Chapter 4

Section

4.14 Unfunded Liability of the Workplace Safety and Insurance Board

Follow-up on VFM Section 3.14, *2009 Annual Report*

Background

The Workplace Safety and Insurance Board (WSIB) is a statutory corporation created by the *Workplace Safety and Insurance Act, 1997* (Act). Its primary purpose is to provide income support and fund medical assistance to workers injured on the job. The WSIB receives no funding from the government; it is financed through premiums charged on the insurable payrolls of employers. The government has the sole responsibility for setting benefits and coverage through legislation, while the WSIB has responsibility for setting premium rates.

In our *2005 Annual Report*, we noted that the assets in the WSIB's insurance fund were substantially less than what was needed to satisfy the estimated lifetime costs of all claims currently in the system, thus producing what is known as an "unfunded liability," which stood at $6.4 billion at that time.

In the review that appeared in our *2009 Annual Report*, we observed that, as of December 31, 2008, the unfunded liability stood at $11.5 billion, an increase of $3.4 billion from the previous calendar year (by December 31, 2010, the unfunded liability was $12.4 billion and had almost doubled in size since 2006). Our review expressed the concern that the growth and magnitude of the unfunded liability posed a risk to the system's financial viability and ultimately could result in the WSIB being unable to meet its existing and future financial commitments to provide worker benefits. Eliminating or reducing the unfunded liability required that four key levers—legislated benefits, coverage, premium rates, and investments—work effectively in tandem. We observed that the WSIB and the government may have to commit to a different strategy with respect to these levers if the unfunded liability is to be addressed within a reasonable period of time.

Our other observations included the following:

- The WSIB's funding ratio of assets to liabilities was 53.5%, considerably lower than that of any of the four other large provincial boards we reviewed in British Columbia, Alberta, Manitoba, and Quebec, which averaged 102%. In each of these four provinces, legislative and policy differences are key factors that contributed to their higher funding ratios.
- The WSIB and governments have sought over the last two decades to satisfy simultaneously two major stakeholders: employers, who wanted lower premiums, and workers, who

wanted higher benefits. This has undoubtedly affected the size of the current unfunded liability.

- The WSIB's ability to eliminate the unfunded liability has to some extent been limited by the government's control over benefit changes and over which businesses and industries are covered by the system. For example, in Ontario, 72.6% of the workforce was covered by the system as of 2007, compared to 93.1% in British Columbia and 93.4% in Quebec.
- Annual premium revenues in recent years have not been enough to cover benefit costs. Premiums have increased by an average of only 1% each year since 2001, at the same time as the WSIB was reporting average annual deficits of more than $900 million.
- Benefit and health-care costs have risen steadily over the last 10 years as a result of workers staying on benefits longer and receiving increases in those benefits as a result of legislative changes.
- The WSIB's 15-year average rate of return on its investments from 1994 to 2008 was 6.6%. Given that future benefit costs are expected to rise at 7% annually, investments must earn more than 7% before any reduction of the unfunded liability can be realized solely from investment returns.

Our 2009 review of the unfunded liability did not make specific recommendations, but rather discussed the factors contributing to the growth of the unfunded liability and the initiatives being undertaken by the WSIB to address it. The WSIB responded to the issues we raised and acknowledged that it would need to take significant actions to get its financial affairs in order. We have structured this follow-up of our review on the basis of discussions with the President and other senior officials of the WSIB, and a formal written update the WSIB provided to us.

STANDING COMMITTEE ON PUBLIC ACCOUNTS

The Standing Committee on Public Accounts held a hearing on this review in February 2010. In October 2010, the Committee tabled a report in the Legislature resulting from this hearing. The report contained 10 recommendations and requested that either the Ministry of Labour or the WSIB report back to the Committee with respect to the following:

- whether the Ministry believes that the WSIB should continue to govern its own financial affairs and address the unfunded liability itself, including the Ministry's views of the benefits and drawbacks of opening up WSIB appointments to public application;
- the outcome of the WSIB's consultations on whether there is support for legislative changes that would require the WSIB to become fully funded in time;
- the outcome of the WSIB's review of premium rate-setting, including a timeline and the expected impact on premium rates if the review recommends changes to the way they are set;
- the WSIB's strategy to manage rising occupational disease claims and the impact it anticipates these claims will have on its unfunded liability;
- the outcomes of the Ministry's examination of its options for more comprehensive coverage levels for Ontario workers;
- the WSIB's assessment of how it expects implementation of changes to the Labour Market Re-entry (LMR) Program to impact both the duration of claims and the unfunded liability;
- the outcome of the WSIB's implementation of its narcotic control program, including cost savings that have accrued from it and whether it has had an impact on the duration of claims;
- the status of the implementation of recommendations made in the Chair's Report on Stakeholder Consultations;

- whether the WSIB had achieved its target of a 7% reduction in new claims in 2009 and, if not, the action it had taken in 2010 on this issue; and
- what progress the WSIB had made in drafting a strategy by December 31, 2010, to address its unfunded liability, including the results of its anticipated strategic plan and planned reduction in the unfunded liability over the next five years.

Formal responses to the Committee's recommendations were provided by the WSIB on December 14, 2010, and April 4, 2011, and by the Ministry of Labour (Ministry) on February 2, 2011. Where the Committee's recommendations were similar to ours, this follow-up includes the recent actions reported by the Ministry and the WSIB to address the observations raised by both the Committee and our 2009 audit.

Status of Actions Taken on Issues Raised

According to the information we received from the WSIB and discussions with senior management regarding the issues raised in our 2009 review, the WSIB had made progress in introducing a number of initiatives to address the unfunded liability. As well, legislation has been passed that, subject to proclamation, would require that the WSIB reach a prescribed level of funding within a specified time frame. The funding and time frame are to be established by regulation that will take the results of the current independent funding review into consideration.

The following update has been organized on the basis of the key initiative areas identified in the WSIB's 2011–2013 Corporate Business Plan. We have prefaced each section with relevant observations from the review that appeared in our *2009 Annual Report*.

SUFFICIENT FUNDING—FOCUS ON THE UNFUNDED LIABILITY AND STRIVE TO SIGNIFICANTLY REDUCE IT

Observations

- *Both the WSIB and the government may have to commit to a different strategy with respect to the setting of premium rates and benefits if the WSIB is to eliminate the unfunded liability within a reasonable period.*
- *Section 96 (2) of the Act states: "The Board has a duty to maintain the insurance fund so as not to unduly or unfairly burden any claims of Schedule 1 employers in future years with payments under the insurance plan in respect of accidents of previous years." Clearly, the very existence of the unfunded liability demonstrates that, over the years, the province's employers have not fully funded the costs of injuries and occupational diseases, so these liabilities will need to be funded by future employers. Thus, employers in currently declining industry sectors have transferred workplace-safety financial obligations to other current and future generations of employers.*
- *Eliminating or reducing the unfunded liability requires the interaction of four key levers—legislated benefits, coverage, premium rates, and investments—to work effectively in tandem. The inability to eliminate the WSIB's unfunded liability over the last two decades has been owing in part to the WSIB's desire to satisfy all the stakeholders.*

Status

The WSIB indicated that the following actions had been taken in response to these issues:

- The WSIB launched an independent funding review seeking advice from stakeholders. The review, led by an external academic, provides the opportunity for employers, workers, and other interested parties to make presentations. It is designed to provide the WSIB with advice on issues such as how to achieve full funding of the insurance fund, the design of

the employer incentive programs, and the effectiveness of the rate-group structure and the premium-setting methodology.
- Legislative amendments to the Act have been passed and proclaimed by the Legislature. These amendments provide the WSIB with more autonomy to govern its own financial affairs.
- Legislative amendments to both the *Workplace Safety and Insurance Act* and the *Occupational Safety and Insurance Act* (Bill 160) have been passed with the intent of promoting the integration of the prevention and enforcement elements of the occupational health and safety system. These measures include the transfer of the WSIB's prevention mandate to the Ministry of Labour. This will also allow the WSIB to concentrate on its insurance function.
- The WSIB established an Actuarial Advisory Committee to provide general advice and counsel to the President and CEO.

REVENUE MUST COVER COSTS—OPTIMIZE PREMIUM AND INVESTMENT REVENUES AS A CRITICAL MEASURE OF FISCAL HEALTH

Observations

- *Premium revenues have not increased enough to offset the costs of the benefits that are mandated under the Act. Benefit expenses increased by about 7% annually from 1999 through 2008, but premium revenues increased by an average of only 3% during the same period.*
- *Ontario will eventually need to increase its premium rates if it hopes to make any progress toward eliminating its unfunded liability—unless downward revisions are made to the current benefits structure or investment returns recover dramatically.*
- *Having too few investments relative to the WSIB's liabilities and liquidating investments to pay current operating expenses and benefit claims typically have a significant negative impact on the size of the unfunded liability and fiscal sustainability of the WSIB.*

Status

The WSIB indicated that, in response to these issues, it had:

- put into place a 2% increase in the average annual premium rate for 2011, with a further 2% increase planned for 2012;
- begun addressing the sources of revenue leakage, including employers' arrears and payment avoidance, as well as non-compliance strategies; and
- implemented its Strategic Investment Plan reflecting a more conservative investment strategy with a focus on reduced volatility.

RIGHT-SIZING COSTS—REDUCE TOTAL BENEFIT COSTS THROUGH REDUCING WORKPLACE FATALITIES, INJURIES, AND ILLNESSES, AND PROMOTING EARLY RECOVERY AND RETURN TO WORK

Observations

- *Benefit and health-care costs have been rising over the last 10 years. These cost increases—in particular, benefit cost increases arising from increases in the amount of time that workers are staying on benefits and increases in benefits arising from legislative changes—have contributed to the unfunded liability.*
- *Health-care costs paid by the WSIB on behalf of workers receiving benefits averaged 16% of total benefit costs over the 1999–2008 period. But in that same period, these health-care costs more than doubled—rising from $238 million in 1998 to $619 million in 2008. One of the primary drivers of increased health-care costs is the increased number of narcotic prescriptions for analgesia (pain relief).*
- *Employer incentive programs were not providing the desired outcomes. If claims duration in general is increasing, rebates should decrease and/or surcharges should increase correspondingly.*

A study noted that the opposite was occurring: employers were still being rewarded even as their injured-worker claims duration was increasing.

Status

The WSIB indicated that it had taken the following actions in response to these issues:

- It had implemented a new Work Reintegration Model to improve return-to-work outcomes. The model involves more early involvement and the use of work transition specialists.
- It was more carefully managing employer incentive programs, with the result that the imbalance of refunds exceeding surcharges was the lowest that it had been in the past 16 years.
- It had introduced a more appropriate graduated narcotic therapy for injured workers.
- It had initiated a value-for-money audit to report on the effectiveness and efficiency of the WSIB's claims management process.