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April 5, 2011

WSIB Funding Review
Workplace Safety and Insurance Board
200 Front Street West, Toronto,
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Hamilton Community Legal Clinic is a community legal clinic funded by Legal Aid Ontario and provides free legal services to the people of the City of Hamilton. It is an amalgamation of three Hamilton legal clinics some of which have been serving the Hamilton Community for over 30 years. During this time we have represented hundreds of injured workers in their individual cases at all levels of appeal. In addition to case by case representation of individuals, our mandate includes public legal education and community development. We also work with the members of provincial parliament and senior bureaucrats to seek improvements in law and policy affecting the people of Hamilton. As part of this we have represented the Hamilton and District Injured Workers' Group and the Ontario Network of Injured Workers' Group in their legal cases and law reform efforts to improve Workers' Compensation law for injured workers. Our experience with respect Workers' Compensation and the plight of injured workers is extensive.

1. Concerns – limitations of the review

We are writing with respect to the scope of this review. We are concerned that this review will not include a discussion of the expansion of coverage of the Workers' Compensation system to include all workers in Ontario.

There are two reasons for our concern. First the whole reason for this review is the worries surrounding the unfunded liability at the Workplace Safety & Insurance Board. In 2003 Brock Smith reviewed the issue of coverage and found that 38% of all Ontario workers had no Workers' Compensation Coverage. Douglas Hyatt from the Rotman School of Business stated that this 38% of all Ontario Workers represent approximately 1.3 million workers. He indicated that if these workers were covered by Workers' Compensation that the Workplace Safety & Insurance

Board would generate an additional \$200 million dollars in annual premiums. A review of the financial status of the Workplace Safety & Insurance Board should include a method of generating \$200 million dollars in annual premiums.

Expanded coverage would also lower the average employer assessment rates. Many of the employers that are not included in the system are employers that would pay much lower rates than the current average assessment rates. Simply having these employers pay WSIB assessments would lower average assessment rates. Some have estimated that at a level of full coverage the average assessment rate would be approximate 30% lower than it currently is.

The main reason for our concern revolves around the injustice of exempting 38% of Ontario's workforce from Workers' Compensation coverage. For many of these workers an injury at work will lead to no income replacement benefits and an excessive reliance on our social housing, social assistance and public Health Care systems. This is not only an unfair burden to place on 38% of Ontario's workforce; it is an unfair burden to place on the taxpayers of Ontario.

For these three reasons we feel that the coverage ought to be an issue that is studied with the goal of achieving full coverage for all Ontario Workers.

We are also concerned that there is no attempt to discuss the relationship of benefit levels for injured workers to funding levels at the WSIB, premium levels, employer incentives and the indexation of partial benefits. You cannot honestly look at the issues that this review is studying while treating injured worker benefits as an abstraction. The systematic under-compensation of injured workers is the key issue facing the injured worker community today. This commission ought to recommend that a Royal Commission be set up to study the entirety of the Workers' Compensation system.

2. Funding levels

a. The Unfunded Liability: how did it develop

The injured worker movement is familiar with this false concern over the unfunded liability and the impact that this has had on injured worker benefits. This is the identical concern that injured workers saw in the mid 1990's; the movement was told that the then Workers' Compensation Board was in a financial crisis and something had to be done.

The results for injured workers were dire indeed. In 1995 the Government of Bob Rae eliminated full indexing for injured worker benefits. In 1998 the

Government of Mike Harris reduced the indexing for injured worker benefits. These two legislative changes reduced the liabilities at the Board by over \$2 Billion dollars. They also significantly reduced injured worker benefits. An injured worker receiving partial benefits in 1995 has seen the real value of his or her benefits reduced by just over 19%.

At the same time that this happened, employers in Ontario enjoyed significant premium reductions. In 1991 average premiums per \$100.00 in payroll was \$3.20. In 1997, the last time the government was concerned about a financial crisis at the Workers' Compensation Board, the assessment rate was \$3.00 per \$100.00 in payroll. These assessments were steadily decreased in the late 90's until by 2001 the average assessment rate stood at \$2.13 per 100 dollars in payroll. This means that in spite of the supposed financial crisis that justified significant benefit reductions to injured workers, employers in Ontario had their costs reduced by 29%. Even with the recent announced increases in the premium rates, employers are only paying \$2.30 per \$100.00 in payroll; this is a 23% reduction in premiums from the 1997 rate.

This has had a significant impact on the funding levels of the Workplace Safety & Insurance Board. If employers had not enjoyed a premium reduction and had the province allowed the Workplace Safety & Insurance Board keep the savings from the reduced benefits for injured workers there would be no 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.

This discussion of the recent history of Workers' Compensation and its funding levels show that the funding levels at the Workplace Safety & Insurance Board are not driven by increased benefits to injured workers; injured workers have had their benefits reduced and will continue to have their benefits reduced. Instead the Board funding levels are primarily driven by steep decreases in employer premiums. If we were to assign blame for the unfunded liability, the blame would lie squarely on the employer's of Ontario for insisting on lower premiums at the cost of maintaining the unfunded liability.

b. The Unfunded Liability: What is it and should we worry about it.

Much of the hysteria surrounding the unfunded liability has historically been driven by the confusion as to the nature of the unfunded liability. It is seen as being the equivalent to a debt owed by the Workplace Safety & Insurance

Board. This was seen in the Cam Jackson report on Workers' Compensation which stated:

"The principle reason is the size of the WCB's unfunded liability (the difference between its assets and liabilities). While this liability declined from \$11.4 billion in 1994 to \$10.9 billion for 1995, the fundamental problem remains. Its size threatens the viability of the system and the system's capacity to ensure adequate benefits to workers injured today and in the future. It also hinders job growth and the ability of employers to compete in the global marketplaces"

The Mike Harris government were not the only people who confused the Board's unfunded liability with a debt. The Canadian Federation of Independent Business published a "study" concerning the Workplace Safety & Insurance Board. They stated:

Small business owners are painfully aware that unfunded liabilities, just like deficits/debts, mean future (payroll) tax increases or jeopardy to future payments.

This confusion continues to this day. In late 2009 the Auditor-General of Ontario came out with a value for money audit of the Workplace Safety & Insurance Board and discussed the significance of the unfunded liability. In particular the Auditor-General uses the language of debt and implies that the unfunded liability is a debt owed by the Workplace Safety & Insurance Board that can imperil the financial viability of the Board.

This is seen in the following passages. Under historical perspectives at page 320 of the report the Auditor-General states:

By 1994, the unfunded liability stood at \$11.4 billion. In response to the growing unfunded liability, the government reduced benefits in 1995. In 1996, the government of the day undertook a comprehensive review of the system. That review determined that legislative intervention was necessary because the existence of such a large unfunded liability threatened the viability of Ontario's system. The government believed that the unfunded liability not only put at risk the system's ability "to provide fair and secure compensation to injured [and ill] workers both now and in the future" but also had resulted in premium rates that were among the highest in North America – a situation that adversely affected Ontario's competitive position.

It is clear from the section on page 322 entitled "Should We Be Concerned about the Unfunded Liability" that the Auditor-General accepts this. This is seen in the very first sentence where he states:

The risk that a large unfunded liability poses to the system's financial viability was recognized over a decade ago.

He further states:

We acknowledge the argument that because the worker's compensation system is a perpetually ongoing operation, the unfunded liability is meaningless. From this point of view, this liability is merely an amount that will become due only in the highly unlikely event that the WSIB was to wind down its operations today. For example, The WSIB told us that, from an injured worker's perspective, there are currently sufficient funds to pay benefits for up to three years even if ongoing premium revenue was eliminated completely and the WSIB was wound down.

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.

This language has accepted the view that a high unfunded liability for the Workplace Safety & Insurance Board places it in an unsustainable financial position. This is the language of debt.

This is also a myth.

Part of the reason that this pernicious myth exists is that it is difficult to understand the concept of an unfunded liability; an unfunded liability is the difference between the amortized present value of all estimated future liabilities and the assets. This is a confusing definition that uses mysterious concepts in finance and actuarial science. It is much, much easier to think in terms of debt.

While it is easier to think of the unfunded liability as a debt it is wrong. The unfunded liability is not a debt.

One way of seeing this to look at the concepts contained in the definition of an unfunded liability in the context of a personal finance problem. Imagine a person who is 46 and has an income of \$100,000 per year; that person would have an income that would put him or her in the top 10% of income earners in Canada. Further imagine that, including all taxes, this person spends \$80,000.00 per year. Suppose that the person plans to retire at 65 and at 65 reduce his or her spending to \$60,000.00. Finally suppose that this person has net assets of \$235,000.

This person would be considered by many to be very well off. Certainly there are richer people in Ontario, but there are whole lot of people in Ontario who are much worse off. This person is not in financial crisis.

This person has an unfunded liability. Using the information in the Workplace Safety & Insurance Board's 2008 annual report one can calculate this person's unfunded liability **exactly** the same way as the Board calculates its unfunded liability. This imaginary person's unfunded liability would be \$1,159,934.22.¹ Certainly if this person was \$1,159,934.22 in debt this person would be in financial trouble.

But this person does not owe this money. The unfunded liability calculation assumes that the person would get no money ever from today onwards: no income from wages, ever; no income from the investments that form part of the \$235,000 assets; no disability insurance should the person become too disabled to work; no Employment Insurance or social assistance benefits should the person be temporarily out of a job; no Canada Pension Plan Retirement or Old Age Security benefits when he or she turns 65. In other words, this person's unfunded liability makes assumptions that are wholly unrealistic and faintly ridiculous.

This is the same flaw with respect to the Auditor-General's view. The unfunded liability is only a concern if we were to assume that the Workplace Safety & Insurance Board **never received a single dollar in revenue ever again**. The unfunded liability is only of concern if we were to make an assumption that was wholly unrealistic and faintly ridiculous.

Another way of seeing the absurdity of the claims regarding the unfunded liability is to compare this mythical person's finances with the Workplace Safety & Insurance Board. An alternative measure of the Workplace Safety & Insurance Board financial health is the funding ratio. This is the ratio of assets to the present value of all future liabilities. The Workplace Safety & Insurance Board has a funding ratio of 53.55%. Our mythical person has a funding ratio merely of 16.85%. In order to have the same financial health as the Workplace Safety & Insurance Board, this mythical person would have to have a net worth of \$ 756,054.35. In other words, the Board is in a sounder financial state than a mythical person who is financially better off than the vast majority of Ontarians.

The only rationale that the Auditor-General appears to give for the concern over the unfunded liability is that the Workplace Safety & Insurance Board's "trend" to sell off investments in order to finance current operations.

¹ See Detailed Calculations in Appendix #1

An analysis of the Workplace Safety & Insurance Board's Annual reports shows that there is no unsustainable trend. The following table shows the Workplace Safety & Insurance Board's assets since 1996:

	Assets (Million \$)	Change in Assets (Millions \$)	% age change in Assets
1996	\$ 7,872.00		
1997	\$ 8,721.00	\$ 849.00	10.79%
1998	\$ 9,338.00	\$ 617.00	7.07%
1999	\$ 10,479.00	\$ 1,141.00	12.22%
2000	\$ 11,395.00	\$ 916.00	8.74%
2001	\$ 11,576.00	\$ 181.00	1.59%
2002	\$ 11,624.00	\$ 48.00	0.41%
2003	\$ 11,847.00	\$ 223.00	1.92%
2004	\$ 13,643.00	\$ 1,796.00	15.16%
2005	\$ 14,547.00	\$ 904.00	6.63%
2006	\$ 16,398.00	\$ 1,851.00	12.72%
2007	\$ 15,972.00	\$ (426.00)	-2.60%
2008	\$ 13,207.00	\$ (2,765.00)	-17.31%
2009	\$ 15,541.00	\$ 2,334.00	17.67%

As you can see from 1996 until 2006 the assets of the Workplace Safety & Insurance Board continuously went up. It was only in 2007 and 2008, years marked by significant investment losses in the Workplace Safety & Insurance Board's investment portfolio, that the Workplace Safety & Insurance Board lost assets.

The final way of seeing the absurdity of the concerns over the unfunded liability is when you look at the level of assets at the Workplace Safety & Insurance Board. As of the end of September 2010 the Workplace Safety & Insurance Board had assets of \$16.235 Billion. How can an organization be in financial trouble when they have over 16 billion dollars "in the bank"? They are not and they cannot be in financial distress with that level of net assets.

c. What is a sufficient level of funding

Some people, including the Auditor-General of Ontario insist that the only proper level of funding at the Workplace Safety & Insurance Board is full funding. The injured worker movement has always believed that a 50% funding ratio is an adequate level for the WSIB. This both ensures the financial security of injured workers' benefits now and into the future without unduly burdening future Schedule 1 employers. We are supported in this by Professor Paul Weiler, a Harvard Law professor who studied Workers' Compensation in Ontario in the 80's and found that a 50% funding ratio was

an adequate funding ratio. We support this and would recommend that the Board's funding ratio be maintained at approximately 50%.

3. Employer incentive programs

In our discussion of the funding levels at the WSIB, we discussed the significant reduction in premiums that employers have enjoyed since the mid 90's and their impact on the funding levels at the Board.

This is not the only financial drain on the accident fund that Ontario employers enjoy. The second reduction in employer premiums was through employer incentives. In theory the employer incentive programs are supposed to give incentives to employers to improve health and safety in their workplaces and to encourage employers to give meaningful work to their injured workers. The mechanics of the program are that employers who have reduced accidents or are able to return injured workers to work get premium rebates. The cost of these rebates are supposed to be paid for by the penalties levied on employers who have bad health and safety records or bad return to work programs. The rebates awarded and the penalties levied ought to balance; they never have. From 1995 until present the Workplace Safety & Insurance Board has paid more than \$3.0 Billion in rebates more than in penalties. In other words, had there never been experience rating, the unfunded liability at the WSIB would be \$3.0 Billion less than it currently is.

There is also indication that employer incentives do not work. Employer incentives are based on the number of workplace accidents and the length of lost-time claims. Because of this, instead of having good health and safety programs there is a lot of employer pressure on workers to not report accidents to the Workplace Safety & Insurance Board. Also because of the mechanics of the incentive programs, employers don't implement good return to work programs; instead we see aggressive claims management practices that pressure injured workers to return to work too soon. Often the Workplace Safety & Insurance Board is an accomplice in this practice by threatening injured workers' benefits if they do not "co-operate" in this aggressive employer claims management. Much of the litigation in our clinic is about dubious return to work plans.

The impact of this is significant. Injured workers are being returned to work too soon and face higher incidence of re-injury.² Statistics, in fact, suggest that returning to work after injury may be among the most dangerous employment activities in Ontario. The numbers are disturbing. Information began to emerge from research in the 1990s which found that early return

² What follows is taken from John McKinnon's "Early and Unsafe Return to Work: Research shows that Return to Work May be Dangerous to Your Health" a draft of an article appearing in the IAVGO reporting service.

to work did not necessarily result in sustainable employment. A 1995 study by Butler, Johnson and Baldwin looked at Ontario WCB data of 11,000 injured workers with permanent partial disabilities from injuries between 1974 and 1987. This was the first to analyze work absences that occur after the first return to work.³ They found that the rate of successful returns to employment, measured by first return to work, is 85%. However, the rate of success evaluated over a longer time period is only 50%. A most striking statistic in this research is the re-injury rate: "Almost 60% of those who returned to work had one or more subsequent injury related work absences."⁴

Why has the Workplace Safety and Insurance Board developed an employer incentive program that has cost \$3.0 Billion and that does not work?

We would suggest that the program itself is fundamentally corrupt and allows the Workplace Safety & Insurance Board to reduce injured worker benefits further than they otherwise would.

To see why this is, you must understand the process of deeming. The current wage loss system for workers with permanent impairments pays compensation based on the projected future loss of wages. When a worker is actually earning, the WSIB often will base the projected future earnings on the actual earnings and pay 85% of the difference between the escalated pre-injury earnings and the actual earnings. When there are no wages, the Board must deem an injured worker to be earning a wage.⁵ To do this, the WSIB will estimate what the worker could earn in suitable work, pretend that the worker is making these earnings and then pay the worker 85% of the difference between the workers' escalated pre-accident earnings and these pretend earnings. This is called deeming.

When a worker does not accept a job offer from the accident employer, that worker will be deemed to have no earnings loss. Had there been no job offer, the deemed earnings would often be based on lower wages. For many workers injured in manufacturing and construction, deemed earnings in absence of an employer job offer are often substantially lower than the pre-accident earnings; this results in some partial long-term benefits. With this projected earnings loss, and potential benefits there may have been some attempt at retraining to reduce the barriers that are faced by the injured worker in returning to work and potentially mitigate some of this earnings loss.

³ Managing Work Disability: Why First Return to Work is Not a Measure of Success, Industrial and Labor Relations Review, Vol. 48, No. 3.

⁴ Above, p.467.

⁵ For workers that are found to be unemployable, that deemed wage would be zero

This does not happen when a worker is offered a job by the accident employer at no wage loss. There are no future wage loss benefits and there is rarely an attempt at retraining. However, because of the mechanics of the employer incentive programs, many employers will offer modified jobs to injured workers. While there are a number of employers that use this program as an honest attempt to return injured workers to safe, meaningful jobs where they can retain their dignity as workers, many employers abuse the incentive program merely to avoid workers' compensation assessments. All too often we see examples of employers not making good faith efforts to return injured workers to safe and meaningful jobs. In a number of cases, the employer will misstate the level of effort involved in the modified job; the job won't in fact be safely modified. In a number of cases, an injured worker will be returned to a meaningless job that adds no value to employer's production; these jobs are never sustainable. In a number of cases workers are harassed by either their employer or their fellow co-workers upon a return to work; these workers often end up leaving this poisonous work environment. In many cases the employer takes back the injured worker only to terminate them shortly thereafter for reasons other than the workplace injury.

The Workplace Safety & Insurance Board will usually condone these employer abuses of the incentive program. Instead of making a finding that the employer is not co-operating in the early and safe return to work program, they will make a finding that the worker is not co-operating. This results in no wage loss benefits and no efforts by the WSIB to reduce the barriers that the injured worker faces due to disability. The savings by the WSIB are potentially large for condoning this employer abuse of the employer incentive programs. It is hard to avoid the conclusion that the WSIB has paid \$3.0 billion since 1995 to the employers in order to have a program that significantly contributes to the systematic under compensation of injured workers.

We believe that employer incentive programs ought to be eliminated. They don't work, they contribute to the re-injury and under-compensation of injured workers and they have cost \$3.0 billion dollars since 1995.

4. Indexation of Partial Benefits

In the 70's injured workers were faced with large increases in the cost of living; their compensation was only partially adjusted for these increases. The reality of injured workers in the 70's were that they faced real decreases in the purchasing power of their compensation and injured workers who relied on their compensation benefits were becoming steadily poorer. In 1985 the Liberal Government of David Peterson introduced legislation that

mandated annual increases of all workers' compensation benefits by the rate of inflation.⁶ All three parties supported this change in legislation.

Unfortunately this protection lasted a mere 10 years. In 1995 the New Democratic Government of Bob Rae introduced Bill 165. One of the significant changes of this Bill was that it eliminated full inflation protection for the majority of injured workers; with certain exception would only receive benefit increases that were 1% less 1/4 of the rate of inflation. This disturbing trend continued with Bill 99. The class of workers that received full inflation protection was reduced and the amount of inflation protection was reduced as well. After January 1, 1998 most injured workers would only receive benefit increases that were 1% less than 1/2 of the rate of inflation.

Even with the low inflation we have been experiencing since January 1, 1995, the de-indexing benefits have had a significant impact on injured workers' benefits. The cost of living in Ontario has increased by 36.6% whereas most injured workers benefits have only increased by 11.4%. This means that an injured worker receiving \$1000.00 in benefits in 1995 would require \$1366.42 in 2011 to have the same purchasing power as in 1995; due to the de-indexing of benefits this worker only receives \$1114.01. This amounts to a real decrease in benefits of 18.47%.

With no changes in the legislation, this real decrease in injured workers benefits will only get worse. I have attached a chart that shows the impact of inflation for the next 25 years on an injured worker's benefits. This assumes a 2.5% inflation rate going forward; this is the figure that the Workplace Safety & Insurance Board has used to calculate the cost of indexing. I would submit that this estimate is a conservative one; since World War II, the average annual rate of inflation has been 3.96%. If we were to increase an injured workers' benefits by only the current general indexing factor that injured worker would lose 32.94% of the purchasing power of his or her benefits.

This does not tell the full story. Discussions of inflation illustrate the difficulty of divorcing the issues of level of benefits from the discussion of the impact of the partial indexing of injured workers. One subset of workers who are affected by the partial indexation of benefits is those workers in receipt of partial benefits who were injured after January 1, 1990; these workers have been deemed and their benefits reflect the deeming. Because of the mechanics of deeming, the impact of partial indexation is much worse for these injured workers than for other injured workers.

⁶ The particular inflation rate that was used for these increases was the annual Consumer Price Index for Canada.

The obvious way in which the partial de-indexing of benefits affects an injured worker is that these benefits do not increase with the cost of living. However there are two other ways in which partial de-indexing affects that workers benefit level. An injured worker is rarely deemed only once during the course of their claim. The Board may review the level of compensation every year; typically you see a review of benefits approximately three years after an injury and the Board must do a review 6 years after an injury. These reviews can, and often will reveal some of the other impacts of the de-indexation of partial benefits. This is because the WSIB must make an estimate of the escalated pre-accident wages and the likely wages at the time of the review and both of these estimates are skewed by the lack of full indexation.

The first way in which the review is skewed is in the estimation of a worker's future wages. This process is prone to abuse by the WSIB especially for those workers that were deemed to be able to work but that either did not, or could not return to work. Besides pretending that an injured is earning deemed wages, the WSIB will pretend that an injured worker has work experience and therefore will pretend that they have received pay raises.⁷ This only makes sense if the goal of WSIB policy is to find ways in which to reduce an injured worker's benefits.

However, even if these abuses by the WSIB did not happen, partial indexing would have an impact. When the WSIB recalculates a partial Loss of Earnings benefit based on deemed earnings, the WSIB uses actual wages encountered in the labour market. Unfortunately since 1995 average wages in the economy have increased faster than the cost of living.⁸ This means that at every review an injured worker faces an absolute decrease in the level of benefits. This is made worse by the fact that the pre-accident wages are not escalated by the cost of living but are escalated at a rate that is less than the cost of living.

Decision 387/01 of the WSIAT sets out the law and gives the calculation for the calculation of the escalation of net average earnings by incorporating both 43(4)(1) & (2) of the Workplace Safety & Insurance Act in calculating the adjusted net average earnings. There are two steps to adjusting the net average earnings in any given year. First, the net averages earnings are "scaled up" by the full CPI. This figure is then reduced somewhat by multiplying the fully scaled up figure by a percentage that is arrived at by dividing (1 + Friedland Formula) by (1 + Full CPI). The calculations for the combined impact of Section 43(4)(1) & (2) of the Workplace Safety & Insurance Act are shown in the chart below:

⁷ In recent years, the substantial increase in the minimum wage has been a mixed blessing for injured workers. Workers who were deemed to be working at or slightly above minimum wage, but who did not or could not work, had their benefits reduced because of the increase. They were deemed to be earning the new higher minimum wage.

⁸ See Appendix 2 for Chart.

Year	C.P.I	Friedland formula	Fraction
1996	2.40%	0.20%	97.85%
1997	1.70%	0.00%	98.33%
1998	1.50%	0.00%	98.52%
1999	1.00%	0.00%	99.01%
2000	2.40%	0.80%	98.44%
2001	2.80%	1.10%	98.35%
2002	1.90%	0.43%	98.55%
2003	3.20%	1.40%	98.26%
2004	1.60%	0.20%	98.62%
2005	2.30%	0.73%	98.46%
2006	2.60%	0.95%	98.39%
2007	2.10%	0.58%	98.51%
2008	2.00%	0.50%	98.53%

The implication of these two factors is grim for injured workers facing a recalculation of their loss of earnings benefits. The WSIB, when doing the mandatory recalculation of the loss of earnings benefit 6 years after the accident, must subtract from a number that grows slower than the rate of inflation a number that grows faster than the rate of inflation. For many injured workers this means that the mandatory 6 year review of their loss of earning benefit will result in an absolute decrease in the amount of benefits.

To illustrate this phenomenon, I have given a hypothetical example. I have assumed someone making the maximum covered earnings. To make the calculations somewhat simpler, I have assumed an accident on January 1 of the year accident and that the deeming takes place of on December 31 on the year of accident. I have also assumed that that worker would be deemed to make the average industrial wage. In making the calculation from gross to net I have assumed that the net pre-accident wages are 75% of the gross wages and to reflect our progressive taxes that the net deemed wages are 80% of the gross deemed wages. The escalation of the pre-accident wages and the increases in the average industrial wage would have resulted in absolute decreases in benefits for this injured worker regardless of the year of injury.⁹ This is illustrated in the chart below:

⁹ This would be for any given year between 1998 and 2004; those injured after 2004 have not had their six year reviews of their long term loss of earnings benefit.

Year of injury	Absolute loss of benefits after 6 years.
1998	\$ 5,429.19
1999	\$ 5,429.19
2000	\$ 5,755.37
2001	\$ 6,711.01
2002	\$ 6,743.17
2003	\$ 6,250.18
2004	\$ 6,642.45

The average loss of benefit at the 72 month review is \$6137.22. Of course the purchasing power of these decreased benefits is eroded even further by the loss of full indexing thereafter.

The impact of the limited indexing of injured worker benefits can be large and disturbing. For injured workers who do not return to work but who are deemed to be able to work, they will have to face the rest of their working lives with increasing poverty and some case decreasing WSIB benefits. Some will be able to rely on family; many will rely on our social safety net. It is neither right nor fair that injured workers become reliant on family and on the taxpayers of Ontario because of their injury. While the partial de-indexing of benefits does not cause all of these problems, it contributes to the problem and should be eliminated. All benefits should be fully indexed and all calculations in the act should be fully indexed to the Consumer Price index for Ontario.

5. Conclusion

To summarize we have made the following recommendations:

- a. Expand WSIB coverage to include all of Ontario's workforce.
- b. Establish a royal commission to study all of the problems facing Workers' Compensation
- c. Maintain a Funding Ratio at the WSIB of 50%
- d. Eliminate all employer incentive programs
- e. Increase all benefits and calculations by the full Consumer Price Index for Ontario

All of which is submitted
Hamilton Community Legal Clinic/Clinique Juridique Communautaire de
Hamilton

Appendix 1: An individual unfunded liability

Assumptions

Annual Salary	\$	100,000.00
Annual Expenses	\$	80,000.00
Total Assets	\$	235,000.00
Current Age		46
Age At Retirement		65
year of Retirement		2029
Expenses after retirement	\$	60,000.00
Age at death		83
Year of Death		2048
Fully indexed discount rate		4.5%

Results

Benefits Liability	\$1,394,934.22
Assets	\$ 235,000.00
Unfunded Liability	\$1,159,934.22
Funding ratio	16.85%

If person's finances were like the WSIB's

Net Assets 2008 \$ 756054.35

Year	Expenses	Discounted expenses
2011	\$ 80,000.00	\$ 80,000.00
2012	\$ 80,000.00	\$ 76,555.02
2013	\$ 80,000.00	\$ 73,258.40
2014	\$ 80,000.00	\$ 70,103.73
2015	\$ 80,000.00	\$ 67,084.91
2016	\$ 80,000.00	\$ 64,196.08
2017	\$ 80,000.00	\$ 61,431.66
2018	\$ 80,000.00	\$ 58,786.28
2019	\$ 80,000.00	\$ 56,254.81
2020	\$ 80,000.00	\$ 53,832.35
2021	\$ 80,000.00	\$ 51,514.21
2022	\$ 80,000.00	\$ 49,295.90
2023	\$ 80,000.00	\$ 47,173.11
2024	\$ 80,000.00	\$ 45,141.73
2025	\$ 80,000.00	\$ 43,197.83
2026	\$ 80,000.00	\$ 41,337.64
2027	\$ 80,000.00	\$ 39,557.55
2028	\$ 80,000.00	\$ 37,854.11
2029	\$ 80,000.00	\$ 36,224.03
2030	\$ 60,000.00	\$ 25,998.11
2031	\$ 60,000.00	\$ 24,878.57
2032	\$ 60,000.00	\$ 23,807.25
2033	\$ 60,000.00	\$ 22,782.05
2034	\$ 60,000.00	\$ 21,801.01
2035	\$ 60,000.00	\$ 20,862.21
2036	\$ 60,000.00	\$ 19,963.84
2037	\$ 60,000.00	\$ 19,104.15
2038	\$ 60,000.00	\$ 18,281.48
2039	\$ 60,000.00	\$ 17,494.24
2040	\$ 60,000.00	\$ 16,740.90
2041	\$ 60,000.00	\$ 16,020.00
2042	\$ 60,000.00	\$ 15,330.14
2043	\$ 60,000.00	\$ 14,669.99
2044	\$ 60,000.00	\$ 14,038.27
2045	\$ 60,000.00	\$ 13,433.75
2046	\$ 60,000.00	\$ 12,855.27
2047	\$ 60,000.00	\$ 12,301.69
2048	\$ 60,000.00	\$ 11,771.95

Appendix 2

25 Year Projection of benefit loss based on 2.5% inflation

Year	Friedland Formula	Level of Benefits	Inflation	Cost of Living	Lost to Inflation	% loss
2011	0.8750%	\$ 1,000.00	2.50%	\$ 1,000.00	\$ -	0.00%
2012	0.8750%	\$ 1,008.75	2.50%	\$ 1,025.00	\$ 16.25	1.59%
2013	0.8750%	\$ 1,017.58	2.50%	\$ 1,050.63	\$ 33.05	3.15%
2014	0.8750%	\$ 1,026.48	2.50%	\$ 1,076.89	\$ 50.41	4.68%
2015	0.8750%	\$ 1,035.46	2.50%	\$ 1,103.81	\$ 68.35	6.19%
2016	0.8750%	\$ 1,044.52	2.50%	\$ 1,131.41	\$ 86.89	7.68%
2017	0.8750%	\$ 1,053.66	2.50%	\$ 1,159.69	\$ 106.03	9.14%
2018	0.8750%	\$ 1,062.88	2.50%	\$ 1,188.69	\$ 125.80	10.58%
2019	0.8750%	\$ 1,072.18	2.50%	\$ 1,218.40	\$ 146.22	12.00%
2020	0.8750%	\$ 1,081.56	2.50%	\$ 1,248.86	\$ 167.30	13.40%
2021	0.8750%	\$ 1,091.03	2.50%	\$ 1,280.08	\$ 189.06	14.77%
2022	0.8750%	\$ 1,100.57	2.50%	\$ 1,312.09	\$ 211.51	16.12%
2023	0.8750%	\$ 1,110.20	2.50%	\$ 1,344.89	\$ 234.69	17.45%
2024	0.8750%	\$ 1,119.92	2.50%	\$ 1,378.51	\$ 258.59	18.76%
2025	0.8750%	\$ 1,129.72	2.50%	\$ 1,412.97	\$ 283.26	20.05%
2026	0.8750%	\$ 1,139.60	2.50%	\$ 1,448.30	\$ 308.70	21.31%
2027	0.8750%	\$ 1,149.57	2.50%	\$ 1,484.51	\$ 334.93	22.56%
2028	0.8750%	\$ 1,159.63	2.50%	\$ 1,521.62	\$ 361.99	23.79%
2029	0.8750%	\$ 1,169.78	2.50%	\$ 1,559.66	\$ 389.88	25.00%
2030	0.8750%	\$ 1,180.01	2.50%	\$ 1,598.65	\$ 418.64	26.19%
2031	0.8750%	\$ 1,190.34	2.50%	\$ 1,638.62	\$ 448.28	27.36%
2032	0.8750%	\$ 1,200.76	2.50%	\$ 1,679.58	\$ 478.83	28.51%
2033	0.8750%	\$ 1,211.26	2.50%	\$ 1,721.57	\$ 510.31	29.64%
2034	0.8750%	\$ 1,221.86	2.50%	\$ 1,764.61	\$ 542.75	30.76%
2035	0.8750%	\$ 1,232.55	2.50%	\$ 1,808.73	\$ 576.17	31.86%
2036	0.8750%	\$ 1,243.34	2.50%	\$ 1,853.94	\$ 610.61	32.94%

Percentage benefits lost to inflation

32.94%

