Construction Employers Coalition
(for WSIB and Health & Safety and Prevention)

Construction Employers Coalition on WSIB Health and Safety and Prevention

WSIB Insurance Fund Surplus Distribution Model Consultation

Presented:
August 6, 2021

WSIB Insurance Fund Surplus Distribution Model Consultation

A. CEC- Who we are

1. The Construction Employers Coalition on Workplace Safety and Insurance Board Health and Safety and Prevention ("CEC") represents more than 2,000 firms employing approximately 80,000 workers. The CEC (initially named the Construction Industry WSIB Task Force) was formed in 2011 for the purpose of studying and responding to issues related to construction workers and employers in Ontario.

2. Construction, with one of the highest average premium rates, contributes almost $1 billion in premiums to the WSIB annually, which in turn represents about 25% of the total system premium, making Ontario's construction sector almost as large as the entire Alberta Workers Compensation Board.

3. CEC members include: Ontario General Contractors Association (OGCA), Ontario Road Builders' Association (ORBA), Mechanical Contractors Association of Ontario (MCAO), Ontario Sewer & Watermain Contractors Association (OSWCA), Kingston Construction Association, Niagara Construction Association, Ottawa Construction Association, Sarnia Construction Association, Merit Ontario, Ontario Home Builders Association (OHBA), Heavy Construction Association of Toronto (HCAT), Progressive Contractors Association of Canada (PCAC), Residential Construction Council of Ontario (RESCON), Ontario Residential Council of Construction Associations (ORCCA), including its members: Residential Tile Contractors of Ontario (RTCA); Ontario Concrete and Drain Contractors Association (OCDCA); Masonry Contractors Association of Toronto (MCAT); Ontario Formwork Association (OFA), and Residential Framing Contractors Association (RFCA).

B. Introduction and Overall Comments

1. Overall, we are enthusiastic with the policy direction of the paper, "**WSIB Insurance Fund Surplus Distribution Model Consultation**" [the "Paper"] released July 15, 2021.

2. While we will advance several suggestions, we strongly support the proposed policy direction and as we understand them, the policy objectives being sought. Our suggestions complement and assist in perfecting the policy proposal. We encourage the government to proceed with legislative and regulatory reform.

3. The recommended approach is infinitely superior to where we are, i.e., funding levels entirely at the discretion at the WSIB with no legal capacity to compel the Board to be disgorged of excess funding.

4. The suggested position, if the recommendations we are about to suggest are accepted, is consistent with a policy theme the CEC has been advancing for many years, most recently presented in a letter of June 9, 2021 to Minister McNaughton (attached at **Appendix A**).

5. We propose regulatory language consistent with and compatible to funding directions currently set out in the *Workplace Safety and Insurance Act* ("WSIA"). See **Section F**.

C. A comment on the 100% funding target and the 115-125% corridor

1. It is clear that most employer associations view the parameters of a 115%-125% corridor as too high. The CEC shares these concerns. While we have historically proposed a corridor of 90%-110%, we are prepared to aggressively modify our proposal to 110%-120%, providing our understanding of the intent of the corridor is reflected in the legislation/regulation as we propose.

2. We are encouraged that the overall funding target of 100% has been affirmed by both the WSIB (in recent discussions) and the government. This adjusts the contextual meaning of the term "corridor," which since 2011, while never officially defined, has been interpreted as being the "funding corridor." It is now more aptly interpreted as the "distribution corridor." In this submission, we will apply the term "disgorge" as being synonymous with the act of distributing excess funding.

3. The CEC fully expects and requests that the legislative/regulatory amendments clearly and unequivocally set the funding target of the Ontario workplace safety and insurance system at 100%.

4. Notwithstanding our preferred corridor parameters are 110%-120%, for the purposes of this submission, we will adhere to the parameters set out in the Paper, i.e., 115%-125%.

D. 115-125% WSIB discretion

1. The WSIB acquires discretion to disgorge if funding is between 115-125%. *What does this mean?*

2. Absent a contextual analysis, it could mean any number of things, and presuming that the WSIB conducts itself prudently (as required by WSIA s, 163(2)), that the WSIB has complete unfettered discretion to do nothing, or to disgorge to any level of funding above 100%.

3. Our analysis suggests that neither would be permitted.

   a. A reasonable expectation of prudent governance would likely support a decision to maintain funding at or slightly above 115%, notwithstanding a 100% funding target.

   b. With that noted, while the Board would not have the direction to disgorge excess funding below 115%, it would maintain the discretion not to increase premium rates if funding sat within 100%-115%. The act of disgorgement and premium rate policy are related but distinct considerations.

c. So, in our view, the Board would not have the discretion to reduce funding through disgorgement to below 115% and any such move may be open to legal challenge by stakeholders (workers and/or employers) and/or the government directly. This point does not require additional comment but highlights the need for a reasonable lower threshold (hence our 110% parameter).

d. Nor would the WSIB have the luxury of doing nothing. It is our contextual reading of the codification of a threshold (115%) *as creating an obligation on the part of the Board to address the question as to whether or not disgorgement should occur once funding reaches 115%*.

4. The requirement of the Board to turn its mind to disgorgement once funding reaches 115%:

a. We suggest a *de facto* expectation of disgorgement if funding reaches and/or exceeds 115% unless there is a sound, evidence-based reason not to disgorge, and this expectation should be codified in the legislation/regulation.

b. The regulation must also require the WSIB to develop guidelines to be approved by the Minister for the exercise of this discretion, and for those guidelines to form part of the Memorandum of Understanding.

c. We propose that the regulation require that at 115% or higher that the Board is required by the WSIA to publicly release its decision to the Minister on disgorgement, with full reasons (either way).

d. If the decision is to disgorge, the publicly released reasons will be accompanied by a publicly released plan for distribution.

e. Section 96.1 which deals with a funding plan can serve as a guiding template. As in s. 96.1, the Minister will have the capacity to ask for a review of the WSIB's decision. This checks the Board's discretion without limiting that discretion in any manner.

f. The bottom line is that there be a structural expectation of disgorgement unless there is a sound evidence-based reason not to. The default is to disgorge.

E. At 125% the Board must disgorge

1. As the structural expectation is that the Board will be disgorged of excess funding above 115% unless there are evidence-based reasons not to, once funding reaches 125% it must be presumed that either the Board erred or improperly fettered its discretion.

2. The WSIA must instruct the Board to disgorge at 125% funding.

3. This must be a significant disgorgement as the structural expectation is that the 125% upper threshold will never be reached.

4. It is proposed that the WSIA will direct the WSIB to disgorge to a 120% funding level and that the Board must immediately file its plan to the Minister and facilitate the implementation of the plan in no less than two years.

F. The CEC recommended legislative/regulation template

Distributing excess funding

The funding target is 100%

XX (1) Subject to this section, the amount of the fund sufficient to allow the Board to meet its obligations under this Act shall be deemed to be 100% on a sufficiency basis.

Distribution of excess between 115% - 125% funding

(2) Subject to subsection 4, when funding exceeds 115% but is less than 125% the Board shall submit a plan to distribute excess funding to employers to the Minister, and the plan shall be publicly released.

(3) The excess funding identified for distribution by subsection (2) must be distributed no later than two years following the commencement of the plan.

(4) If there are prudent evidence based reasons not to distribute excess funding when funding exceeds 115% but is less than 125%, the Board shall provide those reasons to the Minister and publicly release those reasons.

Minister may obtain review

(5) The Minister may obtain a review of the Board's reasons not to distribute excess funding, and if the Board's reasons are not supported by the review, the Board shall review its reasons or submit a new plan to distribute excess funding to employers to the Minister.

(6) The review shall be conducted by an actuary or auditor appointed by the Minister.

Report on findings of review

(7) The actuary or auditor shall,

(a) on completing the review, submit a written report to the Board and the Minister on the findings of the review; and

(b) address in the report such matters as the Minister may specify.

Costs of review

(8) The costs of the review are an administrative expense of the Board.

Board shall establish guidelines

(9) The Board shall establish guidelines for the operation of subsection (4) and those guidelines must be approved by the Minister and upon approval shall be incorporated into the Memorandum of Understanding.

Distribution when funding exceeds 125%

(10) If the insurance fund has achieved 125% funding on a sufficiency basis, the Board shall submit a plan to the Minister to distribute funding exceeding 120% on a sufficiency basis to employers, and the plan shall be publicly released.

(11) The excess funding identified for distribution by subsection (10) must be distributed no later than two years following the commencement of the plan.

G. Discussion of the three questions (at page 3)

1. Should all Schedule 1 employers be eligible to receive a surplus or should some exclusions be established (e.g., employers with accounts in bad standing)? **Response:** All employers should be eligible.

2. What method should be used to allocate surpluses (e.g., distribute surplus based on the proportion of premiums paid by individual employers compared to the total premium base)? **Response:** Keep it simple. As a function of premiums is easiest.

3. How should the surpluses be distributed (e.g., credit to employer's account, premium reductions)? **Response:** Premium reductions. It is the simplest.

David Frame, Chair
Construction Employers Coalition on WSIB
Health and Safety and Prevention
August 6, 2021

Appendix A

Construction Employers Coalition
(for WSIB and Health & Safety and Prevention)

June 9, 2021

Hon. Monte McNaughton
Minister of Labour
Office of the Minister of Labour
400 University Avenue
14th Floor
Toronto ON M7A 1T7

Dear Minister McNaughton:

WSIB Funding Corridor and Distribution of Funding Surplus

This correspondence is further to the May 14, 2021 Zoom meeting which was held to discuss and exchange ideas surrounding a WSIB funding corridor. During that meeting you and other Ministry officials requested feedback with respect to the implementation of the funding corridor and the mechanisms for re-distribution when funding reaches a pre-determined surplus point.

While the CEC is in general agreement with the concept of a funding corridor, the funding target sought should remain at the historically determined point of 100%. We agree that legislative or regulation changes should be made to reflect these concepts to ensure consistent and transparent implementation over the coming years.

As we indicated in the meeting and as I outline below, we reject a 115% - 125% funding corridor range, and propose the following:

- The funding target, as noted, must be 100%, flexibly administered through a funding corridor of 90 to 110%. This means that when the funding ratio falls below 90% premiums may increase for purposes of funding. If the funding ratio is between 90 - 110%, rates will neither fall or rise. If the funding ratio exceeds 110%, rates may decline, subject to the point immediately below.

- As the funding ratio may adjust upwards or downwards due to market variations, a funding surplus will be returned through a premium dividend (though either a reduction in the premium rate or some other cash dividend mechanism), when funding hits 115%.

Funding corridor of 90-110%

The acceptance of a 115% - 125% funding corridor seems to flow from the November 6, 2020 ***Workplace Safety and Insurance Board Operational Review Report***. This was the first time that such a high range was introduced, and we wish to be clear that the funding corridor issue did not attract a comprehensive public dialogue.

It is our firm view that a 115% - 125% funding range promotes intergenerational inequity through excessive system enrichment. We draw your attention to the L.A. Liversidge briefing note of March, 2018 (**Appendix A**) which canvasses this issue. We agree with that analysis. It has been long-recognized that intergenerational inequity results from an underfunded system. The same applies to an overfunded system. Both are unfair. The contemporary generation of employers should fund that generation's

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workers' compensation costs. A 100% funding goal ensures intergeneration fairness. A 90 – 110% corridor with premium dividends at 115% funding levels offers pragmatic flexibility.

Refunding a funding surplus

In the May 14, 2021 meeting we were asked to provide suggestions for a refund mechanism, i.e., premium rate reductions or a direct cash dividend. We do not have a preference as there are benefits for each.

A dividend to employers

We suggest that such be calculated by sector and allocated equitably based on payroll. This does not upset the dynamic of premium rate setting. If this was to be calculated based on premiums, employers who pay a higher premium rate in a sector would receive a higher dividend than employers who pay a lower premium rate (and who would have a better health and safety record and who may have taken active steps to obtain a lower premium rate).

Adjustments to premium rates

This option is a slightly easier to implement, and would result in an equal percentage of reduction to all employers in a sector.

Should you have any questions or if you have any governments comments or response we would be pleased to discuss.

Regards,

David Frame, CEC Chair

Appendix A

A comment of the future funding strategy and policy of the Workplace Safety & Insurance Board

An opportunity to fulfill a 35 year old promise to Ontario's employers

Presented:
March, 2018

A comment of the future funding strategy and policy of the Workplace Safety & Insurance Board

An opportunity to fulfill a 35 year old promise to Ontario's employers

A. Preamble

1. This paper is being presented by members of the **WSIB Chair's Advisory Committee** to assist in the discussion scheduled for March 19, 2018 to address the future funding of the Ontario workplace safety and insurance system ["WSI"].

2. We are at a crossroads. A positive one for a change.

3. The recent financial history of the WSIB represents a remarkable turnaround story. From the 2009 Auditor General Report which cast serious doubt on the future sustainability of the WSI, Ontario's employers, the Board and the government worked with dispatch pulling towards a collaborative effort to eliminate the unfunded liability ["UFL"].

4. We have seen outstanding management on the part of the Board. We have seen sound legislative leadership on the part of the government. And, very significantly, we have seen the sustained effort over a period spanning four (4) decades of Ontario's employers contributing between 30% – 50% of their premiums towards the UFL.

5. Recent reporting shows that this time, this effort has been successful. The UFL, at this moment, is at or nearing zero. The question of the day is one fully two generations of Ontarians have never heard – *what's next? What will the funding plans look like with no UFL?*

6. This paper is presented to assist in that discussion.

7. First though, it is important to recognize that this did not just happen. This was caused. Chair Steve Mahoney, Chair Elizabeth Witmer, President David Marshall and President Tom Teahen are the principals behind this landmark achievement. Our strongest thanks for your breakthrough leadership and stewardship. While today's workers and employers benefit from this triumph, it is future generations who are the true beneficiaries.

8. A new chapter is about to be written. We want to help.

B. A simple focus – equity for the future

1. This paper will advance three prongs of a single theme. Employer equity.

2. First, we will examine the promise held out to Ontario's employers and presented time and time again over the past 35 years. It has been well received. It has been understood. It has prompted sustained employer engagement. And, it is simple. Once 100% funding is attained, the UFL component of the premium will be dropped.

3. Second, we will explain why a funding target of 100% is not only the appropriate level of funding, but anything more or anything less will violate the principle of inter-generational equity, a longstanding WSIB sanctioned principle.

4. Finally, we will present preliminary thoughts on the best funding concepts going forward to ensure the objectives of full funding and rate stability are managed through an inter-generational equity focus.

C. A truncated history of the UFL

1. The first mention by the (then) Workers' Compensation Board ["WCB"] of the UFL was in the **WCB 1983 Annual Report**. The UFL was then \$2.7 B (\$5.85 B in 2017 \$), and the funding ratio had dipped to 49%.

2. The first response of the WCB administration was to demand a 27% increase of the Average Premium Rate ["APR"] in a single year, with more to come, with some rate groups experiencing premium increases of up to 35%.

3. This sparked a brush-fire of employer discontent.

4. Many of the employer associations currently sitting as members of the CAG joined forces and provoked a high level dialogue within the WCB and government.

Unfunded Liability

The Workers' Compensation Board's "unfunded liability" has been rising steadily over the last few years. While the Board has assets in cash, securities and property with which to cover part of the liability, any remaining liability represents a concern to those responsible for maintaining the stability of the province's workers' compensation system.

In 1983, the unfunded liability — the gap between the Board's liabilities to injured workers and the Board's assets available to pay these future costs — grew to approximately \$2.0 billion, up from \$1.4 billion in 1982.

Of that \$2.0 billion, \$0.5 billion represents a partial provision for possible cost-of-living adjustments which may be legislated in future. Given nearly 10 years' experience in Ontario of yearly cost-of-living increases in benefit levels, however, it is reasonable to consider the impact of continuing with only a partial provision for these adjustments. Indeed, if one takes full account of these possible future cost-of-living adjustments, the unfunded liability may reach \$4.9 billion.

FIRST STEP

In response to this trend, the Workers' Compensation Board, in 1983, amplified efforts to reduce its deficit. The first step was to make Ontario's employers fully aware of the problem which confronts the province's workers' compensation system. Although the unfunded liability has always appeared in the Board's annual financial statements, the Board wanted to stress to employers the need to increase assessments in the next few years in order to keep our compensation system on a sound financial base.

The second, and equally important, step was to seek the co-operation and assistance of employers. Under the Workers' Compensation Act, Ontario's approximately 164,000 employers are charged with funding the compensation system.

In 1983, members of the Board's senior management met with employers and employer groups throughout the province on more than 50 occasions. It was hoped that, together, the Board and employers could determine the most appropriate methods of reducing the unfunded liability without, in any way, hampering the ability of Ontario's employers to carry on business. After all, the ultimate health of the workers' compensation system depends on the continued strength of the province's economy.

FUNDING WORKERS' COMPENSATION

In order to understand the roots of the Board's unfunded liability, and the measures available to tackle it, consider how the province's compensation system is funded. Most of Ontario's employers are classified into 108 industry rate groups according to their end products or services. All firms in an industry rate group pay assessments to the Board at a particular rate for every \$100 of assessable payroll, up to an assessable earnings ceiling of \$22,200 per employee in 1983.

By far the most significant and complex factor in determining an industry's assessment rate is the estimated total cost of injuries which will occur in that industry during the assessment year. Because many injuries necessitate benefit payments over several years, total cost must include a projection of the cost of benefit payments over those years. In fact, the Board calculates the cost of benefits by projecting upwards of 28 years into the future.

As already outlined, an allowance for possible future cost-of-living adjustments is included in this 28-year projection. In the past, however, this allowance has been insufficient, in part because these periodic adjustments — their size and their timing — are the prerogative of the Ontario Legislature. Taking full account of these possible future adjustments would make a significant difference to the average cost of a year's claim.

LEGISLATIVE AMENDMENT

In 1983, such a legislative amendment caused the compensable earnings ceiling used in calculating injured workers' benefits to be raised to \$25,500, even though the 1983 ceiling for assessment purposes had already been fixed at \$22,200. Since most employers would have based their own financial

13

5. Overall, the resulting dialogue was productive.

6. The Board adopted the 30 year funding plan, requiring several years of more modest employer premium hikes. They were still hefty - 15% per year for three years (85,86,87) followed by 10% per year for another three years (88,89,90).

7. The plan called for the elimination of the UFL by the now infamous date of 2014.

8. This plan represented the commencement of a new partnership between the Board and Ontario's employers.

9. From 1984 to 1989, the Board focused on improving return to work efforts and enhancing client service delivery. By the end

of 1989 the UFL was $8.5 B, with the funding ratio receding to 38.7%.

10. In the 1989 WCB Annual Report, the Board was optimistic that if "*the 1989 accident performance is maintained over the long term, it could result in elimination of the unfunded liability seven years earlier – by the year 2007*" (at p. 18). Accident performance actually declined in the long term. Of course, the Board missed the 2014 target let alone the new 2007 target.

11. By 1990, the UFL was up to $9.1 B ($15.3 B in 2017 $).

12. Throughout 1990 to 1995, the Board underwent several reorganizations in efforts to improve service delivery and reduce time on claim. By 1995, the UFL was $10.9 B ($16.2 in 2017 $).

13. By the year 2000 the UFL was $5.7 billion ($7.87 in 2017 $), with the Board remarking "*. . . the service delivery strategy initiative integrated a "new business model" into the organization . . . "the work we are doing is paying off*" **[WSIB 2000 Annual Report, p. 15]**.

14. In a May 28, 2004 **Third Party Audit of the Workplace Safety & Insurance Board** on behalf of the Minister of Labour, it was noted that "*addressing the UFL is fundamental to achieving financial stability of the WSIB*".

15. The **2005 Annual Report of the Office of the Auditor General** of Ontario (at p. 362) noted that "*the insurance fund . . . (is) substantially less than what is needed* ." The WSIB itself recognized that in 2005 the Board's "*most daunting challenge is economic . . . we have a significant unfunded liability*" **[WSIB 2005 Annual Report, p. 5]**, but the Board remained committed to the elimination of the unfunded liability by 2014.

16. By 2006 the UFL was slightly less than $6 B and the Board declared that this "*result indicates we are starting to turn the financial corner*" **[2006 WSIB Annual Report]**. By 2007, the UFL was up to $8.1 B and the WSIB announced another reorganization **[2007 Annual Report, p. 32]**.

17. The "game changer" was the **Ontario Auditor General November 2009 Report** which announced "*there is a risk that the WSIB may not be able to meet its obligations*." At that moment everything changed.

18. A new WSIB President, David Marshall, was appointed. **A Funding Review** chaired by Harry Arthurs investigated and reported. **Ontario Regulation 141/12** required that the Board attain funding levels of 60 % by December 31, 2017; 80 % by December 31, 2022; and, 100 % by December 31, 2027.

19. Ontario's employers became engaged in a manner as never before.

20. Heavy rate hikes were accepted. From 2010 to 2017, when funding levels improved well ahead of schedule, there was no demand for slowing down the success curve through lower premiums.

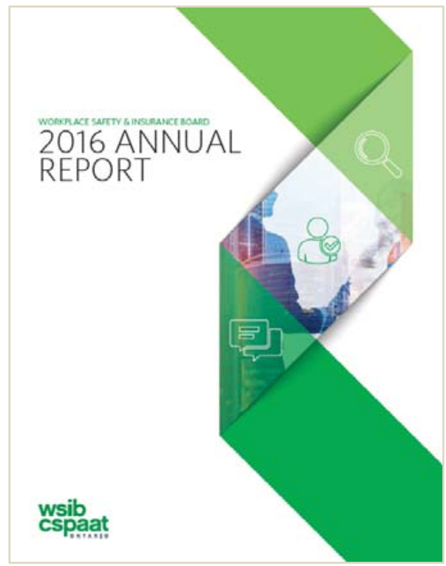
D. How is the WSIB doing?

1. After many years of a sustained focus, higher premium rates, higher overall employer premiums, lower injury rates, and lower time on claim, and after decade upon decade of failed efforts, success seems to be at hand.

2. In the **WSIB 2016 Economic Statement**, the Board reports the UFL will be retired well ahead of schedule.

Impact on the Ontario Economy

The WSIB's projections for the future continue to look bright. We believe we will eliminate the UFL by 2021 even as we implement legislated benefit increases (e.g., presumptive PTSD legislation, indexation of partial benefits), invest in our systems to improve service and lower premium rates.



3. In the **2016 WSIB Annual Report**, Chair Witmer advises that on a sustainability basis the UFL sits at $4.0 B at the end of 2016.

Most notably, after reaching an unsustainable high of $14.2 billion in 2011, our Unfunded Liability (UFL) ended 2016 at $4.0 billion on a sufficiency basis - and continues to fall at a pace well ahead of the legislated timetable for its elimination. This is being achieved at the same time as significant new investments are being made to strengthen programs of care for

4. By the time the **2017 Third Quarter Report to Stakeholders** was released, the improvement in the UFL is shown to be even more impressive.

5. On a sufficiency basis, the UFL as at September 30, 2017 was a remarkable $1.8 B, a tremendous achievement.

	Sep. 30 2017	Dec. 31 2016
Unfunded liability[3,4]	(1,284)	(3,925)
Unfunded liability - Sufficiency Ratio basis[4]	(1,777)	(4,004)
Sufficiency Ratio[4]	94.5%	87.4%

6. By the time of the March CAG meeting, the WSIB may well be at or very close to full funding. *So, what's next?*

E. The promise to Ontario's employers. It's time to deliver.

1. From 1984 onwards, Ontario employers contributed a premium surcharge to retire the UFL.

2. Sizeable investments to this end have been made. As it turned out, 25 years of that surcharge ended up being a wasted expenditure.

3. Since 2010, with the original promise always in mind, today's generation of Ontario's employers, along with the Board, stepped up to the plate and hit a home run. It is time to round the bases and fulfill the promise.

4. The **WCB 1987 Annual Report** articulates the promise (at p. 11):

> ". . . the average assessment rate should plateau within the next two to three years and remain relatively constant thereafter, ***until the unfunded liability surcharge is removed in 2014 – at which time the average assessment rate is expected to fall sharply***".

5. This promise is repeated in the February, 1992 Board document "**WCB Funding Strategy**", at page 7:

> Once each rate group's actual assessment rate reached its full funding (target) level, future rates would depend on the rate group's collective accident cost experience. According to the 1984 plan, the unfunded liability would continue to rise at a gradually decreasing rate until just before the turn of the century. Thereafter, it would decline steeply until its elimination in 2014 when the unfunded liability surcharge of approximately 50 cents could be removed.

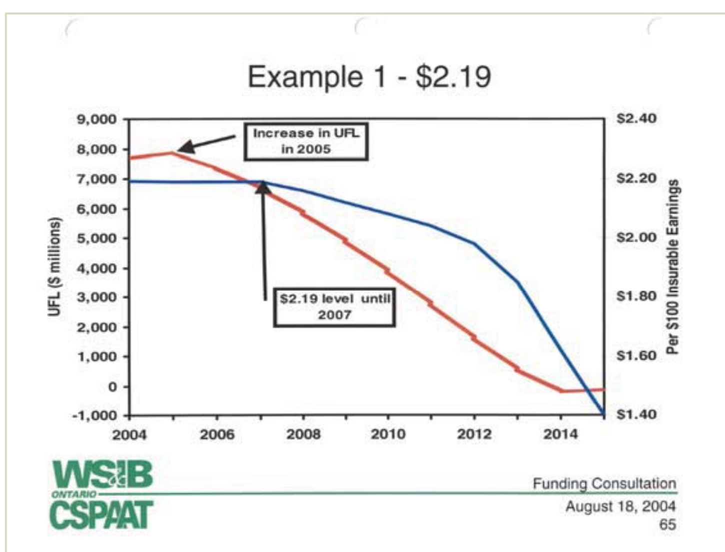
6. That 100% funding was the target is affirmed in the **WSIB 1998 Annual Report** (at p. 17):

> "Our goal is to have the lowest premium rate possible, while protecting the financial future of the system through 100% per cent funding of all liabilities".

7. A series of funding scenarios presented at the **WSIB August 18, 2004 "Funding Strategy Consultation"** at the Radisson Plaza Hotel confirmed the promise.

8. Every one of the scenarios (one is reproduced at the right), shows plummeting premium rates as the UFL approaches zero.

9. These charts presented 14 years ago, remind of the longstanding promise – at 100% funding the unfunded liability surcharge will be removed.



10. In the **WSIB July 20, 2005 "Funding Framework"** the sought after performance at 2014 when full funding is reached is 100% funding (see excerpt below from page 19):

Performance Measures

The following measure is suggested to help monitor and analyse progress under funding strategy.

Measure	Description	Performance
Funding ratio	The ratio of total assets, excluding the Accumulated Other Comprehensive Income, to total liabilities	62.9% by 2006 100% by 2014

11. In the **WSIB May 2008 "Funding Framework"**, one of the core funding principles is set out as the "*retirement of unfunded liability*" (at p. 4). The "full-funding target" is explained as "*the reported unfunded liability based on a 100 per cent funding ratio"* (at p. 6).

12. In the WSIB June 2011 paper, **"Perspectives on the WSIB's UFL"**, presented to the Harry Arthurs Funding Review through a June 6, 2011 memorandum from WSIB President David Marshall, it remains clear that the funding target being sought is 100%. The paper advises (at p. 14):

> "It is our considered view that the WSIB Insurance Fund must be fully funded, that is, 100 per cent funded and that goal be specified in legislation."

13. This point is made clearer in an accompanying Eckler study submitted by the WSIB, **"Concept Design Paper for Funding of the WSIB", June 6, 2011**. A chart from p. 13, reproduced below, shows that once 100% funding is reached, the only premium rate components are the new claim cost and administration. There is no UFL or any other funding element.

	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031
Average Rate	2.35	2.40	2.46	2.52	2.57	2.63	2.69	2.69	2.70	2.71	2.71	2.72	2.72	2.69	2.60	2.23	1.97	1.91	1.89	1.89	1.90
Current Rate	1.51	1.75	1.76	1.77	1.77	1.78	1.79	1.79	1.80	1.81	1.81	1.82	1.83	1.84	1.85	1.85	1.85	1.86	1.87	1.88	1.90
New Claim Cost	1.01	1.23	1.23	1.24	1.25	1.26	1.27	1.28	1.29	1.30	1.31	1.32	1.33	1.35	1.36	1.37	1.38	1.40	1.41	1.42	1.44
Administration	0.50	0.53	0.53	0.53	0.53	0.53	0.53	0.53	0.53	0.53	0.53	0.53	0.53	0.53	0.53	0.52	0.51	0.51	0.51	0.51	0.51
UFL Rate	0.85	0.65	0.70	0.75	0.80	0.85	0.90	0.90	0.90	0.90	0.90	0.90	0.90	0.90	0.90	0.35	0.06	0.00	0.00	0.00	0.00

14. This brief narrative simply shows that from the outset, "full funding" has meant 100% funding. Once 100% is met, the UFL component is removed, and the only remaining premium rate components are new claim costs and administration.

15. Ontario's employers expect delivery of this understanding.

F. Intergenerational equity – the essential bridge towards fairness

1. As set out in the **WSIB 2005 Annual Report** (at p. 17), the key funding principle is the retirement of the UFL. We are almost there. The next fundamental principle is "*equity among generations of employers*." This principle is repeated in the **WSIB 2005 "Funding Framework"** (at p. 6).

> **Inter-generational equity and fairness among employers, workers and the system**
>
> While recognizing that there is a considerable amount of unfunded liability to be paid for from future premiums, the WSIB will minimize any undue or unfair shift of the financial burden in respect of injuries from previous years to future generations, and among employers, workers and the system as a whole.

2. This is a dynamic principle.

3. During a period burdened by an unfunded liability, this equity principal ensures that today's employers must contribute sufficient premiums to fund the current and projected future cost of new injuries, as well as contributing a sizeable portion to the UFL (resulting from a period predating adherence to this principle).

4. However, it also means that today's employers should not fund tomorrow's costs. For the sake of equity, those costs must be borne by <u>that</u> generation of employers.

5. Understandably, as the primary funding focus of the Board over the past 35 years has been the UFL, this principle has been applied in a manner to restrain the impact of past years' injuries to current and future generations.

6. However, this principle also speaks to the concept of funding today for tomorrow's injuries. Such a practice is not equitable, for the same reasons. This principle is discussed at length in the earlier introduced WSIB June 2011 paper, "**Perspectives on the WSIB's UFL**," at page 9:

> ". . . the laxness that enters the administration of the Insurance Scheme are a direct result of the absence of the check-and-balances provided by charging current employers the true cost of benefits. Cumulatively, these factors, if unchecked over time, inevitably deliver a poorly run Insurance Scheme"

7. Just as the paper advances the thesis that "*it is poor public policy to provide a subsidy to <u>current</u> employers at the expense of <u>future</u> employers"* (at p. 12), the inverse is also true, "*it is poor public policy to provide a subsidy to <u>future</u> employers at the expense of <u>current</u> employers."*

8. Such subsidies undermine the accountability levers both within the Board and the employer community. Lax administration will result if administrative actions are immunized from the funding implications of current decisions. Similarly, future employers will lose accountability over their current costs if a sizeable portion of those costs have been pre-funded by yesterday's employers.

9. Therefore, any desire to establish a target level in excess of 100% offends the carefully designed equilibrium built into the WSI system. Once the UFL has been reduced to zero, the only reasonable funding mechanism is that which has been sought and promised since 1984 – a funding goal of 100%, nothing more, nothing less, and premium rates that reflect the funding realities of the day.

G. An adjunct to the funding policy – rate stabilization versus intergenerational equity

1. While the only reasonable funding target consistent with the underpinning motivational and accountability elements of the WSI funding scheme and consistent with the principle of inter-generational equity is a 100% target, rate stabilization is a secondary but important consideration.

2. However, rate stabilization does not supplant equity.

3. The current generation of employers must adequately fund the current generation of insurance costs. More simply, the new claim cost component must reflect the actual cost regardless of the impact to absorb those costs.

4. In the past, the lack of will or perceived inability to adequately fund current claim costs resulted in the creation of the UFL – a dragging weight on the system for 40 years. Of course, a cornerstone of the current funding mindset ensures that contemporary costs are borne by the contemporary generation of Ontario's employers.

5. Rate stability is not a relevant consideration in the context of performance based variations (beyond defining the length of the historic window through which to average past costs).

6. However, the fluctuation of the capitalized value of the Board's investment fund along with periodic declines in investment returns is a powerful variable that directly impacts the UFL.

7. While 100% must be set as the funding target, a funding ratio slightly higher or lower resulting from market conditions should not drive premium rate adjustments.

8. This issue was canvassed in the **WSIB May 2008 "Funding Framework"** (at p. 6):

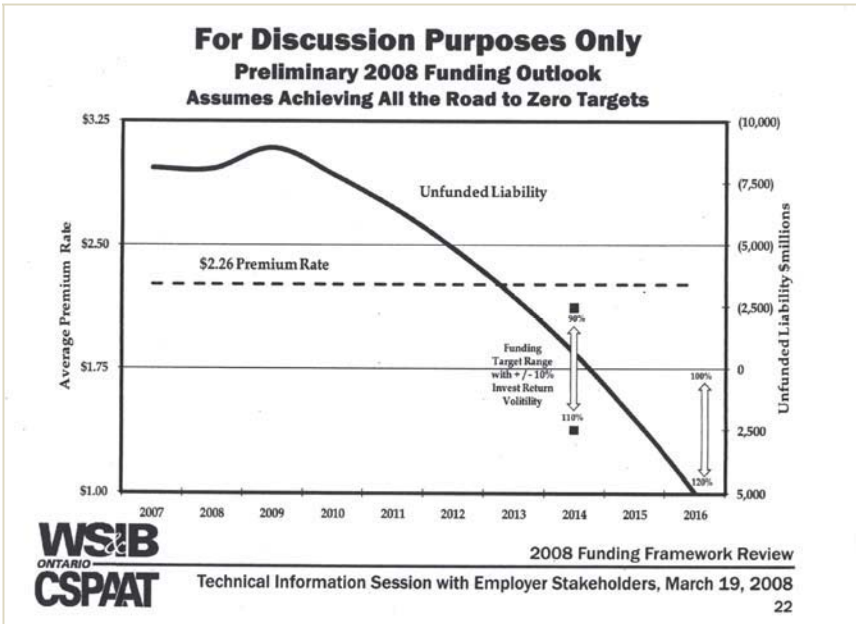
> **Funding target**
>
> The full-funding target is the reported unfunded liability based on a 100 per cent funding ratio (the ratio of total assets to total liabilities). This is based on consideration of the impact of investment return variability on the funded position of +/- 10 per cent (i.e. 90 per cent to 110 per cent funding ratio). This is to provide premium rate and benefit stability in the light of potential investment return variability.

9. The 90% - 110% funding range idea (while premature and optimistic at the time) was an element of the **2008 Funding Framework Review Technical Information Session with Employer Stakeholders, March 19, 2008**, when a **+/- 10% Funding Target Range** concept was first introduced.

10. The chart on the next page reflects the Board's thinking at that time.

11. Since the system had "bigger fish to fry" at that time, and as the UFL itself was the primary funding focus, the idea did not garner serious debate in that 10 year ago meeting.

12. It is now a concept that warrants attention.



13. In the 2011 Eckler paper presented to the Funding Review by WSIB President Marshall, this concept is addressed and described as a "*yellow or No Action Zone around the target funding level, within which no corrective action is taken, in order to avoid over-reacting to temporary fluctuations in the funding position*" (**Eckler Paper, Section 8: Other Elements, at p. 26**).

14. Be it described as a "Funding Target Range" or a "No Action Zone" the concept is a vibrant one and should be an integral element to the WSIB post-UFL funding strategy.

H. A road-map for the future

1. The WSIB must affirm that a funding ratio of 100% is the only target being sought.

2. Once 100% funding is reached, the 35 year old promise to remove the UFL surcharge must be fulfilled.

3. Once that promise is fulfilled, a post-UFL funding strategy is to be developed, adopting a "no action zone" concept, be it 90-110% or 95-105%, or another range. While funding is within the "no action zone", the average premium will neither increase or decrease.

ALL OF WHICH IS RESPECTFULLY SUBMITTED
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