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législative
de l'Ontario

STANDING COMMITTEE ON GOVERNMENT AGENCIES

REPORT ON AGENCIES, BOARDS AND COMMISSIONS

WORKPLACE SAFETY AND INSURANCE BOARD

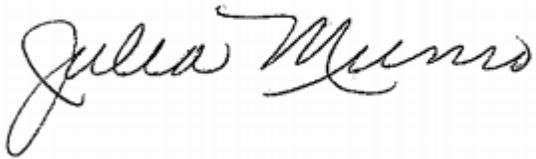
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The Honourable Michael A. Brown, MPP
Speaker of the Legislative Assembly

Sir,

Your Standing Committee on Government Agencies has the honour to present its Report and commends it to the House.

A handwritten signature in black ink, reading "Julia Munro". The signature is written in a cursive, flowing style with a large initial 'J' and 'M'.

Julia Munro, MPP
Chair of the Committee

Queen's Park
May 2007

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INTRODUCTION

Under Standing Order 106(e) the Standing Committee on Government Agencies is given the mandate to review the operation of all agencies, boards and commissions (ABCs) to which the Lieutenant Governor in Council makes some or all of the appointments, and all corporations to which the Crown in right of Ontario is a majority shareholder. The Committee is empowered to make recommendations on such matters as the redundancy of ABCs, their accountability, whether they should be sunsetted and whether their mandate and roles should be revised.

In accordance with its terms of reference, the Committee reviewed the Workplace Safety and Insurance Board (WSIB) on February 27, 2007. The WSIB was invited to respond to issues raised by witnesses in a second session held on March 1, 2007.

Appearing before the Committee from the Workplace Safety and Insurance Board were Mr. Steve Mahoney, Chair; Ms. Jill Hutcheon, President and CEO; Ms. Malen Ng, Chief Financial Officer, and Mr. John Slinger, Chief Operating Officer.

Five stakeholder groups and one individual addressed the Committee. The Ontario Federation of Labour was represented by Mr. Wayne Samuelson, President. Canadian Manufacturers and Exporters (CME) was represented by Mr. Ian Howcroft, Vice-President (Ontario division), and Ms. Maria Marchese, worker's compensation and health and safety policy director (Ontario division). The Canadian Federation of Independent Business was represented by Ms. Judith Andrew, Vice-President (Ontario division) and Mr. Satinder Chera, Director (Ontario division). The Industrial Accident Prevention Association was represented by Ms. Maureen Shaw, President, and the Industrial Accident Victims Group of Ontario was represented by Mr. Dave Wilken. Also appearing was Mr. Les Liversidge, lawyer.

The Committee wishes to express its appreciation to all the witnesses who appeared before it during its public hearings on this agency.

This report presents the Committee's findings on the WSIB. The Committee urges the Chair of the WSIB to give serious and thoughtful consideration to the Committee's recommendations.

THE WORKPLACE SAFETY AND INSURANCE BOARD

The Workplace Safety and Insurance Board (WSIB) is a trust agency administering no-fault insurance for employers and employees under the terms of *Workplace Safety and Insurance Act, 1997*.

The basic principles of workers' insurance have not changed since the *Workmen's Compensation Act* was introduced in 1914, establishing the Workmen's Compensation Board in 1915. The creation of the Board reflected a historic compromise between employers and employees. Employees gave up the right to sue for work-related injury or disease, irrespective of fault, in return

for guaranteed compensation of accepted claims. Employers received protection from lawsuits in exchange for financing the program through premiums. This system of collective liability provides compensation for injured workers and their families, while spreading costs among employers.

Over the years, the Workmen's Compensation Board changed its name to the Worker's Compensation Board, reflecting the increased participation of women in the labour force. The *Workplace Safety and Insurance Act, 1997* overhauled the workers' compensation system in Ontario and replaced the Workers' Compensation Board (WCB) with the WSIB.

Mandate

Section 1 of the Act states that its purpose is to accomplish the following in a financially responsible and accountable manner:

- promote health and safety in workplaces and prevent and reduce the occurrence of workplace injuries and occupational diseases;
- facilitate the return to work and recovery of workers who sustain personal injury arising out of and in the course of employment or who suffer from an occupational disease;
- facilitate the re-entry into the labour market of workers and spouses of deceased workers; and
- provide compensation and other benefits to workers and to the survivors of deceased workers.

The Board has responsibilities and powers under a number of other statutes, including the *Occupational Health and Safety Act*. The WSIB is also required to negotiate a Memorandum of Understanding with the Minister of Labour every five years. The current Memorandum, dated February 2004, establishes the following additional responsibilities for the Minister and Board:

- foster the internal responsibility system of the workplace parties, both in the prevention of workplace injuries and occupational diseases and their management when they occur; and
- maintain a workplace safety and insurance system predicated on sound insurance and business principles, including:
 - provision of fair benefits;
 - achievement and maintenance of a financially sustainable system with greater certainty, less complexity and litigation, and simplified administration; and
 - commitment to a superior quality service to workers, employers, and other stakeholders.

Programs and Services

The Workplace Safety and Insurance Act, 1997 lists the industries that must be covered by insurance. Workers performing certain jobs are explicitly excluded

from coverage, including professional athletes, circus performers, some categories of casual workers, partners in a business, and corporate executive officers. Approximately 69% of Ontario's work force is covered by the Act.

Employers' Premiums

The premiums that employers must pay to the WSIB reflect the health and safety risk of the business, the size of the payroll, and the employer's health and safety record. The Act divides employers into two groups. Schedule 1 industries are collectively liable for their accident costs, and must pay annual premiums. Schedule 2 industries are individually liable, and reimburse the WSIB for claims paid on their behalf. Most employers in Ontario are covered under Schedule 1.

In 2006, Schedule 1 industries paid an average premium of \$2.26 per \$100 of insurable earnings. Premiums are unchanged for 2007.

The WSIB offers several programs that financially reward businesses for maintaining good health and safety records, and penalize them in the opposite case. For example, the New Experimental Experience Rating Program (NEER) applies to all firms outside the construction industry paying more than \$25,000 in premiums. The cost of a company's claims is compared to the average for its rate group. If claims costs are lower than would be expected for a company of the same type and size, the firm receives a premium rebate; if higher, a surcharge.

Filing a Claim with the WSIB

An eligible worker may file a claim with the WSIB if he or she:

- was injured in an accident at work;
- developed medical problems caused by the type of work he or she does; or
- developed a disease or medical problems caused by exposure at work (to noise, chemicals, etc).

Claims must be filed no later than six months from the date of the accident, or from the date the worker realizes he/she is suffering from an occupational disease.

When the WSIB considers a claim, it has before it information supplied by the employer, the worker, treating health care practitioner, and the WSIB investigator's report (if a formal WSIB investigation took place). In arriving at a decision, the Board must determine whether the claim is work-related.

Benefits and Services

Injured workers may qualify for one or more of the following benefits and services:

- Wages and employment benefits on day of injury.
- Loss of Earnings (LOE) benefits – the WSIB pays the injured worker 85% of his or her net earnings loss (based on an annual wage ceiling: 175% of the average industrial wage, or \$71,800 in 2007) commencing the day

after the injury, until the worker is no longer impaired or is deemed to no longer be suffering a wage loss. A worker can receive LOE benefits until the age of 65.

- Non-Economic Loss (NEL) award – a NEL award is intended to compensate the injured worker for losses other than wages, such as pain and suffering.
- Loss of Retirement Income (LRI) benefits – if the worker is under 64 at the time of injury and receives LOE benefits for more than 12 consecutive months, he or she is entitled to a retirement benefit upon reaching 65.
- Health Care – the WSIB will pay for the health care that is necessary and appropriate as a result of the worker's injury.
- Survivor Benefits – for the survivors of those who die as a result of workplace illness or injury.
- Occupational Disease and Survivors Benefits Program – provides specialized services to workers, dependents, and employers affected by serious occupational diseases, such as cancer, asthma, asbestosis and silicosis.
- Benefits for Severely Injured Workers – provides a support team including a claim adjudicator and health professionals for workers who receive a permanent (or likely permanent) impairment leading to a 60% or more NEL benefit and/or a 100% personal disability (pre-1990 system) benefit.

Appeals

Workers and employers who disagree with a WSIB decision must first appeal to the Board itself. If either party is still unsatisfied, WSIB decisions can be appealed to the Workplace Safety and Insurance Appeals Tribunal (WSIAT). An appeal must be filed within six months of the WSIB's final decision.

WORKPLACE HEALTH AND SAFETY

The mandate of the WSIB includes promoting the prevention of work-related injuries and diseases. The WSIB oversees Ontario's system of workplace safety education and training. As noted, the Board provides incentives that reward companies with good health and safety records and penalize those with poor records. The Board also funds and supports various events and prevention activities, such as the Day of Mourning (for workers who have suffered workplace injury, illness or death); the North American Occupational Safety and Health (NAOSH) Week; and a monument to those who have suffered death or injury due to their work. Recently, the Board has focussed on promoting the safety of young workers through its Young Worker Awareness Program. Finally, the Board funds a variety of research projects investigating measures to improve workplace safety and prevent injury and disease.

Early and Safe Return to Work and Labour Market Re-Entry Programs

The WSIB is also mandated to facilitate the return to work of employees with injuries or illnesses. The worker and his or her employer must co-operate in facilitating the worker's return to his or her job, or to some other suitable job with the same employer. "Suitable" work is safe, restores pre-injury earnings as closely as possible, and is permitted by the employee's skills and abilities.

If it is impossible for an employee to return to the same employer, the Board will assess whether the injured worker should enter into a Labour Market Re-entry (LMR) program. This program includes an assessment of the worker's abilities, and may entail a plan that will help prepare him or her to return to the workforce. LMR service providers, under contract with the WSIB, provide vocational rehabilitation services designed to help workers develop their job skills or obtain new ones for returning to suitable work. A WSIB adjudicator evaluates the plan prepared by the service provider before it is approved. The worker continues to receive benefits, but must participate in the approved plan.

Operational Overview

Unfunded Liability

The Board maintains an Insurance Fund to pay for benefits to injured workers covered under Schedule 1. As the Fund is insufficient to cover the life time costs of all claims registered with the WSIB, the Board has an "unfunded liability," representing the shortfall that would occur if it were required to pay off its commitments immediately. Between 1984 and 1996, the unfunded liability increased from \$2.7 billion to \$10.5 billion. It decreased between 1996 and 2001 to \$5,657 billion, but has increased somewhat since then. It stood at \$6.5 billion at the end of 2005. The WSIB intends to eliminate the unfunded liability by 2014.

Legislated Obligations

The Board must reimburse the province for all costs of administering the *Occupational Health and Safety Act*, the Workplace Safety and Insurance Appeals Tribunal, and the Offices of the Worker and Employer Advisor. The Board also provides funding for the Institute of Work and the Health and Safety Workplace Associations, clinics, and training centres.

The table on the next page provides a ten-year summary of key statistics for the WSIB.

TEN YEAR SUMMARY OF THE STATEMENT OF OPERATIONS & UNFUNDED LIABILITY

| | 2005 | 2004 | 2003 | 2002 | 2001 | 2000 | 1999 | 1998 | 1997 | 1996 |
|---|------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|-------------------|
| (\$ millions) | | | | | | | | | | |
| Revenues | | | | | | | | | | |
| Premiums for current year | \$2,256 | \$2,124 | \$2,068 | \$1,997 | \$1,866 | \$1,760 | \$1,707 | \$1,722 | \$1,886 | \$1,917 |
| Investments | 819 | 470 | 456 | 246 | 765 | 1,128 | 1,042 | 982 | 839 | 699 |
| Other income | 3 | 49 | - | - | - | - | - | - | - | - |
| | 3,078 | 2,643 | 2,524 | 2,243 | 2,631 | 2,888 | 2,749 | 2,704 | 2,725 | 2,616 |
| Expenses | | | | | | | | | | |
| Benefit costs paid | 3,197 | 3,101 | 2,996 | 2,883 | 2,755 | 2,558 | 2,195 | 2,255 | 2,244 | 2,368 |
| Net increase/(decrease) in | | | | | | | | | | |
| benefit liabilities | 840 | 950 | 495 | 692 | 270 | 125 | 135 | (85) | (1,740) | 50 |
| Loss of Retirement Income Fund | 66 | 60 | 56 | 52 | 50 | 46 | 44 | 44 | 43 | 40 |
| | 4,103 | 4,111 | 3,547 | 3,627 | 3,075 | 2,729 | 2,374 | 2,214 | 547 | 2,458 |
| Administrative and other | | | | | | | | | | |
| expenses | 203 | 204 | 210 | 240 | 236 | 247 | 387 | 336 | 341 | 321 |
| Legislated obligations | 200 | 188 | 172 | 160 | 162 | 156 | 145 | 125 | 117 | 98 |
| | 4,506 | 4,503 | 3,929 | 4,027 | 3,473 | 3,132 | 2,906 | 2,675 | 1,005 | 2,877 |
| Excess/(Deficiency) of | | | | | | | | | | |
| revenues over expenses from current operations | | | | | | | | | | |
| | (1,428) | (1,860) | (1,405) | (1,784) | (842) | (244) | (157) | 29 | 1,720 | (261) |
| Premiums for unfunded liability | 934 | 1,017 | 861 | 902 | 860 | 971 | 1,061 | 930 | 683 | 693 |
| Transfer of Electrical Utilities from Schedule 2 | - | - | - | (52) | - | - | - | - | - | - |
| Excess (deficiency) of revenues over expenses | (494) | (843) | (544) | (934) | 18 | 727 | 904 | 959 | 2,403 | 432 |
| Unfunded liability, beginning of year | (6,420) | (7,135) | (6,591) | (5,657) | (5,675) | (6,402) | (7,098) | (8,057) | (10,460) | (10,892) |
| Effect of change in accounting policy | 0 | 1,088 | - | - | - | - | (208) | - | - | - |
| Other comprehensive income | 404 | 470 | - | - | - | - | - | - | - | - |
| Excess of expenses over revenues | (494) | (843) | (544) | (934) | 18 | 727 | 904 | 959 | 2,403 | 432 |
| Unfunded liability, end of year | \$(6,510) | \$(6,420) | \$(7,135) | \$(6,591) | \$(5,657) | \$(5,675) | \$(6,402) | \$(7,098) | \$(8,057) | \$(10,460) |
| Other Statistics | | | | | | | | | | |
| | 2005 | 2004 | 2003 | 2002 | 2001 | 2000 | 1999 | 1998 | 1997 | 1996 |
| Schedule 1 | | | | | | | | | | |
| Average premium rate (per \$100 of payroll) | \$2.19 | \$2.19 | \$2.19 | \$2.13 | \$2.13 | \$2.29 | \$2.42 | \$2.59 | \$2.85 | \$3.00 |
| Total insured payroll (\$ Millions) | 135,865 | 130,398 | 125,638 | 120,252 | 113,727 | 109,237 | 101,654 | 96,205 | 91,497 | 86,844 |
| Schedule 1 & 2 | | | | | | | | | | |
| Number of new claims by registration year | 352,996 | 352,474 | 354,926 | 361,179 | 371,067 | 379,079 | 364,069 | 342,687 | 341,178 | 345,606 |
| Number of WSIB employees at December 31 | 4,363 | 4,411 | 4,276 | 4,390 | 4,513 | 4,466 | 4,260 | 4,057 | 3,966 | 4,373 |

Source: WSIB Annual Report, 2005

STRUCTURE AND ORGANIZATION OF THE BOARD

The WSIB is composed of a president, a chair, and between three and seven members representative of workers, employers, and such others as are considered appropriate. The Lieutenant Governor in Council (the cabinet) makes all appointments, but consults with the chair and members before appointing the president. The Act sets no limitation on how long individuals may serve.

The Board is mandated to meet, at minimum, every two months. The Board met 8 times in 2006 and 10 times in 2005. Five committees have also been established by the Board: audit and finance, governance and policy, health and safety, human resources and compensation, and investment. These committees met between 4 and 6 times per year in 2005 and 2006.

The following table, provided by the WSIB, provides the name, position, date of appointment, and salary for each of the nine members.

TABLE 2: THE BOARD OF DIRECTORS

| Board Member (Location) | Position | Term of Appointment | Remuneration |
|---|---------------------|-------------------------------|---------------------|
| Mahoney, Steven W. (Mississauga) | Chair (Part-Time) | May 17, 2006 – May 16, 2009 | \$550 per diem |
| Hutcheon, Jill (Toronto) | President (and CEO) | Oct. 14, 2004 – Jan. 23, 2009 | \$300,000 per annum |
| Dillon, Patrick J. (Hamilton) | Member (Part-Time) | July 17, 1996 – July 16, 2007 | \$275 per diem |
| McGrath, Marlene M. (London) | Member (Part-Time) | Oct. 14, 2004 – Oct. 13, 2007 | \$275 per diem |
| O'Neil, James (Pickering) | Member (Part-Time) | Oct. 14, 2004 – Oct. 13, 2007 | \$275 per diem |
| Stoyka Henderson, Loretta J. (Windsor) | Member (Part-Time) | Oct. 14, 2004 – Oct. 13, 2007 | \$275 per diem |
| Deane, John Kenneth (Toronto) | Member (Part-Time) | May 18, 2005 – May 17, 2008 | \$275 per diem |
| Archambault, Mike (Uxbridge) | Member (Part-Time) | Nov. 1, 2006 – Oct. 31, 2009 | \$275 per diem |
| Barnett, Lawrence (Rockwood) | Member (Part-Time) | Jan. 15, 2007 – Jan. 14, 2010 | \$275 per diem |

DISCUSSION AND RECOMMENDATIONS

WSIB Opening Remarks

WSIB Chair Steve Mahoney began his opening remarks to the Committee by highlighting statistics concerning the size and scope of the Board:

- 4,283 employees work in Toronto and in 14 regional offices;
- more than 200,000 employers receive WSIB services of one kind or another;
- more than 350,000 claims are managed and more than 1 million decisions made annually;
- more than \$3 billion was disbursed in claim payments in 2005; and

- benefits were provided (in 2006) to over 550,000 injured and ill workers, surviving spouses and children (almost 5% of the Ontario population).¹

Created in 1915, the Board has grown to become (or be regarded as) the third-largest insurance company in Canada, providing no fault protection to employers from litigation for accidents and illness in the workplace. In 1998, the Board received an additional mandate: to promote health and safety in workplaces and to prevent and reduce the occurrence of workplace injuries and occupational diseases.² To fulfill this purpose, the Board provides access to training programs, products and services, including publications, industry-specific educational material, and web sites presenting information on health and safety awareness.

The Chair acknowledged that “WSIB has had its share of difficulties in the past,” but suggested that these problems are indeed “in the past.”³ In 2004, at the direction of the provincial Auditor, the Province retained the firm of Grant Thornton to carry out a complete financial audit of the Board. The resulting report contained 64 recommendations; according to Mr. Mahoney, the Board “developed a comprehensive and strategic response approach ... to address each [one].” As a result, “we have moved forward, embedding sound management practices and financial controls, keeping in mind our fiduciary responsibilities.”⁴ A follow-up audit conducted by Deloitte in 2006 confirmed that all of the audit recommendations had been addressed and that “significant managerial improvements ... had occurred as a result of those audits.”⁵

The Chair shared with the Committee some of the highlights of the WSIB’s record during the nine months since his appointment last May.

Fiscal Management

- no premium rate increases for 2007, while maintaining the quality of injured workers’ benefits and services
- continued management of the Board’s unfunded liability with a view to its elimination by 2014

In response to later questions from the Committee, Mr. Mahoney revealed that the WSIB has had great success in managing its investments, earning a rate of return of 16.2% in 2006. This success has allowed the company to reduce the unfunded liability considerably. However, despite the WSIB’s progress in reducing lost-time injuries, claims persistency (the seriousness of claims affecting the amount of time individuals are in receipt of benefits) and rising health care costs have affected the organization’s financial position.

Accident Prevention Campaign

- launched in October 2006 a program designed to create a health and safety culture in Ontario workplaces, organized around the theme “there

¹ Standing Committee on Government Agencies, *Committee Hansard*, 27 February 2007, A-473.

² *Workplace Safety and Insurance Act, 1997*, s. 1.

³ The Board was reviewed by the Committee in 1994.

⁴ Standing Committee on Government Agencies, *Committee Hansard*, 27 February 2007, A-473.

⁵ *Ibid.*, *Committee Hansard*, 1 March 2007, A-556.

really are no accidents” and accomplished with an advertising budget that represents 0.12 % of total revenue

- survey results show that almost two-thirds of employers and workers strongly agree that the advertisements have caught their attention

In response to questions from the Committee, Mr. Mahoney discussed other WSIB safety initiatives. Over 225 CEOs have signed a charter committing to make their workplaces safer. In 2007, the WSIB will launch a community charter that will involve municipal governments agreeing to promote health and safety. Mr. Mahoney is recommending that every municipal council assign one of its councillors to sit on its government’s health and safety committee.

The WSIB is also designing campaigns specifically geared to young workers. Advertisements will appear in forms of media frequented by younger individuals. A children’s book devoted to the issue of workplace safety is in development. Mr Mahoney stated that it was his opinion that workplace safety should be part of the curriculum in Ontario schools.

Service Delivery

- “best practices” improvements made in return to work programs, the use of medical evidence in adjudicating claims, and maintenance treatments
- the deadline for appeals extended from six months to one year
- an award-winning worker sensitivity training course helps front-line staff enhance their ability to understand each worker’s unique perspective
- interpretation and translation services available in more than 60 languages, as well as audio and Braille formats
- from 1999 to 2005, customer satisfaction levels have increased for employers from 65% to 79%, and for workers from 59 to 69%.

Benefits Policy Improvements

- clothing allowance for injured workers increased by 10%
- cap on burial expenses removed
- monthly benefits coverage for dependent children increased from 25 to 35 years
- changes made to the calculation of benefits for workers and survivors who also receive CPP benefits
- \$6.5 million in funding provided for Occupational Health Clinics for Ontario Workers

Research and Outreach

- invested \$2.4 million in research grants in 2006 for research into improving the care and treatment received by injured workers

- celebrated the opening of CREIDO (Centre of Research Expertise in Improved Disability Outcomes), the third centre of excellence to be funded by WSIB, where new treatment and rehab options will be developed that will improve an injured worker's ability to return safely to work
- provided funding of approximately \$86 million annually for 14 health and safety associations (HSAs)

The Chair described his own role as being “a custodian of the present who must ensure proper stewardship now and for the future.” This means helping employers reduce accident frequency and duration and ensuring that every worker receives the benefits to which he or she is entitled.⁶

Members also asked questions related to the following issues, some of which were discussed only briefly and others of which are discussed in greater detail elsewhere in this document:

- length of time to process claims related to occupational disease;
- WSIB funding for external programs;
- retirement of the unfunded liability;
- indexation of benefits;
- the extent to which other aspects of Canada's social welfare system may be subsidizing gaps in WSIB benefits;
- potential lack of awareness of the existence of the Office of the Employer Adviser;
- extent of employer compliance with the statutory requirement to have employers certified in health and safety and to maintain joint health and safety committees;
- potential shortcomings in the Labour Market Re-Entry Program; and
- backlogs to see medical specialists and to receive reimbursements for travel for medical purposes.

⁶ Ibid., A-475.

STAKEHOLDERS

Ontario Federation of Labour

The Ontario Federation of Labour (OFL) is the provincial labour federation, representing 700,000 Ontario workers in more than 1,500 local unions. The OFL provides its affiliated labour councils and local unions with services in the fields of communications, education, research, legislative and political action, human rights, health and safety, workers' compensation and basic education skills. The OFL regularly makes presentations and submissions to the provincial government. Mr. Samuelson informed the Committee that the approximately 10% of the OFL's budget comes from the WSIB, the money from which is used to train union activists to help workers access the WSIB system.

Mr. Samuelson brought the following areas of concern to the Committee's attention.

Experience Rating

Mr. Samuelson argued that the WSIB's experience rating system is not functioning properly.⁷ He alleged that the system encourages employers to discourage the reporting of workplace injuries so that companies receive rebates on their WSIB premiums.

In response to questions from the Committee, Mr. Samuelson indicated that he is aware of many personal stories indicating that workers are discouraged from reporting accidents. He maintained that a better experience rating program would provide credit to employers who had effective and co-operative return-to-work programs in place. He also asked whether the experience rating program investigated whether companies receiving rebates had certified workers and health and safety committees (see discussion in next section). He suggested that the system may be rewarding employers who have bad health and safety practices.

Health and Safety Committees

Mr. Samuelson criticized the WSIB's operation of its certification program and the functioning of workplace health and safety committees.⁸ He expressed skepticism at the WSIB's statement that it does not know how many of the province's workplaces were currently fulfilling their legal obligation to have employees certified in health and safety in each workplace.⁹ Mr. Samuelson stated,

I wouldn't be surprised if somewhere between 30% and 50% of workplaces in this province don't actually have a

⁷ The Glossary of this document provides a brief summary of the WSIB's experience rating programs.

⁸ The Glossary of this document provides a brief summary of statutory Joint Health and Safety Committee requirements.

⁹ See Mr. Mahoney's comments at Standing Committee on Government Agencies, *Committee Hansard*, 26 February 2007, A-488.

functioning health and safety committee with certified workers.¹⁰

He recommended that the WSIB immediately implement a process that would ensure that every workplace in the province has a certified employee and a health and safety committee.

Cost-of-Living Increases

Mr. Samuelson informed the Committee that injured workers are extremely troubled by the small cost-of-living increases in benefit payments. He indicated that in the last 10 years, an injured worker “has lost 26% of his income because of inflation.”¹¹ Mr. Samuelson recommended that the WSIB be forced to develop strategies to implement full indexing of benefits.

In response to questions from the Committee, the WSIB indicated that it would cost \$2.3 billion to implement full indexation of benefits. The money would be added to the unfunded liability.

Workforce Coverage

Mr. Samuelson informed the Committee that many of the province’s workers are not insured by the WSIB because statutory provisions dating to 1915 exclude many of Ontario’s current forms of employment. He indicated that a recent WSIB report had approved the expansion of coverage to most of the province’s employees.

Prevention of Injuries

Mr. Samuelson disapproved of the WSIB’s recent advertising campaigns promoting workplace safety. He argued that the most effective way to promote safety is to ensure that the government enforces the existing workplace safety laws.

Early and Safe Return to Work

In response to questions from the Committee, Mr. Samuelson indicated that his organization supports the WSIB’s Early and Safe Return to Work program. However, Mr. Samuelson argued that these programs need oversight, and proposed that certified, educated people would best fulfill this function.

Ontario Federation of Labour Recommendations

The OFL recommended that the WSIB modify the Experience Rating Program to ensure that it is not being abused, by rewarding businesses on overall safety practices as opposed to reported accidents. The WSIB should also ensure that every workplace has an employee certified in health and safety and a functioning Joint Health and Safety Committee. Certified individuals should provide oversight to the Early and Safe Return to Work Program. Furthermore, WSIB benefits should be fully indexed and coverage expanded to include most of the province’s employees. The OFL also recommended that the province enforce its

¹⁰ Standing Committee on Government Agencies, *Committee Hansard*, 26 February 2007, A-492.

¹¹ *Ibid.*

existing workplace health and safety laws as the best means of accident/illness prevention.

Canadian Manufacturers and Exporters, Ontario Division

Canadian Manufacturers and Exporters (CME), Ontario Division, represents the manufacturing and exporting sector in Ontario. Member companies account for more than 75% of total manufacturing output and 90% of exports in the province. Most of its members are small and medium sized manufacturers. CME has participated in many government committees, task forces, and royal commissions pertaining to the issue of workplace safety and insurance.

CME emphasized the loss of jobs in Ontario's manufacturing sector and brought the following issues of concern to the attention of the Committee.

Communications between the WSIB and Employers

Mr. Howcroft informed the Committee that they were pleased with the performance of WSIB Chair, Steve Mahoney. Since Mr. Mahoney's appointment, CME has experienced improved access to the senior levels of WSIB management. However, Mr. Howcroft indicated that CME still had difficulty ensuring that its message is communicated to lower levels of the WSIB. In particular,

Members continue to list lack of communication from the board regarding the adjudication and management of their lost-time claims as their number one service delivery issue. Whether it's finding out the status of a new claim and why it would have been allowed or learning about labour market re-entry programs which their workers have been approved for without their knowledge or input, it's of great concern.¹²

Mr. Howcroft declared that CME members have the right to know about any and all decisions made regarding claims, and recommended that the WSIB implement service delivery expectations.

Mr. Howland also stated that CME was disappointed that several recent policy initiatives, program changes, and pilot projects had been introduced without consultation with employer groups. He indicated that the WSIB formerly had an advisory group composed of employer associations and worker representatives, but it had not met in over three years.

Estimating Costs of WSIB Programs

CME argues that the WSIB has an obligation to cost out all new initiatives so that the financial impact of potential changes can be measured. CME reminded Committee members that section 1 of the *Workplace Safety Insurance Act, 1997* states that the purpose of the Act is to "accomplish the following [mandate] in a financially responsible and accountable manner...." Furthermore, section 161(2) obligates the board to "evaluate the consequences of any proposed changes in

¹² Ibid., A-495.

benefits, services, programs and policies to ensure that the purposes of this Act are achieved.”

Mr. Howcroft indicated that the recent consultations on the Early and Safe Return to Work program were an example of this failure, as CME has been asking for a costing of the proposed policy for approximately two years.

Experience Rating and Safety Groups

CME expressed its continued support for the WSIB’s experience rating and safety group¹³ programs at the WSIB. However, Mr. Howcroft expressed disappointment that the WSIB has not consulted with its experience rating working group in three years. The experience rating program has experienced financial erosion in recent years and it is thus having a reduced impact on improving health and safety.

Technology and Data Collection

CME would like the WSIB to make better use of technology. The WSIB still relies heavily on regular mail and faxes to communicate with employers.

CME also suggested that the WSIB should provide better data collection and analysis services. Information that CME believes should be collected is not collected; for example, the Early and Safe Return to Work program maintains an inadequate data base. In response to questions from Members, Ms. Marchese stated that CME would like the WSIB to ask employers about the kinds of data they would like collected and analyzed.

Named Insured System

CME supports the implementation of a named insured system, to ensure that all employers who are required to contribute to the workplace compensation system do so and that workers who are not covered do not receive benefits. The implementation of such a system would be one way of tackling revenue leakage at the WSIB. In response to questions from the Committee, Mr. Howcroft stated that under the present system, employers pay premiums based on their payroll, without an actual list indicating the names of covered employees.

In response to questions from the Committee, CME expressed its support for the expansion of WSIB coverage to other sectors of Ontario’s workforce, but not necessarily all of the presently uninsured sectors.

Cost-of-Living Increases

In response to questions from the Committee, CME indicated that, in most cases, it believes that the current system provides a fair level of benefits for employees. In the past, employees were being given more money to remain out of work.

¹³ The Safety Groups program provides businesses with a network of firms sharing the goal of reducing injuries and illnesses. Safety Group members pool resources, share best practices and help each other develop and manage effective health and safety programs. A group can receive a rebate on its premiums based on the entire group’s success in implementing its selected safety elements.

Canadian Manufacturers and Exporters Recommendations

CME recommended that the WSIB ensure that communications between its upper management and CME are transmitted to lower levels of the WSIB. Furthermore, the experience rating working group and advisory group that formerly updated employers on WSIB initiatives should be re-established, and employers advised as to how they can participate. The WSIB should also provide cost estimates for proposed program changes, implement a named insured system, make greater use of electronic communication, and provide better data collection and analysis services. Lastly, the WSIB should expand coverage to some, but not all, of Ontario's presently uninsured employers and maintain the current level of benefits.

Canadian Federation of Independent Business

The Canadian Federation of Independent Business (CFIB), Ontario division, is a non-profit, non-partisan organization representing 42,000 small and medium-sized enterprises in the province. The CFIB appears regularly before government committees and is a frequent contributor of WSIB policy recommendations. The CFIB brought the following areas of concern to the Committee's attention.

Employer Satisfaction

Ms. Andrew informed the Committee that more than half of surveyed CFIB members revealed that they did not believe that they received value for money for their WSIB premiums. Furthermore, 60% of respondents to a study on the impact of regulation on businesses indicated that the workers' compensation system was a burden. The CFIB also indicated that member support for the principle of collective no-fault compensation in exchange for immunity from negligence lawsuits has garnered lower and lower support over the years.

In response to questions from the Committee earlier in the day, Mr. Mahoney stressed that small businesses are provided with one-on-one assistance to aid in the completion of WSIB forms. Mr. Mahoney also stated that the WSIB has met with Minister Takhar to discuss the needs of small businesses.

WSIB Audits

Mr. Chera referred to the follow-up to the 2004 audit of the WSIB, noting that marked improvements had supposedly been shown by the agency. However, he expressed concern that the follow-up audit was not available on the Ministry's website.¹⁴

Experience Rating

Ms. Chera informed the Committee that CFIB members are "somewhat happy" with the experience rating programs.¹⁵ (The CFIB's written submission indicates that between 69% and 77% of surveyed CFIB employers indicated that the WSIB's various experience rating programs were either somewhat or very

¹⁴ The executive summary of the 2006 follow-up is located at http://www.labour.gov.on.ca/english/about/pdf/followup_rpt.pdf, accessed 19 March 2007.

¹⁵ Standing Committee on Government Agencies, *Committee Hansard*, 26 February 2007, A-500.

effective.)¹⁶ Mr. Chera stated that the programs acknowledge that employers have done a good job reducing lost-time injury rates. However, CFIB members are concerned that the WSIB is using the successful track record of employers to justify altering the programs and reducing their benefits.

Named Insured System

The CFIB has long advocated the implementation of a named insured system to counter the impact of fraud and the underground economy. Instead, the WSIB and successive governments have tried “to get their hands on more revenues from independent operators, owners, officers and directors of companies.”¹⁷ Approximately 75% of CFIB members also think that businesses should be allowed to obtain private insurance for their employees.

The WSIB’s Management of Costs

Employers contend that the WSIB does not manage costs appropriately. For example, in 1999, the WSIB implemented a new health care model. Employers, including the CFIB, have requested that the WSIB provide an analysis demonstrating the cost impact of the new program. The WSIB has not complied. The CFIB also noted that 162 employees at the WSIB made over \$100,000 in 2005, while there was a \$612 million deficit in the pension and medical benefits plan. Bill 99 (the *Workers’ Compensation Reform Act, 1997*) has also resulted in unforeseen costs that the WSIB should remediate. CFIB members rate fiscal prudence and accountability as a top concern.

Unfunded Liability

The CFIB expressed disappointment that the WSIB would consider altering the scheduled date for the retirement of its unfunded liability (2014) if costs could not be contained. Employers supported the retirement of the unfunded liability by agreeing to substantial premium increases. The CFIB asked what the WSIB had done with the most recent 3% premium increase.

In response to earlier questions from the Committee, Mr. Mahoney indicated that one-third of current premiums are used to pay down the unfunded liability. Mr. Mahoney reiterated that the WSIB is committed to retiring the unfunded liability by 2014, but not at absolutely any cost. Serious events such as the SARS crisis can have a major impact on the economy, and the WSIB needs to retain flexibility in the face of such potentialities.

Occupational Disease

The majority (77%) of surveyed CFIB members indicate that “ordinary diseases of life” [which in some definitions can include cancer] should be excluded from eligibility for workers’ compensation claims.¹⁸ The CFIB has proposed that the provincial government provide compensation to individuals contracting diseases through their place of work.

¹⁶ Canadian Federation of Independent Business, “Rating the WSIB & the ‘Next Big Breakthrough’ in Workplace Safety,” 27 February 2007, p. 4.

¹⁷ Standing Committee on Government Agencies, *Committee Hansard*, 26 February 2007, A-501.

¹⁸ *Ibid.*

Funding of Outside Agencies

The CFIB informed the Committee that its members did not support the use of WSIB money to fund outside agencies such as the province's safety associations and the Industrial Accident Prevention Association. Money collected for WSIB premiums should be used for the WSIB's own purposes.

Prevention

The CFIB informed the Committee that businesses with five or fewer employees are expected to have an injury frequency of one lost-time incident every 10 years. If small firms were to reduce the frequency of accidents to one every 20 years, the feedback cycle would be too long for these businesses to understand the impact of any changes they might have made to their safety practices. Regardless, the CFIB argues that small firms need job specific information about safety conditions rather than general safety information. Any new programs would have to have a demonstrated track record.

Ms. Andrew also indicated that the benefit of WSIB prevention programs should be scientifically demonstrated. She argued, "I don't think anyone has actually proven that having a company policy and program actually improves the safety performance of small firms."¹⁹ Similarly, the CFIB was sceptical about the benefits of the WSIB's advertising campaigns and punitive approaches such as the High Risk initiative or the Workwell program. Programs that penalize infractions of the province's legislation punish firms without providing them with necessary assistance. The province's inspection teams can only visit a fraction of the province's businesses every year. The CFIB argued that the province cannot enforce its health and safety regulations "even-handedly," because only a few of the province's many businesses are inspected each year. Those firms that are visited are "winning the lottery for losers" and are unfairly scapegoated.²⁰

In response to questions from the Committee, the CFIB stated that job-specific information would be preferable to health and safety committees and punitive programs.

Early and Safe Return to Work Program

In the package of information presented to the Committee, the CFIB included a submission to the WSIB consultation process regarding potential changes to the Early and Safe Return to Work (ESRTW) program. In that submission, the CFIB argued that the reemployment provisions in the *Workplace Safety and Insurance Act, 1997* do not apply to businesses employing fewer than 20 people. The CFIB requested that any obligations created by new policies in the ESRTW program be reasonable, workable, and reflect the realities faced by small business owners.²¹

¹⁹ Ibid., A-502.

²⁰ Ibid., A-503.

²¹ Canadian Federation of Independent Business, "Proposed Policies Regarding Early and Safe Return to Work," Submission to the Workplace Safety and Insurance Board, 26 January 2006.

Canadian Federation of Independent Business Recommendations

The CFIB recommended that the WSIB adopt a multi-year plan to reduce average premium rates starting in 2007-2008. The WSIB should also make public its plan to retire the unfunded liability by 2014 without increasing premium rates (extending the date slightly as a final option), correct costly, unintended flaws within existing legislation (Bill 99), and continue to avoid policy changes that would increase premiums or the unfunded liability. Furthermore, the WSIB should address cheating in the system by implementing a named insured system. Finally, the WSIB should acknowledge small business needs in the Early and Safe Return to Work program by working with small business organizations, make compliance assistance to small and medium-sized enterprises the centerpiece of prevention activities, and undertake a comprehensive review of the health and safety system to better serve small and medium-sized enterprises.

Industrial Accident Prevention Association

The Industrial Accident Prevention Association (IAPA) is a non-profit organization founded in 1917, and describing itself today as “Canada’s leading workplace health and safety organization.”²² It is a World Health Organization Collaborating Centre in occupational health, and an International Labour Organization – CIS Collaborating Centre.²³ Originally created by the Canadian Manufacturers’ Association, it is also one of 14 sector-specific Health and Safety Associations (HSAs) funded by the WSIB, representing 50,000 employers and 1.5 million employees in Ontario. Two senior member of the WSIB sit on the Board of the IAPA.

Working in concert with the Ministry of Labour and the WSIB to prevent workplace accidents, HSAs such as the IAPA:

- develop and implement educational and training programs;
- assist firms to implement health and safety management systems;
- identify and communicate best practices and standards;
- provide solutions-based consulting of workplace systems; and
- promote health, safety, and wellness and psychosocial awareness.²⁴

Ms. Maureen Shaw, President of the IAPA, told the Committee of her organization’s work with the Ministry of Labour and the WSIB on the Last Chance/High Risk initiative that targets the worst performers in workplace safety in the province. IAPA also supports the safety group program, which it describes

²² Industrial Accident Prevention Association, *2005 Annual Review*, pdf document available at http://www.iapa.ca/about_iapa/about_review.asp, accessed 6 March 2007.

²³ CIS is an abbreviation for “Centre International d’Informations de Sécurité et de Santé au Travail” which means “International Occupational Safety and Health Information Centre” in English.

²⁴ Ontario Ministry of Labour and IAPA, “Thinking Differently About Health and Safety: Successful Partnerships that Make a Difference,” Paper delivered at the International Conference on Partnerships in OS&H Inspection (Beijing, China), April 2006, pp. 3-4.

as “one of the most enlightened programs that the WSIB has supported and assisted us in putting in place.”²⁵

Noting that it has been 10 years since the current Act was created, Ms. Shaw spoke about the need for “clarity about roles and responsibilities” with a goal of “eliminating confusion and duplication and of improving the relationships within the system.”²⁶ While the IAPA endorses the WSIB’s recent social marketing campaign (discussed above), it believes that involvement of the HSAs from the outset could have made the initiative even more effective. Improved communication is a related concern, in the strategic sense that HSAs need to be advised in advance about new initiatives, and in the tactical sense of ensuring that the WSIB has a very clear understanding of what the IAPA does.²⁷

Ms. Shaw suggested that the WSIB’s oversight process (vis-à-vis the designated entities it funds) needs streamlining; the system of performance-oriented standards established in 1997 regarding governance, objectives and functions is complex and consumes resources better used elsewhere. When it has had a successful year, the IAPA would like to be able to retain any year-end surplus for re-investment in future projects, rather than having it clawed back by the WSIB [see “Note on IAPA Finances” at the end of this section]. The Association also requires a funding formula to provide a level of stability to its planning. Ms. Shaw also suggested that when WSIB introduces new initiatives mid-year, such as the early and safe return to work program, it should provide start-up funding to enable its partners to participate.

The IAPA relies on the WSIB to provide information about claims and decisions concerning its members, and in some cases about who IAPA members are and where they are located. The quality of that data, the Committee was told, needs to be improved. Similarly, the WSIB needs to take a lead role on “broader environmental scanning that will help us to adapt to the new realities that are taking place in the province and in the country.”²⁸

Ms. Shaw spoke about the continued need to create and support initiatives that apply a systems perspective. For example, she noted how Last Chance firms can graduate into safety groups, which may then be graduated into the accreditation program.

Questioned about the extent to which IAPA’s member firms have operating joint health and safety committees with certified worker representatives serving on them, Ms. Shaw indicated that IAPA delivers three certification training programs. This, she noted, is the biggest program that IAPA delivers, with about 20,000 individuals receiving certification annually.

Note on IAPA Finances

In the *2005 Annual Review*, IAPA’s statement of revenues (and of excess of revenue over expenses) was as follows:

²⁵ Standing Committee on Government Agencies, *Committee Hansard*, 26 February 2007, A-505.

²⁶ *Ibid.*, A-506.

²⁷ *Ibid.*

²⁸ *Ibid.*, A-507.

| | 2005 | 2004 |
|---|---------------------|--------------|
| Approved original funding allocation [from WSIB] | \$20,014,812 | \$20,023,691 |
| Recoveries | 10,644,709 | 9,567,971 |
| Interest | 254,896 | 180,989 |
| | 30,914,417 | 29,772,651 |
| Less expenditures for the year | 30,318,194 | 29,470,953 |
| Excess of revenue over expenses | \$ 596,223 | \$ 301,698 |

IAPA 2005 Annual Review, p. 23.

The explanatory note accompanying this table was as follows:

In accordance with WSIB's "Designated Entity Surplus Recovery Policy" dated March 23, 2001, IAPA is allowed to maintain an unrestricted fund balance based on 6% of WSIB funding. The unrestricted fund balance at year-end of \$569,317 (2004 - \$357,138) meets the above requirement.²⁹

The entry "Recoveries" consists of revenues received from certification courses (\$3.2 million), courses and seminars (\$3.1 million), consulting fees under IAPA's Synergration program (\$0.8 million), meetings (\$2.6 million), and safety literature and information services (\$1.0 million).³⁰

Industrial Accident Prevention Association Recommendations

The IAPA recommended review and clarification of the respective roles of the Board's prevention division and of designated providers of education and training, and the development and funding of system-wide initiatives that apply the strengths of each partner (the Board and HSAs) to common initiatives. Complementary recommendations included better communications between the partners, updated WSIB oversight processes, broader environmental scanning by the Board, and improved quality in the data supplied by the Board to the HSAs.

Mr. Les Liversidge

Mr. Liversidge has been active in the workplace safety and insurance sector for over 33 years in a number of capacities, including a period of employment with the Board and working as an independent consultant. Currently, he is a lawyer with a practice focused on workplace safety and insurance matters. In Mr. Liversidge's opinion, today's Board is infinitely superior to the Board of 30 years ago, but "many of the lessons of the past still remain unlearned." In particular, he highlighted the "continuing phenomenon of a Board that still does not always listen well to emerging criticisms and which does not always resolve budding problems."³¹

²⁹ IAPA, 2005 Annual Review, p. 23.

³⁰ Ibid., p. 24.

³¹ Standing Committee on Government Agencies, *Committee Hansard*, 27 February 2007, A-508.

The Committee was told that under the current Chair, the Board is in excellent hands, but also, that the influence of the Chair is a sign of the administrative weakness of the Board, particularly in its implementation of employer tax policy, which impacts smaller businesses the most:

While the process of setting employer tax rates is generally fair, how tax classifications are applied to individual cases often is not. ... Simplicity is simply not possible. Common sense and reasonable application, though, is essential. Often, it is elusive.³²

Mr. Liversidge suggested that the Board treats its mistakes as unfortunate but isolated missteps when they are reflective of a more systemic problem: “when dealing with the day-to-day taxation of smaller business, the Board sometimes is a bit of a bully.”³³ He recommended an operational review of the WSIB’s audit department, and closer attention of senior Board officials to issues brought to their attention.

Recently, the Board has partnered with the Canada Revenue Agency (CRA) to identify employers not paying their premiums and to take action to enforce compliance. Mr. Liversidge expressed two concerns:

- By abandoning the voluntary registration program, the Board now provides equal treatment to delinquent “employers that voluntarily come forward and [to] those that wait to be found out.”³⁴
- While the CRA withholds collection while a taxpayer is appealing a ruling, the Board collects payment up front, leaving the possibility that an unfair and incorrect WSIB tax ruling, “even if later found to be unjust and incorrect,” could well force an Ontario business to the brink of insolvency.”³⁵

The witness also raised concern about the process of reform of the Board: “Change is massive or non-existent; it’s feast or famine.” Instead, Mr. Liversidge proposed a routine five-year external review reporting directly to the Ontario Legislature.³⁶

In response to questioning, Mr. Liversidge expressed his support for the WSIB’s experience rating program. In his view, the problem is not that the program is abused, but that it is underutilized, largely because it is not well understood by business, “and the reason it’s not that well understood is that the Board has not explained it all that well.”³⁷

Asked about the proportion of workplaces that have functioning health and safety committees with certified workers on them, Mr. Liversidge suggested that small businesses – “where, more likely than not, with a less official, less doctinated

³² Ibid., A-509.

³³ Ibid.

³⁴ Ibid.

³⁵ Ibid., A-510.

³⁶ Ibid.

³⁷ Ibid., A-511.

approach you get the same thing done” – would be more likely not to have such committees.

Mr. Les Liversidge’s Recommendations

Mr. Liversidge recommended that WSIB directors be required to conduct a high-level review of the Board’s business operations, particularly its audit and collection functions, and to engage more directly in issues brought to their attention. He also called for restoration of the voluntary registration program and suspension of collection activity while an assessment is under active appeal.

Industrial Accident Victims’ Group of Ontario

The Industrial Accident Victims’ Group of Ontario (IAVGO) is a community legal aid clinic funded by Legal Aid Ontario since 1975 and serving the injured worker community in Ontario.³⁸ IAVGO representative David Wilken told the Committee that the lack of funding and understaffing of the Office of the Worker Advisor and lack of funding for legal clinics and legal aid certificates has led to the existence of a “whole class of predatory consultants who prey on injured workers who’ve been denied their benefits and can’t find reasonably priced or competent representation.”³⁹

Mr. Wilken brought four areas of concern about the WSIB to the Committee’s attention.

Occupational Disease

The Occupational Disease Panel (and the preceding Industrial Disease Standards Panel) issued more than 20 reports on various diseases. Although these were forwarded to the Board, Mr. Wilken noted that action was only ever taken on a handful of them. The Panel was disbanded in 1997, and although an occupational disease advisory panel was created at the Board, it lasted only two years, and draft policies have yet to emerge from the Board.

Failure to act on this front in the decade since the Occupational Disease Panel was disbanded indicates to Mr. Wilken that “there’s a systemic problem with the way this is set up.” Instead, he recommended the creation of

an independent body that’s able to make strong policy recommendations that the board must respond to in a timely fashion and that also has not only an independent research capability but educational capability.⁴⁰

Indexation of Benefits

Echoing some witnesses heard earlier in the day, Mr. Wilken expressed concern that the adoption of the so-called Friedland formula, and later of the so-called modified Friedland formula, has had the effect of de-indexing benefits for injured

³⁸ Industrial Accident Victims’ Group of Ontario, web site at <http://www.iavgo.org/>, accessed 9 March 2007.

³⁹ Standing Committee on Government Agencies, *Committee Hansard*, 27 February 2007, A-513.

⁴⁰ *Ibid.*, A-514.

workers. He noted that the Supreme Court of Canada observed 30 years ago that

to compensate someone for future loss of earnings, you have to fully take account of inflation; otherwise, you're just not compensating them for the loss.⁴¹

Mr. Wilken suggested that the effect on injured workers' real compensation over the past four years has been a loss of at least 25%.

Program Evaluation

Mr. Wilken suggested that with respect to at least two areas, the Board requires better research into the effects of its policies.

Deeming

The negative effect of de-indexing injured workers' benefits can be magnified by the deeming provision, which has been part of WSIB policy since 1990. Most injured workers are deemed to be employable in some way or another. Regardless of whether or not a worker returns to work, the deeming process continues – workers are deemed to be increasing their wages because of their experience.⁴² Mr. Wilken suggested that after seventeen years, there is still a dearth of evidence to show how well the Board has performed with deeming.

Experience Rating

Mr. Wilken stated that over the past 10 years, more than \$2 billion more has been paid out under this program than has been taken in in penalties, and yet evidence as to its effectiveness in reducing workplace injuries remains unproven. Citing a commentary piece in the January 2007 issue of the *Canadian Medical Association Journal*,⁴³ he suggested that a significant portion of physicians and workers when surveyed outside the workplace knew of work-related injuries that had not been reported. In this case, Mr. Wilken suggests, the evidence points to a need for a better designed and enforced set of programs:

If you offer incentives to reduce claims costs, which is all we have in our experience rating program, and with very few controls, what you will get is some activity to increase workplace safety, some activity to hide claims, some activity to fight just claims, some activity for good return to work, and some activity towards bringing people back towards counterproductive, unprofitable phony jobs. There's research on all of this Without better design and appropriate controls, these programs will remain expensive boodoggles.⁴⁴

⁴¹ Ibid.

⁴² Ibid., A-515.

⁴³ Aron Thompson, "The consequences of underreporting workers' compensation claims," *CMAJ* 176 (30 January 2007): 343-344.

⁴⁴ Standing Committee on Government Agencies, *Committee Hansard*, 27 February 2007, A-515.

In response to questioning, Mr. Wilken noted that experience rating only looks at claims costs. An intermediate step would be to introduce cross-checks that must be satisfied before rebate cheques would flow. One example would be requiring a workplace health and safety committee to be in place with certified worker membership.

Industrial Accident Victims' Group of Ontario Recommendations

The IAVGO recommended creation of an independent body, with research and educational capabilities, to make policy recommendations on occupational disease, recommendations to which the Board would be expected to respond in a timely fashion. It also called for a review of the experience rating program, and the application of better controls, such as intermediate steps between the consideration of claims costs and the issuance of rebate cheques. Indexing injured workers' benefits to inflation and evaluating the effectiveness of deeming provisions with respect to their employability were also proposed.

WSIB RESPONSE

Mr. Mahoney was pleased to have the opportunity to comment on presentations to the Committee by WSIB stakeholders. He also submitted a letter to the Committee dated March 21, 2007, in which he answered outstanding Member questions and further clarified his response to stakeholders. His remarks focused on several themes.

Financial Responsibility

Reiterating the details of the 2004 financial audit and the follow-up to it, Mr. Mahoney spoke also about "real dialogue between the Auditor General, the auditing teams and our financial people."⁴⁵ In addition to working to eliminate the Board's unfunded liability, projected to be about \$6 billion at the end of the fiscal year, the Board is also:

- working on issues like persistency of claims;
- reviewing health care costs; and
- achieving administrative savings (a \$30 million reduction) while improving service levels provided to clients.

⁴⁵ Ibid., *Committee Hansard*, 1 March 2007, A-556.

Consultation

Mr. Mahoney suggested that comments made about a lack of consultation by the Board reflect a lack of understanding or awareness. The WSIB attended over 1,300 meetings with employee groups, employers and associations in 2006. He also indicated that constructive criticism helps the Board improve the services it is mandated to deliver and identify systemic weaknesses that everyone is keen to eliminate.⁴⁶ The Chair offered his commitment “to work with all of our stakeholders to achieve that common goal: the complete elimination and eradication of workplace injuries, illnesses and fatalities.”⁴⁷

Occupational Disease

Occupational disease was described as the Board’s biggest challenge in achieving a provincial fatality-free workplace. The Chair detailed a current focus on “expedited decision-making, strengthening support for adjudication and quality service,” improved communications, and enhanced information and technology.⁴⁸ In response to suggestions that the Board has not responded to reports from the occupational disease advisory panels, Mr. Mahoney spoke about the training of 70 occupational disease staff and the implementation of an adjudication protocol based on the principles of Brock Smith’s final report on occupational disease. He also said the Board will consult with stakeholders on draft policies “over the next several months.”⁴⁹

In his letter to the Committee, Mr. Mahoney responded to several claims made by the Ontario Federation of Labour (OFL) pertaining to the length of time it takes to process occupational disease claims. The OFL had commented,

Every single day, workers who worked in the facility I worked at are dying because of exposure to chemicals in the workplace. I came from the rubber industry in Kitchener. We have literally hundreds of claims backed up at the Workers' Compensation Board.⁵⁰

Similarly, the OFL stated,

Look at the case of Jean and Barb: Their husband and father began fighting for his claim in 1992. He passed away almost 10 years ago. His claim has just passed the final level of appeal at the board and is ready to go on to the independent appeals tribunal. That is not as unusual a case as I think you might be led to believe by people from the board presenting earlier today. There are scores of cancer and asbestosis cases that have been discovered in the last five years alone in Sarnia alone that are still waiting to be dealt with.⁵¹

⁴⁶ Ibid., p. 557.

⁴⁷ Ibid.

⁴⁸ Ibid.

⁴⁹ Ibid.

⁵⁰ Ibid., A491.

⁵¹ Ibid., A-514.

In his letter to the Committee, Mr. Mahoney replied that there have been 492 WSIB claims associated with Kitchener's rubber industry. As of March 21, 2007, there were only 17 still pending. Furthermore, Mr. Mahoney noted that only 10 of 778 claims for cancer and asbestosis linked to employment at Sarnia's Owens Corning and Holmes Foundry were still pending.

Mr. Mahoney also responded to a Member's question regarding the average length of occupational disease claims. He stated that the majority of claim decisions were made within four to six weeks. While no claims have extended beyond ten years for initial entitlement decisions, he noted that the WSIB "is committed to improving the timeliness of more complex claims."

Joint Health and Safety Committees

Responding to several conversations about joint health and safety committees that were held between Committee members and stakeholders, Mr. Mahoney shared his belief that "these committees are crucial to developing a health and safety culture in workplaces across Ontario, and critical to the success of prevention initiatives."⁵² He also indicated that, as a result of the Committee's discussion of these issues, the Board's prevention chief has been asked to make joint health and safety committees a priority, and to work with the Ministry of Labour and HSAs to improve compliance by provincial employers.

Coverage Issues

The Chair indicated that he is open discussing the idea of a named insured model, but that this is not an alternative to mandatory coverage. Mr. Mahoney described the successful partnership with the Canada Revenue Agency that has allowed the Board to register 17,000 non-compliant employers in the past two years. He also indicated that the Board will be reinstating the voluntary registration program, as suggested by one of the stakeholders to the Committee on February 27.

Experience Rating

Contrary to suggestions made by some stakeholders, the Board's evidence is that prevention incentive programs like safety groups and experience rating succeed in motivating "positive behaviours." While he noted the intensity of efforts to eliminate fraud, including implementing a "verification audit to ensure full and appropriate reporting of all injuries and illnesses," the Chair also acknowledged "the need to review and find opportunities to improve all of our financial incentive programs, including experience rating, and to ensure their future effectiveness."⁵³

In his letter to the Committee, Mr. Mahoney reiterated the WSIB's commitment to an experience rating system that encourages and rewards best practices in prevention and return to work. He noted that the WSIB informs all employers of their legal obligation to report workplace accidents and illnesses. Failure to report is against the law and can result in substantial fines. Mr. Mahoney also

⁵² Ibid., A-558.

⁵³ Ibid.

remarked that changes to the NEER and CAD-7 plans will increase fairness and accountability and will contribute to improved health and safety outcomes.⁵⁴

Recognition of Needs of Small Businesses

The small business community, represented by the Canadian Federation of Independent Business, presented information to the Committee suggesting that small businesses had relatively few accidents and should therefore be less burdened by WSIB requirements. The Canadian Federation of Independent Business also criticized the Workwell⁵⁵ program, arguing that

[Small firms] don't need punitive approaches like the Last Chance or High Risk initiative or the Workwell program. The Workwell program: There's correspondence in your kits—we wrote about it at the time—that suggests that over a 10-year period, they touched 2,860 firms out of over 300,000 firms in the province. They touched very few firms. They essentially are seen as an organization that is marauding around, attempting to find and penalize employers without actually helping them. Small businesses need help; they need job-specific, firm-centred help, not a whole lot of agencies.⁵⁶

Mr. Mahoney noted that 12% of claims in 2005 came from small businesses, representing approximately 42,375 injuries or illnesses. Mr. Mahoney reiterated that the WSIB provides one-on-one assistance to small businesses requiring help to fill out WSIB forms. New software will allow employers to fill out the forms online.

Mr. Mahoney also indicated that he had considered the possibility of creating a new class of employer, Schedule 3, for small businesses. However, he argued that the WSIB already treats small businesses as a unique class. Within five days of registering, a small business owner receives the WSIB's small business employer guide, which includes easy-to-understand pamphlets and posters expressing the obligations, benefits, premiums, legal rights, and appeals process for small businesses. Each small business is assigned a customer service representative.

Mr. Mahoney also noted that, according to WSIB surveys, 80% of the province's employers state that they are satisfied with the WSIB's services. He stated:

⁵⁴ The NEER program was described earlier in the report and is also explained in the Glossary. CAD-7 is the experience rating program for employers in the construction industry.

⁵⁵ The WorkWell program conducts health and safety audits of firms with poor safety records in order to encourage an effective internal responsibility system through financial incentives. If an employer does not meet the WSIB's criteria they are given six months to correct the situation. If the company fails the second audit, surcharges can be levied.

⁵⁶ Standing Committee on Government Agencies, *Committee Hansard*, 27 February 2007, A-502.

I would argue strongly that I have a little more confidence in the surveys we conduct than simply asking a small business owner a question like, “If you had a chance to buy your coverage competitively from five or six companies instead of being forced to buy it from the government’s WSIB agency, what would you prefer?”⁵⁷

In his letter to the Committee, Mr. Mahoney added that the Workwell program had actually audited 6,500 companies in the last decade. He emphasized that Workwell focuses on employers with the worst health and safety records. Workwell audits lead to significant improvements in the records of those firms and reduce the negative financial impact that firms with poor safety records have on other employers in their industry.

Service to Employers

Mr. Mahoney outlined the ways in which the Board continues to support employers:

- providing protection from liability;
- encouraging and rewarding positive health and safety behavior through prevention incentive programs;
- providing training programs, products and services through 14 HSAs;
- developing an accreditation program to recognize superior health and safety practices;
- developing an e-channel to enhance accessibility; and
- providing tax-deductible premium rates to employers.⁵⁸

Support to Injured Workers

Mr. Mahoney outlined the ways in which the Board continues to support injured workers:

- comprehensive multilingual support in more than 60 languages;
- the creation of an adjudicative best practices working group;
- staff training in areas of occupational disease, return to work, and worker sensitivity;
- creation of a serious injury program working group with external stakeholders;
- a review of the Board’s service delivery roles;
- funding of occupational health clinics; and

⁵⁷ Ibid., A-561.

⁵⁸ Ibid., A-558-9.

- numerous benefit improvements over the last few years.⁵⁹

WSIB Premium Rates

In its deputation to the Committee, Canadian Manufacturers and Exporters made the following comment:

Last year, Mr. Mahoney announced that the average premium rate for 2007 would remain unchanged from its 2006 levels. We view this as an acknowledgement that there were inconsistencies between the increasing WSIB premium rates in previous years and the successes that had been achieved by employers in improved health and safety in their workplaces, which had been evidenced by an ongoing decline in lost-time injury rates.⁶⁰

The Canadian Federation of Independent Business had also expressed concern about increases in premium levels in past years, highlighting three 15% increases followed by two 10% increases.⁶¹

In his letter to the Committee, Mr. Mahoney responded that the WSIB had introduced a number of measures to improve its fiscal situation which provided the Board with the flexibility to keep 2007 premiums at 2006 levels. The decision to maintain the 2006 levels was based on a careful review of the financial pressures and possible outcomes that could arise if the WSIB placed increased emphasis on prevention and return to work programs. Furthermore, Mr. Mahoney noted that between 1996 and 2006, the average premium rate has decreased by almost 25%, from \$3.01 to \$2.26. Rates have only increased twice in that period.

Northern Ontario Injury and Fatality Statistics

In response to a Member's request, Mr. Mahoney provided the Committee with injury and fatality statistics for northern Ontario.

⁵⁹ Ibid., A-559.

⁶⁰ Ibid., A-495.

⁶¹ Ibid., A-502.

COMMITTEE RECOMMENDATIONS

The Committee acknowledges that many witnesses expressed their approval of the current management and direction of the WSIB, and commends the Board for its performance and efforts. The Committee also recognizes that the WSIB serves groups that occasionally have competing interests, as reflected in the witnesses' recommendations. There is always room for improvement, however, and the Committee advises the WSIB to consider these recommendations and continue to improve its relationship and programs with system partners. The Committee would also like to propose its own recommendations, mindful that the WSIB must balance these competing interests.

The Committee recommends that:

1. Recognizing the government's responsibility for determining appropriate levels of compensation and benefit coverage, the WSIB continue to consult stakeholders regarding compensation and benefit coverage for injured workers and premium levels for employers.
2. The WSIB consult with stakeholders on the merits of a named insured system and issues concerning implementation and administration.
3. The WSIB explore the use of electronic communication systems in place of regular mail and faxes.
4. The WSIB review and clarify its relationship with Safe Work Associations in the delivery of education, training and consultation services to workplaces.
5. The WSIB adopt the Canada Revenue Agency practice of suspending collection activity while an assessment is being actively appealed.
6. The WSIB evaluate the effectiveness of the "deeming" provisions regarding the employability of injured workers.
7. The WSIB re-establish the experience rating working group and review the effectiveness of the experience rating program to ensure that it reflects the overall safety practices of businesses.
8. The WSIB continue to work with small business stakeholders and the Ministry of Small Business and Entrepreneurship to develop programs to assist small businesses in preventing workplace accidents and managing their *Workplace Safety and Insurance Act* responsibilities.
9. The WSIB create an independent advisory body to provide expert scientific advice regarding occupational disease policy development and disease scheduling.
10. The WSIB ensure that all employers are in compliance with requirements under the OHSAA (*Occupational Health and Safety Act*) to have a joint health and safety committee or a health and safety representative.

GLOSSARY

Deeming

The WSIB pays injured workers 85% of their net earnings loss until the worker is no longer impaired or suffering a wage loss. However, the WSIB's Operation Policy Manual states that workers can be "deemed" to be receiving wages "in the absence of actual employment earnings."⁶² A worker, for example, may be unable to find a suitable position yet the WSIB can rule that he or she has the potential to earn a certain wage.

Early and Safe Return to Work Program

The WSIB is mandated to facilitate the return to work of employees with injuries or illnesses. The WSIB is responsible for managing and monitoring the claim and providing education and assistance to the worker and employer. The worker and his or her employer must co-operate in facilitating the worker's return to his or her job, or some other suitable job with the same employer. "Suitable" work is safe, restores pre-injury earnings as closely as possible, and is permitted by the employee's skills and abilities.

Experience Rating Programs

The WSIB offers several programs that financially reward businesses for maintaining good health and safety records, and penalize them in the opposite case. For example, the New Experimental Experience Rating Program (NEER) applies to all firms outside of the construction industry paying more than \$25,000 in premiums. The cost of a company's claims is compared to the average for its rate group. If claims costs are lower than would be expected for a company of the same type and size, the firm receives a premium rebate; if higher, a surcharge. Other experience rating programs apply to different sectors of the economy.

Health and Safety Associations

The WSIB provides annual funding of approximately \$86 million to 14 health and safety associations (HSAs). The HSAs are comprised of 12 industry-based safe workplace associations, the Workers Health and Safety Centre, and the Occupational Health Clinics for Ontario Workers.

HSAs provide training programs, products and services to the province's employers and workers.

Joint Health and Safety Committees

Section 9 of the *Occupational Health and Safety Act* requires that most workplaces with 20 or more workers have at least one employee and one management person serve as certified members of a workplace Joint Health and Safety Committee (JHSC). Larger workplaces require larger committees, but in all instances at least one half of the membership of a JHSC must be employees.

⁶² Workplace Safety and Insurance Board, "Operational Policy Manual: Payment of LOE [Loss of Earning] Benefits." Internet site at <http://www.wsib.on.ca/wsib/wopm.nsf/Public/180302>, accessed 30 March 2007.

Certification involves training in health and safety law, and in the identification, assessment and control of hazards, and is furnished by providers approved by the WSIB and the province's health and safety associations.

Named Insured System

A "named insured" registration system is a proposal that would require all persons working in certain workplaces (e.g., construction sites) to carry identification cards and be identified by name to the WSIB, either as a worker on an employer's payroll or an independent operator with the WSIB. It is argued that such a system would curtail the underground economy. It would also ensure that workers eligible for WSIB coverage have had premiums paid on their behalf, while workers who are ineligible for coverage would be unable to file for benefits.

Voluntary Registration Program

In 2001, the WSIB implemented an employer voluntary registration program that offered incentives to employers that were required to have insurance coverage but had failed to register. Employers who registered under this program avoided retroactive assessment of premiums and fines. The program ended in 2003. In 2004, the WSIB entered a partnership with the Canada Revenue Agency to track employers that are obligated to register with the WSIB but have failed to do so.

APPENDIX A

DISSENTING OPINION FROM THE PROGRESSIVE CONSERVATIVE MEMBERS OF THE COMMITTEE

DISSENTING OPINION OF HER MAJESTY'S LOYAL OPPOSITION TO THE AGENCY REVIEW OF THE WORKPLACE SAFETY AND INSURANCE BOARD BY THE STANDING COMMITTEE ON GOVERNMENT AGENCIES

The Committee adopted an adversarial procedural approach to this review, which works well in our court system, but is unproductive when applied to a parliamentary review of any Agency.

After all presentations had been heard, including those of the Agency, the Agency was then permitted to make further oral and written presentations to refute the presentations of interested stakeholders, who were not then permitted further clarification.

Rather than emphasizing a cooperative approach to improving the services to workers by the Agency and stakeholders, the rebuttal rights of the Agency introduced an atmosphere of one-upmanship rather than one of cooperation. This is not a healthy atmosphere for all our responsibilities to injured workers.

In addition the Ontario budget coincidentally contained a number of improvements and changes for injured workers, but a suggested request for a costing from the Agency was refused by the Committee majority. As the unfunded liability has increased during the past three years, the budget changes (some having a term limitation) make costing very difficult if not impossible. There is little doubt however that the Budget WSIB requirements make the goal of eliminating the unfunded liability by 2014 improbable if not impossible without substantially increased premiums. The inclusion of the WSIB requirements in the budget breaks with tradition and circumvents the usual intensive consultative process which has occurred in the past.

The combination of these two procedures has resulted in a most unfortunate adverse impact on this important review process.

MPP Gary Martiniuk, Cambridge