

Ms. Linda Regner Dykeman
Mr. Sean Speer
WSIB Operational Review
Ministry of Labour
400 University Avenue
Toronto, Ontario
WSIBReview@ontario.ca

July 23, 2019

Dear Ms. Regner Dykeman & Mr. Speer:

Re: WSIB Operational Review

I am writing on behalf of the members of the Council of Ontario Construction Associations to provide advice with regard to the operational review of the Workplace Safety and Insurance Board which you have undertaken on behalf of the Government of Ontario.

By way of introduction, the Council of Ontario Construction Associations (COCA) is a federation of 29 construction associations representing approximately 10,000 general and trade contractors that operate in the industrial, commercial and institutional parts of the construction industry. Our member contractors include large, medium and small sized enterprises, both unionized and non-union and they operate in all regions of the province. COCA's mandate is to ensure that the legislative and regulatory environment in Ontario supports success in the construction industry and fosters prosperity across Ontario. COCA is the largest, most diverse and most representative voice for the non-residential construction industry in Ontario.

Since the time of COCA's formation in 1975, matters relating to the WSIB have been among our very highest priorities. All of our members participate in the provincial compensation scheme and they understand that our industry and our economy require a workers' compensation system that serves the needs of employers and workers effectively and efficiently.

Today, Ontario is Open for Business once again! Our province competes every day on the global stage for investments from around the world, investments that can be placed almost anywhere, investments that will produce jobs and economic growth. There are many factors that determine our overall competitiveness relative to other jurisdictions. These include taxation rates, the cost of land, the state of the infrastructure, the cost and reliability of labour, to name a few. Ontario's workers compensation system is also one of these factors and in this regard, our provincial compensation system must:

- Be fully funded or very near fully funded; an unfunded liability represents a future payment and serves as a red flag for prospective investors and will deter investment

- Offer premium rates that are competitive with other jurisdictions
- Provide a program of benefits that meets the needs of a modern economy
- Must be operated effectively and efficiently, following industry best practices and using modern management tools and practices

We understand the scope of your review is limited to the following areas:

- **financial oversight:** the sustainability of the WSIB insurance fund and the controls over it
- **administration:** the effectiveness of the current governance model and leadership structure
- **efficiency:** the effectiveness and cost efficiency of the WSIB's operations, including comparisons to other jurisdictions and private sector insurers

With this in mind, we provide the following advice:

1. Financial Oversight

a. Administrative Oversight of the WSIA

- The WSIB is among the very largest group insurance schemes in North America
- Workers compensation systems are extremely complex
- Understanding the WSIB requires significant financial and actuarial expertise
- The Ministry of Labour does not have the necessary financial and actuarial expertise for competent oversight
- The administrative oversight of the WSIA should be transferred to the Ministry of Finance which is better equipped for this responsibility

b. Sustainability

- Currently there is a regulation that requires the WSIB to be fully funded by 2027
- The regulation is very vague; for example, the regulation requires the WSIB to be fully funded by 2027 but does not prescribe a funding level beyond 2027; the WSIB has already reached full funding so does that release the organization from the 2027 target? Now that the WSIB is fully funded, the question should be, "What should the ongoing funding level be?"

- As a prudent, conservative practice, workers compensation actuaries will price-in a premium on their cost of new injuries; most often, this practice produces a surplus at year end; these year after year surpluses can produce a significant overfunding of the system
- The monies that make up these surpluses come from overpayments by employers; this is employers' money which is better deployed actively in the economy by employers in their businesses, creating new jobs and investing in equipment rather than sitting passively in the WSIB's investment account
- The WSIB should always target to be at least 100% funded
- However, there are externalities beyond the control of the WSIB that can impact the funding level; there will be times when employment falls unexpectedly and assessed payroll doesn't meet the WSIB's projections, creating a deficit on operations; there will be times when the financial markets recede and the WSIB fails to meet its investment target
- The funding regulation should be amended to prescribe an ongoing funding corridor in which the funding level can fluctuate without adjusting the rate setting calculations; we recommend a funding corridor of 95% to 110% as a reasonable range
- When the system is funded beyond the upper limit, there should be a mechanism through which the WSIB can return monies to employers; when it falls below 100% premium adjustments should be made; only in extraordinary circumstances should the funding level be allowed to fall below 100%
- While we do not recommend benefits enhancements at this time, should the government choose to add to the existing benefits program, new benefits must be fully costed before being implemented to determine the impact on the funding of the insurance fund

2. Administration

a. Governance

- Financial oversight of the WSIB's operations is the responsibility of the WSIB's board of directors
- Among the responsibilities of the WSIB's board of directors is holding management accountable for achieving the goals set out in management's annual operating plans; operating plans should be aligned with the organization's strategic plan established by the board of directors

- It is critical that the members of the WSIB's board of directors are selected based on their governance experience and competencies
- Financial, legal, human resources, taxation, risk management, actuarial, business strategy and investment expertise are some of the competencies that should be represented on a WSIB board of directors' competencies matrix
- The WSIB should maintain a board of directors' skills matrix and new board members should be recruited and appointed based upon matching their skills with existing gaps in the skills resident on the board of directors
- Ideally new directors should have experience serving on the board of directors of a similar sized enterprise and have earned a corporate directors' designation from a recognized institution
- If positions on the WSIB board of directors continue to be Order in Council appointments, then the chair of the board of directors should be responsible for presenting a short list of appropriately skilled candidates to the government from which the government can select its preferred candidate
- Members of the WSIB's board of directors must not be selected solely on their political affiliation
- In order to perform its work, the WSIB's board of directors must have all the necessary functioning committees, e.g. audit, finance, HR
- One of any board of directors most important responsibilities is the hiring of its President & CEO; we recommend that the President & CEO of the WSIB be selected in a process similar to the way we have recommended directors are appointed, from a list of suitable candidates presented to the government by the chair

b. Leadership Structure

- The members of COCA have full confidence in the current leadership of the WSIB at both the board of directors and management levels
- We are particularly pleased with the WSIB's stakeholder engagement model with its Chair's Advisory Committees (CACs) at which there is good confidential two-way exchange of information and ideas

- Without strong and experienced leadership at both the governance and executive levels, the WSIB will fall back into a state of complacency and organizational drift that has been its hallmark for much of its history; poor leadership will lead to poor performance and a weakened organizational state that will invite political interference; a strong chair and a seasoned board of directors will create a vision and a strategic direction to guide the provincial compensation agency to a “best-in-class” state with customer service excellence a top objectives; a strong management team will create and execute annual plans that meet the goals of the strategy and get out in front of emerging challenges
- The Rate Framework initiative, which has been underway for many years and will be implemented in January 2020, has been particularly well managed in both the planning and implementation stages; COCA fully supports the implementation of the Rate Framework on January 1, 2020; the Rate Framework includes: a) a classification system based on the North American Industry Classification System that is widely used by jurisdictions across the continent to classify businesses, b) an employer centric rate setting process that balances individual accountability and shared liability, and c) a new prospective rate setting process that is made up of the fully capitalized cost of new injuries and administration costs
- The implementation of large complex initiatives such as the Rate Framework will always experience bumps in the road and unexpected hiccups, but we have confidence that the WSIB’s board and management can see it through successfully with minimal disruption
- The WSIB might consider moving to a governance model more aligned with contemporary best practices of corporate governance

3. Effectiveness and Cost Efficiency

a. Administration of Multiple Benefits Programs

- The WSIB currently administers at least three benefits programs; the benefits levels depend upon the year in which an incident took place
- This has made the design of automated claims handling systems very complicated and expensive for the WSIB
- Consideration should be given to merging the multiple benefits programs into one and in a way in which all WSIB clients are treated fairly and their benefits remain the same

b. Office of the Employer Advisor (OEA)

- The Office of the Employer Advisor provides advisory and representational services to small employers in matters relating to the WSIB
- The service that COCA members receive from the Office of the Employer is outstanding and greatly appreciated
- The OEA is accessible, highly responsive and provides first-class service and is managed in a highly efficient manner
- We offer our full support for the OEA

c. Prevention

- Members of COCA greatly value the work of the Infrastructure Health and Safety Association (IHSA)
- The IHSA has a network of regional and trade committees that engage participants in the construction industry across the province; many COCA members actively participate in the IHSA network
- The construction industry has an extremely active Employment Standards Act (ESA) Section 21 Committee (the Provincial Labour-Management Health and Safety Committee) that provides advice directly to the Minister of Labour regarding legislative and regulatory changes
- The construction industry is extremely loyal to the IHSA
- Many members of COCA take full advantage of the programs and services offered by the IHSA
- The IHSA continues to offer a program of legacy services that remain free and accessible
- Cuts to Prevention are short sighted; Prevention programs and services lead to better health and safety management and improved outcomes that produce fewer costly accidents and injuries; this contributes to an improved working environment for both workers and employers that is attractive to investment
- The greatest challenge in the prevention system is reaching small business owners who are not members of their local construction association and trade association and that operate outside the mainstream and under the radar

- There has been talk in the past about amalgamating the HSAs to achieve greater efficiencies; an amalgamation would lead to improved coordination of activities; there could be opportunities for efficiencies by merging back shop operations such as finance, IT, HR, program development etc.; industry specific customer facing entities should remain; there was an initial study conducted by John O'Grady of Prism Economics several years ago for then Chief Prevention Officer, George Gritziotis; this idea is worthy of further study that confirms and builds upon O'Grady's findings
- However, the creation of a single large, slow, bureaucratic, process-bound prevention organization must be avoided; the province's Prevention system should be more entrepreneurial, fast, fluid and flexible, and accessible to meet the needs of workers and employers in an ever-changing industry landscape
- Prevention was transferred from the WSIB to the Ministry of Labour as a result of the Tony Dean Expert Panel Report; Dean's preference was to transfer the responsibility for Prevention to an independent body outside the Ministry of Labour and the WSIB; when he tested this idea with employers he received significant pushback; employers feared the return of an organized labour dominated agency like the one that was in place before the 1999 reforms generally referred to as "The Agency" which was led by Paul Forder; as a compromise, to keep the peace, Prevention was moved to a newly created Prevention Office in the Ministry which was led by a (nominal only) Associate Deputy Minister
- Progress on the accomplishment of the recommendations contained in Tony Dean's Expert Panel report by the Prevention Office in the Ministry of Labour has been exceedingly slow because Prevention initiatives are of secondary importance there; as an example, we have been waiting for the introduction of the Accreditation Standard for almost two years
- While the responsibility for Prevention was transferred to the Prevention Office in the Ministry of Labour, the WSIB has continued with a Prevention mandate; having Prevention services in two places has been the cause of confusion in the marketplace
- The Prevention Office has never been given the strong independent leadership that Dean had contemplated and today the Chief Prevention Officer operates at the assistant deputy minister level; the first Chief Prevention Officer was an Associate Deputy Minister in name only
- Careful thought should be given to creating a single, suitably governed independent Prevention organization outside the WSIB and the government

d. Increasing Claims Volume and Increasing Durations

- Legitimate concern has been expressed about growing claims volumes and increasing durations
- The high levels of economic activity and employment over the last several years have naturally produced a corresponding increased volume of claims
- The WSIB, at the same time, is committed to a digital transformation of claims processing on a Guidewire platform
- The WSIB is in the process of transitioning from a claims processing platform that was built around people and that was designed to handle much smaller volumes of claims to the Guidewire platform, a more modern one designed around process
- This transition has created delays in claims processing times that have produced longer claims durations
- The WSIB is committed to the digital transformation and is reluctant to hire more people every time there is an uptick in claims volume
- This is an issue that should be monitored closely

e. Labour and Employer Influence

- The financial and overall health of the WSIB must not be compromised either by labour demands for enhanced benefits or employers' demands for lower premiums (usually for political advantage); the WSIB must be inoculated against government interference

f. 72 Month Lock-in

- The 72 month lock-in benefit allows injured workers who have been off work for 72 months as a result of a workplace injury to have their benefits "locked-in"
- The result of this provision, in many cases, is that injured workers do whatever they possibly can to stretch it out to 72 months in order to have their benefits locked-in
- A study conducted by the Institute for Work and Health revealed that workers that receive 72 month lock-in benefits are on average being over compensated
- This was not the intention of the government that established the 72 month lock-in provision

- The 72 month lock-in provision should be abolished

g. Cost of Enforcement and Prevention

- The full costs of Prevention and Enforcement services delivered by the Ministry of Labour are born only by employers that are required under the WSIA to participate in the province's workplace compensation system
- It is our understanding that the Ministry of Labour periodically issues an invoice to the WSIB for the costs associated with the delivery of Prevention and Enforcement for the period and the WSIB is obliged to pay it; there is no line-of-sight accountability of the Ministry of Labour back to the WSIB and to the province's employers for the way in which these monies were spent; this is an outrage and it must be addressed
- Not all employers in Ontario are required to participate in the system and we do NOT advocate for universal coverage in which all employers would be required to participate in the system
- We do however recommend that employers that are not required to participate in the province's workers compensation system be assessed for their fair share of the costs of Prevention and Enforcement

These are our submissions, respectfully submitted and we will appreciate the opportunity to discuss them when with you.

Sincerely,



Ian Cunningham
President