

From: Kate [mailto:klush@sympatico.ca]
Sent: May 28, 2010 10:49 AM
To: katch_koch@ontla.ola.org
Subject: Information for June 2nd Meeting

Dear Mr Koch,

This is a letter to the Members of the Standing Committee on Public Accounts - I trust they will receive it in time to review before the June 2nd meeting

Re: the Auditor General's Report on the Unfunded Liability of the Workers Safety and Insurance Board to be discussed in Committee June 2

Submission of Concern for Threats to Injured Worker Benefits - Information for Committee from Injured Workers

I am the coordinator of the Injured Workers Speakers School, an initiative of the Research Action Alliance on the Consequences of Workplace Injury (RAACWI). There are currently branches in Toronto, Thunder Bay and Hamilton.

The injured workers in our school are concerned about the threats to benefits headlined in the Auditor General's press release December 2009:

"WSIB's Unfunded Liability could threaten future benefits".

One of our Toronto students, Maryam Nazemi, visited her MPP, David Zimmer, who is a member of the Standing Committee, to share these concerns.

We have now heard about your meeting on June 2, and would like to offer some comments from our studies, to help inform your deliberations on this matter of extreme importance to the lives of injured workers in Ontario.

Our graduate group of injured workers decided to study the Auditor General's full report in depth, and to consider it in the light of what we know about the history and principles of the compensation system, which as you probably know was established by Justice Meredith in 1914 with a Historic Compromise:

Injured workers agreed to give up their right to sue in exchange for guaranteed compensation as long as the disability lasts. Employers agreed to pay for this collectively, contributing according to the risk of their industry into an accident fund, administered by an independent agency - the Board - in return for predictable costs and protection from lawsuits. This is a public system, not private insurance, and has no requirement to be fully funded.

Here are our concerns:

The Auditor General's report uses the unfunded liability to make the alarming suggestion that the WSIB is financially strapped, so much so that injured workers cannot be supported as the system intended. The report suggests that it would be "unpopular" to ask employers to raise their assessment rates, the main source of income for the Board. Instead, the most vulnerable people in our province are being asked to pay (again) with cuts to benefit levels and duration. What

happened to the Historic Compromise? To compensation as long as the disability lasts?
Injured workers must keep their side of the bargain - why not employers?

We urge you to read the documents attached: notes dated May 11 from our studies in class, and some background for your information - a very brief history of the unfunded liability in workers compensation since Meredith with specific quotes from original documents - taken from our Injured Worker Speaker School Manual.

This is a matter of grave importance - and not only to injured workers (an unfortunately large number) with their advocates, friends and families - but to all who believe in the values of public service that make this province great.

Thank you very much,

Kate Lushington

Coordinator and teacher, Injured Workers Speakers School

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Attachment 1 – Speaker School Analysis of the Auditor General Report

Injured workers speaker school – May 11, 2010

Auditor General Report on the 2009 UFL of the WSIB - what the elephant in the room is saying

The class looked at the AG report with an eye to analysing the “4 levers” that he proposes to end the Board’s unfunded liability. Here is what we found.

No debate allowed on having an unfunded liability or not

The AG took inspiration from the 1996 Jackson report, the only study of WC mentioned and mentioned favourably (p. 320 and 330). Interestingly, it is called “the 1996 study” and no reference is given to its partisan author. This was not an **independent study** as we know. The last relatively independent study on WC was Weiler, and it recommend to keep an unfunded liability. This is not even acknowledged. The AG acknowledged that there is a debate whether there should be an unfunded liability or not today. However he dismisses it summarily. He simply says: “we do not agree with this argument and are concerned that the trend of selling off the WSIB’s investments to fund current operations and benefit payments is not financially sustainable” (p.322). By combining two different concepts, he dismisses Weiler, Meredith and 97 years of history, as Ontario has always had an UFL.

He describes the WSIB (WCB) as “insurance business” (324), and an insurance operation (333). He looks with envy at the provincial board that have legislated ‘full funding’ (Alberta?) – page 324.

Injured Workers have paid for the UFL

The AG says that by 1994 the UFL was 11.4 Billion and the Tories felt legislation was necessary. So they reduced benefits **consistent with other provinces** and tightening eligibility rules (p. 321). **Comment:** he is buying the Jackson report propaganda, benefits were not higher than other provinces! BC and Quebec

had full COLA for example and 90% of net. He then says the cuts done by Bill 99 reduced the UFL by \$1.8 billion (p. 321). **Comment:** the Jackson report predicted cuts to the tune of \$18 billion.

But whatever the figures, he at least admits that workers have already paid, and should have added that they had already paid with Bill 165 and the Friedland formula.

Employers have benefited instead

On page 325 the AG makes the case that while workers paid, employers enjoyed. He shows a chart showing the employer assessments were reduced from \$3.20 (1991) to \$2.25 (2009). He says that if rates had stayed at \$3.00, the UFL would have been very small in 2008 (p. 325).

But the Liberals have set a bad example with the cost of living (2.5%)

The AG chastises the Liberals for introducing the 2.5% “increases” to the cost of living for 3 years. He calls them “increases” but Paul Weiler insisted in calling COLA an adjustment as the iw stays the same even at full COLA. AG does not tell us that iws are still at -18% despite the adjustments. He says if the government does this again the actuaries will have to assume permanent full funding and the UFL would increase by \$1.6 Billion. The AG then wags his finger at the government by quoting the Jackson report: yes, you can adjust benefits for workers, but make sure you do not have an increase in the UFL (p. 330).

He then further criticizes the Liberals for being kind of drunk with success in bringing in the 2.5% adjustments. The fools, he implies, thought that investment returns would be high and be able to finance this. He says “we note that the Bill 187 legislated reforms...followed shortly after the impressive 16.2% investment returns experienced in 2006” (p. 335).

Full cost of living is an “adverse” scenario

The AG quotes several scenarios that the WSIB auditors are presenting to deal with the future. The worst case scenario includes full cost of living and it is called “Plausible Adverse Scenario with Indexation Scenario Base Case” (p. 322). This is the worst scenario for the unfunded liability. **Comment:** is there any doubt how hard it will be to have cost of living adjustments from now on? One wonders what assumptions for employer assessment were put into this calculation by the WSIB auditors....I guess no increase....

Twisted logic

Once he established that injured workers have already paid for the UFL (although he minimizes this impression) and employers have had assessment reductions, what do you think might be suggested? That it's time for employers to pay, right? Not so. He builds a careful argument that everyone should pay and then he ends up letting the employers off the hook once again – saddling the injured workers for a third time!

Use four levers to eliminate the UFL in a “balanced and comprehensive” way

On page 318 he says the WSIB agrees with him that the 4 levers (assessments, benefits, investment returns and universal coverage) should be used in a balanced and comprehensive way.

A protector of the employer assessment lever

When it comes to employer assessments, one finds a firewall of protection. Let us try to list the “ifs” and “buts” here:

- 1) he says they are politically difficult to do, becoming a political expert and auditor in one stroke: “we recognize that increasing premium rates, and thereby increasing the cost of doing business in this province, would not be a popular option for either the WSIB or the government in the midst of a severe economic downturn”. **Comment:** is it more popular to go after benefits? Should the AG even venture into this realm of comment?
- 2) The time is not right as there is an economic crisis. **Comment:** did they adjust rates at times of economic growth?
- 3) It increases the cost of doing business. **Comment:** is this so? Don’t employers shift costs onto workers and consumers? Do not injured worker’s benefits help their spending power?
- 4) “The problem is compounded by the fact that Ontario’ average premium rate is among the highest in Canada (p. 328). **Comment:** we are referred to a chart on page 329 (the largest chart, interestingly) but it does not show Ontario is among the highest. In addition, he makes a big comparison mistake: he does not consider that Ontario has the largest uncovered sector (banks, offices etc.) that if covered (as they are in other provinces) would significantly reduce the average employer rate since they are areas of lowered injury rates.
- 5) “Ontario may **eventually** need to increase its premium rates if it hopes to make any progress towards eliminating the UFL – **unless** downward revisions are made to the current benefits structure of investment returns recover dramatically.” (p. 328, emphasis added). **Comment:** how does one read this? “Premiums: not now, maybe later unless you get enough money out of workers and investment returns, wink-wink....”

The universal coverage lever is small

On page 328 he says that Ontario has the lowest level of coverage in Ontario. (**Comment:** This was also noted by the Jackson report). He says that bringing in the uncovered sector will help the UFL, but it will not be a lot of money, only \$ 280 million a year (p. 328). He also says that the government is already bringing in the construction independent operators by Bill 119. **Comment:** in the scheme of things this is a small lever for the UFL and the politics is that the Tories have caused a lot of stink on Bill 117 already that we are unlikely to see any new boldness by the Liberals on this front.

The investment return lever is small

The AG says that the WSIB made a mistake in assuming very high investment returns to continue, and notes that at one point the rate of return was 16.2%. He says that now the investments will be more cautious and the Board expects a rate of return of 7% (p. 335). **Comment:** the message here is expect less from returns and stop wishing to use this lever as the major one to end the UFL.

And the winning lever is...Benefits!

The IW benefit lever has two handles; one is held by the Government (legislation, i.e. cost of living adjustments) the other one is held by the Board, i.e. in controlling the “duration” of benefits, medication costs, entitlement decisions, etc.

In this case the AG notes that the WSIB/WCB has done some homework already. From pages 330 to 333 we get a full account of the WSIB’s analysis as they engaged the independent IWH. (Not in fact an independent IWH study). We cannot go into detail here, but their analysis is a picture of increased duration of benefits, increased costs, increased cost and use of medication and narcotics, an increased recurrences. The board says that bill 99, instead of reducing costs, has had the unintended effect of increasing costs. The Board says it has a plan: it will reduce the new enemy “duration of benefits” by returning workers back to work faster, reducing medication use (which delays return to work and causes recurrences) and so on. They will do this with or without the Ontario medical Association (p. 332). The AG says there is a study (not quoted) that shows that addiction negatively affects return to work (p. 332). The Board says it has set up an entire new service delivery model to reduce duration.

The AG repeats the old mantra that “the faster you return to work the better it is” (p. 332). Here the IWH is helpful in dispelling this myth called “reverse logic” by Ellen McEachern, but there is no mention of it.

AG to WSIB: “You may not be tough enough to do it alone...you may need Government help...”

The AG says: “Although it is hoped that these (WSIB) initiatives will help reduce claims duration, fundamental legislative change may also be needed before any significant progress can be made in reducing claims duration.” **Comment:** None required!

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Attachment 2 – Speaker School review of the unfunded liability

WSIB’s UNFUNDED LIABILITY COULD THREATEN FUTURE BENEFITS

Office

of the Auditor General of Ontario, News Release December 2009

The WSIB Unfunded Liability is currently \$11.4 billion.

What does this mean and why is it so scary?

Is it a debt? No! It’s not a debt.

An “unfunded liability” is an insurance term. It refers to the difference between the money you have in the bank today, and the projected costs of your commitments for the future.

A private insurance company is legally bound to keep enough money in the bank to cover all the current claims they will have to pay out in the future, because they might go bankrupt.

A public compensation system like WSIB has never gone bankrupt. Employer assessments are enough to cover costs each year and employers are obliged to keep paying.

It’s a bit like having a house with a mortgage. You have a healthy income with no possibility of a layoff, you have a lot of equity in your house, and you are required to make mortgage payments in

the future. You wouldn't say you were in financially and that you had a nice house

crisis; you would say you were fairly well off

CAW Workers Compensation History, The Unfunded Liability

Alberto's Story

Alberto is 35 and has a good job. He pays all his expenses and still puts a little bit away each year. If he lives another 40 years and his costs stay the same, he will need one million dollars. He has money in the bank, but his unfunded liability – the difference between his future costs and what he has now, is still close to a million dollars! Is he in financial crisis? No. We all have an unfunded liability.

Critical Times, Issue #3, Summer 1996

EMPLOYERS DIDN'T WANT FULL FUNDING IN 1910 – WHY IN 2010?

A Brief History of the Unfunded Liability in Ontario

Workers Compensation was not set up as a Private Insurance System

Back in 1913, when Meredith's Royal Commission was hearing from all interested parties, the compensation system finally agreed upon was one where employers put their money together – *collective liability* was one of Meredith's principles – paying a set amount to an *independent agency*, which administers the money as an Accident Fund to pay benefits to injured workers. [Ed. Note – in return, employers were guaranteed protection from lawsuits – injured workers relinquished the right to sue for workplace injury – this is called The Historic Compromise]

Meredith was clear that Workers Compensation was *not* a private insurance model:

"I do not like the term premium, I prefer the terminology which I have used. What is levied by the Board is not a premium but an assessment." he wrote in his final report.

The employers did not want to pay for a fully funded system. They understood that it wasn't a private insurance model. They wanted to keep their assessment rates low - a current cost system.

"Pay As You Go" (No UFL) – Cheaper for Employers – Actuaries Show

The Canadian Manufacturers Association (employers) told Judge Meredith they wanted a current cost system (pay as you go) – just collect what you need to meet costs each year:

- Actuarial evidence showed that in a pay as you go system, employer assessments will always be less than, or equal to assessments in a fully funded plan.
- Given the choice between paying the entire cost of an item up front or over time, a business will always choose time to pay.
- The money will be available for business to use instead of being locked away in a separate fund.

- They felt there was no risk, so no need for a reserve fund of any kind.

“We Need a Cushion for a Rainy Day” – Meredith Recommends Reserve Fund

Meredith rejected the employers’ “pay as you go” current cost model:

- he wanted some reserve funds in case of unexpected future costs
- the amount was to be left to the discretion of the Board:

"I have, therefore, concluded that the Act should not lay down any hard and fast rule as to the amount that shall be raised to provide a reserve fund and that it is better to leave that to be determined by the Board which is to have the collection and administration of the accident fund as experience and further investigations may dictate," he wrote in 1913.

To this day there is no legislative requirement for full funding.

The Board must take in enough to meet its costs on a “pay as you go” basis plus a reserve fund.

1980-90: Sweeping Reforms to Workers’ Compensation- Unfunded Liability No Problem

Professor Paul Weiler (*see Class 7*) – conducted a review and proposed reforms for the Ontario system - he had no problem at all with funding – at that time it was at 50% - but that does *not* mean that the system is “fiscally unsound” (*all quotes from: Reshaping Workers’ Compensation 1980*)

...the system is now only about half funded, given realistic assumptions about inflation, interest rates, and future adjustments to pension benefits to keep them abreast of rising prices. This does not pose a threat to the fiscal soundness of the program. It simply means that the Board must use its power to levy assessments in later years to meet future liabilities on a “pay as you go” basis. (Paul C. Weiler, Reshaping Workers Compensation in Ontario, 1980)

- Weiler was concerned about impact of full funding on business: capital is better kept in circulation than locked away in a separate fund, better for employers and whole province:

*The main virtue of this policy is that the Workers Compensation Board does not drain out of the private sector massive amounts of capital (amounting at this time to another two billion dollars which would be needed for full funding of current liabilities) (Weiler *ibid*)*

- He realized that money put away in investments could be affected by economic changes:
- *We cannot assume the investment portfolio of a fully funded system would escape economic disaster unscathed (Weiler *ibid*)* - which is exactly what happened in 2008 –WSIB assets plummeted in the financial downturn just like everyone else’s.

Unfunded Liability became a Bogeyman, it seems, in 1990s

1995 - Bill 165 – NDP Government Takes Away Cost of Living Indexing (Friedland Formula) to address UFL

- Mike Harris Conservatives elected in midst of last recession – Common Sense Revolution

1996 - The Jackson Report – New Directions in Workers Compensation

- Unfunded liability misrepresented as a “debt”, caused by “generous” benefits; assessment rates inaccurately compared to other provinces

[Ed. Note – this is the report cited frequently as “the 1996 review” in the AG report]

“THE FUTURE OF THE ENTIRE SYSTEM IS AT STAKE, MINISTER CAUTIONS”

A high unfunded liability and correspondingly high assessment rates affect the province’s ability to retain and attract investment. They also affect the province’s capacity to grow and create jobs, and the ability of employers to continue to fund a workers’ compensation system into the future.

The Hon. Cam Jackson, Minister Responsible for Workers' Compensation Reform

“New Directions in Workers Compensation,” 1996

[Ed. Note – this is in direct contrast to the economic views of Professor Weiler in 1980 and the preference of the business community in 1915, see above]

1998 Bill 99 – Name Changed to Workplace Safety and Insurance Board

Benefits to injured workers were cut; BUT savings did NOT go to retiring the UFL; instead they were passed on to employers – assessment rates were cut.

UFL would have been gone by 2006 if assessment rates had remained at 1995 levels