser extent, so have I. What I am hearing is that stakeholders are concerned with the lack of a report, or at least they, having heard back about the existence of a report—the last that I heard, and this is within the past week, was that this was being edited. But you mentioned that a report—and I'm not sure if it's the same one—has been posted on your website. Could you comment on that and give us a bit of a look-see at the substance?

Mr. Steve Mahoney: Sure. When I launched the idea of having this multi-stakeholder consultation, it was about January of last year. I had hoped at that time to be completed in about six months' time and issue a report. I found it extremely difficult to hit that target. We held over 45 individual meetings with stakeholder groups and had over 75 written submissions, and an awful lot of work has been done on it. The report is now available

and, I admit, only recently—I believe as of yesterday—on our website.

I too was anxious to get it out and get the work completed, but it's very complex and I wanted to be sure that I covered all of the issues that were raised by the stakeholders. That is the very nature of this, that in a different way, we are looking to take the ideas that stakeholders give us, recognizing that we don't have all the solutions to the various questions and problems, and set up a more formal process to discuss these ideas with all of the stakeholders and see if there are ways we can move forward on them.

The report is ready; it's available on our website. I've already, today, received endorsements from a number of stakeholder groups who have written in to my office; I believe they copied the minister. There seems to be some general acceptance of the go-forward methodology.

I've also had extensive meetings with our new president, which, frankly, was another reason that I wanted to hold back on the premature release, because I wanted to have an opportunity for the new president and CEO to take a look at the document, to become familiar with it, and to share some of the ideas with him that I heard from the various stakeholders.

It has been delayed—I acknowledge that—but it's now available.

Interruption.

Mr. Peter Shurman: I don't know when that stops and you start.

Interruption.

Mr. Peter Shurman: Let me continue, then; maybe we can hear each other over that. You announced in 2009 that the unfunded liability—and this has been mentioned in Mr. Marshall's presentation—would be retired by 2014, but you backtracked when you later admitted that that was not going to be possible. You have made no other comment that suggests you had or you have any kind of a strategy that gives us a new date or an approach. Mr. Marshall spent considerable time, I suppose, expanding on that same premise. Do you actually have a strategy or an approach that you favour for retiring the unfunded liability or not? If so, share it with us. If not, why not and when?

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Mr. Steve Mahoney: I address that in the report in that rather than more or less just picking a date out of the blue, or based on the strategy that we have, which is a 7% reduction of lost-time injuries, a 7% return on our investments, a better reduction of the growth in health care costs—all of these items are included in the strategy that has been there.

The target of 2014 was not set by me; it was set in 1984. I felt, when I arrived as the chair in 2006, that based on the data, the returns, the progress that was being made at the time and all of the information that was being presented to my board by our staff, 2014 or very close to that was still achievable.

Mr. Marshall has outlined the impact of the financial downturn in the economy, and one of the items that I deal

with in my report is not a shock to anyone or news to anyone—that 2014 is not achievable. It's not the first time I have said that to stakeholders. We've been admitting that, due to the losses in investment revenue alone, 2014 is not achievable.

Rather, though, than dictating a date or simply putting a finger on a time on the calendar, if you will, I'm suggesting that, as part of the more formal process of consultation with all of our stakeholders, we work it out together and that, I believe, as the deputy has said, by the fall we will develop a comprehensive go-forward plan that should include that aspect as well.

Mr. Peter Shurman: So you expect—and I'm talking now particularly with regard to the private sector employers, which is where the real problem lies—that the consultations that you've started would be ongoing and that the strategic approach—and you gave us 7% and 7%; a 7% return and a 7% reduction, was it?

Mr. Steve Mahoney: Yes, a reduction in lost-time injuries.

Mr. Peter Shurman: And also that a reduction in long-term payments—a tightening up of the belt, if you will—is still achievable. Do you think that there's a strategic approach to things that encompasses those numbers on a go-forward basis?

Mr. Steve Mahoney: I really want to give all of the people who have done tremendous work in this consultation process the opportunity to sit with us, to get reports from our staff and to analyze the impact.

One of the real benefits of this consultation process has not only been the many different ideas that have been put on the table by our stakeholders, but it has also been the learning process that our stakeholders have undergone in learning about the complexities of the compensation system itself.

In the past, one of my concerns, when I announced the consultation, was that there was a methodology of consultation at the WSIB in days gone by where we would simply tell stakeholders what our goal was and then have a meeting that was called consultation but, in fact, was mere education. We wanted to change that, and that's what I have set out to do: to make sure that it's meaningful consultation; that we listen to the ideas; that we discuss them, we research them, we debate them, not ad nauseam, but to the point of ensuring that we get the best input available from the various groups.

There are some very well-financed, very knowledgeable organizations in the construction industry and in the manufacturing industry. Yesterday, I was speaking to a group in Waterloo in the automotive industry. These people have tremendous knowledge and input, and I think they're the people, including the labour movement, I would add, who, every day—I've had many meetings. In fact, I had a meeting scheduled with the new head of the OFL, Sid Ryan. We have talked, but unfortunately his wife, I believe, had a health problem and we've had to postpone that meeting, but it's coming up.

I want to hear from all sides on this thing. Rather than just simply telling them what the date is or what the chart

looks like, we want to involve our stakeholders in a very meaningful way.

Mr. Peter Shurman: It's a lofty goal, and I applaud you for it, because at the end of the day, you can consult until the cows come home, but if you don't come to some conclusion that works on all our behalf, then we have a big problem.

You made a statement sometime within the last year, and I'm quoting here: "Any allegation that we're close to financial ruin is outrageous." If you were a private insurer, you know that you'd be toast. You can't do that on the private side and get away with it, so on the public side we have to take a look at it. The Auditor General did express his concern about the lack of business principles applied at WSIB. Again, that is a quote. Is that a justifiable concern?

Mr. Steve Mahoney: If we were a private insurer, we would not be allowed to carry an unfunded liability. They're regulated—

Mr. Peter Shurman: That's the point.

Mr. Steve Mahoney: Let me finish, sir. They're regulated through Ottawa. If that were the case, then we would take the one third of the premium that is allocated toward servicing the unfunded liability, and that would reduce the unfunded liability by a substantial amount. We do not use that figure in the calculation today, because it's there for ongoing servicing of the UFL. So the problem we would have, as my actuarial folks have pointed out, is that once we took that out of the premium and used it to pay down the unfunded liability, there would still be a very substantial amount left over. The only option we would have at that point would be a dramatic increase in premium rates. I don't think that's acceptable. That's not something that my board wants to see happen. So we do need to work together.

I do not believe that the WSIB is in financial ruin or even, as Mr. Marshall has pointed out, in financial crisis. I do think, and have thought from the day I arrived in the chair's office, that there's a very serious problem with the unfunded liability.

The real benefit to eliminating the unfunded liability is that it would free up the one third of that premium, which could then be used to either reduce premiums or increase benefits, or a combination of both. So it's a target.

We're working together. I'm actually very confident, with David's help and our entire staff, and working with our stakeholders in our new process of consultation, that we're going to arrive at a date. I see 2010 as being a transformative year, and you can quote me on that if I'm still around in 2011. I think 2010 is a very important year. With our new president on board, with the stakeholder consultation report available, with the very cooperative relationship we have working with the Ministry of Labour, I think we're going to see a new strategic plan.

Mr. Peter Shurman: When would you expect to be able to say, "We have this new strategic plan, and by the way, the end result is this new date by which we will

reduce the unfunded liability to some number or we'll have a new plan to deal with the UL"?

Mr. Steve Mahoney: Very simply, I reiterate my point that I want the opportunity—my report has gone on our website as of yesterday. I want the opportunity for feedback on the report. I would encourage and invite all members of the committee to have a look at it and share any comments or suggestions that you might have. I'd be all ears. But I want to meet with our stakeholders. I am not going to dictate some prefabricated date based on figures that have not had full discussion and opportunity for the stakeholders to have input.

Mr. Peter Shurman: The Auditor General says that if every single worker in Ontario were covered and employers were paying the freight, you still couldn't meet the unfunded liability. That's a very significant statement.

We know that Bill 119 extended coverage to construction. That was clearly an effort to address a huge need for cash, but it is vastly insufficient, if that's what you were depending on—I know you weren't. Can we expect that, however—and maybe this question is better directed to you, Deputy Minister—to be a scene-setter for future WSIB expansion or extension to pervasive coverage of Ontario workers?

Ms. Cynthia Morton: I think the ministry is open to discussing any and all of the levers that are affecting the fiscal strategy, going forward, for the WSIB. Whether those are within our purview or within the responsibility of the WSIB itself, we're prepared to look at them and assess whether in fact there's a need for change.

With respect to the timing for looking at those issues and coming to some conclusions, we're looking to the fall of this year to have a framework going forward.

Mr. Peter Shurman: So if I'm reading between the lines here, you're not closed to the consideration of bills like Bill 119 covering other aspects of Ontario labour life. You're not saying you're doing it, but you're not saying you're not.

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Ms. Cynthia Morton: We're not saying we're not doing anything at this point. We have to do the analysis. We have to consider the options. We have to see how the levers interact with each other, what makes the most sense for Ontario and the workplaces of Ontario. It's all on the table for analysis, assessment and, indeed, advice from stakeholders, as the chair has noted.

Mr. Peter Shurman: One final question for you, Mr. Mahoney, and you, Mr. Marshall, if you care to add to it. Another quote: "We are giving fair warning that if the unfunded liability is not addressed, premiums will increase." That was you, Mr. Mahoney. Who were you warning and what time frame were you talking about?

Mr. Steve Mahoney: I believe that was taken out of a letter that I sent out to employers who in fact were receiving an increase in their premium when we changed our format somewhat for 2010 premiums. It was my view that it was the vast majority of employers in the province who were doing a good job in the area of health and

safety, and I had some difficulty personally in supporting a premium increase to a company that had done a good job in health and safety and shown good results. So we changed, for 2010 rate-setting, the way that we calculated the future premiums for 2010; we do this in 2009 to set the 2010 rates. What we arrived at was that 36,000 companies out of the 238,000 that we cover were in fact below the bar, if you will, in terms of their record, or more importantly, they were in rate groups that were below the bar. And 202,000 were above the bar and achieving good success in their health and safety, so those that were above that bar received zero increase in their premiums, and the 36,000 that were identified in the poor-performing rate groups got an increase. So that's really where that came from.

But the point of my letter to those 36,000—there was a lot more in it than that statement. We have realigned the health and safety associations. We want these 36,000 companies that are receiving a rate increase in 2010 to be on the other side of the ledger, if you will, or to be above the bar next year and to work with our health and safety associations to improve their lot. I believe one of the issues that I have identified, in fact, in the consultation is that the larger companies that can afford the full-time employees, health and safety folks and things like that, don't seem to have as much of an issue as the smaller to medium-sized firms, where it's seen as a financial burden for them to have full-time staff on board. Where that occurs, we would like them to work more closely with the realigned health and safety association.

Included in the cost of their premium is a package or a bundle, if you will, of health and safety programs that are available to those companies at no additional cost. As was pointed out yesterday morning in my delivery in Waterloo, one of the questions came out about this very issue and the questioner was surprised when I told him that they would not have to pay, for example, IAPA, who have now been rolled into a new organization—that they would not have to pay for additional health and safety services, and that those services would be available to them at no additional cost. It's included in their premium. So it's a whole package of things to try to identify to those 36,000 firms that we think they can do better and we want to help them do better.

Mr. Peter Shurman: That's fine, and I appreciate the explanation. Let me get you to just expand a little bit on it. The implication read from that line in the letter by people whom I've spoken to seems to be that it was a threat—not a nasty threat, necessarily, but the facts of life are you've got to fund things from somewhere. So it seemed to people, and I'd like to hear your thoughts on this, that what you were warning of was the possibility of an across-the-board rate increase to employers, notably at a time where employers are just not looking to spend any more money on anything.

Mr. Steve Mahoney: I wasn't doing that, but I was just simply saying, and I think the auditor points out in his report, that premium rates have not kept up in that regard. It's clearly an issue that needs to be addressed.

What I would like to do is find a way, going forward, and I know my board supports me on this, where we can recognize the good performers. There are many companies that have had one million, two million, three million hours without a lost-time injury. Some folks in the labour movement would say it's because they're not reporting their injuries, but we've looked into that. There are many companies that in fact have excellent records in terms of health and safety, who work with their unions, who work with their staff, who provide safety equipment, who have joint health and safety committees, who keep minutes etc.

We think it's important to recognize that, and keeping their premiums down is one way of doing that. So the statement that you quoted, taken out of the letter, certainly sounds harsh, and it was not intended to be. I did answer some phone calls and some e-mails from some angry folks who thought I was being a little bit belligerent. That was certainly not my intent.

Mr. Peter Shurman: Thank you, Mr. Mahoney, and thank you, Chair.

The Chair (Mr. Norman W. Sterling): Mr. Zimmer.

Mr. David Zimmer: I just have one question, and then I think my colleagues have some questions.

My question is to the President and CEO, Mr. Marshall. In the conclusion of your remarks, you made the following statements: "Eliminating the unfunded liability must be dealt with, or at least an acceptable level of funding found." You then went on to say, "Everything is on the table" in terms of solutions. The next point you made was that you were looking at some very "tough decisions," and your last sentence in your remarks was that it was important to "find the right balance." My question is: What do you think the right balance is and, second, how do you get to that right balance?

Mr. David Marshall: You're quite right in referring to the fact that I've said, "Everything is on the table." In doing that, I deliberately put on the table whether there should be full funding or not. I think, as an honourable member has pointed out, that when you look at trying to find \$11 billion in a short period of time, it could pose an impossible kind of burden on businesses, especially since the majority of our clients or our people who fund us through premiums are small and medium enterprises. So the issue of trying to find a balance to get to a place where you're more healthy than you are today, whether you can get to full funding right away or not, is something that, as the chair has pointed out, we've got to take advice and consultation on. We'll be talking, of course, to the Ministry of Finance and a number of other people to see what the right balance is. Obviously, we want to start with, let's get fully funded. Backing up from that point, what steps have to be taken, and then have to be recalibrated, to bring a package together that makes sense? That's really what I meant.

Mr. David Zimmer: As an experienced executive, civil servant and banker, what's your personal philosophy on this issue of getting the right balance and what the balance is?

Mr. David Marshall: If you ask me, I think I'd like to get to full funding or maybe even a little beyond, because you can't predict what can happen. As I think I pointed out, it's going to take some years to get the fund back on track. It took almost 25 years to get it to 70% funding from 31%. You can't predict what might hit you over the years to come, so I think you do need a cushion. That's my philosophy. I would like to see full funding, maybe even a little beyond, but I'm going to consult with stakeholders, see the art of the possible and get the best possible combination to bring forward.

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Mr. David Zimmer: Do you have any preliminary views, leading into the consultation, as to how you might get to that balance? What do you suspect might be the right road to getting the balance?

Mr. David Marshall: I guess I always start from where you are, and I try to make sure that I'm trying to understand whether you're making it worse or better. You have the past; let's make sure we're not making things worse from here forward.

In trying to look at that aspect of our operation, what I found was actually quite encouraging. If I look at the premiums we are collecting today versus the payments we make today, both for administration, the claims that are due this year that are ongoing but that we have to meet this year, I find that we in fact have a surplus. So we're not making the unfunded liability worse. We're okay, if you want to call it that, today, and that's encouraging. The issue is how you deal with the fact that revenue wasn't sufficient to meet your payouts until now, and you have this liability.

In addressing that, one of the things we can operate on, if you like, that everybody agrees we should operate on, is trying to get workers back to work earlier than they have been. That rate has been slipping badly, and you can assign all kinds of reasons.

What we're finding is that employers are taking on workers who have been injured, in order not to report lost-time injuries and therefore suffer a penalty. And then, after a certain window of time, a three-year window, we find that worker coming onto our books to be compensated. Now, that window happens to coincide with the window in which employers are judged as to whether they should get a penalty or get a refund. Once the window is over, the worker comes back on our books.

That's three years after the injury, so now you've got a worker who has to somehow be helped back into the workforce, given training, given help with the issue. There are all kinds of social and cost issues.

This is the kind of thing we need to be able to get at—that we can control, if you want to put it that way—and that everybody agrees we should control. I would say that's an encouraging aspect, if you want to call it that, in the sense that there is something concrete that we can do.

As I've shown you in the chart, the workers who come onto your books and are going to be staying there for 40 years are the most expensive. So we want to get them back to work, and even last year the group has already

been doing a new service delivery model designed to assess the situation for a worker holistically as early as possible, and also to adjudicate claims quicker so that you can get to the issue before it starts to become a long-term and entrenched problem.

I think we want to tackle those things vigorously for sure. I'm going to challenge our team as to how much we can do down that path, whether we can reduce our rate of long-term beneficiaries by half. What would that do to our income stream?

Then of course, there are all the other levers the auditor talked about, and questions have come now. Should you expand coverage to include more workers? All the other provinces do. Should Ontario do it or not? Our premium rates: What should we do with premium rates? Probably very sensitive, because, as I say, the economic times are not great. But you've got to balance the books, so what's the answer? That's what we're going to—we'll set out some of the bones of it, and then we'll head out and start talking to people and come back and propose.

As I've said, there will be tough decisions. You're not going to find \$11 billion hanging around. There will be tough decisions.

Mr. David Zimmer: Thank you, Chair. I think my colleagues have some questions.

The Chair (Mr. Norman W. Sterling): Ms. Sandals.

Mrs. Liz Sandals: I think this leads into where I wanted to go, talking about claims duration, because you were already touching on that somewhat.

You've given us a chart here which is predicting, if you have a claim today, where the cost falls in terms of the "out" years. From your remarks, Mr. Marshall, and from some of the auditor's, it looks like the experience over the last several years has been that the actual duration of claims is, in fact, growing from what it might have been. I wonder if you can offer any insight to the committee on the different reasons—and I'm guessing that there might be more than one—why we're experiencing that increase in claims duration. Then I've got some follow-up.

Mr. David Marshall: Mr. Chair, I have—

Mrs. Liz Sandals: If you would like to include your staff who know all these things, feel free.

Mr. David Marshall: I appreciate that. I do have, if you like, a 30,000-foot view of this in the few weeks I've been there, but I think you probably would benefit from a more substantive answer. I wonder if I could ask, Mr. Chairman, our chief operating officer, John Slinger, to join our table?

The Chair (Mr. Norman W. Sterling): Certainly.

Mr. David Marshall: John, did you hear the question?

Mr. John Slinger: I did. It was an issue that we took a number of years to unfold. I think Mr. Marshall referenced the fact that when legislative change occurs, it often takes a long time to understand what the impacts are of those changes. Sometimes, those impacts aren't

what you expected or aren't what were intended by the changes.

When we started to see the long-term claims go to the legislative lock-in point in higher numbers than had been the case in the previous legislation, we brought in the Institute for Work and Health to assist us in a study of those long-term cases to understand what the drivers were. They identified three major drivers.

The first was the legislative change that occurred in 1998, which was really quite dramatic. It had been a system in which there were prescribed legislative interventions very early on, an internal system of vocational rehabilitation and a number of built-in review points, all intended to keep the worker and employer very close to the WSIB. In a review that was conducted prior to the 1998 changes, recommendations were made that, in fact, the board was too involved and that if you simply left it to the workplace parties, they would achieve the best outcomes, and that you should simply rely on your incentive programs and things would by and large work out. If they don't work out, the suggestion was that you could arrange for labour market re-entry services.

The impact of all of that was the creation of an outsourced labour market re-entry program and about 400 vocational rehabilitation folks ceasing to be internal. There was a clear distinction made that the employer and worker would work together, and if they couldn't arrange anything, it would go to an outsourced labour market re-entry program to assist the worker in retraining. Of course the board's model for service followed that. It was very clear to the Institute for Work and Health that that had had a very significant impact.

But it wasn't the only thing they found. They also found some significant changes in health care, especially prescriptions for narcotic medication, especially OxyContin. This probably doesn't come as a surprise to a lot of people around this table because I think we've been hearing a lot more about it, but it was clear that there were increases of the magnitude of 100% in prescriptions for narcotics and a higher daily dose for narcotics and prescriptions earlier and earlier in a claim. Certainly, a lot of the studies that we have reviewed suggest that the long-term outcomes for workers are not positive. Again, the kinds of medication we're talking about are highly addictive.

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The third major piece was the WSIB's incentive programs. Of course, when you go to a self-reliance model, your incentive programs become especially important. What the study found was a growing trend towards workers re-entering the system, sometimes years after the original injuries. For example, the institute found a strong correlation between increasing durations and higher rates of recurrence—and this is where a worker goes back to work but then returns to the system—especially at later points in the claim.

They also found that second-injury enhancement fund relief, which is used to reduce an employer's cost in the case where there's a pre-existing problem, had risen

again by 100% over that 10-year period, to the point where we were actually relieving employer costs for the purposes of experience rating by 31% of our total costs, again diminishing the overall incentive to the employer to take the injured worker back and to sustain that return to work over the long term. The suggestion was that when we went to a self-reliance model, employers, in some cases, became self-reliant, not in ways that necessarily achieve positive results for injured workers.

Those were three very critical findings, all of which we have used in developing a number of the responses that we're pursuing right now.

Mrs. Liz Sandals: So to follow along, if I'm understanding correctly from some of your comments and some of the auditor's comments, you've got self-reliance, medical prescriptions and the incentive model.

Let's start with the meds. Because clearly you're not the doctors, is there anything you can reasonably do to intervene in that change of practice by doctors to get into prescribing these painkillers?

Mr. John Slinger: Our model is that workers are treated by community physicians, and community physicians prescribe medication. In the ordinary cases, we, of course, go along with whatever the doctor recommends.

Shortly after this report came out, we developed an external drug advisory committee. We started looking at formulary changes we could make to actually limit the narcotics that were being prescribed, both in terms of the nature and the timing of those prescriptions—

Mrs. Liz Sandals: So if it's the WSIB that's covering the drugs, you may be able to do that in terms of what you're covering?

Mr. John Slinger: Correct. That's right. We got some excellent advice from our drug advisory committee. We then approached the Ontario Medical Association and worked with them, and towards the end of last year, in fact, came out with a new formulary, which is very much a narcotic-control formulary and limits the narcotics that can be prescribed at different points in a claim.

We looked at what other provinces do. Some do more than others, but we're satisfied that this is probably the most aggressive narcotic-control program that now exists with any workers' compensation system in Canada.

Mrs. Liz Sandals: Good. So that's a creative way to get around something that's clearly outside your normal mandate.

The self-reliance model: If that was legislated, is there anything you can do in terms of whatever flexibility you do have without having to reopen the legislation—to work within that?

Mr. John Slinger: I think that's an excellent question. While we certainly have seen some negative impacts as a result of the legislation, it is very much the legislation we are working with, and we need to take appropriate steps within that legislation.

What we did, in introducing a new service delivery model—we started rolling it out in late 2008 and completed the rollout in 2009—was to develop some

specialty programs and specialty positions in front-line roles and set mandatory review times.

We created, for example, return-to-work specialists who are now in the workplace; they didn't exist before. We are making decisions. Because of a new eligibility specialty role, we're now making—I think the number is close to 90% of all decisions within two weeks, because we found from the institute's study that the longer it takes us to make an eligibility decision, the less involved the parties are in discussing the return to work. It's more about eligibility. That has certainly helped.

We have seen some early improvements from those changes. We have seen some duration improvements at the front end, but it's really based on designing some roles that could be much more interventionist. So the self-reliance model we're getting away from in many respects—

Mrs. Liz Sandals: So you now have an interventionist self-reliance model.

Mr. John Slinger: That's correct. But I think the key is still having an incentive program that works effectively. For example, we have created a centralized team to do all of the second-injury enhancement fund relief decisions. It was previously spread out among 600 case managers. We needed to get real control and consistency and discipline around what we were granting second-injury enhancement fund relief for, because that can act as a disincentive to return to work. So we've created a specialty team. We're monitoring those decisions, and certainly we're seeing those numbers come down. We're seeing much more consistency in those decisions.

I think the area that we're really moving to now, consistent with the other changes we've made, is the labour market re-entry piece, which is the other very significant change that occurred through legislation. The value-for-money audit that has just been released that KPMG performed, in our view, is critical—

Mrs. Liz Sandals: And what did they look at precisely?

Mr. John Slinger: They looked at the effectiveness of our labour market re-entry program in the context of best practices for injured worker reintegration into the workforce. They looked at a number of different jurisdictions. I think they provided some very sound advice.

One very important finding was that more needs to be done to reconnect the worker with the injury employer, that the opportunities for workers to be successful with other employers are not nearly as good as with the injury employer. Instead of this division between returning to work with the injury employer and then retraining and working for another employer, we need to look at that as an integrated whole because, if it takes retraining to get the worker back to the injury employer, that's what we should be doing. We shouldn't be losing that connection. That was certainly a key.

There were other things around greater accountability with our providers, more monitoring, more choice for injured workers, a better complaints-handling system, those kinds of things, but from our point of view one of

the key pieces is this notion that we can't separate those two. They need to be integrated. Again, it isn't what the legislation suggested, but it's certainly what all of the evidence is now telling us we should do.

The Chair (Mr. Norman W. Sterling): We're going to move on to Mr. Miller at this present time.

Mr. Paul Miller: Welcome. Good afternoon, everyone. I see in the auditor's report that he has mentioned that cost reduction measures are needed on the operating costs of the board to meet future obligations. Mr. Marshall indicated that he was happy with what's going on in the board as far as administration goes and the departments. I don't know if I share that opinion. I have some concerns, and I've mentioned it many times before. I have grave concerns.

I believe in your opening remarks you mentioned experience rating. I think this is a horrible system. It's costing plenty of money for the WSIB to pay out bogus rewards to companies. Even some of these companies under our investigations have had fatalities, and when we brought that forward last year, the board finally said that they would penalize the company for one year on their rates and things like that.

So I want to know if the new CEO is going to eliminate experience rating and also eliminate the process of deeming, which has had a negative impact on injured workers. Are you prepared to handle that?

Mr. David Marshall: I'm certainly prepared to look at it. I don't know where the conclusion will be. We've got to make sure that we understand all aspects of these issues. I've said already that the experience rating system does need to be looked at, and I think that's the view of a number of people, and we will be doing that.

The issue of deeming I'm not really that sure about, and I will defer that to our chairman, but I can assure you that every line is being looked at.

Just in terms of administrative expenses, there are numbers that are quite publicly available that show that Ontario WSIB's administrative costs as a percentage of premium revenue are the lowest among all the provinces in Canada. So I think they've done a reasonable job on that score.

Mr. Paul Miller: In reference to that also, they have taken in more money and seem to have a lower percentage right now at 53% of unfunded liability, yet they took in twice as much as the province of Quebec in actual premiums, so I'm not quite sure. They only had 329,000 claims and the province of Quebec had 175,000. That's not a big difference between provinces as far as the number of claims, I think, especially when you take in double the revenue. I'm not quite sure where the money's going or where it's being spent in those situations.

1400

You showed us a chart here of 1983 and on. I know that when I went to work in the early 1970s for the job I spent 30-odd years at, the very week I started in that job, I had three opportunities to start apprenticeships at three different places: Westinghouse, Firestone and Stelco,

who are all gone. They employed in the neighbourhood of 32,000 people in the city of Hamilton. I think Stelco, which is now US Steel, is down to about 2,000. You probably have got less fees coming in, there are fewer people working now, there are more companies leaving Ontario, so that would probably play a big role—it's beyond your control, mind you, but it does play a big role in the lack of income for the board. That's not really dealt with or mentioned in here.

I would also express and ask you a question. You were quite proud of the fact that in 1983, it was 49.3%. Here we are in 2010 and we're at 53% or less. That, to me, is not a great improvement. I see that in the late 1990s to 2002 era, the highest we got was 66%. Can you explain to me why the other provinces always maintain a higher level than we do? I realize we have more people, but from what I can see, they are mandated by legislation to keep their levels at a good percentage. I don't know how you could possibly be happy with 53.5%. In fact, with our pension plan at the Steel Company of Canada, the alarm bells are going up now. We're at 51%, and we're usually funded at 80% or above and have been for many years. Our defined pension plans are under attack too, so you're not alone in that area.

Maybe you can answer that, why you're happy with 53.5%.

Mr. David Marshall: I'm certainly not happy with 53.5%. What I was trying to illustrate with the chart was that the WSIB directors, in consultation with stakeholders back in 1984, set a trajectory to get into fully funded status by 2014. What this chart shows is that they were making pretty good progress towards that goal. In 2006, for example, they had reached 73.2% funding. We're on target to reach 2014. I was just trying to show that there was a plan, it was on target, but it got blown off by the recession that has occurred all over the world.

I'm certainly not happy with 53.5%, and that's one of the reasons I took this job: to see if I could put my shoulder to the wheel and make a difference.

Mr. Paul Miller: I'm counting on you.

That comment dovetails nicely into my next question. I see in the auditor's report that \$3 was the premium back in the early 1990s, and it has dropped to \$2.26 as of 2008. I'm not a businessman—I'm from a labour background—but common sense would tell me to ask: Why wasn't it maintained at \$3 for the bad times? Why were all governments interfering with the WSIB—and they do on a regular basis to gain votes or to win elections—"We're going to lower the business rate for you." I think that's wrong.

They keep telling me in the Legislature, and I have trouble absorbing this, "We're a standoff overseer. They're a stand-alone entity." I don't think so. It doesn't appear to me—I think they're really involved, and I don't think the government in any province should be that involved in setting premiums—which you mentioned, deputy minister: that the government does set premiums. They're not running the day-to-day operations; they don't know what they're up against. I'm not quite sure any of

them are aware of any forensic audits, and I imagine if you asked any member of the government, they couldn't give you any details on a forensic audit.

I think it's out of our element and I think that the government should not be involved. I don't know why they are, and maybe you can explain to me why they're involved.

The Chair (Mr. Norman W. Sterling): I think the deputy might want to comment at this time.

Ms. Cynthia Morton: Just to clarify, I did not say that the government was setting premium rates. The government sets benefit levels and assesses coverage by way of regulation.

Mr. Paul Miller: Okay.

Ms. Cynthia Morton: It is solely the decision of the board of directors of the WSIB—

Mr. Paul Miller: To set the premiums?

Ms. Cynthia Morton: To set the premium rates. Absolutely.

Mr. Paul Miller: Was someone asleep at the switch? Mr. Mahoney, would that be a fair statement? Letting it go from \$3 down to present levels—if I'm not mistaken, in this report it said that we would be at a \$4-billion deficit at this point, as opposed to \$11.5 billion, if we had left it at \$3. Would that be fair?

Mr. Steve Mahoney: At one point it was \$3.20, and I think we would have been in surplus had it been left. But hindsight is pretty good, pretty easy.

I guess part of the problem is, and it's hard for us to speak to either who the government was in the early 1990s or who the chair or the board was, but decisions are generally made based on a number of factors when you're setting a premium. One of them is the impact on the economy. When you're in tough times, you try—at least, our current organization tries not to drive business out of business by raising premiums too high.

Was someone asleep at the switch? Mr. Chairman, through you to Mr. Miller: Your guess is as good as mine as to why that happened.

Mr. Paul Miller: Yes, well, I can see your point, but good business sense—the WSIB is a public venture but I do believe it's supposed to be run by business people or should be run by business people who foresee downturns in the economy, foresee global recessions. These are all factors that we've all gone through, right back to the Great Depression, so it's not a new thing that has happened.

I think that contingency funds are important for the bad times. I'm not quite sure that was done properly. Sure, like you said, I can complain now when it's all over and we're in trouble, but I think that's one of the biggest problems. In my short tenure at Queen's Park, I've seen a lot of this poor planning for the distant future, for the possible hard times. Maybe that's another thing government could look at to put you in a less vulnerable position for criticism as far as setting you up for these types of meetings where you have no control over a global economy.

We do have control over internal policies. You do have control over experience rating and things like that. I for one would think that an employer in this province should not have to be rewarded for a good safety record. Yes, you can give them a plaque or you can give them a nice golden, I don't know, polar bear, but they don't require millions of dollars for keeping their employees safe. That should be a built-in want of an employer.

You know what the worst part about that whole situation is? They don't use their rebates to improve the safety situation. In fact, in a lot of cases—and correct me if I'm wrong—the board doesn't get the reports they should get from the injured employees. A lot of employers say, “Look, you come in and answer the phone, Mr. Miller. Don't report your accident. Then my premiums will be better and I'll get a better experience rating cheque at the end of the year.” That happens. It has happened to me so I know those things go on. That's another thing the board could look at to save themselves a lot of money.

As the new CEO, I hope that you're going to go after these types of expenditures that are uncalled for, not needed. I could go on forever, and I won't, on that situation.

The Chair (Mr. Norman W. Sterling): Mr. Miller, with your deference, could I just ask one question, because it's a key question that I would like to see the committee have a response to, and that is: Under the Workplace Safety and Insurance Act, as the auditor has pointed out, “The board has a duty to maintain the insurance fund so as not to burden unduly or unfairly any class of schedule 1 employers (generally all private sector employers) in future years with payments under the insurance plan in respect of accidents in previous years.” The board is challenged, or required by legislation—and I believe that this act was preceded by a similar suggestion—

Mr. Paul Miller: You owe me. You're cutting in on my time.

1410

The Chair (Mr. Norman W. Sterling): I'm not cutting in on your time. We'll take it out of the PC time.

Mr. Paul Miller: Okay.

The Chair (Mr. Norman W. Sterling): What I am concerned about is the same thing Mr. Miller is. I've been here for all of this period. I was in Bill Davis's cabinet in 1984 when we had this 30-year to plan to solve it in 2014, and we appear to be no further ahead now.

You're using the economic downturn as an excuse that you're down to 53%. Quite frankly, I don't buy that. Your improvements during the good economic times are not good enough. One year you had 16% return on equities, and your number didn't jump high enough. The economic downturn is not an excuse to legislators who want this problem solved in the long term. How do we prevent this same meeting happening another 20 or 30 years out?

I believe that the problem is the relationship between the boards that the governments, present and past, have

appointed—will not act independently. How do we call them to account to the people?

Mr. Steve Mahoney: I suspect there are a lot of people—to your point and to Mr. Miller's earlier point—who would have been delighted had they predicted the downturn in the global economy. I don't think anyone was immune. While not citing that downturn as the sole reason or as an excuse, the WSIB is not an island. We were impacted fairly dramatically by the downturn in the economy.

What's really interesting to me, though, is that the only time the WCB was ever in full balance of its liabilities was day one, when Justice Meredith opened the doors 100 years ago, plus or minus. One of the things that was done for compensation boards across the land was to give them the ability to carry an unfunded liability, and the reason for that, as Mr. Marshall pointed out in his presentation to you earlier, was that employers do not have to pay the full costs of the injury as it goes year by year, month by month, week by week. In fact, they can defer some of those costs, and those costs then generate your unfunded liability.

So if we want to change that system—what's happened in Alberta and British Columbia, for example, is that once they achieved full funding, they passed legislation that said that they can never go into a deficit-funding position again. I believe the Auditor General met with or was involved in discussions with those organizations. What would happen is, there would be an automatic adjustment of premiums. They would either go up or down. In fact, if I'm not mistaken, at the last meeting held here in Toronto of the Association of Workers' Compensation Boards of Canada heads of delegations, chairs and presidents, Alberta reported that they were 122% funded. So they've got a 22% cushion on top of their full funding. If they go into an economic downturn, they can use that cushion to avoid having to adjust the rates.

I think that would be an ideal situation for us to achieve here. Maybe 122% is too high. That, after all, is employers' money, and we are a compensation system, not a bank. But 110% was always the figure that we were targeting in our strategic plan. We wanted to get to the point where there was 110% funding. That is the goal.

At the same time, Mr. Chairman, for someone who has been around as long as you have, you know full well that this has always been an issue—

The Chair (Mr. Norman W. Sterling): That's why I want to resolve it. And we're not resolving it by your answer, because what you're doing is acknowledging that you're not going to get to 100%, and I think we have to. You haven't answered my question, with respect, with regard to the obligations of the board and the responsibility of the board to see that the legislation is followed. They're not following the legislation now; they haven't for 30 years. We have to have some kind of legislation or some kind of mechanism to say to the board: “If you don't fund it, you are liable; you are responsible.” I'm sorry, Mr. Miller.

Mr. Paul Miller: It's okay. Getting back to my initial train of thought here: What percentage of the board's investments would be in the volatile stock market? What are you allowed by law to put into mutuals or volatile funds?

Mr. Steve Mahoney: Could I ask our chief financial officer to come forward: Anthea English? She can perhaps share those specific numbers with you.

Ms. Anthea English: Hello. Our investment asset mix has changed over time. If we go back a couple of years to the beginning of 2008, we had an asset mix that was just under 60% in public equities, 6% in real estate and 35% in fixed income, primarily in bonds. At the beginning of 2008, we realized that we needed to shift that investment strategy in order to reduce the volatility of our returns, while still targeting a long-range return of 7%.

So we started developing a new strategy at that time, in consultation with the very expert advisers whom we have on our investment committee. We developed a new strategy where we are moving towards a mix of returns that will give us the returns that we need in terms of 7% long-term, but with less volatility in the system. So we're moving into private equities, infrastructure and more private real estate holdings as well.

Mr. Paul Miller: Okay. To interject, I guess as long as it's not Bernie Madoff running your portfolio, I'll be happy. I'm thinking here—and it's just a suggestion, or maybe you could come back with an answer—that, because of the volatility of the world markets and what we've seen in the last two or three years, would it not be prudent of the WSIB to think about more fixed assets: more GICs? Three per cent is better than losing 15%. I think your portfolio mix is too high in the—how would I call it—risky end. You seem to have demonstrated to me that you made some changes in 2008 that would be more conservative, but I don't think you've gone far enough.

I think what happened to a lot of the pension plans in North America was the fact that companies were all allowed to play the market to subsidize their private pension plans—I'm not talking about government pension plans. They find themselves winding up pension plans all over North America. So I'm thinking that, with the dollars from the businesses that are paying into the WSIB, they would want to see a conservative investment scheme by the board so that they feel that the dollars they're paying in premiums to you are being utilized to the best of your ability so that their premiums won't go up.

That dovetails nicely into what the auditor said. He said that “the very existence of the unfunded liability demonstrates that, over the years, the province's employers have not fully funded the costs of injuries and occupational diseases, so these liabilities will need to be funded by future employers.” With the government's initiative to bring more businesses to Ontario and to make it more attractive, you're not going to want to have a workplace compensation system that's going to increase their premiums. That was one of the biggest problems that was pointed out earlier, that it was kind of

attractive to have low rates for businesses. So today's investments could mean future jobs and companies coming to Ontario with a WSIB plan that was better funded and more secure. Would that be a reasonable road for the WSIB to take?

Ms. Anthea English: In terms of our investment strategy, in fact, the target for our more volatile investments is 15% of the investment portfolio being in public equities. We feel that that is an appropriate level of that type of diversification. On our investment committee, we have extremely qualified advisers who guide us through the process of being able to set an investment strategy that will deliver solid returns with reduced volatility. We feel that we have that directory in place. Of course, it's not in place at the moment. When you're shifting an investment strategy, you don't want to do it overnight because it crystallizes the losses that we have seen in 2008. We are in the middle of the transition to that strategy, and the expectation is that it will take a five-year period. We're now moving into year three of that strategy change.

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Mr. Paul Miller: Last year, Minister Fonseca made a presentation to us. At that time, I asked a question which has fallen on deaf ears, and I didn't get a response. I'm still waiting. You worry about operational costs. It has come to my attention more than one time that there are significant bonuses paid to WSIB employees for keeping the claims down, whatever they're doing. No one seemed to want to talk about the fact that some of the executives were getting performance bonuses, if you want to call them that. Is this true? Do they exist?

Ms. Anthea English: In terms of our administration costs, our operating costs, this is an area that we've paid a great deal of attention to. As our CEO mentioned earlier, those costs have remained essentially flat for the last five years.

Mr. Paul Miller: They do exist?

Ms. Anthea English: In terms of executive bonuses, they have existed in the past. They were suspended when we realized that we were in an economic downturn, so there will be no executive bonuses paid for 2009.

Mr. Paul Miller: Could we possibly get a number on the bonuses that have been paid out since 1983? Would that be possible?

Ms. Anthea English: I think I would have to look into the implications of that, but the salary disclosure that is provided publicly for the Ontario government agencies does include all monies that are paid to all members of the WSIB who earn over \$100,000 a year.

Mr. Paul Miller: Including their bonuses?

Ms. Anthea English: Oh, yes.

Mr. Paul Miller: But there's no breakdown for it?

Ms. Anthea English: Not generally, no; I don't believe so.

Mr. Paul Miller: Okay. I'm just curious about that.

They've laid out four different areas where they could solve the unfunded liability. They're talking about increasing premiums, examining administration costs,

and there were two others. I don't have them in front of me, but there were four of them. I believe that the approach was to cut benefits, and there was one other.

Do you feel that at the WSIB, which was mandated originally to provide coverage and health and safety and to protect injured workers, that one is off the list, the one about decreasing benefits to the recipients of the claims or shortening their period of collecting? Is that one of the things that you're looking at?

Mr. Steve Mahoney: Mr. Chairman, perhaps the deputy would like to respond to that particular issue as it's a government issue.

Ms. Cynthia Morton: The lever of establishing the rates of benefits is in the legislation. I think, though, what the Auditor General report has indicated is that the real cost attached is not the level of benefits but how long an injured worker stays on the benefits. Our benefit levels in Ontario are comparable to every jurisdiction in Canada. We're not unusual with respect to the benefit levels that have been established for injured workers in Ontario.

Where we do struggle is the return to work of those injured workers and how long they stay on those benefits, which is why one of the areas where the WSIB is attending its focus is the return to work of injured workers and the responsibilities of employers through the experience rating program to make those opportunities available to them. It's not the benefit levels, I would submit. I think the Auditor General has pointed to duration being the bigger issue, not the benefit levels.

Mr. Paul Miller: The auditor noted, "In using this approach, the WSIB faces a challenge when unanticipated events, such as the recent economic downturn, result in either higher costs or lower revenues than planned. Ideally, such unanticipated shortfalls would be recovered by increasing subsequent years' premiums." The auditor observed that the "average premium rates are 12.7% lower now than 10 years ago." He also noted that "Ontario's average premium rate is among the highest in Canada."

How would you address this problem?

Mr. David Marshall: Mr. Miller, as the Auditor General pointed out, there are provinces that have a legislated mechanism to increase premiums when costs go up. In fact, if you look at Alberta's trajectory, there was a spike in premium rates. We have the liberty and the burden of making that decision at the board; the board sets premium rates. As the Chair has pointed out, the question is: What are we going to do in terms of those premium rates? My sense is that we're going to be looking at them very closely. We're going to have to consult our businesses. We have to keep in mind what is a bearable burden, if you want to call it that.

We are where we are: We've got \$11 billion that isn't paid for, and we've got a whole lot of small businesses and an economically difficult time. So we're going to have to look at all the things that are available to us, to try first to reduce the duration of time, as the deputy has pointed out, to increase prevention efforts, to make sure

the problem doesn't get worse and then try to recover the past in the best-balanced way we can.

One thing I can assure you, Mr. Chairman, and all members present, is that we will come forward with a plan. I expect it will take us at least until the early fall to do so in a proper way after consulting with our stakeholders. The plan will have benchmarks and will have milestones, so we will be able to discuss how we're doing. We'll be able to receive support and advice on what to do should there be variances. But turning a ship like this, which takes years, is going to need the co-operation, goodwill and willpower of a large number of players, and that's not an easy thing to do, but we're going to have to do it.

Mr. Paul Miller: I'd say so. In reference—

The Chair (Mr. Norman W. Sterling): Thank you.

Mr. Paul Miller: Is that it?

The Chair (Mr. Norman W. Sterling): You'll get another round.

Mr. Ouellette.

Mr. Jerry J. Ouellette: Thank you for your presentation. The WSIB guideline essentially states that the board has a duty to maintain the insurance fund so as not to burden unduly or unfairly etc. Then, Mr. Marshall, your presentation specifically stated earlier on that even today "the system is not in crisis. From the figures I've seen, the WSIB is financially able to meet its obligations as far into the future as one can reasonably see, and that means for at least a quarter-century or more."

Putting the two together, what I'm reading here is that I don't think there is urgency, from the WSIB's perspective, that the unfunded liability is a problem. Would you agree or disagree?

Mr. David Marshall: I wouldn't want to disagree with a member of the Legislature.

Mr. Jerry J. Ouellette: Okay, from your own personal perspective.

Mr. David Marshall: This is why I came here. This is a mess. It's got to be fixed. The thing I'm looking at is how. Obviously, we could jack rates up 10, 20, 30—whatever amount you want to—and clear it up, but that's not going to be feasible and it's not even sensible. So we have to work both sides—the cost side and the income side—and try to bring it into balance.

What I was trying to say when I said it's not in crisis is that I think injured workers, legislators and all of our stakeholders should understand that we are meeting our bills; it's not a crisis in that sense. But it is a crisis in a broader sense, because we're hamstrung. We're looking at rates in other provinces that are lower than ours, and we don't have the flexibility to lower our rates. We can't increase benefits, even though they're not keeping up with inflation. So in that sense, it's a very serious problem and we've got to fix it.

Mr. Jerry J. Ouellette: Okay, we'll play the game a little bit. From a banker's perspective, if I walked into my bank and said, "I have 25 years of financial security; am I in a good position?" the answer would be?

1430

Mr. David Marshall: “I have 25 years of financial security”? I don’t know. Are you an insurance company? No.

I wanted to make sure that people understood that we can meet our bills. Mind you, we have a taxing capability in our legislation. We can raise money to pay the bills, so that’s not the issue. The issue is, what are we going to do to get to financial health?

Mr. Jerry J. Ouellette: The mess that you’re listing is far more than just an unfunded liability. It’s the actual operations of the entire entity.

You also said, “I found that older claims, especially those that are locked in, make up over two thirds of the current liabilities. Many of them—some 130,000, in fact—date before 1990.”

What we’re hearing, and I’m sure what other MPPs and elected officials are hearing, from our constituents is, is there anything being done to address this file? The reason I’m mentioning this is because I constantly hear that every time a new file manager comes on, there’s an entire review of a file, particularly in this caseload. Is that one of the ways to try to manage this, to re-examine it? These individuals are coming to us on a regular basis, saying, “Why are they doing this? Doesn’t this cost them money to redo me for the fourth and fifth time?”

Mr. David Marshall: If I understand your question, are we going to go back over these files again and again—

Mr. Jerry J. Ouellette: What options are being made available to manage the 130,000 cases that represent in excess of two thirds?

Mr. David Marshall: I’m sorry, I’m not sure whether you’re saying we’re going to take time to look them over again or whether we should look them over again.

Mr. Jerry J. Ouellette: I’m just saying, what options are you using to manage that file, which represents in excess of two thirds of the caseload?

Mr. David Marshall: Okay. John, do you want to just come and help us with that?

Certainly, we’re managing them. The issue that I think is important to understand is that many of them are locked in by legislation. In other words, the formula, the benefit, has to be paid; pensions have to be paid. However you manage them, just going to them and cutting them is not an option. That’s what I was trying to convey.

John, do you want to talk about the existing inventory?

Mr. John Slinger: I think what you said is exactly correct. The group of 130,000 claims is related to an older benefit system, pre-1990, which pays out awards for permanent disability for workers who suffered injuries that they have not recovered from and that would limit their earnings. Those are lifetime awards, and those workers certainly aren’t going to recover. Those benefits are determined by legislation.

Similarly, there is another very large group of cases after 1990 that go back longer than six years from now. Those cases have been locked in pursuant to wage loss

legislation that came in after 1990. Those are, again, cases where we have estimated a future wage loss to age 65 and are compensating accordingly.

The cases, obviously, that we can influence on a number of the things I’ve been talking about, in terms of service delivery model, experience rating, narcotic medication and health care—those really are the cases that have not yet been locked in. Obviously, the shorter-term cases are the ones that can more likely be influenced in terms of successful recovery or return to work. The longer a case stays in the system, or the later it returns to the system within that lock-in period, the less likely it is that we are going to influence that worker’s anticipated wage loss.

These all, of course, are permanent impairment issues, and we compensate based on the worker’s capacity to perform suitable and available work, and what that earning is compared to the previous earning.

Mr. Jerry J. Ouellette: I don’t believe that will answer the questions of the individuals coming to our offices. They’re constantly being reviewed. These are individuals where a case would be locked in—

Interjection.

Mr. Jerry J. Ouellette: Yes. Then it’s reviewed once a new file manager comes online. They’re constantly coming in and saying, “Does this not cost the system, when I’ve been reviewed”—or deemed, as mentioned—“several times now?”

Mr. John Slinger: I now understand your question. We had a fairly significant cutover when we went from the old approach to claims, with a single consolidated adjudicator, to short- and long-term adjudicators and case managers, supplemented with return-to-work specialists and eligibility folks. There was a cutover as we transitioned those cases but, quite frankly, since we’ve created those new roles, the amount of movement has been significantly less. In fact, the attrition rate has been less as well.

There were some real issues around the old job in terms of an individual’s capacity to engage in every issue from day one to six years, and we have tried to create better-sized jobs. When we did the cutover, there were about 40,000 claims that were transferred, but the good news from our perspective is in fact we saw short-term durations actually go down as we were transitioning. So the results started to show up fairly early.

There was, however, a transition where new folks who weren’t previously involved in that file had to do a review. Those reviews have now been completed. We’re now moving forward with pretty stable caseloads, and there isn’t a lot of movement right now in terms of staff, and we don’t anticipate a lot. There was a cutover period, for sure.

Mr. Jerry J. Ouellette: Okay, thank you. Mr. Mahoney, I brought in a predecessor of yours to meet with the local CAW workers, and during the discussions there one of the key difficulties that WSIB was finding was that the labour market re-entry program had significant difficulty with seniority issues within certain operations.

Can you tell me if this issue has been resolved? In other words, what takes place is, senior individuals within entities have a tendency to have the lower-impact jobs. When they occupy the lower-impact jobs and return to the labour market, individuals find it very difficult to actually find places to place them. Has that issue been resolved or has there been any—

Mr. Steve Mahoney: I actually don't think it has. The difficulty that we face is that we're dealing with a collective bargaining agreement that's in place; for example, with a fairly large organization down in Windsor that operates under a collective bargaining agreement that functions very much like that, based on seniority, so the jobs are not available for people to go back to. That poses a real difficulty for us.

What we have done is—and it was approved by the minister—we've gone out for a value-for-money audit on the LMR process to see how we can best deliver that. That report is now finished, completed, available, published and quite extensive, but there's very little that the WSIB or, for that matter, even the government could do to alter a collective bargaining agreement that has been negotiated in good faith between the employer and the union and has been in place for many years.

Mr. Jerry J. Ouellette: There's one last question that I have. Recently you mentioned the recession. Do we have a financial figure with expectations of the lost job market in the province of Ontario and how the revenues have impacted WSIB?

Mr. Steve Mahoney: I think we have lost \$300 million in annual revenue, in premium revenue, as a result of the job losses. That's in addition to the \$3 billion-plus that was lost in the investment fund due to the downturn in the economy.

Mr. Jerry J. Ouellette: Based on the upturn of the markets, was that not something you were able to make up?

Mr. Steve Mahoney: We've done better in 2009. We're certainly positive—as are all financial investment organs, if you will—experiencing a return, but you don't get that back. Your return is a positive percentage on a smaller capital amount. The \$3 billion that was lost is gone. The length of time it would take to recover that, quite frankly, is quite substantial. So now the returns that we're seeing, which more closely resemble returns prior to the downturn in the economy, are returns based on a smaller pool.

Mr. Jerry J. Ouellette: Those essentially are my questions.

The Chair (Mr. Norman W. Sterling): Ms. Sandals.

Mrs. Liz Sandals: If I've got time, I've got a couple of questions I would like to ask.

The Chair (Mr. Norman W. Sterling): I think we're going to split the time with the NDP on this, so I'll give you seven minutes.

Mrs. Liz Sandals: Okay. This actually goes back to what Mr. Sterling was asking around long-term planning and the original notion, which I understand was made before any of you came on the scene, that we should get

out of unfunded liability by 2014. Now we're talking about putting forward a new plan and some public stakeholder discomfort about why we would think the new plan would actually work. I don't know whether Mr. Marshall can comment on what sort of assurances we could have that there's some accountability around a new plan.

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Mr. David Marshall: My commitment is to develop a plan with my team and with consulting stakeholders that brings us to a fully funded position within a reasonable amount of time. I still have to figure out how soon we can do that.

That plan will have measurable benchmarks. It will say that we have to hit this rate of return, that we have to reduce duration by this amount by this date in order to meet the plan so that this committee, our stakeholders, the government and the minister can measure and see if we are getting there. However, it's going to have some tough, tough proposals in it. I mean, you can't recover this amount of money without some sort of pain somewhere in the system. We're obviously going to try to be as fair and balanced as we can be. We're here because that, by definition, hasn't been done so far. We are committed to doing it.

To the earlier questioner: We are taking it very seriously. It's in my letter. I don't get any bonus unless I can meet this target. It's a very clear target, and we're going to get there. I'm confident that we will. But I don't want to tell you now what it is, obviously, after four weeks. I've got to figure it out. We've got to look at it. But we can get there, and we will get there.

Mrs. Liz Sandals: But what you can tell us now is that there will be benchmarks so that we can measure your progress along the way. It's just saying, "It's okay. There's a goal out here somewhere, 10 years down the road."

Mr. David Marshall: That's right. It's not just going to be a date and everyone just hopes that you get there. No, it won't be like that.

Mrs. Liz Sandals: Okay, thank you. The other one is perhaps going back more to Mr. Slinger's area. My sense would be that if you look at the history of WSIB, part of your claims pool is now a different claims pool. Instead of being an injury pool, you're much more looking at an occupational disease pool. I wonder if you could talk about the evolution of the increase in the number of occupational diseases that you're (a) dealing with and (b) recognizing.

Mr. John Slinger: We have certainly, over the last 10 years, seen a significant increase in occupational disease claims. I think the exact number is 128%. But I think the real story lies in the fact that many of these cases relate to exposure that occurred in workplaces 20 and 30 years ago. Of course, within that group there are a number that result in fatalities and are obviously very emotional and very challenging.

I think what we initially saw, when these started to go up, was that it wasn't just a general increase. They would

occur in spikes, coming from different communities where employers had existed that obviously had environments that were giving rise to these cancers.

I think we've done a lot of work in the last couple of years to begin to get a real handle on how to better manage the cluster nature of those cases.

Because of the challenges of looking at work exposures and medical histories going back 20 and 30 years, for companies that are often out of business, those cases can be very challenging to adjudicate. Sometimes the science isn't there to really tell you if there is a connection.

We have made a really concerted effort, probably in the last three years. We've gone from a situation where we had, at any given time, 700 or 800 cases that went longer than six months before initial adjudication. We're now down to about a hundred and have done consistently better.

We did that by, obviously, re-resourcing the area, but we also created some new approaches to dealing with those cases. I think we've engaged in partnerships with unions and workplaces. We've relied on the Ontario clinic system, OHCOW, to get their assistance and buy-in. We've worked with the MOL. And I think our response to those cases is now much improved.

But again, we don't expect those cases to decline. We actually don't believe we've yet seen the peak of those cases.

Mrs. Liz Sandals: That was my next question. Has workplace health and safety legislation been around long enough that at some point you have safer workplaces and therefore less exposures?

Mr. John Slinger: I don't think we've yet reached the tipping point.

Mrs. Liz Sandals: We haven't reached the tipping point.

Mr. John Slinger: Certainly, the work environments are better in so many respects, and regulation and monitoring and controls exist. But some of the long-latency claims are still out there, and we know they're out there. We haven't seen an abatement of that increase. We don't expect to see that for several years.

Mrs. Liz Sandals: So we'll still be seeing new—

Mr. John Slinger: We'll still have challenges. Those, of course, create funding challenges, because obviously the employers whose environment it was that these cancers came from are no longer, in many cases, in business to even contribute to the payment—

The Chair (Mr. Norman W. Sterling): Thank you. Mr. Miller?

Mr. Paul Miller: I guess I could direct this question to Mr. Marshall. If the government gave the WSIB more autonomy to govern its own financial affairs, do you think that that would contribute to the long-term financial sustainability of the WSIB?

Mr. David Marshall: I must say that I'm not seeing right now that the current relationship poses any impediment to our managing in a financially responsible way. I think that there is a proper relationship. I can't tell you right now whether we are bumping up against anything,

but I don't see it. We can set our premiums. We can manage cases. We can work with employers and injured workers.

The general view that there's pressure from the government on premium rates is probably overstating the case. The same considerations a government would have, the board of the WSIB has: Do you want to increase premiums in times of difficulty or not?

So, no, I think we have the levers we need, and we've just got to now get on with it and exercise them.

Mr. Paul Miller: So what you're telling me is that the WSIB and the ministry—do they consult each other on changing employer premiums? Do they consult each other on worker benefits? If they do, and they had influence in those areas, that would tend to tell me that your previous statement might be questionable, that they would have a say. Do you consult with them on these types of things? Yes or no?

Ms. Cynthia Morton: Well, in fact, there's an obligation to consult with anything that may have a major impact on the system, pursuant to the expectations of any agency that is accountable to a minister. So—

Mr. Paul Miller: So you're telling me, then, that if that's a mandate—and obviously you follow it—there could not be any political pressure or political influence on the board's decision in reference to those things, such as premiums, because of an election coming up or that it looks good to employers? You're saying that there's none of that going on?

Ms. Cynthia Morton: I think there's a 100-year-old history here, and for me to say that none of that's ever gone on in the history of the WCB or the WSIB would—I couldn't defend that statement. What I am saying is that the government of the day, I believe, has an obligation to ensure that the WSIB board of directors, in making a decision, is aware of the economic environment within which they're operating and the expectations that are imposed on any agency to be prudent. That's where the obligation, from my perspective as deputy, begins and ends: Is the WSIB considering the right issues when they're making those decisions?

Mr. Paul Miller: We may have an opportunity to eliminate some of those situations if the WSIB would be willing to support legislative changes requiring the WSIB to become fully funded. Would they support legislative changes to force you to become fully funded, like they do in other provinces?

Mr. David Marshall: Mr. Miller, that is certainly on the table. That is one of the things that we are going to look at, especially because recovery and changes in financial position take such a long time to effect. We want to make sure we stay on track. Legislation certainly has helped other jurisdictions. So we will be looking at that. We will be consulting the minister and the Ministry of Labour, other ministries within government. It's on the table.

Mr. Paul Miller: And other parties, representatives—

Mr. David Marshall: And other parties, absolutely.

Mr. Paul Miller: That's good.

Mr. David Marshall: Absolutely.

Mr. Paul Miller: That's good. Thank you very much. That's it, Mr. Chair.

The Chair (Mr. Norman W. Sterling): Thank you very much. Are there any further questions? Okay.

Would you be able to provide—I find this chart very helpful, the one with the UFL reported from 1983 to 2008. Would you be able to provide the committee with additional columns outlining the revenue sources, or the revenues that you have collected, both in premium and investment income, as well as showing what the income pool was for that particular year, the average amount of—not income, but capital you had—

Mr. Steve Mahoney: The investment pool.

The Chair (Mr. Norman W. Sterling): Yes, what you had, as well as showing for each year the costs, both in terms of the administration and the benefit part of it.

Mr. David Marshall: Yes, certainly, Mr. Chair. That is available. We can do that for you.

The Chair (Mr. Norman W. Sterling): Thank you very much.

Mr. David Marshall: Do you want it for the whole period?

The Chair (Mr. Norman W. Sterling): Yes, because we're trying to—I think the committee probably would like to address a long-term view, to help the administration have the necessary incentives in place to ultimately deal with the problem. That's what the committee is trying to do. We're trying to drive so that 30 years from now we're not going to be looking at the same—or the next set of legislators. I plan to be here at that time as well.

Interjection: I'm sure you do.

Interjections.

The Chair (Mr. Norman W. Sterling): Thank you very much for coming to the committee. We appreciate your help and your information.

I'd just ask the committee to sit back so we can just talk a little bit about what we might want to tell the researcher to draft in her report.

The committee continued in closed session at 1452.

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