

The Liversidge e-Letter

An Executive Briefing on Emerging Workplace Safety and Insurance Issues

November 15, 2006

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

5 pages

Report on Town Hall Meeting with WSIB Chair *Mahoney Hits a Home Run!*

The message: *Accessible and Accountable*

On November 2nd the WSIB Chair and top level WSIB officials met face-to-face in an open and informal town-hall discussion with L.A. Liversidge clients

On November 2, 2006 the Hon. Steven W. Mahoney, appointed Chair of the WSIB earlier this past summer, met in an open forum with close to a hundred L.A. Liversidge clients and associates.

In a rare opportunity, unconstrained by the clock (the meeting went almost three hours), Mr. Mahoney set out his vision for the Ontario workplace safety and insurance ["WSI"] system. The message was clear – *a new sheriff is in town*. Mr. Mahoney is more than the face of the Board – he is committed to ensure the Board delivers on its objectives – and first and foremost – *the number one priority is to eliminate workplace injury in Ontario*.

Accompanied by many of his senior officials, including Ms. Jill Hutcheon, President; Ms. Milan Ng, Chief Financial Officer and Mr. John Slinger, Chief Corporate Services Officer, Mr. Mahoney faced the tough questions head on. **Mr. Mahoney delivered the straight goods – No beating around the bush here**

No beating around the bush here – no polished obfuscation, no baffle-gab – just the straight goods. In the past I have said that Mr. Mahoney does not hedge on the tough questions and you know where he stands [see **January 25, 1995 issue of The Liversidge Fax-Line** and the **April 28, 2006 issue of The Liversidge e-Letter**]. This was proved true. Undeniably, Mr. Mahoney aspires to the *gold standard* on accountability and integrity, and does not shy away from personal commitment, the touchstone of his style.

Based on my observations and client feedback I received after the meeting, ***it was clear that Mr. Mahoney hit a home run*** (and all he had to do was *not strike out!*). One message came out loud and clear – Mr. Mahoney has taken on a cause. [continued on page 2]

L. A. Liversidge Executive Seminar Series

An interactive executive briefing on revamped WSIB ESRTW policies is scheduled for:

**January 17, 2007
9:30 A.M. to 12:00 P.M.**

Early and safe return to work is now the cultural standard in all Ontario workplaces. Yet, the WSIB still persists on fixing something that is not broken.

While the Board pulled back last year's ill-conceived policies, a new slate of policies have been released for public consultation while simultaneously being implemented in four pilot projects.

These policies will impact every Ontario workplace. Make sure you are prepared.

Set aside this date now for an in-depth executive briefing on these critical policies and learn how you can develop an informed and influential response.

Invitations will be e-mailed

Mr. Mahoney has a tough act to follow – under the Glen Wright era, prevention became the cultural adjunct to WSI administration

As readers of *The Liversidge e-Letter* are well aware, I remain a fervent adherent to the legacy of past WSIB Chair Glen Wright, who left the Board more than two and a half years ago.

As I noted in the March 26, 2004 issue of *The Liversidge e-Letter* [**“A commentary on the Resignation of Glen Wright, Former Chair and CEO of the Ontario WSIB”**, at page 5], 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.”*

Without question, Mr. Wright changed the way the Ontario WSI system functioned. He re-tuned the administration to focus on core customer service and most importantly, his changes to the Board’s role towards, and commitment to, injury prevention were nothing less than revolutionary.

Almost a decade ago, the past WSIB Chair attended an L.A. Liversidge client meeting

Almost ten (10) years ago, after Mr. Wright spoke at an L.A. Liversidge client meeting, I noted the following: *“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. Rarely, if ever, have I been witness to such a frank, open discussion with a WCB Chair”*.

On November 2nd, Mr. Mahoney equalled Mr. Wright’s sincerity and openness, all the while demonstrating his own style of executive stewardship.

Injury prevention ignites Mr. Mahoney’s personal passion – safety is his cause

Right out of the gate, it has become patently clear that prevention is Mr. Mahoney’s number one priority. In fact, he described it as a personal cause – likely the first real cause he has taken on in his impressive career. And, one that he clearly wants associated with his legacy – what one day will be referred to as the *Mahoney Era* (my words, not his).

Very clearly, he is personally committed to spearheading ground-breaking initiatives to move safety awareness forward (such as the recently unveiled and controversial WSIB *Core Marketing Campaign “There really are no accidents”*, which includes strikingly stark images of serious injuries as they happen). It is also clear that Mr. Mahoney expects employers to do even more on reducing injuries (even though accidents are down by over 50% since the 1980s) [see the August 3, 2006 issue of *The Liversidge e-Letter*, **“WSIB Releases Preliminary 2007 Premium Rates”** – which links the decision of the Board to toe the line on premium rates to the expectation that employers will do their part to reduce both injuries and time on claim].

On November 2nd, on prevention, this is what he said

Speaking with passion and personal conviction, Mr. Mahoney recounted how his own family was touched by the

tragedy of a workplace death. His maternal grandfather was killed on the job, leaving a wife and several children (including Mr. Mahoney’s mother, then aged 15 years). Mr. Mahoney recounted how that accident was clearly avoidable – by his grandfather – and – by his grandfather’s employer (the very messages chronicled in the Board’s recent campaign), and the tragic impact that this needless death had on his family. He recounted how his mother was left without a father and how he never knew, except through an oral narrative, his maternal grandfather.

Every “accident” involves a choice – a bad decision or an omission to act

With conviction and passion, Mr. Mahoney declared that every work fatality involved a bad choice – a direct bad decision or a direct bad omission – and the line between cause and effect is clear.

There are no accidents

Taking the message from the recent media campaign, Mr. Mahoney said there are no accidents. In fact, he noted that he has changed his own use of language – and will use the term “incident” instead of “accident”. In other words, *every* on-the-job incident is preventable. Mr. Mahoney suggested that everyone should *“stop the blame game”* - stop pointing fingers – it is time to address the big picture and make workplace injury as socially unacceptable as drinking and driving. Mr. Mahoney is confident that this corner can be turned.

Prevention is an investment, not a cost

Mr. Mahoney’s message to corporate leadership is loud and clear – move prevention and safety to the asset side of the ledger. Safety, in other words, is an investment – not a cost of business. Of course, this theme is entirely consistent with the message that I have been urging for more than two decades now [see for example the March 26, 2004 issue of *The Liversidge e-Letter*, **“Experience Rating Reform: The Concepts, Does Experience Rating Deliver on its promise?”** and the May 16, 2005 issue, **“Experience Rating Update: Administrative changes increase surcharges and reduce rebates even though accident rates still head lower”**]. The fact remains that *employers have received this message*. However, as readers of *The Liversidge e-Letter* are well aware, I have been very critical of the Board for its lack of structural support towards experience rating, especially for the lack of support for employers to more easily understand the NEER math and facilitate basic business case calculations [see for example the January 23, 2006 issue of *The Liversidge e-Letter*, **“WSIB Releases Draft Policies on Early and Safe Return to Work, Part II”**].

WSIB to study “named insured”

On the administrative front, Mr. Mahoney confirmed that the Board will be studying “named insured” (a long requested initiative by the construction industry) and will be implementing a five (5) year plan to improve e-filing, which will include obtaining clearance certificates on line.

The Chair's response to the tough questions

Mr. Mahoney did not hedge or side-step a single question. No major theme was untouched. He was open and candid throughout. While Mr. Mahoney is no apologist for the Board, and admits mistakes when mistakes are made, he is an ardent champion of the people that are there, and views the WSIB administration as a competent, caring group of public servants.

Mr. Mahoney has a high degree of confidence in the current administration

This will be one of the few "eras" within the recent history WSI administration where an incoming Chair has not engineered a major administrative overhaul in his early days as WSIB Chair.

Dr. Robert Elgie oversaw a massive restructuring in the mid-1980s

In the mid-1980s, under the Chairmanship of Robert Elgie, the (then named) Workers' Compensation Board ["WCB"], underwent a massive internal restructuring, resulting in the "realignment" of most of the senior executive team. A new Board of Directors and a new core executive group was put in place. In fact, during that time everything was up for grabs. I have referred to that period as a true *Renaissance* [see the June 8, 2004 issue of **The Liversidge e-Letter**, "*It is time for a renewed approach to employer lobbying*" and the January 28, 2005 issue, "*WSIB Changes Appeal Time Limit Rules*"].

A complete revamping of the Board's internal structures unfolded during an unprecedented period of reform and change. For a sense of the magnitude of change experienced at that time, read **The Workers' Compensation Board of Ontario, 75th Anniversary Symposium, September 20-21, 1989, Organization Change in Large Public Agencies**, pp. 43 – 58, and especially the papers delivered by: Alan Wolfson, WCB Vice-Chairman of Administration and President, "*Organizational Change at the WCB*" at p. 44; Professor Jeffrey Gandz, University of Western Ontario School of Business Administration, "*Rapid Change in Large Organizations*"; and the *Panellist's Remarks* at p. 53. *More change during the NDP period 1990 - 1995*

In the early 1990s, during the tenure of NDP appointed WCB Chair Odoardo Di Santo, the Board again underwent a top level shake-up, with a new President, and Board of Directors. They didn't stay long.

Another major shake-up mid to late 1990s

In the mid-1990s, the incoming regime under the leadership of a new Chair, again revamped the entire administrative delivery chain, scrapped "*Integrated Service Units*" and put in place the current "*Industry Sector Units*". A new management team replaced the "old" new management team, and a deliberate new style emerged. A new Board of Directors was put in place at the same time as a new Chair arrived. The first few years of the "last regime" was focused on selecting a new senior management, and revamping the administrative structures.

This time, much remains as it was

This time around, it seems that while there is a clear change at the top, much else remains about the same. The old Board of Directors is the new Board of Directors. The old WSIB administration is the new WSIB administration. The *old* status quo is the *new* status quo.

The Mahoney era starts with accepting the current structures – most of which were put in place during the previous government

The "*Mahoney Era*" will be the first distinct WSI "administration" in the last twenty years that did not commence with wide and deep structural change, in senior staffing, in members of the Board of Directors and in the administrative delivery structures of the WSIB. Whether this will aid or hamper the *Mahoney message* is not known. What is clear is that this approach is a novel one in the last two decades of WSI "regime change".

But, then again, it has been rare for a new Chair to be appointed almost three years into a government's mandate. In the past, when there has been a change in government, usually the two top slots at the Board have changed fairly immediately. This was so with the Peterson Liberals (Elgie and Wolfson), the Rae NDP (Di Santo and King) and the Harris Conservatives (Wright and Williams).

In this case, while Glen Wright left the Board within the government's first year (within about nine months), it took the government more than two more years to name a full-time replacement. This can only be interpreted as a likely vote of confidence towards the remaining executive team, most of whom were appointed to senior WSIB positions by Mr. Mahoney's predecessor. More to the point, there does not appear to be a wide-spread appetite for broad based change, either within the government or within the stakeholder public.

With this noted, while Mr. Mahoney is assuming stewardship of the present *status quo*, if his performance on November 2nd is any indication, he has very clear markers where he will be leading the Board. And, make no mistake, it is evident that he will be *leading*.

Steven W. Mahoney will be setting the tone, tenor and character of the next three years (at least) of WSI administration in Ontario. Now, onto the questions and answers.

With respect to premium rates and funding:

The question: Right at the top, I noted that premium rates for 2007 were held at a "zero percent increase" over 2006 levels. Yet, it was just last year that senior WSIB officials called for and received a rate hike for 2006, making it quite clear that employers could expect similar rate hikes for the next few years. ***What changed?***

The answer: Mr. Mahoney advised that there never was any firm plan or decision to increase premium rates beyond the 2006 announcement, noting that the Board of Directors must always deal with premiums rates year by year. He noted that no firm decision was taken to increase rates in

future years because such a decision cannot be made until the preceding Fall of the assessment year. However, what changed was a renewed focus on potential mitigating factors, such as expected declines in accident levels and time on claim.

As I noted in the **August 1, 2006 issue of The Liversidge e-Letter**, “*WSIB Release Preliminary 2007 Premium Rates*”, when announcing the “zero percent increase” in premium rates for 2007 last summer, Mr. Mahoney noted:

“The WSIB has introduced a number of measures to improve its fiscal situation. These measures are helping to alleviate some of the financial pressures on the system, but they cannot address all of them”. In an accompanying notice to employers, the Board hit this point home: *“The WSIB’s decision to hold the line on the aggregate premium rate assumes that significant progress will continue on key issues of concern to Ontario workers – such as safer workplaces, and improved return to work outcomes for injured workers”*.

As I said on August 1st, “... the Board under Mahoney’s leadership is banking in improved performance. In other words, while not expressly broadcast – the gauntlet has been thrown down . . . the Board is paying dividends on an expected investment return a little ahead of time”.

On November 2nd Mr. Mahoney essentially confirmed that approach, noting that he would prefer to see premium rates stable over the next several years. However, he also made it clear that he cannot speak for the entire Board of Directors and he cannot guarantee a rate freeze, a rate decline or a rate hike for next year. As was the case for 2007, it will depend on the facts as they present themselves later next year.

With respect to e-filing:

The question: One client asked Mr. Mahoney when the WSIB will be getting its e-filing and e-mailing system up and running. I commented that the WSIB is not keeping up with the times. Parties cannot communicate with the Board via e-mail, nor is there e-access to employer account information. Employers must await quarterly experience rating statements to see a “snap shot” of cases, rather than access their records in real time, thus impacting pro-active management decision-making. With respect to clearance certificates, employers have been hearing for years that the Board will be providing these on-line.

The answer: Mr. Mahoney indicated that he will not be “micro-managing” the Ontario WSI system, however, the Board is proceeding to implement e-filing of Form 7s very soon. The Board is also embarking on a \$150 million project to update its e-capacity (*ed.* hopefully not shades of the ill-fated “*Agility Program*”). Mr. Mahoney committed the Board to provide a flow chart of expected milestones and target dates when completed.

With respect to employer classification:

The question: One participant outlined some classification peculiarities with respect to his business,

commenting that the Board’s unfair classification will lead to a loss of Ontario jobs.

The answer: Mr. Mahoney volunteered to look into the matter personally. I commented that there are serious problems within the Board’s classification system which warrant serious attention. All too often the insurance premium does not at all match the insurance risk (more on this in future issues of **The Liversidge e-Letter**)

With respect to WSIB Employer Audits

The question: I commented that there are deep rooted, serious problems within the WSIB audit department. Too many audits are wrong and are later adjusted, only after the employer has retained legal counsel. Some of these audits would have had disastrous consequences, if left unchallenged. I suggested that while it is likely the case that most audits are routine and are facilitated without significant problem, where there are problems, there are many instances where there is either a lack of thoroughness on the part of the auditor, or a “black letter” (and unfair) adherence to WSIB policy, without regard for the individual circumstances of the case. It remains my view that this is a problem that is more focused towards smaller establishments, who lack the resources to challenge the Board’s decisions.

The answer: Mr. Mahoney conceded that there may be problems from time to time, and of course, disagreements. However, he noted that it is likely that the cases that come to my attention as counsel are the “problem cases” and may not be representative of the true and complete situation. He did indicate though that the Board may “*come in with both guns blazing*” and on occasion WSIB officials may be a little overzealous. [*ed:* I agree that the cases that come to me are “problems” (that goes without saying), but the point is that most of them shouldn’t be. I will be writing more on this in upcoming issues of **The Liversidge e-Letter**].

With respect to small business:

The question: One participant complained about the impacts of experience rating on the small business and the difficulty with small business interacting with the WSIB.

The answer: Mr. Mahoney again indicated that he would be happy to look into the specifics of the complaint, but acknowledged that this was the first time he has heard complaints about experience rating (*ed.* In future issues of **The Liversidge e-Letter**, I will be writing about some deep-seated and serious adjudicative and administrative problems within the Board’s *Prevention Services Department*. All is not so rosy). However, Mr. Mahoney recognizes the special problems that may impact smaller businesses when dealing with the Board. In fact, he suggested, that smaller businesses do warrant special considerations in their dealings with the Board.

With respect to early and safe return to work

The question: A representative of the temporary placement industry posed a serious of ESRTW questions peculiar to that industry.

The answer: Ms. Jill Hutcheon immediately stepped up to the plate and offered to meet face-to-face with the industry to examine and try to resolve this issues, clear evidence that the Board's outreach style is not limited to Mr. Mahoney. (As an aside, after the town hall meeting, another client approached Ms. Hutcheon directly on a serious issue and a senior level dialogue was immediately arranged, indicative of a "hands on" executive approach).

With respect to occupational disease:

The question: I introduced the question of compensation for occupational disease [readers of **The Liversidge e-Letter** are well aware of my perspectives on occupational disease. My analysis and solutions have been set out in the **June 29, 2004 issue** of **The Liversidge e-Letter**, "**Occupational Disease Advisory Panel Report: An Executive Overview**" and the **September 28, 2004 issue**, "**Occupational Disease Advisory Panel Report - A Recommended Course of Action: Occupational Disease Requires Legislative Reform**"]. I suggested to Mr. Mahoney that at present, notwithstanding the current approach to occupational disease policy development within the Board, occupational disease cannot be, and will not be, fairly compensated. I commented that the problem is a structural one. I asked whether or not the Board will recommend legislative design options to the government.

The answer: Mr. Mahoney noted that obviously the Board must adjudicate the Act as it is currently structured. However, he is not at all opposed to looking at new ways to deal with occupational disease. (*Ed.:* Of course, compensation for occupational disease is a complex subject and "the fix" has eluded the system for well more than a quarter of a century now. I will be writing on this again in future issues of **The Liversidge e-Letter**, but until and unless there is a new social contract constructed to deal with disease cases, one that changes both the funding and adjudicative frameworks, fairness will remain ever elusive).

With respect to the "Mahoney Era":

The question: Several WSIB (and WCB) Chairs have presided over what can be described as distinct and definable eras. For example, Robert Elgie transformed the Board in the mid-1980s to one that heightened worker equity and oversaw dramatic structural changes to workers' compensation administration. Glen Wright re-aligned the purposes of the Board to include a high priority to worker safety, especially young worker safety, while streamlining internal administration and reducing premium rates and the unfunded liability. Mr. Mahoney has come right out of the gate with a continued high emphasis on safety, while ensuring premiums would not increase. I asked: *What do you want to be the Mahoney legacy?*

The answer: Mr. Mahoney expressed his real passion for the organization (the WSIB). He expressed that he had always thought of himself as an "incrementalist" (in other words, pragmatically assessing issues and solutions one step at a time). Now, he views things in a far more visionary

way. He wants the Board to be a fiscally responsible organization while at the same time, he wants to oversee a stark and dramatic drop in the number of on-the-job injuries and deaths. Zero is the goal.

My comments and my words: While not said in these words, I see an intersection between Mr. Mahoney's self-declared past-pragmatic approach and this new visionary style. In fact, his vision has what I can describe as a pragmatic twist – he wants to *share the vision* – he wants his vision to be every employer's, every worker's, every labour leader's, and every business leader's vision. He passionately wants to see every working Ontarian ardently pursue his *road to zero*. He wants on-the-job accidents to be viewed from a new social vista – to be seen as avoidable and needless.

My overall comments:

The *Mahoney Town-Hall* meeting was an unqualified success. I express my sincere thanks to Mr. Mahoney for his candour, his passion and his straight-talk. And, to Jill Hutcheon, Milan Ng, and John Slinger, my sincere thanks for their attendance, participation and openness to address the issues raised in the meeting pro-actively and directly.

Every incoming Chair to the WSIB comes in with a sincere and strong desire to improve the system – to have things better upon leaving that they were upon arriving. This has been true from the very beginning, even with the Chair's from before *the Renaissance* of the 1980s, when success was measured a little differently.

Since the mid-1980s, the WSIB Chair position has dramatically changed - it is more urgent - and there is more to do. The WSIB of 2006 bears only a passing resemblance to the Board of 1976. The job is bigger. The problems are bigger. And, people's expectations are bigger. The WSIB and its stakeholders are more sophisticated. And, there is less time to fix or change anything.

Over the last thirty (30) years, I have seen the Board operate under the stewardship of more than six (6) Chairs (permanent) appointed by five (5) distinct governments. Without question, *every* Chair was determined to improve the system for the benefit of all Ontarians, regardless of personal background or political affiliation. And, every Chair was successful in one way or another.

However, only a few were able to *reform* the way things were done. From my perspective, the difference wasn't administrative or managerial competency, or technical proficiency in the finer details. The difference was *vision*.

Over the last thirty years, the Board leaders with passion and vision leave their imprints on the system to this day. If one thing became clear on November 2nd it is that WSIB Chair Mahoney not only has this passion and is able to articulate a clear and defining vision, but he is able to bring others onside. He is able to lead. It has been said that "*They may forget what you said, but they will never forget how you make them feel*". On November 2nd, Mr. Mahoney made everyone feel involved.