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Official Report of Debates (Hansard)

Thursday 2 December 2010

Journal des débats (Hansard)

Jeudi 2 décembre 2010

**Standing Committee on
Finance and Economic Affairs**

Helping Ontario Families and
Managing Responsibly Act, 2010

**Comité permanent des finances
et des affaires économiques**

Loi de 2010 sur l'aide
aux familles ontariennes
et la gestion responsable

Chair: Pat Hoy
Clerk: Sylwia Przedziecki

Président : Pat Hoy
Greffière : Sylwia Przedziecki

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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON
FINANCE AND ECONOMIC AFFAIRS

Thursday 2 December 2010

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DES FINANCES
ET DES AFFAIRES ÉCONOMIQUES

Jeudi 2 décembre 2010

The committee met at 0900 in room 151.

SUBCOMMITTEE REPORT

The Chair (Mr. Pat Hoy): The Standing Committee on Finance and Economic Affairs will now come to order. Our first piece of business would be to read the report of the subcommittee. Do you have that, Ms. Pendergast?

Ms. Leeanna Pendergast: Your subcommittee on committee business met on Wednesday, December 1, 2010, to consider the method of proceeding on Bill 135, An Act respecting financial and Budget measures and other matters, and recommends the following:

(1) That the committee hold public hearings in Toronto, at Queen's Park, on Thursday, December 2, 2010, during its regular meeting times, as per the order of the House dated Wednesday, December 1, 2010.

(2) That the clerk of the committee, with the authorization of the Chair, post information regarding the committee's business on the Ontario parliamentary channel and on the Legislative Assembly website.

(3) That interested people who wish to be considered to make an oral presentation on Bill 135 should contact the clerk of the committee by 5 p.m. on Wednesday, December 1, 2010.

(4) That the clerk of the committee, in consultation with the Chair, be authorized to schedule witness presentations as the requests are received, on a first-come, first-served basis.

(5) That groups and individuals be offered 10 minutes for their presentations, followed by up to five minutes for questioning by committee members.

(6) That the deadline for receipt of written submissions be 5 p.m. on Thursday, December 2, 2010.

(7) That the research officer provide the committee with a summary of written submissions by 5 p.m. on Friday, December 3, 2010.

(8) That amendments to the bill be filed with the clerk of the committee by 10 a.m. on Monday, December 6, 2010, as per the order of the House dated Wednesday, December 1, 2010.

(9) That the committee meet on Monday, December 6, 2010, at 2 p.m. for clause-by-clause consideration of the bill, as per the order of the House dated Wednesday, December 1, 2010.

(10) That the clerk of the committee, in consultation with the Chair, be authorized to commence making any preliminary arrangements necessary to facilitate the committee's proceedings prior to the adoption of this report.

The Chair (Mr. Pat Hoy): Are we all agreed? Agreed.

HELPING ONTARIO FAMILIES AND
MANAGING RESPONSIBLY ACT, 2010LOI DE 2010 SUR L'AIDE
AUX FAMILLES ONTARIENNES
ET LA GESTION RESPONSABLE

Consideration of Bill 135, An Act respecting financial and Budget measures and other matters / Projet de loi 135, Loi concernant les mesures financières et budgétaires et d'autres questions.

CANADIAN LIFE AND HEALTH
INSURANCE ASSOCIATION

The Chair (Mr. Pat Hoy): Now then, across from me I believe we have the Canadian Life and Health Insurance Association. Good morning.

Mr. Ron Sanderson: Good morning.

The Chair (Mr. Pat Hoy): You have 10 minutes for your presentation; there could be up to five minutes of questioning. This time, the questioning would come from the official opposition.

If you'd just state your name, you can begin.

Mr. Ron Sanderson: Thank you very much, Mr. Chair. My name is Ron Sanderson. I am the director of policyholder taxation and pensions at the CLHIA.

Established in 1894, the CLHIA is a voluntary trade association that represents the collective interests of its member life and health insurers. In addition to providing life, disability and supplementary health insurance services, our members are active participants in the retirement planning area. CLHIA members administer approximately two thirds of pension plans in Canada and provide annuities that guarantee benefits for life and guarantee that those benefits are actually paid, not merely promised.

The proposals in schedule 15 of this bill address an unintended aspect of the current Pension Benefits Act that may allow some individuals to double-dip into their pension plans. Unfortunately, for Ontarians who lose

their jobs before retirement age, the proposals would severely restrict the use of annuities to lock in a guaranteed retirement income. The proposals would prevent abuse but would also diminish choice and income security in the larger community.

At present, on termination of employment, an individual can require a pension administrator to purchase a life annuity from an insurance company to provide equivalent pension benefits. The current legislative wording may be interpreted to also allow that individual to claim a lump sum payment from the pension plan, reflecting any difference between the cash equivalent of the pension rights under the plan—what is known as the commuted value—and the cost of that replacement annuity. In effect, the individual can top up his pension plan by claiming an additional part of the capital of the plan, capital that we think should be retained in the plan to pay other workers' pensions.

As of July 1 of next year, in order to prevent this double-dipping, schedule 15 would prevent annuity purchases before retirement age. Terminating employees would still be able to purchase locked-in retirement accounts—essentially RRSPs that are locked in until retirement age. This would still permit individuals to guarantee lifetime incomes, but only when they reach retirement age, not now. The actual income provided would depend on investment earnings, or losses, from loss of employment through to retirement age, and the income to be provided would be unknown until then. We think this exposes workers to unnecessary risk. It diminishes both retirement income security and Ontarians' ability to plan their retirement incomes.

Annuities are the only way to offload the risk of outliving your finances, to transfer that risk to a financial institution that can properly manage that risk. Annuities are an essential retirement planning tool, and Ontarians deserve access to such tools.

The potential double-dip is inappropriate, but repealing paragraph 42(1)(c) of the Pension Benefits Act, as proposed by schedule 15, is not the solution. Removing choice and flexibility is poor public policy. Schedule 15 should be withdrawn or amended so that purchases of guaranteed income annuities, payable for as long as Ontarians live and using current pricing, would still be permitted. But where an annuity can be purchased for less than the assumed cost under the pension plan, the Pension Benefits Act should ensure that any excess will remain in the pension plan for the benefit of other workers and not the benefit of former members who are receiving their full entitlement in the form of a guaranteed income annuity.

We have provided your committee and finance officials with some alternative wording for this proposal, and I would be happy to respond to any questions you might have.

The Chair (Mr. Pat Hoy): Thank you. The questioning will go to the official opposition. Mr. Miller.

Mr. Norm Miller: Thank you for your presentation. I guess my first question is, how did you even find out

about these hearings? Before they happened, I noted you had submitted your request to appear before they were even posted, and there were some very, very tight timelines based on the government's time allocation motion. In fact, the subcommittee just met yesterday around noon, advertised for all of a couple of hours and then here we are meeting today. I'm just curious about how you actually knew that this might be happening.

Mr. Ron Sanderson: Well, without being flippant, it is the business of people in the pension industry to watch pension legislation and financial legislation. We watch what's happening here and in other Legislatures across the country with great interest.

Mr. Norm Miller: You must do it on a daily basis, then.

Mr. Ron Sanderson: I would suggest more frequently than daily.

Mr. Norm Miller: Yes, okay. I guess, secondly, on this particular schedule 15, why do you think the government would put this provision into the bill? According to what I read in the bill's explanatory note, it says, "Currently, clause 42(1)(c) of the Pension Benefits Act enables a former member of a pension plan to transfer the commuted value of his or her deferred pension for the purchase of a life annuity. That clause is repealed on June 30, 2011." Why do you think they're making this move that prevents the ability of these former members to be able to buy annuities?

Mr. Ron Sanderson: It goes beyond the intent—and, yes, it does prevent access to buying annuities by those individuals. The concern has arisen due to a small number of individuals who have recognized that there is a pricing difference between the assumed price of that annuity within the pension plan—what's referred to as the commuted value—and the actual price out in the marketplace. If, in fact, the commuted value exceeds the actual purchase price of that annuity, then the question is, what do you do with the excess? The way the legislation is currently drafted, it is unclear, and some have suggested that individuals may, in fact, be able to pocket that difference, even though they're getting a full equivalent to the benefit they would have received under the pension plan by buying the annuity. Should they be able to access the plan twice? We don't think so.

0910

Mr. Norm Miller: Okay. The excess amount is payable to the former member. That's—

Mr. Ron Sanderson: That's right. That's the definition of commuted value, as opposed to the price of a replacement annuity.

Mr. Norm Miller: So your recommendation would be to just pull that section, schedule 15. Maybe I could ask the Chair or legal counsel: If we propose an amendment to remove that section of the bill, is that in order?

The Chair (Mr. Pat Hoy): That would be a question for legal counsel.

Mr. Norm Miller: Because usually, we do these things, then we get to the point of voting on them and

find out they're not in order. So I thought I would ask now.

Mr. Ron Sanderson: If I may, I would suggest, rather than withdraw schedule 15, there is a fix that is possible and would simply limit the amount that the former member of the plan would have access to the amount necessary to purchase that replacement annuity. We've suggested some alternate wording.

Mr. Norm Miller: Okay. We have that?

Mr. Ron Sanderson: You do.

Mr. Norm Miller: Okay, because once again, it's an extremely tight time frame to make the amendments, and Monday is clause-by-clause. We'll have a look at those suggestions you made. And hopefully the government will too, because often, when I propose these things, they don't go anywhere, anyway. Thank you.

The Chair (Mr. Pat Hoy): And thank you for your submission.

Mr. Ron Sanderson: Thank you.

INJURED WORKERS' CONSULTANTS

The Chair (Mr. Pat Hoy): Now I call on the Injured Workers' Consultants community legal aid clinic.

Mr. John McKinnon: Thank you, Mr. Chair. If I may, I just discovered this morning that I'm losing my voice, so I'll just get a little something to help me along.

The Chair (Mr. Pat Hoy): It's the time of the season.

As you see, you have up to 10 minutes for your presentation, and there could be up to five minutes of questioning. Simply identify yourself for our recording and you can begin.

Mr. John McKinnon: Thank you, Mr. Chair, and good morning, members of the committee. My name is John McKinnon. I work with the Injured Workers' Consultants community legal clinic. My co-worker Marion is also going to be joining me in the presentation. I understand that she's just on her way in. As you may have heard, the subway system is down on the Bloor line, so a lot of people are coming here on foot. I apologize for that.

Interjection.

Mr. Peter Tabuns: Rob Ford again; they all say that.

Mr. Toby Barrett: No, it's Mike Harris.

The Chair (Mr. Pat Hoy): Order.

Mr. John McKinnon: I'm sure he'll fix it.

Our submission is limited to schedule 21 of Bill 135, and that's the schedule that deals with amendments to the workers' compensation legislation. There's a little bit of information in our submission about our community legal clinic. I'm sure that all of you have had the experience of meeting with injured workers in your constituency offices who have experienced financial difficulties as a result of getting benefits reduced or cut off in situations that seem a little bit unfair. I wish that—

Ms. Marion Endicott: Hi, John.

Mr. John McKinnon: Marion Endicott has just joined me.

Ms. Marion Endicott: Sorry. The subway's stopped.

Mr. John McKinnon: That's what we thought.

Unfortunately, due to shortage of time, we can't really develop the connection. Here, today, we're talking about a completely different end of a system, the funding of the system, but there is a connection between the presence of injured workers in all of our offices who are unhappy with decisions and with cuts on benefits and with the level of anxiety at the top of the workers' compensation system about the funding.

Let me just highlight some of the features in our submission, and Marion's going to cover some of them. The essential features of schedule 21 are: a legislative amendment to fully fund the workers' compensation system. At the same time, this amendment eliminates the requirement for the WSIB to raise the rates of employers in the event of an insufficiency of funds. Also, section 3 eliminates the safety net of a loan by the government to the Workplace Safety and Insurance Board in the event of an insufficiency of funds among the employers of Ontario, and section 4 eliminates the Minister of Labour's authority to issue policy directives.

Let me just start first with our concluding recommendation. Over the next year, as some of you may be aware, workers' compensation funding is going to be on trial in a public inquiry that was announced by the Workplace Safety and Insurance Board on September 30. At the end of this trial, Professor Harry Arthurs, who's been commissioned to hold the inquiry, is going to give his verdict, and it's either going to find in favour of a full-funding approach to workers' compensation or of a current-cost approach to workers' compensation funding.

By legislating full funding now through schedule 21, the government is writing the verdict before the trial has taken place. This is going to do irreparable harm to the public credibility of the process that the WSIB has begun, and it's going to discourage those who may wish to support steady-state or current-cost funding from participating in the review at all. That's why our recommendation is that the committee should delete schedule 21 from the bill. Remove any reference to workers' compensation from the bill and come back to this after the funding review has been completed.

A sort of second and alternative position that we mention in the brief, to relieve the provincial government and the Auditor General of anxiety over the potential liabilities of the WSIB, is that it would be okay to remove the safety net of a potential loan from the government to the WSIB. The WSIB has survived for the last 95 years without any financial difficulty, and it's really not necessary to have the government potentially on the hook for that loan. If it would solve the crisis of the day, then that would be an option.

Ms. Endicott and I are going to review some of the reasons for our recommendation—they're covered in more detail in our submission—but there is no WSIB funding crisis right now. What people refer to as the unfunded liability is not a debt; it's a future cost. Currently, the unfunded liability is calculated as roughly \$12 billion. That means that our workers' compensation system is roughly 55% funded.

The workers' compensation system was originally set up on the basis of the royal commission by Sir William Meredith. Employer representatives called for a current-cost funding system where the WCB would collect enough money from employers during the year to pay out the anticipated cost of benefits for the year. This was advocated by the Canadian Manufacturers' Association, and their actuary said that that was the lowest cost way to fund the system; lower than a fully funded system.

So Meredith recommended what we call steady-state funding today—a current-cost system with a reserve—and the compensation board was to determine how much that reserve should be. That is how the Ontario workers' compensation system has been funded for the last 95 years. It survived two world wars, the Great Depression of the 1930s, the recession of the 1990s, the recent economic tsunami of 2008 and everything in between.

We also comment in our submission that full funding works against the interests of employers. We don't think that Ontario's employers are better off to have a fully funded workers' compensation system, because that means taking an additional \$12 billion and tying it up in the WCB instead of it being left in businesses and in the economy until it's time to pay it out to injured workers. The new president of the WSIB said to the Standing Committee on Public Accounts earlier this year that the reserves of the board are sufficient to cover all the costs of all the claims on the books for the next 25 years. So it doesn't seem, in our view, to be in the interests of Ontario's economy or Ontario's employers to hand over \$12 billion today when the board will not begin to pay out any of it until 25 years from now.

Consider what would have happened in 2008 if the board had been fully funded. With \$25 billion in investments, it would have lost over \$4 billion in a flash overnight. That would have been a huge disgrace, and the only solution at that point would have been to go to the employers and say, "I'm sorry; you have to pay up again. We need another \$4-billion-plus to make up the shortfall." That's something to consider.

Also in our brief, we point out that injured workers have basically already paid to fully fund the system through the benefit cuts that were brought in in 1995 and 1998. Through some calculations that were done by the WSIB—we've included their chart in our submission—had the employers' rates been left the same in 1996, the unfunded liability would have been gone by the year 2006. Ontario would have a fully funded workers' compensation system because of the cuts to injured workers' benefits. However, the board, the government and the employers chose rate reductions instead of fully funding the system. Rates were reduced every year, and they're still about 25% less today than they were in 1996.

0920

We also ask you to consider the Canada pension plan, which has a funding system like the WSIB. I mentioned the WSIB is 55% funded while the Canada pension plan is about 22% funded now and its goal is to achieve a funding level of about 25%. The Canada pension plan is

highly regarded for its investment and funding strategy, but our WSIB is more than twice as well funded.

At this point, I'm going to pass it over to Ms. Endicott to deal with some of the problems that would arise if schedule 21 was enacted.

The Chair (Mr. Pat Hoy): You have about a minute and a half left.

Ms. Marion Endicott: Oh, boy. Well, let me very, very briefly say, then—and let's see how I can fill it in—that even though this may seem innocuous and it may seem like a financially responsible set of amendments to the Workers' Compensation Act, from our analysis, which comes from decades and decades of working with the system, these changes will actually increase complexity of the workers' compensation system; it will increase controversy, which I'm pretty sure you don't want; and it will definitely increase poverty. It will shift the burden further from employers paying for the system to injured workers paying for the system.

The reasons for that are described in the brief, but I think you probably all, as MPPs, have many injured workers coming to your doors, and you already know how, through various administrative means, injured workers end up being cut off their benefits when they really shouldn't be. These amendments call for a plan for the board to enact in order to deal with any funding issue rather than simply raising the rates.

We have appended the current legislation to this brief. You will see that a key aspect of it, besides the full funding, is to take out sections 96(4), (5) and (6), which is very plain and simple and requires the Lieutenant Governor, if there's any kind of financial crisis, to direct the board to raise the rates. That's how our system operates. Everybody knows it. It's simple. The bureaucracy's in place. There's no controversy.

Employers may not like having their rates raised. However, also in our brief, it shows that even though there is some claim that Ontario employers pay more, in fact, they don't. It's all relative. In other provinces, there's full coverage, and when there's full coverage, including a lot of the industries that pay much less, the average rate goes way down. So we look bad because we don't have full coverage, and that's one of the anomalies. You have to look at it industry by industry. We have a chart in here that shows industry by industry, and it shows Ontario as kind of right in the middle.

The other thing is coverage. This bill is all about families and managing responsibly. We predict that financially, it will be a disaster. But in terms of families, if you want to do something that addresses the finances of the board, bring in full coverage. That will really fill the coffers of the system and it will cover the 40% of workers in this province who are not currently covered by the system. You'll do two things at once that are good.

The Chair (Mr. Pat Hoy): Thank you. Now we'll move to the questioning. From the NDP, Mr. Tabuns.

Mr. Peter Tabuns: Thank you both for coming in today. Were there any other points that you wanted to make? I know you were given a very brief amount of time.

Ms. Marion Endicott: Yes. Basically, I think that a key point for you to know is, besides removing employer responsibility—which this does, and it’s fundamental to our system—it will really introduce complexity and uncertainty. Our system is so full of that already. You want something that decreases it, not increases it. You’re increasing it in an area where right now there is certainty and there isn’t complexity.

Then I guess the overall point is to summarize the point that John opened with: The WCB has put forward, under the direction of the government, a funding review, a year-long, very gold-star panel. The cart is before the horse here entirely. In fact, the ability of that review panel to do its work is totally undermined by this. We think it needs study. This is precipitous and the schedule should be deleted from the bill.

Mr. Peter Tabuns: When you say “government,” which minister? Or did the Premier appoint this panel?

Ms. Marion Endicott: The funding review panel?

Mr. Peter Tabuns: Yes.

Ms. Marion Endicott: It was actually, oddly, done through the Workers’ Compensation Board and that would come under the Ministry of Labour.

Mr. Peter Tabuns: And the mandate is to look at the option of full funding versus current funding? Are there other elements in that panel’s brief?

Ms. Marion Endicott: It’s also supposed to look at the whole incentive plans: experience rating, the nature of funding; whether we should have rate groups or whether we should go to a flat rate system.

What else, John?

Mr. John McKinnon: Well, there are a few other elements, like having a fund for occupational disease. It’s sort of like a comprehensive look at all of the issues related to workers’ compensation funding, except, so far, for the one important one that Marion mentioned, which is the extent of coverage of our workforce. That doesn’t seem to be on the agenda—at this point, anyway.

Ms. Marion Endicott: Which we’ve raised as a problem. Why isn’t it there?

Mr. Peter Tabuns: When is it due to report?

Mr. John McKinnon: I believe it’s November.

Mr. Peter Tabuns: Of next year?

Mr. John McKinnon: Yes, 2011. Professor Arthurs has outlined a process of fact-finding and then some travelling hearings across the province, and then a kind of review of his findings in quite a thorough process. It’s going to be taking place over the next year.

Mr. Peter Tabuns: I don’t have any further questions, but I have a request for legislative research. Mr. Chair, let me know when I can make that request.

The Chair (Mr. Pat Hoy): You could do it now.

Mr. Peter Tabuns: Excellent. Could we, on this committee, be provided with the mandate of the Arthurs panel so that we know exactly what responsibilities they have, the media release announcing it, setting up, and any comments made by the minister or the Premier upon its being set up made available to the whole panel?

Interjection: Yes.

Mr. Peter Tabuns: Thank you.

The Chair (Mr. Pat Hoy): Thank you for your presentation.

Mr. John McKinnon: Thank you for hearing us.

INDUSTRIAL ACCIDENT VICTIMS’ GROUP OF ONTARIO

The Chair (Mr. Pat Hoy): Now I call on the Industrial Accident Victims’ Group of Ontario to come forward, please.

As you’ve seen, you have 10 minutes for your presentation. There could be up to five minutes of questioning following that. Simply state your names for our recording Hansard, and you can begin.

Mr. Alberto Lalli: Good morning, everyone. My name is Alberto Lalli. I’m a community legal worker at the Industrial Accident Victims’ Group of Ontario, a non-profit community legal aid clinic funded by Legal Aid Ontario. This is Mr. Joel Schwartz, our staff lawyer.

IAVGO, as we call it for short, was created in the 1970s by injured worker activists and, during those 35 years more or less, we have been trying to represent their interests to the best of our ability, and it’s in that capacity that we are here today.

Mr. Joel Schwartz: My name, for the record, is Joel Schwartz. Mr. Chair, members of the committee, we’re here today to raise two concerns that we have about schedule 21 of Bill 135, which of course is the schedule dealing with the amendments to the Workplace Safety and Insurance Act. Our concerns chiefly relate to the provisions dealing with the funding requirements for the board.

I should say from the outset that we agree entirely with the comments of Mr. McKinnon and Ms. Endicott, but I’m going to take a slightly different approach in my presentation.

As I mentioned, we have two main concerns. The first is that schedule 21 is a legislative solution where there’s no legislative problem. Let me begin by saying that there’s no crisis in the WSIB’s funding. There was never any threat that the WSIB would be unable to pay injured workers their benefits as they became due. There’s no serious threat that the WSIB will be unable to pay injured workers at some point in the future. The WSIB is not a private insurance company; it’s a statutory monopoly with the legislative power to increase premiums to raise funds. It’s not going to go bankrupt and it’s extraordinarily unlikely that there will ever be a day when the board has to pay out all of the present value of the claims in the system. So there’s no need to impose private insurance company requirements on a public institution.

0930

We acknowledge that there is room for improvement with the board’s funding, but there’s no need for legislation to do this. We note in particular that one of the provisions of the act which schedule 21 repeals, section 167, allows the Ministry of Labour, with the approval of the Lieutenant Governor, to issue binding policy direc-

tions on the board. Instead of using this straightforward mechanism, what we've got is about four pages of, frankly, quite convoluted legislation, which brings me to my second concern: It's unclear what the proposed amendments actually mean.

Around the same time of the announcement of the Harry Arthurs funding review, the stated intention of the government in Ministry of Labour press releases was to legislate what is commonly known as "full funding." It's not clear to us that that's what the legislation actually provides. We're not entirely sure what it means—and I should say that we spend virtually every day of our working lives working with this legislation.

So we're left now with a concept in 96(3) which deals with the sufficiency of the fund. That says that the board must maintain a fund so that the amount is sufficient to meet its obligations under this act, to make payments for benefits as they become due and to provide for future benefits. Members of the committee, what does "provide for future benefits" mean? It's a rhetorical question, obviously, but does it mean that the board has to be fully funded, meaning that it has to have all the money available, all of the assets available to pay the present value of all of the claims that are already in the system? That would be unfortunate for a variety of reasons. I should let you know that we haven't provided our written submissions yet—we will provide them by the end of the day—which will deal more with our concerns about this concept of full funding.

Again, as has been mentioned, Professor Harry Arthurs has been appointed to conduct a funding review of the WSIB, and he would be the appropriate person to deal with this question. He's going to have resources at his disposal and time to really deal with the issue. He's going to retain economists, actuaries and so forth; he's going to consult with stakeholders. IAVGO's position is we strongly recommend that the government wait to hear his recommendations before mandating a funding level.

Again, as I said, it's not clear that this legislation actually requires full funding. There's another possible interpretation, which is that the boards maintain the fund position such that it ensures that there's minimal risk of being unable to meet its benefit obligations in the future and that the details of how it does so will be sorted out in the regulations. If that's the correct interpretation, it's nothing new. There's nothing really different from what we already have in the act, which of course begs the question, why change it?

This question of what "sufficient to provide for future benefits" means isn't academic. There's billions of dollars of injured worker benefits and premiums that employers will have to pay at stake. If legislation really is necessary to address the board's funding levels, it needs to be clarified to prevent misinterpretation. So we ask the committee to recommend that schedule 21 be removed from Bill 135.

Those are our comments.

The Chair (Mr. Pat Hoy): Thank you. If you do put in a written submission before the time limit, make sure

the clerk has it, and she'll make sure all committee members have a copy.

Mr. Joel Schwartz: We'll make sure we do that.

The Chair (Mr. Pat Hoy): We'll now go to questioning from the government. Ms. Pendergast.

Ms. Leeanna Pendergast: Thank you, Mr. Schwartz and Mr. Lalli, for being here today and for your comments. I would echo the Chair's comment to please make sure you include all of your comments in your submission.

I wanted to pick up on a couple of things you talked about. Specifically, you mentioned that Mr. Arthurs is an appropriate person. I did want to start by saying that the proposed amendments do support the Arthurs review and consultation as he seeks stakeholder input. It shows just how serious we are about retiring the unfunded liability of the WSIB.

The amendments are crucial for consultation, and they show that we're the first government to support, by legislation, WSIB's goal to have a financially sustainable compensation system for Ontario businesses and Ontario workers. That said, would you agree that a financially stable workers' compensation system is in the best interests of all Ontarians?

Mr. Joel Schwartz: Without question. I think I would disagree, though, that a fully funded system is necessary to meet that target. Our position—and Mr. McKinnon mentioned it—is that steady-state funding is really all that should be required, which is essentially enough funding so that the board can meet all its obligations on an ongoing basis, and a bit of a cushion—the amount of the cushion would be open for discussion—to deal with contingencies.

Ms. Leeanna Pendergast: I'm interested in what role you would see the Industrial Accident Victims' Group of Ontario take and what role you would see yourselves taking in Arthurs' year-long review of WSIB funding.

Mr. Joel Schwartz: We certainly intend to participate. There have been consultation meetings already. We plan to provide written submissions and be involved, frankly, to the extent possible.

Ms. Leeanna Pendergast: I guess my next question is a segue to that: Do you think the prospect of allowing stakeholders to provide input to the length of time required to achieve sufficiency and determine the level of sufficiency is a positive approach and a requirement for Bill 135?

Mr. Joel Schwartz: I do. I think it makes sense. It's a very complicated issue. There are people, again, who work with these issues on a daily basis, who should really have the opportunity to be involved. I think Professor Arthurs is a good choice for someone to weigh all the countervailing arguments.

Ms. Leeanna Pendergast: Thank you very much for your expertise today and for sharing your time and your thoughts with us. We really appreciate it.

Mr. Joel Schwartz: Thank you.

The Chair (Mr. Pat Hoy): Thank you for the presentation.

ONTARIO NETWORK OF
INJURED WORKERS GROUPS

The Chair (Mr. Pat Hoy): I now call on the Ontario Network of Injured Workers Groups to come forward, please. For the committee, we have one person who is present, and there will be another person on teleconference. Can the person on teleconference hear us?

Mr. Steve Mantis: I can.

The Chair (Mr. Pat Hoy): Very good. Maybe I'll get you to identify yourself at this time for our recording Hansard. Could you just state your name?

Mr. Steve Mantis: My name is Steve Mantis. I'm the secretary of the Ontario Network of Injured Workers Groups.

The Chair (Mr. Pat Hoy): Very good. You can listen as we hear your deputation. Those here at the table have 10 minutes for your presentation, and there could be up to five minutes of questioning. I ask you to identify yourselves for our recording Hansard, and then you can begin.

Mr. Peter Page: My name is Peter Page. I'm president of the Ontario Network of Injured Workers Groups.

Ms. Patricia Reilly: My name is Patricia Reilly. I'm an injured worker and a member of the Ontario Network of Injured Workers Groups.

Mr. Orlando Buonastella: My name is Orlando Buonastella. I work for the IWC legal clinic. We're a resource to the network and also associate members of the network.

The Chair (Mr. Pat Hoy): You can begin.

Mr. Peter Page: I'll begin, and I think Steve Mantis will follow after my small presentation.

Thank you for allowing me the opportunity to present on this most important issue. As president of the Ontario Network of Injured Workers Groups, of course, I've met many injured workers. Our organization was founded over 18 years ago and was brought together to help injured workers navigate through the complex system that is the WSIB. I would also like to state that our organization believes and strongly advocates that the Workers' Compensation Board remains within the public domain, as it is presently. We do not want to see it privatized.

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Having said that, again, as president, I have met many injured workers during my tenure. I met Daryl, legs amputated at the hip, who worked in the railway; I met Tom, who fell 33 feet, broken back, working in construction; I met Steve, left arm amputated; I met Patricia, acquired brain injury; I met Michelle, broken right arm—useless; I met Sylvia, post-traumatic stress disorder; I met a young worker crushed by a steel plate, not yet into the working world and injured; I met another young worker poisoned by pool chlorine—at 20, she's unable to pursue her athletic career because she has severe asthma.

I could go on. My point is that these are the people the Workers' Compensation Board is supposed to help and protect; yet, employers want to renege on the historic compromise in 1913, where we gave up the right to sue

the employer in exchange for fair compensation. We feel that we've been under attack ever since that historic compromise was implemented by Sir William Meredith almost 100 years ago.

What kind of province do you, as members of Parliament, want: one like in China, where they kill 2,600 miners each year; or in Chile, where they just avoided a disaster by saving 33 miners, which talks about their health and safety issues; or in New Zealand, where 29 miners were killed? Imagine what we would say if that was in Ontario. The Christmas tragedy is at a very poignant point in time because we have the Tony Dean review coming up.

So health and safety—that's my point, that, yes, we should as a province be open to business and we should allow it to flourish. We should give them every opportunity, but at what cost? This province and the workers in it deserve health and safety; they deserve good-paying jobs. Most of all, when they fall ill or are injured, they deserve all the resources available to make their lives whole again—not cast out on the scrap heap of life like so many of our injured workers find themselves today.

I thank you, Steve, if you want to—

Mr. Steve Mantis: Thank you, Peter. I'd like to add to what Peter talked about. We have seen moves in successive governments that are very upsetting to us as injured workers. We are concerned that the government is abandoning the historic compromise that Peter mentioned. Ever since 1990, we have seen the system deteriorating. The system has become almost a fight over money between workers who are injured, disabled for life, and, in many cases, corporate America.

Since 1990, we have had over 250,000 workers end up with a permanent disability in Ontario—over 250,000. According to the WSIB's annual report in 2009, only 21,790 of those received benefits long-term; yet, the research shows consistently very high rates of unemployment. The research goes from 40% to 78% unemployment with the same group of workers. So even at a cautious number, we would be seeing over 100,000 workers who have become permanently disabled because of a workplace injury or disease receiving no benefits at all here in Ontario, and they have to rely on either their families or the government.

At the same time, the system has become more and more adversarial, so that employers and, more specifically, employer consultants, employer advisers, have created a huge business to try to manipulate the claims to reduce the costs to employers and, as a result, shatter the lives of thousands and thousands of workers every year.

We have seen the result of this. Once again, the research shows very high rates of depression and poverty among this group of workers—workers who had to work expecting just to put in their time, make their paycheque and support their families are now experiencing depression, mental health problems and poverty.

What does the government do? We have been asking the government to try to rectify this situation. They have said, "We can't introduce legislative amendments. It's

too difficult. It's too hard." But now we see they're coming forward with legislative amendments that basically, as far as we can tell, are a cover-your-ass type of approach. Rather than taking responsibility to make the system better, they're saying, "Oh, the Auditor General thinks that maybe we don't have it under control, and we have to make sure that we don't get criticized by the Auditor General."

They have consistently encouraged rates to be kept low by the rates that employers pay so that they're not really paying their cost, and then, when the whole thing kind of comes to a head, they go, "Oh, it's not our fault; it's not our fault." We think this is a real problem.

We want the government to take responsibility. We want them to affirm that it is a public system; that it is connected to our public government; and that it's supported through our public government to ensure that it doesn't move into an insurance system that—as we well know, no one really likes the insurance companies. That's not what we want in Ontario. We want to be able to hold up our heads and say, "We have a public system that looks after our citizens when they become injured and disabled," and we can all be proud of that.

I'd now like to turn it over to Patricia.

Ms. Patricia Reilly: The funding of the workers' compensation system is serious business because of the societal implications. It is the expectation of every child in this province that they will get an education and they will go to work in order to contribute to the greater good of our society. We ask the same of our immigrants. However, if said worker in Ontario gets hurt and has a resultant permanent injury, like the 13,000 to 14,000 workers in this province every year, they receive an indictment of poverty, as the WSIB wiggles out every which way to pay lawful and rightful benefits.

Many injured workers live off Ontario government supports, such as Ontario Works, Ontario disability in conjunction with their Canada pension plan, the Ontario drug benefit, drug benefits for seniors, OHIP, community care access and Legal Aid Ontario.

This political action today should be why Ontario taxpayers are on the hook for injured workers on these plans, while the WSIB evades their financial obligations to injured workers and wishes to do so even further. Evasion of lawful responsibility has allowed the WSIB to entertain a corporate culture of entitlement for all involved, excluding the rights' holders in the system: the injured workers. Full funding arises out of corporate culture.

The workers' compensation system in Ontario does not require full funding. Canada pension plan is funded at 29% levels. The recent review under Finance Minister Jim Flaherty, a Progressive Conservative, never suggested full funding of Canada pension plan in its recommendations. Full funding is a requirement of private insurance corporations that operate for profit.

The Chair (Mr. Pat Hoy): You have about a minute left.

Ms. Patricia Reilly: I did ask to speak on my own, and I'm speaking as an injured worker. My concern is

that at other committee hearings, injured workers were not allowed to speak to the all-party committee—public accounts—to address an unbalanced view of an unfunded liability and a move by the Workers' Compensation Board to reduce half of the long-term beneficiaries as a cost-cutting measure, and in no way should the system be looked at as a private corporation. It doesn't trade on the Toronto Stock Exchange; you can't buy it; you can't sell it. It's a public covenant between injured workers who gave up their right to sue and the province of Ontario, which assured us that we would receive a non-adversarial and just compensation system.

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The Chair (Mr. Pat Hoy): Thank you to our teleconference person, Steve.

Now we'll go to questioning, and it goes to the official opposition. Mr. Barrett?

Mr. Toby Barrett: Thank you to the network for testifying. You've indicated that this legislation is unnecessary and, I think in this instance, premature. I think you feel that there has to be some legislation, unless some of these problems can be resolved otherwise.

One issue that I wanted to raise was, you indicated that certain things had been done. There would not have been—and I'm using your words—unfunded liability by the year 2006, for example, if employers had not had a reduction in premiums and if the board had been allowed to have the money from reduced benefits. I'm assuming that money just went into general revenue. You also indicate that, because of that, small business has basically been at a disadvantage with respect to large corporations or larger entities.

I wonder if you could just explain that a bit, and secondly, your concept of unfunded liability versus debt. I read here that Harry Arthurs is looking at sufficiency of funding. Could you define those three terms from your perspective: sufficiency of funding versus unfunded liability versus debt, as some people refer to it?

Mr. Peter Page: I'll start off and maybe Steve can jump in and help me out.

I'm not an actuary, nor do I have any degree in business, but my perception, just as Patricia alluded to, is that the Canada pension fund is only funded at 29%, yet it's not in crisis. Somehow the Attorney General has made the unfunded liability a debt that could be transferred over to the books and cause a \$29-billion debt to Ontario and affect the markets in New York. That's my limited understanding of that—higher interest rates for us to borrow money. Yet it has never been done in the 93 or 94 years that workers' compensation has been in existence.

We don't view it as a debt; it's a liability that's never due. If Ontario's going to close its doors tomorrow and you have to pay everybody—all the injured workers—off, then you would have to have that money come due, but I don't perceive Ontario closing its doors any time soon. It has been around for—Steve, did you want to elaborate?

Mr. Steve Mantis: Yes. I think the other part of the question was the relationship of small business to the WSIB. From what we see, it is the large corporations that

are basically the ones profiting from the way the compensation system is going. They have seen—and you can see this, actually, across North America. They put pressure on you, as the legislatures in different jurisdictions, creating the image that injured workers are scammers and are taking advantage of the system, and benefits have been cut and reduced. That happened in 1998 with the passage of Bill 99 that created the assumption that people were taking advantage and that we need to have this system that is going to stop that. The facts and figures speak against that.

The big corporations with experience rating are able to manipulate the costs that they pay and end up with hundreds of millions of dollars back in their pockets. The small businesses do not have that capability and end up just paying their rates and dealing with a complex and confused system.

I got a call two days ago from an employer here in Thunder Bay that said, “Why is the system so complicated? It drives me crazy. Why don’t they just charge us a flat rate just like they do with Canada pension or employment insurance? That would make our lives so much easier.”

The Chair (Mr. Pat Hoy): You only have about a half a minute.

Mr. Toby Barrett: A flat rate. Anything else that should be done? As you’ve indicated, there’s inequity as far as either employees or small employers. Is there anything else that should be done beyond a flat rate?

Mr. Steve Mantis: Yes. The other is to have comprehensive coverage for all workers and all employers in Ontario. If we were to move to such a system, we would have a broader base of support. We’re a very interconnected economy. The banks and the insurance companies make profit out of manufacturing and resource extraction but are exempt from paying for any of the costs of the injuries that happen in those sectors. If everyone was paying collectively, we would have a stronger system, it would cost less on average per \$100 of payroll and I think we would have a system that we could support much stronger.

Mr. Toby Barrett: Okay. Thank you, sir.

The Chair (Mr. Pat Hoy): Thank you to those who are present and to you, Steve, for the presentation.

CANADIAN FEDERATION OF INDEPENDENT BUSINESS

The Chair (Mr. Pat Hoy): Now I call on the Canadian Federation of Independent Business to come forward, please. Good morning. I think you know how this is going to flow. You have 10 minutes for your presentation and there could be up to five minutes for questioning. Please identify yourself before the committee and you can begin.

Mr. Satinder Chera: My name is Satinder Chera and I’m the vice-president for Ontario with the Canadian Federation of Independent Business. I’m going to be speaking exclusively from the slide deck that you have in the kits before you.

Moving quickly on to page 2, overview of Bill 135, given that we found out about this bill going in late yesterday and I was working up until 1 in the morning trying to put this together, I thought I’d put a little humour together here. So I’m giving the government a thumbs up for providing small businesses with much-needed relief from rising hydro bills, but a thumbs down for rushing through changes to the WSIB with little notice or debate. In fact, given some of the previous presentations, all it really does is undermine the review that the government has already initiated.

On page 3, just by way of background, 94% of Ontario businesses have fewer than 19 employees. Page 4: It is our sector that continues to lead job growth in good times and in bad. The reality is that the economic fundamentals have dramatically changed. We’re not going to be able to rely on the US to pull us out of the recent economic downturn. Larger companies are cutting back and moving operations overseas. It is, in fact, the small businesses that are creating the jobs.

On slide 5, yesterday, we released our latest confidence indicator. Unfortunately, confidence amongst small business owners in Ontario is down as we head into the busy holiday season. Now on page 6: One of the reasons for this is the rising cost of fuel and energy.

On page 7, there’s been a lot that has happened in the system: the HST, smart meters, the green energy tax and then, of course, shifting of loads from residents and big businesses to smaller firms. It’s not a surprise that the cost burden on small businesses when it comes to hydro bills has gone up quite dramatically. In fact, if you look at slide 8, we asked our members recently, “How has your electricity usage changed over the past three years?” Most said that it had actually remained the same; 12% had seen a decrease. Yet when you go to page 9, by and large, the majority of our members have experienced increases on their hydro bills.

Moving on to slide 10, we actually think that the Ontario clean energy benefit is obviously a step in the right direction in that it provides businesses with much-needed relief. And I should say that the government does deserve credit for acknowledging the impact that its energy policies are having on small firms. We’re already hearing some good things from our members on the OECB, but let’s be honest: It is not a long-term solution to our rising hydro prices, shifting the cost from rate-payers to taxpayers. Essentially, we’re all going to have to pay it one way or another, and it does nothing to deal with the fact that most of our members are sitting ducks for increases going forward.

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In fact, when you go to slide number 11, when we talk about conservation, one of the key planks of the government’s strategy is the time-of-use metering, shifting your load from high peak to low peak. But when you go to slide number 12, when we’ve asked our members if they even have the ability to switch their load from on-peak to off-peak, 92% of our members are unable to do that. What that essentially means is that they have no ability to manage their costs. As the smart meters start to come into

play, they're going to pay a lot more. The reality is, the butcher is not going to be able to serve his customers at 3 o'clock in the morning. They're going to do it during the day, and that's when the rates are going to be at their highest.

I think this is something that needs to be addressed. In fact, on slide number 13, some of the existing programs that are in place for small businesses on conservation—most of our members don't even know about them, particularly the power-saving blitz.

On hydro, we think prices do matter and that we shouldn't accept that they have to go up to send the right signals. Based on the steps that small businesses have already taken, our hope is that new conservation tools will be brought into play that actually reflect the inability of small firms to shift their loads. In that sense, our hope would be that the government would slow down its implementation of the time-of-use metering.

Moving very quickly to the other part of the bill that concerns us, changes to the Workplace Safety and Insurance Board, what concerns us, I think, at a high level here is that it really undermines the process that the government has initiated. There's a year-long process. In fact, we just got a call from Harry Arthurs's office the other day that he's going to be holding two days of intense technical sessions in January to give a clear picture of the challenges that the board faces and what the potential options are. We're prepared to be fully engaged in that process. The challenge, of course, is that every time the government keeps making these sorts of decisions, it makes you wonder just how seriously that review is going to be taken by the government and whether it's just a PR exercise.

I would say also, if you look at slide number 16, that we know from our members that payroll taxes are job killers. This is one of the reasons the EI rates aren't going up as much as they could, because there is evidence to show that if you increase these types of taxes, it will cost the economy jobs.

Going to slide number 17, just a quick overview of where we think the system has fallen down. There's no question that there is a difference of opinion on whether or not the system is in crisis. I would say that, look, when we've gone from a \$5.6-billion unfunded liability to nearly \$14 billion, and we're hearing now that it could go even higher, that's not the way to run the system. In fact, we all want to make sure that the system is there for those who truly need it, at the same time being able to balance with the ability of employers to pay for it.

On slide number 18, the fact that the WSIB has already announced that rates are going to go up in 2011-12 only adds to the skepticism among our sector that this review that is under way is going to have any meaningful impact.

The short of it is that the government should respect its own review. In fact, Minister Fonseca himself appointed Harry Arthurs at the request of the WSIB, so the government certainly does have skin in this game and in this review that's taking place.

As opposed to moving forward and making these sorts of changes, our recommendation would be that the upcoming increases be cancelled and that the legislative changes that are being proposed today be excluded from the bill until such time as the review has actually reported back and there's been thoughtful conversation among Ontarians about the challenges that truly face the system and how they should be addressed.

Thank you very much.

The Chair (Mr. Pat Hoy): Thank you for the presentation. The questioning will go to the NDP. Mr. Tabuns.

Mr. Peter Tabuns: Thank you for coming this morning—well prepared in a very short period of time.

To go back to the Arthurs report, we too were very surprised that the government was bringing forward legislation that addressed very substantial issues while at the same time they'd launched this review. Will that review have any credibility in this area if this legislation goes forward?

Mr. Satinder Chera: If these sorts of piecemeal announcements keep coming out—in fact, I mentioned the rate increases. We went to Minister Fonseca and we said to the minister, “Look, we're prepared to sit down and have that adult conversation, if you will, with the government, with the review panel. We recognize this is an important part of our system. We want to make sure that it is there for those who truly need it, while at the same time respecting the fact that, at the end of the day, small businesses are already overwhelmed with so many other different obligations that are placed upon them that if the review is in place, then let's respect that process; let's allow that process to run its course. It's a year-long process.”

We would like to, quite frankly, be able to go back to our members and put the options to them and have them make the decision on how they'd like to see the system, moving forward. But when you see these types of measures coming forward with little or no notice at all, we're literally scrambling to play catch-up. I don't think that helps the credibility of the review.

Mr. Peter Tabuns: You put together a report very quickly. Do most of your members know that, in fact, these changes are being considered in the Legislature?

Mr. Satinder Chera: No.

Mr. Peter Tabuns: I don't have any other questions.

The Chair (Mr. Pat Hoy): Thank you for your presentation.

Mr. Satinder Chera: If I can, Mr. Chair, just very, very quickly say, on your recent announcement of your retirement next year: Congratulations to you on a really successful career in public life. We've appeared before you many times and have always been impressed with the way you've conducted things. You should be very proud of yourself.

Mr. Toby Barrett: Hear, hear.

The Chair (Mr. Pat Hoy): Thank you.

For the committee, I'm informed that the next presenter has cancelled, and at 2 p.m., it was that exact same group, so we are adjourned.

The committee adjourned at 1007.

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