

The Liversidge e-Letter

An Executive Briefing on Emerging Workplace Safety and Insurance Issues

March 26, 2004

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

7 pages

Experience Rating Reform: The Concepts Does Experience Rating Deliver on its Promise?

The WSIB is revamping experience rating ["ER"]

Last September, I advised clients that the Workplace Safety & Insurance Board had been in the process of revamping ER for some time, but ran into several snags, not the least of which was a constantly changing model and conceptual design. As an interim measure, the Board decided to tinker with the NEER plan [see **The Liversidge e-Letter, September 12, 2003**]. These interim reforms, which made NEER more powerful, increasing both rebates and surcharges, became effective January 1, 2004.

A vigorous debate to reform or not is now underway

Since then, a vigorous debate has been raging within the WSIB's Experience Rating Working Group ["ERWG"]. The ERWG, comprised of representatives of several employer trade associations, and of which I am a member, hit a stalemate on the question of moving forward towards a new ER design. Some are suggesting that a completely new ER program is required, that NEER should be scrapped and a new ER plan should be designed and put in place by 2006. Others argue that radical change is not needed, that employers are not calling for drastic changes to the ER plan, and that any program deficiencies can be remedied with additional enhancements to NEER, when and if, actual problems are discovered. I share this latter point of view.

How your premiums are calculated is in the balance

This is an important debate. The outcome will set the principles under which you will be assessed. This outcome will materially affect your WSIB taxation levels. So that all of our clients understand the implications of these proposed reforms, and to ensure that you are provided with background to effectively participate in this debate and protect your own interests, I will be providing an overview of the concepts behind ER, in this issue. In the next issue of **The Liversidge e-Letter** I will address some of the pros and cons of proceeding with a major ER reform initiative.

Experience Rating – The Concepts

Introduction

Does experience rating deliver on its policy promise – does it reduce the incidence and severity of industrial injury? Surprisingly, this is not easily answered. There is no definitive study available, even though modern ER programs have been in place in Ontario for nearly two decades
[continued on page 2]

Registration Notice

An interactive executive briefing

WSI Policy Forum

June 16, 2004

8:30 AM – 1:00 PM: The Guild Room

Days Hotel & Conference Centre

**6257 Airport Road [American Drive and
Airport Road]**

***L.A. Liversidge announces formation of an
interactive WSI Policy Advisory Committee***

In response to client requests, a workplace safety and insurance policy forum will be held on June 16th.

More than just an information session:

This will be an interactive executive briefing, and will give clients an up to the minute account of pressing and leading issues.

***Discover, first hand, changes that will impact
your business***

Clients will be introduced to controversial legislative, legal, policy and procedural matters under active consideration by the WSIB and/or the Government.

An opportunity to channel your feedback:

You will have an opportunity to present comment, opinion, and feedback on these leading issues. This feedback will then be channelled, directly or indirectly, to the Board and/or Government.

***See Page 7 for the Registration Form
This will be a fairly small group to allow for discussion and
debate. Space is very limited – Please register early***

WSI Policy Forum: *The Issues*

Experience rating: A debate raging for some time will set the future direction of experience rating ["ER"]. Some support scrapping NEER and developing a new ER program. Others argue a new program is not necessary – just fix up the current one [see **March 26 and April 2 issue of The Liversidge e-Letter**]. Your point of view on this issue is crucial.

Coverage: Two years ago, the WSIB released a discussion paper which leaned towards expanding WSIB coverage. I countered that the coverage debate should also include private insurance options [see **The Liversidge e-Letter, June 26, 2002**]. *What is your preference? The status quo? Expanding WSIB coverage? Or, full coverage with private insurance competition for the WSIB?*

Occupational Disease: The WSIB established the Occupational Disease Advisory Panel ["ODAP"], a tri-partite (business/labour/WSIB) committee to establish new adjudicative guidelines for disease claims. It was unable to reach a consensus but a WSIB report will likely be released soon. The ETS case (March 8th issue) highlights the pitfalls of deciding disease cases without policy. Others argue that policy should not be a prerequisite for entitlement. Hear all sides of this important debate and express your viewpoint. This is the new frontier – today's policy affects tomorrow's workplace.

Early & Safe Return to Work "ESRTW": "Suitable employment" was heightened when the current Act was proclaimed in 1998, yet it remains a controversial and uncertain issue. What constitutes suitable employment? What is the effect of worker or employer non-cooperation? The ESRTW of an injured worker may take on numerable twists and turns and can result in extensive litigation. Discuss your experiences and listen to others. *What can the Board do to improve this controversial area of case management and enhance your ability to implement and manage effective ESRTW programs?*

Constitutional Issues and the WSIB: Are you ready for WSIB cases becoming Charter challenges? In October, in *Nova Scotia (WCB) v. Martin*, [2003] S.C.J. No. 54, the Supreme Court of Canada changed the law with respect to an administrative tribunal's ability to address constitutional questions. The SCC held that administrative tribunals which have jurisdiction to decide questions of law (which includes both the WSIB and the Appeals Tribunal) are presumed to have concomitant jurisdiction to decide the constitutional validity of that provision. *How will this impact you? What discretion does the WSIB have to refuse to address Charter issues?*

The Administration of the WSIB: On February 12th, the Minister of Labour announced a third party audit on the "efficiency and effectiveness" of WSIB administrative services to report by the end of May. This, along with the resignation of WSIB Chair Glen Wright, ensures that the winds of change will be blowing long and hard. Discover the findings and impacts of the auditor. *What are your priorities?*

Compensation for stress: The *Martin* case makes it almost certain that the stress provisions of the Act will not survive a constitutional challenge. We again will see a policy void on a crucial issue – the worse possible scenario. *Should the WSIB take the lead and develop a new stress policy now?*

The effectiveness of ER remains controversial

[From page 1] Yet, this question still fuels the same controversy and conflict it did when these programs were introduced. Proponents remain of the general view that experience rating imports much needed equity to workers' compensation and point to declining accident rates as evidence of its effectiveness.¹ Opponents argue that experience rating simply affects employer claims management and reporting behaviour and it does not inspire accident prevention efforts.² Experience rating becomes a flashpoint of discord perhaps reflective of other frictions, or, may simply mirror common insurance tensions.³ Yet, it quickly becomes clear that both points of view have merit, and while labour and management sincerely wish to reduce occupational injury, experience rating, rather than acting as the locus of quality intervention, becomes instead the focal point of a different struggle, and what is lost at the end of the day is much needed cooperation.

ER manages the "moral hazard" of WSI

Experience rating deals with the management of "moral hazard" in workers' compensation insurance, which is the "resulting tendency of an insured to under-allocate to loss prevention after purchasing insurance".⁴ The question that arises is whether experience rating introduces a new moral hazard – an opportunity to realize insurance gains without allocations to loss prevention.

While the provision of replacement income to disabled workers is arguably the core objective of any workers' compensation program, the prevention of injury and disease has always featured prominently as a design objective,⁵ and

¹ See: Employers' Council on Workers' Compensation, Bill 165: Review and Analysis of Proposed Changes to the Workers' Compensation Act, August 23, 1994 [Submitted to the Standing Committee on Resources Development] at 22, "We fully support the Board's goal of full implementation of the NEER program by 1995 as this will no doubt result in a greater reduction in the frequency of accidents."

² See: Corpus, "Third Annual Workers' Compensation Conference - Experience Rating: Incentive or Disincentive" (Corpus, 1986), Presentation: Management/Labour Response: A Labour Perspective Presented by Cathy Walker, National Health and Safety Director, Canadian Association of Industrial, Mechanical and Allied Workers, Vice-President of the BC Council of Canadian Unions.

³ Kenneth S. Abraham, "Distributional Risk: Insurance, Legal Theory, and Public Policy, (Yale University Press, New Haven and London) 1986 at 64, "Attitudes towards insurance seem to be pulled against two polarities: one that highlights the risk assessment or efficiency promoting features of insurance classification and the other that stresses the risk-distributional function of insurance", and "Because it is possible to assess risk, the tension between assessment and distribution is inevitable".

⁴ Abraham, *supra* note 3 at 14.

⁵ While the first priority is to compensate occupational injury and illness, "from the programs inception . . . it was also meant to provide an economic incentive to employers to create a safer work environment", William J. Maakestad, "Promoting Workplace Safety and Health in the Post-Regulatory Era: A primer on Non-OSHA Legal Incentives that Influence Employer Decisions to Control Occupational Hazards", (1989) 17 N. Ky. L. Rev. 9, at 17 of 91 [Westlaw]. See also: Terry Thomason and Richard P. Chaykowski, ed., "Research in Canadian Workers' Compensation" (Kingston: IRC Press, 1995), Article: Canadian Workers' Compensation Institutions and Economics: Richard P. Chaykowski and Terry Thomason, at 32, "The Objective of workers' compensation is to promote safety and reduce the number and severity of industrial accidents".

increasingly this role is gaining importance.⁶ Professor Weiler, in his 1980 study into the Ontario workers' compensation scheme,⁷ maintains that an essential design feature of the workers' compensation plan must be to prevent injuries,⁸ and even though the program is no-fault, it has preserved an incentive for prevention through the provision of experience rating.⁹

Economic Incentives to Prevent Injury: The Theory

The under-pinning theme

The underlying economic theory under-pinning experience rating is straight forward – higher costs internalized by employers for injuries should translate into workplace safety expenditures to the point where “the marginal cost of reducing injuries equals the expected marginal benefits”.¹⁰ Weiler acknowledges the power of the funding mechanism to operate as a “useful lever” to encourage accident prevention, on the simple theoretical foundation that it makes sense to have costs paid directly by employers rather than through the general revenue fund as it is “employers who usually are in the best position to institute safety measures in their workplaces”. Weiler explains that experience rating modifies collective liability in a positive manner, building on the theory that “business reacts to economic incentives”.¹¹ Economic theory advances the thesis that experience rating is efficient because “it causes employers to take socially desirable preventative actions to reduce work accidents”¹²

The theory limits the safety investment

Assuming for a moment that the theory holds – that the rational business person is motivated to reduce accidents if held accountable for the costs of those accidents, it is clear there is a ceiling to the extent of that investment, and that ceiling is measured in purely economic terms. One of the criticisms of experience rating and the utilization of the deterrent effects of insurance premiums is that the model assumes losses are measured purely in financial terms and money fully compensates for loss.¹³ Financial measurement is the exclusive mechanism available for experience rating.

⁶ Emily A. Sieler, “Assessing Fairness in Workers’ Compensation Reform: A Commentary on the 1995 West Virginia Workers’ Compensation legislation” (1995) 98 W. Va. L. Rev. 23 at 121 of 313 [Westlaw], “the reduction of injury in both frequency and severity ultimately determines the success of a workers’ program”. See as well s.1 of the *Act* and WSIB 1997 Annual Report, at page 8, “The WSIB aims to promote a health and safety culture in Ontario’s workplaces. Our vision is the elimination of all workplace injuries and illnesses in Ontario”.

⁷ Ontario, Report to the Minister of Labour, “Reshaping Workers’ Compensation for Ontario”, Weiler, 1980 [“Weiler 1”]

⁸ Weiler suggest that it may be the most important objective, *supra* note 7, at 25.

⁹ Ontario, Report to the Minister of Labour, “Protecting the Worker from Disability: Challenges for the Eighties”, Weiler, 1983 [“Weiler 2”]

¹⁰ Barry T. Hirsch, David A. Macpherson, J. Michael Dumond, “Workers’ Compensation Reciprocity in Union and Nonunion Workplaces”, (1997) 50 Indus. & Lab. Rel. Rev. 213 at p.6 of 73 (Westlaw).

¹¹ *Supra* note 9 at 83.

¹² Stephen D. Sugarman, “International Workshop: Beyond Compensation – Dealing With Accidents in the 21st Century (1993) 15 U. Haw. L. Rev. 553 at 4 of 10 [Westlaw].

¹³ Tom Baker, “On the Genealogy of Moral Hazard” (1996) 75 Tex. L. Rev. 237 7 of 144 [Westlaw].

On the basis that the parties who bear the costs of the claim will be motivated to prevent the accident, the employer will invest “in prevention up to the point where the marginal cost of prevention equals the marginal reduction in accident costs”.¹⁴ Boris Kralj has extensively studied the effects of experience rating on employer behaviour, with particular attention to the Ontario system, and explains the theory as: “The neo-classical model of the profit-maximizing (cost minimizing) employer whose workforce is exposed to the risk of injury, predicts that employers will respond to the economic incentives provided by experience rating by allocating resources to activities that reduce their workers’ compensation accident costs up to the point where their marginal benefits equal their marginal costs”.¹⁵ A trade-off exists between safety investment and accident rates – the self-maximizing employer will balance savings in costs with the required investment in safety.¹⁶

This is not uncommon insurance behaviour. Rational decisions about insurance purchases rest in part on comparison of the “cost of reducing a risk through investing in loss prevention with the cost of protecting against it through insurance”.¹⁷

The incentive

The incentive materializes when the insured employer absorbs the costs and interprets those costs as being variable towards prescribed management intervention.¹⁸ The economic problem facing the employer is to choose the appropriate combination of labour capital and workplace safety that maximizes profit.¹⁹ Weiler proposes that the safety investment must attract a return in the form of a reduction of injuries and the related reduction in assessment premiums. However, Weiler also suggests that this intuitive analysis is just a little too simplistic, as it does not take into account the fact that even in the absence of experience rating, the firm will incur direct costs and losses as a result of an industrial injury over and beyond those which are represented by the workers’ compensation insurance costs. Therefore, it likely is the case that even in the absence of experience rating the firm possesses a financial self-interest in reducing or eliminating

¹⁴ William J. Maakestad, “Promoting Workplace Safety and Health in the Post-Regulatory Era: A primer on Non-OSHA Legal Incentives that Influence Employer Decisions to Control Occupational Hazards”, (1989) 17 N. Ky. L. Rev. 9, at 19 of 91 [Westlaw].

¹⁵ Boris Kralj, “Employer Responses to Workers’ Compensation Insurance Experience Rating” (1994) 49 Relations Industrielles 41 at 45.

¹⁶ Reemployment and Accommodation Requirements Under Workers’ Compensation: Morley Gunderson, Douglas Hyatt and David Law at 182.

¹⁷ *Supra* note 3 at 22.

¹⁸ *Supra* note 16 at 182. Direct costs attributed to the employer, especially to the fully experience rated employer, will create an incentive to reduce accident rates where the accident costs are higher. See also at 189.

¹⁹ See: Kneisner and Leeth, “Separating the reporting effects from the injury rate effects of workers’ compensation: A hedonic simulation” (1989) 42 Industrial and Labour Relations Review 280 at 282, 291 and 292. The author also notes that workers respond with market wage and aversion to risk.

injury, such as equipment losses, recruitment costs, down time etc.²⁰

It is generally accepted that insurance law promotes efficiency whenever it is structured to help reduce the sum of the costs of insurance and loss prevention.²¹ The incentive therefore must be thoughtfully constructed to ensure that it efficiently seeks its objective without adding unintended cost distribution.²² A distributive allocation is efficient when resources are used in a manner that maximize their value.²³

Prevention options available within the workers' compensation framework

Some premium modification is essential to promote prevention

In considering the mechanisms that could be deployed to achieve the objective of injury reduction, one must start with an examination of the implications of no modification to employer premiums based on industry or company risk. What would be the implication of all employers, regardless of industry or performance, being assessed at precisely the same rate? If the product costs did not reflect an appropriate and representative component for workers' compensation insurance, and the employer was engaged in an industry with a relatively high risk, (say three times the average industrial risk), and yet, was charged premiums based on the average industrial risk, consumer demand would actually encourage poor safety – the consumer will benefit if the employer is able to manufacture the product and save on safety costs.

Moreover, the enterprise with an actual risk less than the average risk, say one-third of that risk, would be forced to pay higher costs, effectively subsidising the more risky enterprise. That firm as well, loses all incentive to maintain safety because not only do increased safety expenditures provide no return in investment, static safety investments will provide a negative return on investment. That company, if rational, would be financially prudent to divest funds from safety issues. The net result is that both risky and non-risky workplace environments lose any financial incentive to prevent injuries that workers' compensation may provide. While there may be other costs involved and other incentives available, the proposition of a significant reduction in the number of individual employer classifications is simply too risky to seriously consider.

Weiler allows that in principle, workers' compensation should enhance market effectiveness. Writing in the context of the Ontario system as it existed in the early 1980s, Weiler suggested that since the workers' compensation system was organized around an industry classification scheme (without

experience rating), there was only a distinction at the industry level and not at the company level within industries. As a result, with the industry classification exception, the system focused on collectivizing accident costs, and did not take into account the wide variance of cost experiences within different companies with the same industry.²⁴

The conflict of insurance over incentives

Weiler contends that in the early 1980s Canadian Boards were reluctant to embrace experience rating because it offended the collective nature of the liability.²⁵ This is an appropriate concern. Employer accountability must not be achieved through a violation of the fundamental insurance principles of workers' compensation. Insurance is still the essential ingredient, particularly for the smaller employer who is most likely to experience the random and unpredictable accident.²⁶ Little inspirational effect would be achieved through the bankruptcy of small firms who have the misfortune of experiencing a random and unpredictable accident, and thus, in the absence of broad insurance protections, one of the basic policy objectives of incentive deterrence is simply not achievable for the smaller employer.

However, as the size of the company increases, the need for insurance diminishes. Not only are the larger companies in less need of insurance, accidents themselves, given the proper analysis, are more predictable, and thus, the conceptual need for insurance diminishes, and the capacity to prevent is enhanced.

Classified rating

While it may be the case that classified rating on its own may produce some incentive, without experience rating there will be inducement for only the largest of employers – those whose accident experience will influence the entire rate in which they belong. In Ontario (and likely in most jurisdictions) this would encompass only a minute number of industries and companies within those groups.²⁷

Atiyah remains of the view that rate classification is a valued requirement as: i) it is a prerequisite to experience rating; ii) it may be justifiable with respect to resource allocation in the long run and may have an influence on prevention, and; iii) it is justifiable on the basis of employer equity.²⁸ A single rate approach would simply not be equitable, especially for smaller employers, who would be required to contribute at the average set rate and would lack the relative power to secure meaningful rate rebates, whereas the larger employer would be able to acquire strong experience rating gains. The long term result of a single or

²⁰ *Supra* note 9 at 89.

²¹ *Supra* note 3 at 11.

²² *Ibid.* at 11: A technical measure of efficiency *pareto optimality*: an allocation of resources is efficient if no one could be made better off by a reallocation without someone else's being made worse off. Another allocation model: Kaldor-Hicks efficiency: an allocation is efficient if there is no reallocation under which those who are made better off could compensate those made worse off for their losses and still be better off after the reallocation.

²³ *Ibid.* at 11.

²⁴ *Supra* note 9 at 98.

²⁵ *Supra* note 9 at 117.

²⁶ The defining characteristic of insurance is that it is "about the transfer of risk of random loss", Brown, "Insurance Law in Canada" 3rd ed. (Toronto: Carswell, 1997) at 1.

²⁷ P.S. Atiyah, "Accident Prevention and Variable Premium Rates for Work-Connected Accident" Parts I & II (1974) 3 *Ind. L.J.* 1 & 89 at 1.

²⁸ *Ibid.*

limited rate system would be increasing rates for small employers and decreasing rates for larger employers.²⁹

Board sponsored experience rating studies

WCB 1990 NEER Study

The Board has done very little study on the effectiveness of ER. The WCB NEER Study published in June 1990 concluded that NEER may induce its intended effects (accident reduction and rehabilitation) although it may cause some “undesirable effects”, although the Board noted that it is difficult to determine when certain behaviours become inappropriate. The relevant findings were: i) there was virtually no analysis of the costs and benefits of accident prevention undertaken by NEER employers; ii) there was no evidence to suggest non-reporting, but, there was evidence of a shift of lost time claims to no lost time claims; iii) there was no evidence to show non-reporting in non-union enterprises; iv) there was no increase in the abandonment of claims; v) NEER employers are slightly more likely to make use of the Board’s appeal processes than non-NEER employers; vi) while there was a general increase in the propensity of SIEF in 1980s, NEER rate groups experienced a higher rate of growth than non-NEER rate groups.

The Board concluded “NEER has been effective in generating substantial incremental impact on increased health and safety initiatives”,³⁰ and has been effective in increasing management awareness of claims cost and increasing employers’ monitoring activities. The Board notes, “These results are in line with the nature of the NEER financial incentive, and are almost precursors to carrying out the desired prevention, protection, rehabilitation activities. These behaviours are to be expected and, to a reasonable point, represent proper management by firms of their resources”.³¹ Board data shows a relative decrease in frequency rates for NEER rate groups, particularly for the earliest entrants to NEER”,³² and with respect to undesirable behaviours, “the examples are primarily anecdotal”.

1990 KPMG Study

The objective of the KPMG study was to design a series of employer case studies to assess the impacts of NEER on the safety behaviour of employers and the attainment of the objectives. Thirty-five case studies were undertaken, 28 with NEER and 7 with CAD-7 employers and all reported similar findings. With respect to NEER, the study found: i) there is a high degree of support within NEER employers; ii) most of the employers undertake a number of broad health and safety initiatives; iii) NEER has created an incremental impact on this behaviour for approximately 10 – 40% of employers; iv)

²⁹ Ian B. Campbell, “Experience Rating for Accident Compensation: A Necessity or Wishful Thinking” (1989) Department of Management Systems, Business Studies Faculty, Massey University, Occasional Papers: 1989 Number 4 at 18.

³⁰ Ontario, WCB Report, “New Experimental Experience Rating (NEER) Program Evaluation Study, Report of Research Findings and Discussion of Future Issues”, WCB Strategic Policy and Analysis Division, June 22, 1990 at 12.

³¹ *Ibid.*

³² *Ibid.*

there is a lower incidence of longer term rehabilitation than there is of prevention and protection; v) a large percentage (82%) place an emphasis on controlling claims and claims management.³³ The report suggested that although there are no specific guidelines available, “a certain level of claims management activity by employers is appropriate and desirable”, such as requesting SIEF or initiating disputes in cases, or following up with disabled workers regarding the status of their injury. These activities can be “excessive or undesirable” if pursued too aggressively,³⁴ but the WCB has not communicated its views to employers as to what constitutes “legitimate and excessive” claims management.³⁵

The 1994 “Kralj Report”

The Kralj report as well is consistent with the early WCB studies and concludes that: i) “. . . the economic incentives provided to employers by experience rating in the form of premium rebates and surcharges exert a powerful positive influence of the likelihood of change in safety behaviour”; ii) there is a “positive and statistically significant relationship” between the employment of a full time safety official and the probability of a change in its safety practices; iii) employers who comprehend the program are more likely to alter safety practices than those who do not; iv) larger firms are more apt to change their behaviour; v) unionized employers are less likely to change.³⁶

The bottom line

There is no evidence that employers use ER as a tool to improve safety performance. At best, regardless of its potential, it would seem that ER is a *general motivator*, if it motivates at all. The “cost/benefit” analysis which rests at the core of the experience rating promise, in reality it seems, never is unleashed in a prevention context. While it is likely the case that such analysis is conducted post-accident (for return to work issues), accident prevention activities may operate quite independently from ER. Currently, safe workplace associations, when reporting accident data to employers do not present data in terms of NEER costs, nor does the Board provide any statistical analysis of an employer’s cost record.

In the next issue of **The Liversidge e-Letter**, I will address the arguments for and against aggressive experience rating reform.

A Commentary on the Resignation of Glen Wright, Former Chair and CEO of the Ontario WSIB

On March 8th, Glen Wright, WSIB Chair and CEO resigned. On March 12th, Labour Minister Chris Bentley named Jill Hutcheon, WSIB Chief Corporate Services Officer,

³³ Ontario, “Workers’ Compensation Board NEER Case Studies Final Report”, July, 1990 by KPMG Management Consultants.

³⁴ *Ibid.*

³⁵ *Ibid.*

³⁶ *Supra*, note 15.

interim chair. Prior to joining the WSIB a year ago, Ms. Hutcheon was Deputy Minister of Labour and also served as the Assistant Deputy Minister of the Ministry of Transportation. I met Ms. Hutcheon shortly after she joined the Board and was quite impressed with her grasp of the complex policy agenda facing the Board.

Glen Wright served with distinction

Seven years ago, on February 25, 1997, Mr. Wright spoke at a very well attended L.A. Liversidge client meeting. Following that meeting, I noted the following in our newsletter:

“Based on the feedback I received, all clients were very impressed with Mr. Wright’s openness, his commitment to positive change within the Board, and his assurances of an enhanced customer service focus. Mr. Wright detailed an inspiring and encouraging vision for the future of the Ontario WCB. Following his presentation, he engaged in a dynamic question and answer session. Overall, the meeting with Mr. Wright was very enlightening. Rarely, if ever, have I been witness to such a frank, open discussion with a WCB Chair. More importantly, it is clear that new ideas, new commitments and a new focus has taken root at the Board. The cultural shift needed looks possible”.

Glen Wright spoke to the Ontario Bar February 17th

Just a few short weeks ago, on February 17, 2004, I had the opportunity to introduce Mr. Wright at an **Ontario Bar Association Workers’ Compensation Committee** dinner, which, as it turns out, was likely his last public speaking appearance as Chair and President of the Ontario WSIB. At that gathering, I introduced Mr. Wright as follows:

I had the distinct pleasure to have Glen speak to my client group seven years ago, almost exactly – February 25, 1997. Since that time, I have had the opportunity to meet with Mr. Wright on innumerable occasions to address leading policy and legal issues of the day. Often, I have been on the “other side” of many issues with him, advancing a position contrary to that adopted by the Board. Yet, I have found that he always approached disagreement through dialogue, and that he always saw dialogue as a sincere means to bridge differences. Very frequently, after a well defined and researched argument was placed before him, the Board’s position changed as a result of that discussion. Not always. But in all cases, opposing viewpoints were truly heard. And, when change did occur, it was swiftly executed. And with that new approach, Glen Wright changed the way workers’ compensation was managed in Ontario.

From the outset Mr. Wright was eager to improve the Ontario workplace safety and insurance system

In July, 1996, just before assuming the role of WCB Chair, Mr. Wright advised the *Standing Committee on Government Agencies*, that the two biggest issues facing the WCB were the unfunded liability and the capacity to maintain the system.

Readers will recall that eight years ago premium rates and the unfunded liability were on the rise. The WCB was often in the news. Over the last eight years, the unfunded liability was cut down to size, premium rates lowered, and since 1998, the Board has rarely attracted media attention. These improvements were realized while gaining the concurrent respect of both labour and management who thought he was doing a good job.

In the days leading up to his resignation, as many readers are aware, there was much media attention concerning some expenses incurred by Mr. Wright. It was reported that he had been provided with an apartment in Toronto (he lives outside of the GTA area) and that the Board paid for an upgrade to a security system for his residence. As the linkage, if any, between these matters and Mr. Wright’s resignation is not fully known, I will only provide some brief commentary.

Political “adversaries” respected Mr. Wright

Interestingly, the subject of Mr. Wright’s resignation was discussed in some depth on TVO Studio 2’s “*Fourth Reading*”, on March 12th. Steve Paikin, TVO’s host, lead a panel discussion involving former Conservative, Liberal and New Democrat cabinet ministers. Without exception, all three suggested that Mr. Wright had, by all accounts, done an excellent job as WSIB Chair, and had earned the respect of business and labour. Host Paikin commented that the provision of an apartment for an out-of-town CEO of a major crown corporation was not unusual. One of the panel suggested that the security system may have been required as a result of on-the-job security threats. If so, this would seem to be an expenditure well within reason.

Glen Wright set the bar higher: The Wright legacy is an improved WSI system with greater expectations for the future

The Wright legacy will likely be viewed as a change in the customer service of the WSIB and the introduction of occupational safety as a cultural adjunct to WSI administration. Standards and expectations though now are set very high. Employers expect that the WSIB will keep administrative expenses within reason, a commitment Mr. Wright provided to employers last summer. Even with a change in leadership, employers expect that the Board will continue its commitment to reduce the unfunded liability to zero by the year 2014, and expect a significant drop in premium rates at that time. Labour and business both expect the system to be fair and equitable.

There is still much to be done - all is not perfect

There are however, serious challenges on the immediate horizon. On the process side, labour and business have been arguing for a more representative board of directors, similar to that which existed from 1985 – 1990 under the last Liberal government. During that period, directors were able to reach out to their respective constituencies, but without the deadlock experienced from 1990 – 1995 when the board was officially bi-partite.

Substantive and long-standing issues, such as coverage and compensation for occupational disease remain on the agenda, as does the Board’s funding and investment strategies. 2005 premium rates must be set soon, yet the funding dialogue initiated last summer has not progressed very far. Experience rating (addressed in this and the next issue of **The Liversidge e-Letter**) will require the board of directors’ attention, as will the hot issues that will likely be flowing directly from the Minister’s audit of the Board’s operations reporting in May.

Workplace Safety & Insurance

Executive Policy Briefing

L.A. Liversidge presents an interactive executive overview of contemporary WSI policy issues. The winds of change are blowing. WSI is again on the policy front burner. *Are you ready?*

June 16, 2004: 8:30 am – 1:00 pm
Days Hotel and Conference Centre: The Guild Room
6257 Airport Road [American Drive and Airport Road]

A new government is in place. The executive levels of the WSIB are being shaken up. Longstanding policy issues (stress, occupational disease, experience rating, coverage, administrative costs) are returning in full force, and new ones (Charter challenges, WSIB structure) are emerging. WSIB administrative budgets are under scrutiny. Worker demands are on the rise. Employers expect lower premiums. The long-term funding strategy is under scrutiny. Charter challenges may become routine. What happens over the next two years will set the pattern for the next 20. *It is time to become engaged. Are you ready?*

The *Policy Briefing* will provide you with a senior perspective on today's WSI scheme:

Carmer Sweica, Chairman of the Employers' Council of Ontario and past-director of the WSIB Board of Directors, will be introducing the policy forum. The format of the *Policy Briefing* will allow for an exchange of views and a dialogue. Once registered, all participants will receive a survey to provide an opportunity to highlight the areas of most concern to you. The program will be tailored to our client's specific needs.

Each policy issue will comprise a 20 minute segment. A policy paper and policy question will be prepared for each issue. *L.A. Liversidge* will provide a 10 minute briefing, accompanied by a 5 minute Q&A session and a 5 minute discussion period. A policy question will then be posed to the delegation which will provide feedback.

This will be an executive style briefing.

The pace - fast. The focus - intense. The information - essential.

Register NOW. Space is very limited. E-mail, Fax or mail your registration.

Please register me for the June 16, 2004 *Policy Briefing* on WSI Issues

Company: _____

Address: _____ City: _____ Postal Code: _____

Tel # _____ E-mail: _____ Fax: _____

Invoice Me Cheque Enclosed

GST registration #86587 5215 RT001

Cheque payable to: L.A. Liversidge, LL.B.

Pay by Visa MC Card # _____ Exp: _____

Cardholder Name: _____ Signature: _____

Registration Fee [note discount for same firm registrations]

First Company Participant at \$125 = \$125

Subsequent Participants: _____ at \$55 each _____

Total Registration fees: _____

Plus 7% GST: _____

Total Amount: _____

Name of First Participant:

1. _____

Names of Subsequent Participants:

2. _____

3. _____

4. _____