

# The Liversidge e-Letter

An Executive Briefing on Emerging Workplace Safety and Insurance Issues

June 2, 2005

An *Electronic Letter* for the Clients of L.A. Liversidge, LL.B.

3 pages

## *Construction Industry Criticizes ER Changes In Response: The “WSIB Strikes Back”*

**Construction Association (COCA) critical of changes to construction experience rating program – CAD-7: COCA News Bulletin suggests WSIB to remove millions of dollars from CAD-7**

On May 3<sup>rd</sup>, COCA (Council of Ontario Construction Associations) released a news bulletin which noted that the WSIB has presented COCA “with a series of options that are designed to eliminate much of the difference between surcharges and rebates paid out in CAD-7” COCA presented the observation that, “We are convinced that higher assessment premiums and reduced experience rating awards will signal to employers that prevention is not a priority and performance is no longer valued by the WSIB”. The entire COCA News Bulletin is reprinted on page 3.

As I reminded readers in the May 16<sup>th</sup> issue of **The Liversidge e-Letter**, experience rating [“ER”] reform has been an ongoing process, and within the NEER and CAD-7 plans alike, the Board is attempting to reduce or eliminate what it describes as “systemic net-balances” [see May 16<sup>th</sup> Issue of **The Liversidge e-Letter**, “Experience Rating Update”, where (at page 2) I note that “The Board is of the view that a significant portion of the rebate net-balance is systemic (the result of quirks in the formula), and therefore is not “earned” through better than expected performance”].

**I have long suggested that ER changes may inadvertently erode employer confidence**

As I noted in the May 16<sup>th</sup> issue of **The Liversidge e-Letter**, notwithstanding that I remain convinced that Board officials are proceeding with good intentions, and clearly are intent upon developing and managing as “perfect” an ER regime as they consider possible (which includes the entire “family” of incentive based programs: ER, CAD-7, MAP, Safety Groups, Safe Communities), certain changes may in fact lead to an unintended loss of confidence in ER as a program, an off-shoot of which may be a diminished capacity to achieve the core objects of ER.

**COCA is making a very similar point.** COCA observes that the changes will “signal to employers that prevention is not a priority”. Let me pause for a moment. COCA is not saying that prevention is not a priority, just that these changes may signal such to employers.

**Now to the Board’s response (Continued page 2).**

### *Client Executive Briefing*

*An interactive executive briefing on leading workplace safety and insurance issues is scheduled for:*

**June 7, 2005  
9:30 A.M. to 12:30 P.M.**

*L.A. Liversidge to provide a full in-depth executive policy advisory report on the results of the WSIB’s recent consultation meetings facilitated February – May, 2005*

***This will be more than an information session:***

I will be facilitating an in-depth policy forum **June 7, 2005** to provide an executive briefing of the Board’s recently concluded consultation outreach exercise. This will be an **interactive executive briefing**, and will give clients an up to the minute account of the pressing and leading issues of:

- **Long-term funding**
- **Experience Rating**
- **Occupational Disease**

***Invitations will be e-mailed***

This meeting will set the backdrop for a second **policy advocacy meeting** set for **June 29, 2005** which will provide you with the an opportunity to present comment, opinion, and feedback on these leading issues to the Board and Government. **This is a “MUST ATTEND”!**

**The “WSIB strikes back”**

In an unusual (if not unprecedented) move, the WSIB responded, strongly, critically and publicly. In a scathing letter broadly distributed yesterday, the WSIB blasts COCA (*is the next chapter in this potential trilogy “The Return of (the) COCA”?*). The Board impugns COCA for including “*a number of inaccurate and misleading statements*”, which the Board finds difficult to reconcile with “*the information we provided to you in good faith and the comments we received from you at the stakeholder sessions*” [a full text of the letter is reproduced following the COCA News Bulletin]. The Board then states the essence of its case, advising that “*The objectives of the changes are to promote effective prevention and return to work efforts while ensuring that poor performers and those with mediocre records do not receive rebates that they do not deserve in the first place and at the expense of others*”.

The Board then presents what is the clearly the point of the letter, “*To suggest that prevention is not a priority undermines our collective efforts and puts at risk our ability to make Ontario a healthier and safer place to work and to deal effectively with the financial challenges that we face today*”.

**But is that what the COCA News Bulletin said?** From my reading, not at all, as I will address. But, first let me look for a moment at the distribution list of this letter. This was not a “private” communication between the Board and COCA. The letter was distributed widely. The following were included in the distribution list:

The Minister of Labour; the Board’s Actuary; the Canadian Council of Grocery Distributors; the Ontario Automobile Dealers Association; the Canadian Federation of Independent Business; the Canadian Manufacturers & Exporters; the Canadian Petroleum Products Institute; Ford Canada; the consulting firm Nexus; the law firm Hicks Morley; the Ontario Mining Association; the Construction Safety Association of Ontario; the Office of the Employer Adviser; the Employers’ Advocacy Council; L.A. Liversidge; the Ontario Hospital Association; and the Greater Toronto Hotel Association.

**Public censure is not “business as usual” for the Board**

It is an understatement to suggest that such a public censure is not “business as usual” on the part of the Board. I am left perplexed by this tactic. I should also note that COCA did not receive a copy of this letter in advance of the general e-mail distribution. In fact, I was on the telephone with the President of COCA after receiving my e-copy only to discover that COCA’s e-mail arrived *a mere two minutes* before my own. At best, bad form.

What is clear though is that the COCA News Bulletin “struck a cord”, if not a down-right sensitive nerve within the senior echelons of the Board. Now, let me return to the essence of the COCA message.

**What did the COCA News Bulletin actually convey to attract such a response from the Board?**

*As noted, the Bulletin did not say that prevention is not a priority.* Far from it. First of all, anyone with any understanding of the construction industry’s commitment to

accident prevention would intuitively and immediately understand that the COCA message was delivered *because of* the industry’s strong commitment and priority to prevention. COCA did not say that the Board was not committed to prevention, and never once suggested that “*prevention is not a priority*” on either the part of the Board or the industry. COCA’s commitment is aptly reflected in its actions, recent and long-term, present and past.

In actuality, among innumerable initiatives, COCA lead the development of a leading-edge business case software package, available free on the Internet [go to [www.safetyedge.ca](http://www.safetyedge.ca)]. Not only did the Board make much of this contribution in its March 30, 2005 “**Prevention Session**” [see Slide No. 68], on the **Safety Edge** website, a “**Presidents’ Message**”, *signed jointly* by the President of COCA, the President of the WSIB and the Vice-President and General Manager of the Construction Safety Association of Ontario, makes this commitment clear. The message reads:

Dear Construction Associate,

Anybody who has experienced a workplace injury knows how serious the issue is. Thanks to the work of industry leaders, the injury rates are showing improvement. Let's keep the momentum going by getting involved in prevention efforts like The Safety Edge.

The Safety Edge is an online interactive program which emphasizes the business reasons for making safety part of every job. The Council of Ontario Construction Associations (COCA), along with The Workplace Safety and Insurance Board (WSIB) and the Construction Safety Association of Ontario (CSAO), have tested and developed The Safety Edge to reach small construction firms. Early in a construction firm's growth, when it starts to grow, is a critical time to change behaviour and incorporate better health and safety practices.

Successful construction companies know that a strong safety system is a key part of their business. Those companies don't just pay lip service to safety, they make it part of their everyday culture, and part of running a profitable venture.

The Safety Edge is designed to help you, the small construction owner, develop a plan and then make it happen, to use proven safety and prevention strategies developed specifically for your sector

The next step is up to you and is only a click away. We encourage you to visit [www.safetyedge.ca](http://www.safetyedge.ca) today and get started.

**What then was the COCA message?**

As I interpret the impugned Bulletin (and I am speaking for my own interpretation here), COCA is presenting a thoughtful warning – reduced experience rating awards may signal that prevention is not a priority. Inherent in that message is the implicit suggestion that the Board ought not to proceed with these changes. *In other words, are these changes worth the risk of upsetting the motivational elements of ER such that the power of ER may be eroded and may not be, or seen to be, as effective a tool in the ongoing challenge to reduce injury?*

COCA appears to be of the view that increasing premiums while reducing the potential for ER rebates sends the wrong message vis-à-vis prevention. So do I.

COCA does not suggest that the Board is not committed to safety, or that the Board does not view prevention as a priority. COCA appears to be suggesting, as I clearly am, that certain WSIB changes, no matter how well considered within the Board, and no matter how justifiable in the eyes of the

Board they may be, may have some adverse and unintended results. This is the essence of the message that I have been delivering over the years.

**The WSIB is institutionally committed to enhancing prevention**

Unquestionably, the WSIB is institutionally committed to enhancing prevention. That is a significant and permanent transition that was spearheaded under Glen Wright's leadership from 1997 to 2003. The championing of prevention as the leading focus of the Board, buttressed by a legislative re-ordering of priorities in 1998, represented one of the most singularly significant adjustments in organizational priorities since the Board's inception. This theme continues with commitment and fervour under the current regime, supported directly by a committed Government and Minister. Ultimately, prevention is the new *raison d'être* of the Board. A decade ago prevention was a sideline – now the commitment is front and centre – by legislation, by policy, by practice and by leadership, political and administrative.

***The COCA message does not suggest otherwise.*** It is provocative to suggest that the COCA message somehow serves to undermine “collective efforts” and put at risk the “ability to make Ontario a healthier and safer place to work”.

***My general advice to the Board:*** The Board may be well served if it listened to these critiques. **Just maybe, these warnings have some merit. Is it worth the risk to ignore them?**

**The May 3, 2005 COCA News Bulletin**

**WSIB Proposes to Remove Millions of Dollars from CAD-7**

The WSIB has presented COCA with a series of options that are designed to eliminate much of the difference between surcharges and rebates paid out in CAD-7. This is currently running at about \$17 million per year. All of the proposals would reduce the amount paid in rebates and increase the amount surcharged.

The \$17 million gulf has arisen because of a sharp jump in the cost of accidents. CAD-7 measures costs and frequency equally but costs have risen faster than LTIs have dropped. In the past year, employers responded to the prevention challenge with a superb 6% reduction in LTIs and the average LTI cost was less than \$41,000. This year the average LTI cost is projected to be \$53,000 – an increase of almost 30%.

The cost explosion is driven by a rise in health care costs, unexplained levels of pension awards and the pending implementation of the report from the Occupational Disease Advisory Panel. These factors have caused WSIB to propose multi-year assessment increases and a gutting of experience rating incentives.

COCA is preparing to respond to this deplorable situation. We are convinced that higher assessments and reduced experiencing rating awards will signal to employers that prevention is not a priority and performance is no longer valued by the WSIB.

All employers in CAD-7 should be made aware that the WSIB might severely adjust CAD-7 as early as the 2004 Bulk Issue that is

scheduled for release this September. Rebates may be lower by an average of 30% to 40% and surcharges 10% to 25% higher on average based on draft impacts provided to COCA.

A meeting with the WSIB is being organized as soon as possible and COCA will strenuously oppose any plan that would slash incentive programs and denigrate prevention. COCA's WSIB Committee will respond with proposals more in keeping with the industry's needs.

**The June 1, 2005 WSIB Response**

Dear Mr. Frame:

**Subject: COCA News Bulletin – May 3, 2005**

The WSIB has reviewed the news bulletin issued by the Council of Ontario Construction Associations (COCA) on May 3, 2005. It includes a number of inaccurate and misleading statements. We find it difficult to reconcile those statements with the information we provided to you in good faith and the comments we received from you at the stakeholder sessions.

As you know, the WSIB has made every effort to be open and transparent with stakeholders over the past few months through a series of information sessions on funding. The WSIB has presented information on the financial pressures that are facing the workers' compensation system in Ontario today; and has discussed ways that both the WSIB and employers can mitigate those pressures.

We made it absolutely clear at the sessions that the purpose of the proposed changes to the experience rating programs is to eliminate the current systemic imbalances that prevent the programs from operating in a fair and equitable manner. The objectives of the changes are to promote effective prevention and return to work efforts while ensuring that poor performers and those with mediocre records do not receive rebates that they do not deserve in the first place and at the expense of others.

A collective effort is needed among the WSIB, employer associations and employers for these initiatives to succeed. It has always been recognized and clearly stated by the WSIB and COCA that prevention has been a success story and that prevention efforts must continue in order to save lives, reduce injuries, and help improve the financial sustainability of the system. To suggest that prevention is not a priority undermines our collective efforts and puts at risk our ability to make Ontario a healthier and safer place to work and to deal effectively with the financial challenges that we face today.

Another and equally important initiative to mitigate rising costs is better return to work outcomes. The WSIB is disappointed that there was no mention of RTW in the COCA bulletin and its potentially positive effect on the CAD-7 experience rating plan.

I understand that Rob Hinrichs and his team met with you and COCA's WSIB Committee on May 17th to present further options which addressed many of the concerns you expressed at the April 22nd technical session. Those options will help reduce the systemic unfairness and recognize good performing construction employers in their efforts to reduce injuries and return individuals to work. Also, the possible changes include enhancements to the performance aspect of CAD-7 so that firms with strong prevention and RTW programs do not see their CAD-7 incentives reduced.

Again, I would like to express our concerns with the inaccurate and misleading statements reflected in COCA's news bulletin.