Workers' compensation finances – crisis or smokescreen?

Backgrounder

Over the past 20 years, the unfunded liability has been offered as the reason for eliminating full cost-of-living adjustment of injured worker benefits and for reducing benefits levels. A report by Ontario's Auditor General in December 2009 has again expressed concern about the WSIB unfunded liability.

The WSIB responded by telling the Ontario Government's Standing Committee on Public Accounts that it would be taking steps to reduce costs. Injured workers have charged that this alleged financial crisis is a smokescreen for reducing compensation for injured workers in order to keep low rates for employers.

How should Ontario's workers' compensation system be funded? Injured workers support the continuation of the 'steady state' funding model that has served the Ontario workers' compensation well since 1915 and is used by the Canada Pension Plan. Also known as a current cost model with a reserve, it is often called 'pay-as-you-go' or 'partial funding' by opponents who try to stigmatize it

In September 2010 the WSIB publicly announced that it would be holding a public inquiry into workers' compensation funding and several other matters.[1] Although the inquiry is supposed to determine the appropriate level of funding, the WSIB and the Minister of Labour have left nothing to the imagination about their intentions. "Eliminating the unfunded liability is one of the WSIB's main priorities[2]." WSIB President and CEO David Marshall said "These steps … will steer us toward our goal of achieving full funding."[3] "The Government has also called on the WSIB to create a path forward to achieve full funding with support from proposed legislation."[4]

This begs the question: Has the verdict been written and the sentence decided before we have the trial?
What are the issues that should be raised at the public hearings?

Workers' Compensation is a legal right, not a charity

Workers' compensation is not a charity, it is a legal right. Workers' compensation is based on the historic compromise proposed by the Royal Commission Report of Sir William Meredith in 1913. In the historic compromise, injured workers lose the legal right to sue their employers for damages as a result of injury or illness on the job. In the historic compromise, employers are protected from lawsuits.
Injured workers lose their recourse to our justice system and injured workers should get, to quote Sir William Meredith: "full justice, not half-measures".

Employer are protected from lawsuits in good economic times when they profit and could afford to pay damages awarded in lawsuits to compensate workers injured in their employ. And employers are equally protected from lawsuits in tough economic times when one lawsuit against them could bankrupt them.
Workers' compensation is cheap insurance for employers.

Backgrounder

Injured workers have the right to full compensation in good times and in hard economic times as well. What would you think if the Chief Justice of Ontario called a meeting of judges to tell them they must reduce awards of damages to the injured because the insurance companies are experiencing tough financial times?

What is the Unfunded Liability?

The unfunded liability is calculated by taking the amount needed to cover the total future costs of all workers' compensation claims that are currently 'on the books' and subtracting from that the amount of financial reserves that the Board has already put away.

Using round numbers, the money needed 'in the bank' today to be able cover the total future cost for all the claims now 'on the books' until the last injured worker has passed away, without collecting another cent from employers, is about $28 billion, the WSIB has a reserve fund of about $16 billion, so the unfunded liability is roughly $12 billion. That means that our workers' compensation system is now roughly 55% funded. Is that good or bad?

Current Cost vs. Full Funding

Ontario's workers compensation system was set up on the basis of Meredith's 1913 Report. The employer representatives called for a current cost system in which the WCB collects enough money from employers each year to cover the anticipated cost of benefits to be paid out in the year. Their actuarial evidence was that this was the cheapest way to fund the system. Employer rates would always be lower than, or equal to, the rates to fully fund the system. When employers are basically only paying this year for what the WCB has to pay out this year, they keep their money in their business until the WCB collects it to pay it out injured workers.

The other approach is a fully funded system. The WCB charges employers up front for the total future expected costs of each injury from the day of injury until the day the worker is expected to pass away. In a fully funded system, there is no unfunded liability.
Do you think Ontario's employers would prefer to have a fully funded system, meaning that an additional $12 billion (the current unfunded liability) is tied up in the WCB instead being left in their own business until it is time to pay injured workers?

Meredith recommended a middle ground. He recommended a current cost system with a reserve fund sufficient to cover emergencies such as a downturn in the economy or major accident. He recommended that the size of the reserve fund be left to the discretion of the WCB because it is in the best position to decide what will be sufficient.[5]

That is how Ontario's workers compensation system has been funded for the past 95 years. It survived two world wars, the 'Great Depression' of the 1930's and the 'economic tsunami' of 2008 and everything in between.

The concept of an "unfunded liability" really has had no place in the discussion of our public workers' compensation system until recent years. It is a concept that applies to the private insurance industry. A private insurance company is prohibited by law from having an unfunded liability because it could go bankrupt or close down tomorrow and must leave enough money behind to cover the claims on its books. Ontario's economy is in no danger of closing down or going bankrupt. If such a thing could ever happen, it would be a financial disaster like we have never seen before and would wipe out all the savings and all of the investments of even a fully funded workers compensation system. As long there is business in Ontario, our workers compensation can continue to be funded on a current cost / steady state model.

Our History – the last recession

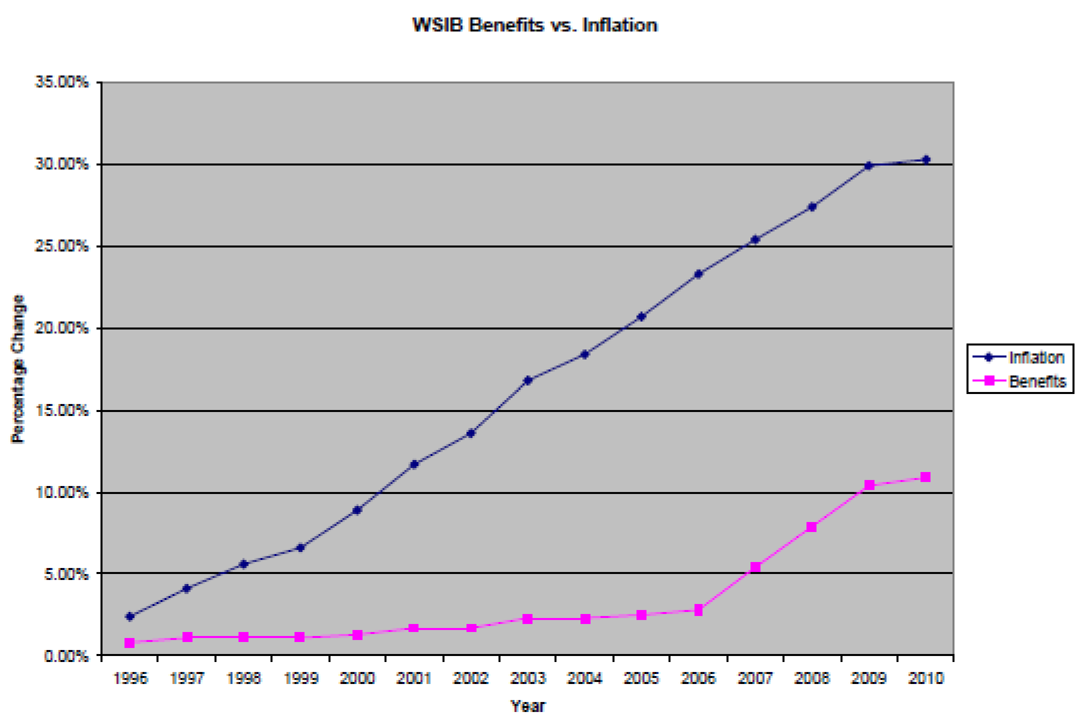
How were injured workers treated in the last recession?

The previous governments did not respect the historic compromise and the basic principles of workers' compensation. When the last recession hit in the early 1990's, the provincial governments claimed benefit cuts were needed to deal with the unfunded liability:

- Cost of Living Adjustments were virtually eliminated.
- Benefit levels were reduced from 90% to 85% of net.
- Compensation for Loss of Retirement Income was reduced from 10% to 5%

The impact of the cuts to cost of living adjustments is that injured workers' benefits were reduced in value by nearly 30% compared to their value in 1995. Although the government did legislate three 2.5% increases in 2007 - 2008, injured workers remain nearly 20% below their income levels compared to 1995.

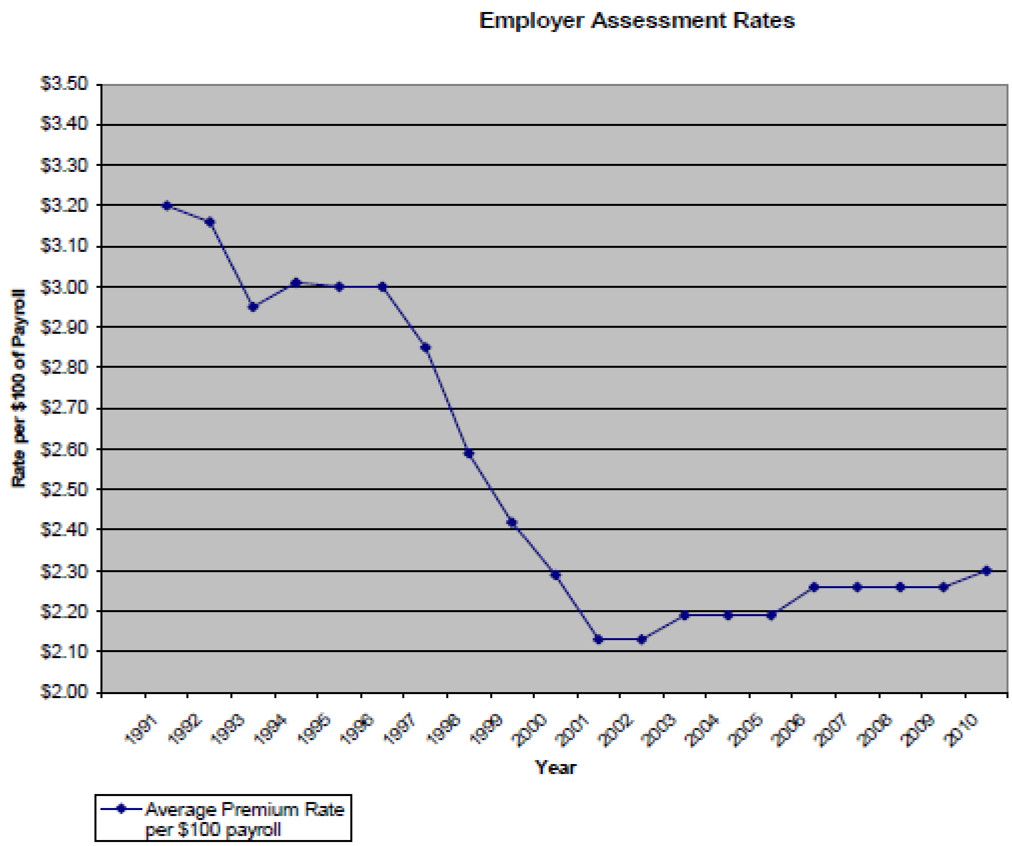
Injured workers are still paying for the last recession. They are trying to pay 2010 living costs with a 1990 paycheque.



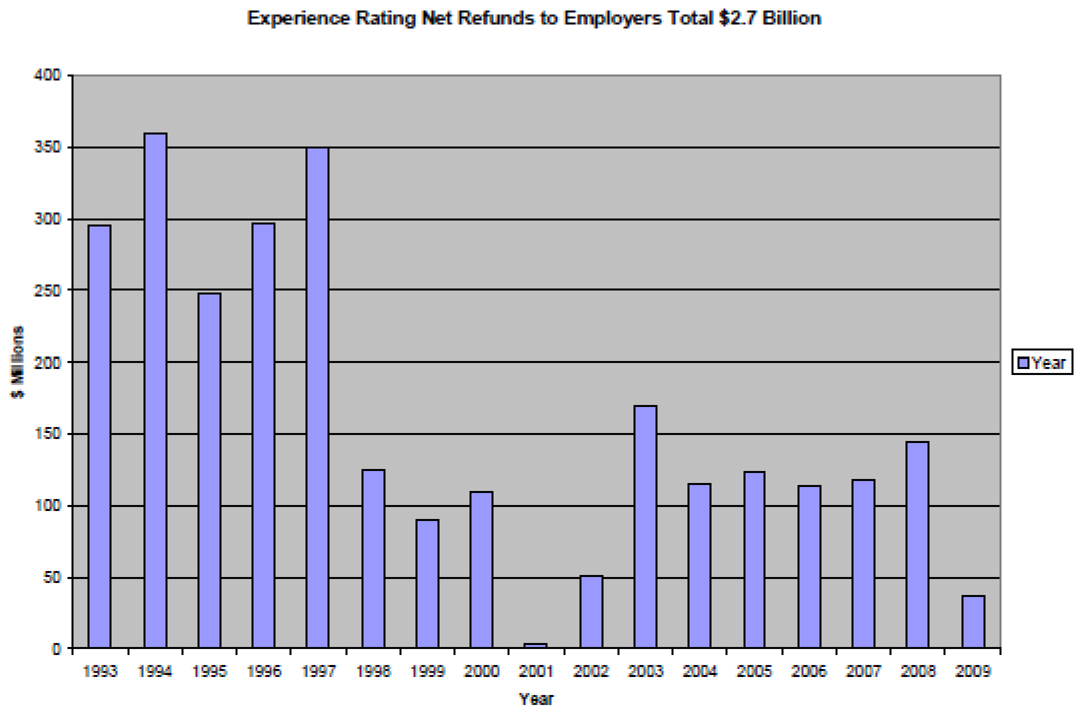
Backgrounder

How were employers treated in the last recession?

Employer rates were reduced by about 25%. Employers were paying over $3.00 per $100 of payroll in 1996 and this has been reduced to the present rate of $2.30 per $100.00 a payroll. Employers are earning 2010 dollars and paying 1980's prices for workers' compensation coverage



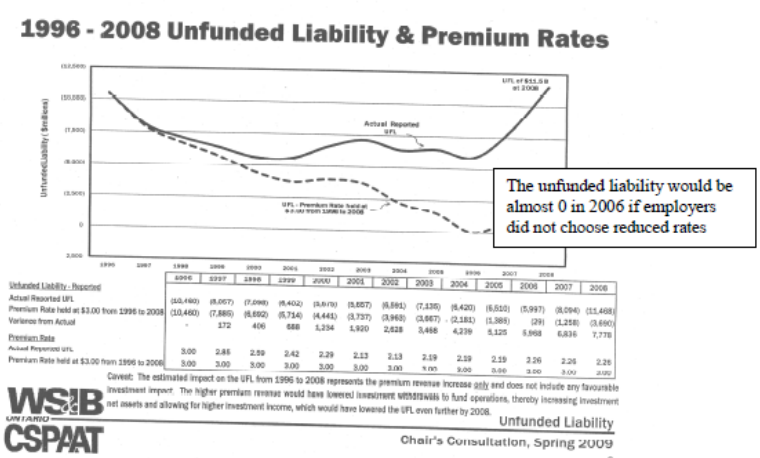
Employer rebates under the Experience Rating program were also increased. In fact, employer rebates were consistently paid out above and beyond the amount of the employer penalties (surcharges) collected so that the WSIB had to take money out of the accident fund, the money collected for injured workers, to pay for excessive rebates to employers. According to the WSIB Annual Reports, nearly $3 Billion was paid out in excessive rebates to employers over this same time period.



Follow the Money

Ontario had a choice. Cost of living adjustments were virtually eliminated in 1995 and 1997 when benefit levels were cut in the name of the 'war against the unfunded liability.' This produced significant savings for the workers' compensation system due to reduced benefit payments to injured workers. Employers have enjoyed generous cuts in their rates since 1996. If employers kept paying the same rates and allowed the savings from the reduced benefits for injured workers to build up at the WCB, it would have increased the financial reserves and completely eliminated the unfunded liability.

The WSIB produced a chart for the Chair's consultation in the Spring of 2009 which demonstrates that if employers' assessment rates had simply been kept at the 1996 level, by the year 2006 there would be no unfunded liability. The unfunded liability would have been totally eliminated and Ontario's workers' compensation system would be fully funded.



	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008
Unfunded Liability - Reported													
Actual Reported UFL	(10,460)	(8,057)	(7,098)	(6,402)	(5,675)	(5,657)	(6,591)	(7,135)	(6,420)	(6,510)	(5,997)	(8,094)	(11,468)
Premium Rate held at $3.00 from 1996 to 2008	(10,460)	(7,885)	(6,692)	(5,714)	(4,441)	(3,737)	(3,963)	(3,667)	(2,181)	(1,385)	(29)	(1,258)	(3,690)
Variance from Actual	-	172	406	688	1,234	1,920	2,628	3,468	4,239	5,125	5,968	6,836	7,778
Premium Rate													
Actual Reported UFL	3.00	2.85	2.59	2.42	2.29	2.13	2.13	2.19	2.19	2.19	2.26	2.26	2.26
Premium Rate held at $3.00 from 1996 to 2008	3.00	3.00	3.00	3.00	3.00	3.00	3.00	3.00	3.00	3.00	3.00	3.00	3.00

Caveat: The estimated impact on the UFL from 1996 to 2008 represents the premium revenue increase only and does not include any favourable investment impact. The higher premium revenue would have lowered investment withdrawals to fund operations, thereby increasing investment net assets and allowing for higher investment income, which would have lowered the UFL even further by 2008.

Backgrounder

What happened? The workers' compensation system was paying less to injured workers and the WSIB gave employers an immediate rate reduction. Employers' assessment rates were slashed every single year until they reached a low of $2.13 in 2002. They are now $2.30 per $100.00 of payroll, about 25% less than they were in 1996.

Ontario had the opportunity to reach full funding in 10 years without any additional cost to employers. It could not have been made any easier for employers to reach a fully funded system. However, employers, the WSIB and the government conspired to choose a rate reduction rather than a fully funded system. They chose not to work towards full funding. The last time benefits were cut in the name of the unfunded liability, the money went straight into the pockets of employers instead of the financial reserves for injured workers. What will be different if they try this again?

Full Funding = Financial Irresponsibility

What if the WSIB had reached full funding in the year 2006, as the WSIB admits it could have done? The WSIB would have had about $25 Billion in investments. If Ontario had a fully funded system in 2008 when the global economic down turn hit and the value of all investments fell dramatically, the WSIB would have lost well over $4 billion in a flash, a huge disgrace. A huge waste – would employers then be told to 'pay up' again or would injured workers benefits then be cut?

A fully funded system would have led to greater losses than a pay-as-you-go system because of the WSIB's approach to financial management. Relying on investing in the market to expand the funding is one more example of how the WSIB tries to minimize the employers' financial obligations. When that fails, the workers are asked to make up the difference. A fully funded system would make us more vulnerable to drops in the market caused by another economic downturn. This demonstrates that full funding of the workers' compensation system is not financially responsible.

And as a fully funded system, the WSIB would have had to collect that $4+ billion immediately in order to restore full funding. Do you think Ontario's employers would prefer to have a fully funded system where they could be forced to contribute billions of additional funds for claims they already paid for when the economy goes sour? Perhaps, if they had the power to say "no" to rate increases, forcing the WCB to shift the loss onto injured workers by reducing benefits or services to the injured. Injured workers have 'seen that movie before.'

What is the appropriate funding level for our workers compensation system?

Why does the WSIB have a financial reserve at all? Why not have a pure, current cost system where WSIB only collects enough money this year to pay out the expected claims this year? The answer is that a reserve is a useful cushion to help the WSIB with payments in tough economic times. The Auditor General and the WSIB President say these are tough economic times. Rather than fretting over the unfunded liability, the WSIB should use the financial reserves that it has now for its intended purpose: to make sure that injured workers receive full justice in hard times, just as employers get full protection from law suits at all times.

Backarounder

The real question is how much of a reserve is enough? This is a question for actuarial advice. It is worthy to note that the previous chair of the Workers' Compensation Board, Glen Wright, came to the WCB after establishing a successful actuarial consulting firm. As Chair of the Board, it was his decision whether to maintain employer assessment rates at 1996 levels and achieve a fully funded system within 10 years, or to make no effort at all to move toward full funding and to simply reduce employers' assessments rates. The WSIB chose the latter course.

Currently the WSIB is around 55% funded. Take a look back to the year 1985 when the Ontario government, with the unanimous consent of all three parties, decided to provide automatic annual full cost of living adjustments to workers' compensation benefits. When that legislation was passed in 1985 the Workers' Compensation Board was 44% funded. It would appear from history that the level of funding that the WSIB currently enjoys is enough of a financial reserve.

Canada Pension Plan Funding

Compare the funding of our workers' compensation system with the funding of our Canada Pension Plan. In April 2007, the Federal Office of the Chief Actuary released a study called "Optimal Funding of the Canada Pension Plan". In that study, the Chief Actuary reviews the options for funding a social security scheme: current cost; partial funding; and full funding. The report explains why the Canada Pension Plan has chosen a partially funded system that it calls "steady state" financing. The Canada Pension Plan is about 22% funded and its target is to reach 25% funding by the year 2025.[6] The Canada Pension Plan keeps a financialreserve sufficient to cover future benefits for about 5 years.

Alternatives to reduction of workers' compensation benefits and services

It is true that the income of the WSIB was squeezed by the recent financial downturn. The WSIB gets income from two sources to pay for the workers' compensation system. It gets income from its investments. Since those investments are worth less, it gets a smaller income from those investments. Also, the main source of income from the WSIB is the assessments on employer payrolls. At the height of the recession there were fewer employers in business, and employers had smaller workforces, so that resulted in a lower income for the WSIB. If the WSIB requires additional income to meet its legal and moral obligations to injured workers, what else can it do?

1. Raise employer rates

Take a look at the employer assessment rates. Employer assessment rates are now a bargain at much less than 1995 prices. Employers have enjoyed a substantial price break for many years at the expense of injured workers. How long will the government and the WSIB condone this?

2. Coverage for All Workers, All Workplaces = Financial Stability

This recession is solely the result of the banks and the financial industries. How much do the banks and the financial industries pay into Ontario's Workers' Compensation System? ZERO.

Backarounder

Banks and the Financial Industry are not covered under the legislation. Is that because banks and the financial industry have no impact on our workers' compensation system? Obviously not. The Ontario WSIB is claiming to be in a financial crisis as a result of the activities of the banks and the financial industry. Is that fair to Ontario?

Is it fair that workers in the banks and the financial industries are not entitled to worker's compensation? Are the people with bad backs, with repetitive strain injuries and other musculoskeletal disorders happy that they have the right to sue? Do they, can they realistically ever sue their employers for a bad back or a repetitive strain injury?

Can the WSIB exercise its health and safety responsibilities in a workplace that the WSIB has nothing to do with?

One in three workers in Ontario is not covered by workers' compensation due to an antiquated list of industries that are required to have coverage. British Columbia made the move to full coverage and it is now fully funded. Fairness to injured workers and to financial stability for the WSIB requires full coverage for all workplaces, for all workers.

In his December 2009 report about the WSIB unfunded liability, the Auditor General stated that there were 4 "levers" available to address the funding level: benefit levels, employer rates, WSIB investments, and coverage of the workforce. In their announcement of the upcoming review of WSIB funding issues, the WSIB and the Minister of Labour have listed the report of the Auditor General as the first item on the list of resources. But there is no mention of the need to expand coverage that the Auditor General identified as one of the 4 key solutions. What happened to coverage of all workers?

What will happen in the review?

We are heading into a review that is already proclaimed by the WSIB and the Ministry of Labour to establish full funding and eliminate the unfunded liability. Those of us who question the financial crisis and who bring the principles of the Meredith Report and the steady state financial system that carries our Canada Pension Plan, and has served our workers' compensation system well for the past 95 years, now feel like we have brought a meat dish to a vegetarian dinner. We can put it on the table, but no matter how tasty or nutritious it is, nobody will touch it.

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1 http://www.wsibfundingreview.ca/terms.php
2 WSIB 2009 Annual Report, page 18.
3 http://www.wsib.on.ca/wsib/wsibsite.nsf/public/NewsRelease093010
4 Letter dated Sept. 30, 2010, from WSIB Chairman and CEO to stakeholders.
5 The Meredith Report, Final Report, 31 October 1913, p. 6.
6 http://www.hrsdc.gc.ca/eng/oas-cpp/reports/2009/page06.shtml

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