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**Preliminary thoughts with respect to a  
WSIB “*Funding Summit*”**

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## Preliminary thoughts with respect to a WSIB “Funding Summit”

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### Executive Summary

#### A. Purpose of the Funding Summit

*Objective one:* To trigger and cultivate a renewed partnership with Ontario’s employers generating a revitalized spirit of cooperation and support, sharing ownership of the both the problem and the solution.

*Objective two:* To mutually define new objectives with clear deliverables based on new fundamentals, all of which is to be built on a common knowledge base, all the while respecting prescribed legislative expectations.

*Objective three:* To translate the objectives into a workable business model that will endure regime change and respect inter-generational equity.

*Objective four:* To structure a meaningful review methodology that allows for a structured mechanism to assess progress and adjust the plan if warranted.

#### B. Why the 1984 thirty year plan failed

The “1984 thirty year funding plan” [“1984 Plan”] was not an outright failure. It succeeded in creating an awareness of the funding frailties of the Ontario WSI system for a generation. Other than that, it never came close to achieving a policy objective of full funding. *Why?*

*Reason No. 1:* The plan was not a serious commitment – the founding objective was *not* funding

*Reason No. 2:* Competing priorities

*Reason No. 3:* A design flaw – a serious policy realignment was not possible

*Reason No. 4:* The spectre of unintended consequences

*Reason No. 5:* A lack of policy discipline – the tarnishing of an objective

#### C. The timing and duration of the Funding Summit

It is expected that the desired WSIB/employer consensus will take no less than 9-12 months to be achieved, and another 1-3 months to codify into a workable and durable policy. The process must start immediately, and should be the first orders of business after the employer **Advisory Committees** [“AC”] are struck.

**D. Structure of the Funding Summit Committee**

The employer members of the Funding Summit will be pulled from each of the ACs (except the Schedule 2 AC). Each AC will elect a set number of delegates.

**E. The agenda**

While Funding Summit participants will define the agenda, at a minimum, the following issues and approaches are suggested as a rough guide.

*Meeting No. 1: Defining and understanding the scope of problem*

*Meeting No. 2: A closer look at the drivers*

*Meeting No. 3: Comparing Ontario:*

*Meeting No. 4: An Economists perspective*

*Meeting No. 5: An open discussion – Where is the system succeeding? Failing?*

*Meeting No. 6: The funding policy options*

*Meeting No. 7: Deciding on a policy*

*Meeting No. 8: Identifying related policy initiatives*

*Meeting No. 9: Setting the benchmarks*

*Meeting No. 10: Setting the review mechanism*

*Meeting No. 11: The communication of the plan*

*Meeting No. 12: Regrouping and assessing next steps*

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### A. Purpose of the Funding Summit

1. The 2008/9 world-wide financial crisis layered over an already stressed workplace safety and insurance [“WSI”] system created a “*perfect storm*” culminating in a loss of investment capital, investment income, employer premium revenue stream and, increasing claims costs.
2. While the “*statement of the problem*” was addressed in recent WSIB financial statements it was confronted head-on in the **2009 Annual Report of the Ontario Auditor General** [“AG”], and received recent focus before the **Standing Committee on Public Accounts**.
3. The 2014 target for retiring the unfunded liability [“UFL”] will not be achieved. Some (LAL) have suggested that the target was unattainable *before* the “meltdown” whereas others (WSIB) suggested that the primary culprit was the “meltdown”. Nonetheless, there is no discord that full funding or anything close will be realized by 2014.
4. A new funding strategy is required.
5. While the WSIB possesses the legal authority to proceed unilaterally to develop a funding strategy and approach of its sole design, it would prove imprudent to do so. Because employers as a class assume final and direct responsibility for WSIB’s funding needs, employer support and ratification of the WSIB funding strategy advances a spirit of partnership and buy-in.
6. Moreover, a joint WSIB/employer plan augments the spirit of the original 30 year funding plan linking the exercise of the Board’s taxing powers to the health of the Ontario economy, aptly summarized in the **WCB 1983 Annual Report**:

**“...the ultimate health of the workers’ compensation system depends on the continued strength of the province’s economy”**

7. The purpose of the Funding Summit is multi-faceted:
- a. **Objective one:** To trigger and cultivate a renewed partnership with Ontario's employers generating a revitalized spirit of cooperation and support, sharing ownership of the both the problem and the solution.
  - b. **Objective two:** To mutually define new objectives with clear deliverables based on new fundamentals, all of which is to be built on a common knowledge base, all the while respecting prescribed legislative expectations.
  - c. **Objective three:** To translate the objectives into a workable business model that will endure regime change and respect inter-generational equity.
  - d. **Objective four:** To structure a meaningful review methodology that allows for a structured mechanism to assess progress and adjust the plan if warranted.

**B. Why the 1984 thirty year plan failed**

1. The "1984 thirty year funding plan" ["1984 Plan"] was not an outright failure. It succeeded in creating an awareness of the funding frailties of the Ontario WSI system for a generation. Other than that, it never came close to achieving a policy objective of full funding. *Why?*
2. **Reason No. 1: The plan was not a serious commitment – the founding objective was not funding**
- a. The 1984 Plan never represented a serious commitment to retire the UFL by 2014. The 1984 Plan was more crisis management (curtailing premium hikes) than funding policy.
  - b. The Board was clumsy in its lead-up to the 1984 Plan, and instead of embarking on a pre-emptive thoughtful consultation with Ontario's employers, responded to a looming funding crisis (miniscule by today's standards) and reacted with proposed rate hikes in excess of 20-30%.
  - c. This triggered an explosive employer backlash politicizing the issue.
  - d. The "crisis" solved by the 1984 Plan was not funding but rather employer discontent.

- e. Once employer discontent was effectively managed through a longer term vision reinforced with acceptance of several years (six) of premium rate hikes, urgency cooled.
- f. From 1984's vista, 2014 was far enough out to be a problem deferred to another generation and close enough not to be ruled irresponsible.

3. **Reason No. 2: Competing priorities**

- a. From the early 1970s (Aird Task Force) to the early 1990s (post-Weiler), the primary policy worry of the WSI system was worker equity not funding or system costs.
- b. This policy focus was reasonable and objectively based. Prior to the 1985<sup>1</sup> and 1990<sup>2</sup> reforms, which congregated on a myriad of worker equity issues, the system was systemically unfair to workers.<sup>3</sup>
- c. As most clearly delineated by Prof. Weiler in his seminal 1980 report,<sup>4</sup> the system of the late 1970s and early 1980s was not responsive to contemporary worker needs. Change was demanded, required and delivered.
- d. The early 1980 funding considerations were little more than a transitory distraction, resolved with the 1984 Plan. After that, until the mid-1990s, design and administrative focus was almost exclusively set towards establishing a higher standard of worker equity.
- e. That the Board's funding ratio immediately dipped from its 1983 level of 49% to a floating 30-40% range until 1996 ought to be no surprise. While a higher level of funding was no doubt desired, it was not sought.
- f. The system was not responsive to the efficacy of the 2014 Plan until the introduction of the Friedland formula (1994) and modified Friedland (1997). Yet, even at these two junctures, a strong commitment to full funding never

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<sup>1</sup> Bill 101: Representative Board of Directors; independent Appeals Tribunal

<sup>2</sup> Bill 162: Wage loss and reemployment obligations/rights

<sup>3</sup> "Meat chart" pensions; an insensitive administration; inadequate benefits; lack of reemployment opportunity and rights; etc.

<sup>4</sup> Ontario, Reshaping Workers' Compensation for Ontario, November, 1980, Weiler.

materialized. With the introduction of Friedland, retroactive increases to worker benefits were implemented. In 1997, premium rates commenced a decline.

- g. In short, a full funding policy was supplanted in the 1980s and early 1990s by a policy preference towards increased benefits and in the late 1990s by a policy preference towards lower premiums. Achieving 100% funding has never been a policy priority.

4. **Reason No. 3: A design flaw – a serious policy realignment was not possible**

- a. The 1984 Plan was defeated in part by its simplicity that full funding was to be achieved over a thirty year period with the combined power of serial and cumulative achievements: injury reduction; persistency reduction; cumulated investment performance; and a stable or increasing economy.<sup>5</sup>
- b. While in recent years the Board developed multi-year funding strategies, the fundamentals of the 1984 Plan (100% funding level by 2014) was *always* accepted as the target.<sup>6</sup>
- c. There was never any real serious capacity to objectively move off that target. Yet, the target itself was not taken seriously.<sup>7</sup>
- d. Absent from the plan was a *serious* incremental review and assessment mechanism, other than the yearly premium rate setting process. In response to the inevitable attraction to “toe-the-line” yearly on premiums, the presumptions tended to become rather “rose coloured” over time.

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<sup>5</sup> See **WSIB Funding Framework, May 2008**, pp. 7-8 for a summary of the most current presumptions.

<sup>6</sup> “*The target full funding date is 2014, which is the original 30-year funding target date established in 1984*”, **WSIB Funding Framework, May 2008**, p. 6. “*The WSIB is committed to a planned and disciplined approach to achieving full funding by the target full funding date*”, *ibid*, p.7.

<sup>7</sup> One need look no further than the WSIB’s Q&A informational document which accompanied the announcement on 2008 premium rates, released in mid-2007, for convincing evidence that the target was driving the presumptions rather than the presumptions driving the target. That year’s announcement followed the government’s amendments increasing worker benefits beyond the legislative prescribed levels, triggering close to \$1 billion in unanticipated cash outflows. Yet, premiums did not increase. The reason behind stable premiums was not founded on objective evidence of past and actual performance, but rather on the “hopes” that “*all partners in Ontario’s workplace safety and insurance system continue to achieve breakthroughs in health and safety and return to work.*”

- e. To avoid the “*tail wagging the dog*” the policy choice of low premiums was achieved not by an honest recalibration of the 1984 Plan, but instead by an overly optimistic and over time unrealistic and unattainable series of presumptions.
- f. That the Board still held to the mythical expectation that the WSIB would “*reduce the number of workers still on benefits at various claim durations by 10 to 20 per cent by 2012*”<sup>8</sup> when all objective evidence showed a systemic trend in the opposite direction,<sup>9</sup> colours the true depth of commitment to the 1984 Plan.
- g. The objective of full funding by 2014 had evolved into a belief system, not a business plan. 2014 became the “Holy Grail” of WSIB economic policy.

5. **Reason No. 4: The spectre of unintended consequences**

- a. The 1990 amendments (Bill 162) and the 1997 amendments (Bill 99) redefined the terms of the “insurance contract” prescribing benefits based on actual wage loss. The premise was based on sound policy – an individual’s earning capacity is influenced as much, or more, by socio-economic elements as it is by degrees of actual impairment.
- b. Coupled with these giant reform steps was a structural shift towards improving individual earning capacity through early rehabilitation intervention, with the expectation that even the seriously injured individual would be able to return to gainful employment and re-establish an earnings profile, which overall should result in lower aggregate claims costs.
- c. The initial wage loss model was slightly modified in the 1997 amendments but the essential features remained.
- d. “Locking in” benefits by the end of the 6<sup>th</sup> year post-injury was introduced as a mechanism to curtail unnecessary administrative activity on established cases predicated on the presumption that within 72 months the injured worker would have achieved maximum earnings potential.

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<sup>8</sup> **WSIB Funding Framework, May 2008, p. 7.**

<sup>9</sup> Even before the significant increases arising from the amendments introduced in the 2007 Budget, the Board attributed a 11.5% increase in benefits (2006 over 2005) to “*persistency of claims over 12 months old, natural growth of locked-in claims each year, and indexing*”, **WSIB 2006 Annual Report, p. 26.**



- e. Concurrent with these initiatives was the introduction of experience rating ["ER"], a program designed, in part, to encourage employers to re-employ disabled workers early in the course of the claim.
  - f. Ironically, the "lock-in" feature and certain elements of ER policy ("three year window") diminished the capacity of the Board to affect the desired outcome in the most serious of cases. For the seriously injured, after a period of protracted medical rehabilitation which may consume the initial several years in the lifespan of the claim, the focus would turn towards vocational rehabilitation, another lengthy process. Often, by the time of the lock-in a worker may not have achieved maximum earnings capacity.
  - g. In addition, in the serious case with no return to work within the first three years, an employer lost financial motivation to permanently rehire workers.
  - h. Moreover, adding to this, worker motivation would understandably abate in the few years leading up to the "lock-in". *Why trade certainty for uncertainty?*
  - i. In short, critical system design elements are at odds with system objectives and expectations.
6. **Reason No. 5: A lack of policy discipline – the tarnishing of an objective**
- a. In an unprecedented move, just as the funding fortunes of the Board were improving,<sup>10</sup> the 2007 Ontario Budget included amendments to the *Workplace Safety & Insurance Act* to increase worker benefits beyond the prescribed statutory inflation adjustments, adding close to \$1 billion in immediate and unanticipated expenditures.
  - b. A year ago, in the Spring of 2009, the Board announced that the 1984 Plan was dead. To this day, the Board has no official funding policy in effect, choosing instead to default to a year-to-year methodology.

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<sup>10</sup> As at 2006, the WSIB's funding ratio had gradually improved to 73.2% exclusively as a result of improving investment performance over the previous 4 years (2006 and earlier WSIB Annual Reports).

- c. Yet, in December 2009 a further \$200-\$300 million was expended by similar legislative amendments at a time concurrent with the Board's public declaration that it was facing an unprecedented financial crisis.
- d. These moves rendered the 1984 Plan moot and stamped out the moral authority of the Board to achieve full funding through premium rate hikes.

**C. The timing and duration of the Funding Summit**

- 1. It is expected that the desired WSIB/employer consensus will take no less than 9-12 months to be achieved, and another 1-3 months to codify into a workable and durable policy. The process must start immediately, and should be the first orders of business after the employer **Advisory Committees** ["AC"] are struck.
- 2. Of course, if everything is a priority, nothing is. The first step is to organize and have the inaugural meetings of the ACs *post-haste*, and certainly no later than April 30, 2010.
- 3. The **Funding AC** will then be structured (see Section D) and the first meeting held the second Wednesday of every month thereafter, commencing in May, 2010.<sup>11</sup>
- 4. This schedule should be flexible to allow for the striking of select *ad hoc* sub-committees to address specific issues as considered appropriate.
- 5. The Funding Summit will then re-group after twelve (12) meetings have been held to assess the future and continuing agenda of the Funding Summit.

**D. Structure of the Funding Summit Committee**

- 1. The employer members of the Funding Summit will be pulled from each of the ACs (except the Schedule 2 AC). Each AC will elect a set number of delegates.
- 2. If four (4) representatives are pulled from each employer AC and there are four (4) ACs (construction; general business; manufacturing; small business), the Funding Summit will have 16 employer delegates, small enough to allow for effective dialogue and large enough from which to strike issue specific sub-committees as required.

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<sup>11</sup> **2010:** May 12; June 9; July 14; August 11; September 15; October 13; November 10; December 8; **2011:** January 12; February 9; March 9; April 13)

3. The WSIB will resource the Funding Summit in a similar manner to the administration of the ACs<sup>12</sup> ensuring sufficient dedicated resources.

**E. The agenda**

1. While Funding Summit participants will define the agenda, at a minimum, the following issues and approaches are suggested as a rough guide.

2. **Meeting No. 1 (May, 2010): Defining and understanding the scope of problem**

- a. The WSIB will “open its books” and fully disclose the scope of the problem.
- b. The Board will present alternative scenarios within varying scenarios, to project the likely future realities facing the WSI system.
- i. Where will the system be if the current presumptions<sup>13</sup> hold true?
- ◆ 5 years out
  - ◆ 10 years out
  - ◆ 15 years out
  - ◆ 20 years out
- ii. Are the presumptions realistic? If not, how are the above projections impacted with more likely presumptions?
- ◆ Frequency targets not met or rate of injury reduction slows
  - ◆ Claims persistency continues current upwards trends? Slows but no decline?
  - ◆ Investment targets not met
  - ◆ Inflation projections exceed expectations
- iii. What are the premium rate pressures to attain full funding status, under a variety of mitigation scenarios?

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<sup>12</sup> See LAL March 8, 2008 memorandum, “*Preliminary Thoughts on the design, mandate and functioning of WSIB Advisory Committees: For Discussion*”

<sup>13</sup> As per **WSIB Funding Framework, May, 2008**

- iv. How do premium rate pressures abate with a funding target reduction?
    - ◆ 90%
    - ◆ 85%
    - ◆ 80%
    - ◆ 75%
  - v. What are the most likely scenarios?
  - c. WSIB funding has been a policy concern for almost 30 years, yet the same issues and questions perpetually recur. *Why?*
  - d. The purpose of the first meeting is to ensure that all participants fully understand the scope and depth of the challenges of the WSIB, and understand that change in one form or another is essential.
3. **Meeting No. 2 (June, 2010): A closer look at the drivers**
- a. Claims costs:
    - i. An examination of contemporary trends and an informed and open exploratory discussion on potential causes.
    - ii. A look at the “claims inventory”
      - ◆ Current
      - ◆ 1-6 years duration cases
      - ◆ 6 years+ (locked-in) duration cases
  - b. Medical costs:
    - i. An assessment of medical costs against a theoretical construct – WSIB versus universal social health care
  - c. *An introductory discussion:* What are the primary policy objectives of the Ontario WSIB?
  - d. Administrative costs: Value for money and channelling resources towards objectives

4. **Meeting No. 3 (July, 2010): Comparing Ontario:**

- a. How does Ontario stack up:
  - i. With comparable Canadian provinces?
  - ii. With comparable American jurisdictions (size and proximity)
  - iii. With comparable world systems? (Australia; Europe)
- b. Contrasting Ontario with relevant world wide trends

5. **Meeting No. 4 (August, 2010): An Economists perspective**

- a. The viewpoints of a leading, world renowned economist with a solid reputation contributing to tax related public policy (i.e., of the calibre or in the person of Jack Mintz) to address, but not necessarily be limited to:
  - i. The economic and competitive truths arising from WSIB funding realities and challenges;
  - ii. The implications of standing still and the cost of moving forward
  - iii. A review of the overarching public policy role of a modern WSI system
- b. Roundtable discussion

6. **Meeting No. 5 (September, 2010): An open discussion – Where is the system succeeding? Where is the system failing?**

- a. An objective assessment of the system’s attributes, positives and negatives
- b. What can the Board do without? What does the Board need more of?
- c. A discussion of the role of government
  - i. Is the WSIB an “arms-length” public body? Should it be?
  - ii. The broad implications of premiums as a payroll tax to the overall taxation burden of Ontario business
    - ◆ What is the actual current role and influence of government? What should it be?
    - ◆ Should government directly decide?

- ◆ Since indexation levels beyond prescribed amounts are now the purview of the Executive Council, should employer premiums be afforded similar treatment?
  - d. Accounting for the unfunded liability and assessing the Auditor General's suggestions as set in the 2009 Annual Report of the Auditor General
7. **Meeting No. 6 (October, 2010): The funding policy options**
- a. A realistic discussion of the burdens and benefits of a target of full or better funding
  - b. A full and open discussion of new approaches to modern WSI administration
  - c. Is full funding a necessary target in the medium term?
  - d. A nuts and bolts analysis of the various funding options available
8. **Meeting No. 7 (November, 2010): Deciding on a policy**
- a. Developing a consensus on a new funding policy
  - b. A *Funding Framework* that will be welcomed by tomorrow's generations
9. **Meeting No. 8 (December, 2010): Identifying related policy initiatives**
- a. Is a renewed funding policy enough?
  - b. An assessment of the expenditure side
    - i. Controlling controllable costs
    - ii. Assessing the challenge of increasing time on claim
      - ◆ What is within the Board's role – what is not?
  - c. The WSIB as policy adviser to the government - *Is the Board an agent of reform or an administrator of the status quo?*
  - d. An assessment of the current benefit delivery model:
    - i. After two decades of experience with a wage loss system, what are the lessons?

- ii. What is the ideal benefit delivery model?
  - iii. Is Ontario there? If not, define the road to perfection
- e. Reducing/eliminating the risk of legislative “wild cards”
- 10. **Meeting No. 9 (January, 2011): Setting the benchmarks**
  - a. Planning to monitor and monitoring the plan
  - b. The development of specific funding targets to be achieved within specific timelines
- 11. **Meeting No. 10 (February, 2011): Setting the review mechanism**
  - a. Reviewing progress – the mechanism
  - b. Actual versus Plan:
    - i. The implications of worse than expected performance
    - ii. The implications of better than expected performance
- 12. **Meeting No. 11 (March, 2011): The communication of the plan**
  - a. Developing support:
    - i. The Board’s role
    - ii. Employer associations
  - b. Developing a communications plan
- 13. **Meeting No. 12 (April, 2011): Regrouping and assessing next steps**
  - a. A look back at the year
  - b. A look ahead at the decade