

# The Liversidge e-Letter

An Executive Briefing on Emerging Workplace Safety and Insurance Issues

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3 pages

## *WSI and the “Business Lobby”* The time is ripe for a different approach

**The times have changed: It is time to change methods, not principles.**

**Before 1984: Business was sleeping – Labour issues were in the forefront (and rightly so)**

Before 1984, there was no organized business lobby on workplace safety and insurance (“WSI”) matters. Employer trade associations, for the most part, were not involved except in response to *ad hoc* industry specific issues, with such participation usually reactionary to worker generated public issues, and even then, involvement was muted.

Individual corporate involvement focused principally on regulatory compliance issues (accident reporting, information requests, etc.). For the most part, companies facilitated the day to day administrative burdens in a complacent, compliant fashion.

**Rates were stable (and low) with no unfunded liability**

Rates were stable, the unfunded liability (“UL”) was a term with no external meaning (the Board ran a surplus until 1969 and the UL was not an “issue” until after 1985) and employers had little, if any, variable cost exposure (the only experience rating plan in force [developed in the 1950s] had minimal power and performance based penalty assessments were implemented only in the 1970s). For business, WSI was likely and properly perceived to be a stable and reasonable business insurance cost exposure.

**The appearance of stability was a mirage**

However, this appearance of financial stability was a mirage. Under no circumstances was the scheme stable. Labour discontent, fuelled by a system which, by any benchmark, delivered an inadequate standard of justice, by a hierarchical, autocratic institution, galvanized into a forceful and dominant political juggernaut, powerful enough to seize absolute political control of a pressing social issue.

**Worker inequities drove fundamental reform**

From a 1973 Government Task Force on WCB administration, which radically expanded the Board’s administration resources, to the first Weiler Report (1980) which would dovetail into two massive legislative reforms in 1985 and 1990, changing in absolute terms the legal and administrative framework, labour issues influenced, and then directly manoeuvred, every facet of reform.

This commanding influence was sparked and then fed by a potent and formidable ingredient – being on the side of fairness.

**Before 1990 the system was structurally unfair to workers**

Before 1990, the WSI legal and administrative framework was, by any measurement, systemically unfair to workers. It may require some effort to recall the depth of worker despair from today’s vista. But it was meat chart pensions, a refusal to address disease, an autocratic and paternalistic Board, a strictly in-house appeal and review mechanism, that created true discontent, discontent allowed to ferment for years, until it erupted in a screaming demand for change, change which was delivered with an as yet unmatched political enthusiasm.

**The system began to re-shape itself even before the law was changed**

So powerful were the demands, and in many respects, so principled the cause, this change was begun to be structurally implemented in the early 1980s through a loosening of various entitlement provisions, well before legislative amendments in 1985 and 1990 (which together implemented the slate of Weiler reforms). More and more money was being spent as a means to address a longstanding systemic imbalance (all of this long before the arrival of the Appeals Tribunal).

**The Weiler review became the blueprint for change**

In response to growing worker pressure, unabated if not increased after the 1973 Task Force review, Professor Paul Weiler was commissioned to undertake what would turn out to be the single most influential review since the 1913 Meredith Report [Ontario, Reshaping Workers’ Compensation for Ontario, Paul C. Weiler, November, 1980]. Describing workers’ compensation as “. . . a vast and fractious field” (at 13) “ripe for government action” (at 11), the Weiler recommendations, forged from the flames of 1970s discontent, became the reform blueprint for a massive realignment of the Ontario WSI scheme. Weiler’s ideas, once implemented, served to virtually eliminate systemic worker inequity.

During the Weiler dialogue, the White Paper, and the extensive Standing Committee examination which followed, labour prominence escalated (for one committee hearing in

1983, the Committee actually convened on the front lawn at Queens' Park, the numbers demanding an audience so great). Business participated, but in a traditional, constrained way, but, the real message was properly owned by another constituency.

The issue moved into the mainstream political arena in a massive way, acquiring a political potency previously unseen.

#### **1984: Overnight an employer lobby is created**

The new insatiable financial appetite of the Board eventually and unavoidably came face to face with reality – the piper must be paid. In a strategy which exposed the madness of the times, the Board proposed (demanded) employer assessment rate hikes of almost 40% to take place immediately. And it was that single action – a demand for a huge tax increase that overnight created the impetus for the creation of the Employers' Council on Workers' Compensation ("ECWC), an employer coalition formed to aggressively respond to this unprecedented tax hike.

#### **The first strength of the employer lobby was its very creation**

When the employer lobby first emerged, its strength flowed from its very creation, the establishment of the first coalition of employer associations to focus on workers' compensation. Initially, the issue agenda was small - a single issue in fact - assessment rates, which required only some *ad hoc* funding for actuarial services. The first and urgent issue was successfully tamed, with the establishment of the first Board/Government/Business long-term funding strategy, the core of which survives today.

After that issue, capitalizing on the benefits of organization, the employer lobby began to turn its attention to other WSI issues, but it still remained an unfunded, loose, "volunteer" coalition, with no institutional identity beyond that of its collective membership, although it spoke through the voice of a Chairman.

Within a short period, the principal employer lobby group acquired an institutional presence and dominated the employer advocacy arena, somewhat over-shadowing the participation of its constituent members. The ECWC provided leading edge analysis, opinion and insight into every pressing workers' compensation issue. The quality of the product, and the ability to capitalize on that product determined the relevance of the ECWC.

#### **The employer lobby matures and peaks 1987 – 1997**

After 1987, as a result of the effect of the first phase of the Weiler reforms (WCAT, representative Board of Directors), still within a reform-minded environment, the issue agenda exploded. A virtual renaissance was underway – with everything up for grabs. At the 1993 6<sup>th</sup> ECWC Annual Conference, Jim Yarrow, Chairman, ECWC captured the contemporary atmosphere in this manner:

The Ontario workers' compensation system has been under severe strain beginning with the passage of Bill 101 in 1984 (which created the Workers' Compensation Appeals Tribunal, the Industrial Disease Standards Panel, the representative Board of Directors, and the Offices of

the Worker and Employer Advisor). This was followed by an extensive and aggressive reorganization of the WCB itself, and the dismantling of all of the then existing service delivery programs.

We have seen the advancement of the claims adjudication, vocational rehabilitation, medical rehabilitation, and revenue strategies, with little if any improvement in the ability of the Board to better serve its constituencies. Many in fact would say that the service levels have declined over the last five years, in spite of these numerous initiatives.

The problems facing the system though go far beyond service delivery issues. The sustainability of the system is now suspect. The unfunded liability, one of the key indicators of the financial health of the system, sits at an unprecedented \$11 Billion. The cost for lost time injury has also been steadily increasing. The number of WCB staff has increased significantly, concurrent with the financial difficulties plaguing the Board. The number of cases per staff member has been decreasing. Expenditures have been allowed to spiral ever upwards, to the point where the very sustainability of the Ontario workers' compensation system is now in certain peril. The issue is not one of financing - but - one of management, and it is through the management of the Workers' Compensation Board that the solutions must be immediately implemented.

For its part, not only did Ontario business take its financial obligations to the system seriously, and contributed with the support of this Council, higher assessment rates, but, strong efforts were focused on the prevention of accidents - what was thought then to be the true long term solution to the workers' compensation crisis. Business did its part - quite successfully, and despite an ever expanding definition of accident, accident frequency rates held, and in many industries, a real and powerful decline resulted.

#### **The business lobby became politically influential**

The business lobby became more formal, and acquired the attributes of any organization: structured committees, fee structures, membership classes, etc. Its *raison d'être* was still, at its core, political, stimulated by core business concerns – rising rates or increasing financial exposures.

#### **WSI lobbying is classic self-interest**

WSI lobbying remained an archetypical model of self-interest pursuit, for all sides. This both explains and pardons a variable level of participation. At no time was the employer lobby a disinterested observer, offering comment for reasons of selfless altruism. Position development was persuasive advocacy at its height – certainly scrupulous, but always promoting direct self-interest.

With the election of an NDP Government in 1990, and with either of the opposition parties clearly being a government in waiting, the employer lobby reached its zenith of political activism, successfully redefining the touchstone of WSI reform. It was the business lobby that aided in the development of remarkably similar political platforms from the Liberals and Progressive Conservatives, all the while combating an aggressive front against NDP initiatives.

#### **By the mid-1990s, employer issues dominated, but only because the system was now fairer to workers**

Employer issues began to acquire dominance. The financial sustainability of the system was now the rallying issue, not worker inequity. However, this rise in prominence of taxation concerns must be pragmatically gauged. While not without merit, these issues were allowed to float to the top of the issue agenda only through the absence of compelling and competing worker equity issues. Worker

equity issues will always trump employer cost issues in any social policy field. But, by the early 1990s, legislative reform had eliminated structural worker inequity.

#### **The worker lobby lost the power of rectitude**

The worker lobby, while still organized, had lost the power of rectitude, and this mantle was picked up by business in an environment that accepted testimonials of oppressive cost exposures.

Throughout this time, however, the employer lobby began to splinter. As a consultative process became institutionalized, other groups emerged with a seemingly equivalent participatory capacity. WSI lobbying became commercially relevant and attractive.

Still, the business lobby, while still generally reactive, spearheaded a formidable barrage against tax hikes and was able to successfully link WSIB financial disarray to bad management, bad law, bad policy and bad structure. The Tories were elected, WSI reform was implemented, and coincided with an unprecedented period of economic development.

#### **A war-time machine in a peaceful interlude 1997 – 2002**

Shortly, a new Board was in place, empowered with a new Act, in the presence of a new economic vitality and a tired and worn policy advocacy constituency. Change became quieter, in both execution and impact. The Board, for the most part, stopped consulting, and no one seemed to mind (it has only recently again picked up the consultation mantle). The period of protest had expired, likely through a combination of record employment levels, ever declining premium rates, a curtailed unfunded liability, and a waning will in all quarters.

#### **WSI drops off the radar screen**

The Board, for its part, focused on internal issues and reorganized itself, again. The appetite for major policy initiatives faded and by the end of the decade, WSI had to all intents and purposes, dropped off the radar screen. The Board focused on issues hard pressed to attract controversy or cultivate dissent (safety, fraud, etc.). It became apparent that a disability insurance scheme that measured benefits based on post-injury earnings impairment, functioning in a full-employment economy, was not all that tough a nut to crack.

#### **Employer lobby becomes a latent force**

The employer lobby, now being advanced through several disassociated and disconnected groups, by the end of the decade responded in a manner not at all inconsistent with its organizing spirit of self-interest – it became a latent force, and understandably so. The aggressive model of interaction so successfully unleashed in the past, simply was no longer needed.

#### **The present need**

It is clear that today's need has evolved and is different from yesterday's. Employers, as a class, are not, nor perceived to be, an aggrieved group. The upper reaches of the Board's hierarchy is structured in a manner which

consolidates high level decision making power within the walls of the Board in a manner unimaginable since the late 1960s, with a partisan political adjunct. External political action, a mature skill of the business lobby, is ineffective and self-defeating. Whether this is positive or not need not be debated – it is the reality of the moment.

#### **Today's needs have evolved: Time changed**

The atrophy of the business lobby is a reasonable organic response to a new reality, and is simple evidence that things have changed. Today's needs are different.

Firstly, what is not required today, is an organized, aggressive political action force, able to first inform and then mobilize a broad business and political constituency.

However, as quiet as things may appear to be, they are far from perfect. A centralization of administrative power has historically been largely responsible for deep, long-lasting and far reaching structural problems, often being responsible for today's smouldering embers to ignite into tomorrow's inferno.

However, through today's structure, extraordinary advancement may take place, providing the appropriate method is used.

Today's need is more aligned to providing thoughtful leading edge legal and policy analysis, presented in a more balanced style and a form which captures all positions.

In short, recognizing the implicit irony, the most effective manner to promote today's self-interest is through disinterested position development.

#### **The development of new quality ideas advances the business interests (along with everyone else's)**

The presentation of quality ideas, able to bear up to intelligent scrutiny, not constituency strength, is the means to today's influence and securing a legitimate partnership between the Board and business.

#### **Old style lobbying no longer effective**

There is no need for business to mobilize as a lobbying group *per se*, but instead as a source for idea development. The new *raison d'être* would necessitate that the "business vision" be at the vanguard of idea innovation, presenting commentary from an equal perspective as that of the Board and Government itself.

The approaches to be taken for idea development are limitless. At the very least, business leaders could limit themselves to being the focal point for informed discussion, to allow for a debate of competing viewpoints. At the very most, business could mobilize a dynamic, funded "think-tank", publishing position papers for the consumption of a broad and diverse constituency.

#### **It is time to redefine**

In short, while a need still exists for an employer lobby, it is time for it to be redefined from an advocacy based lobby force to a source for dynamic intellectual thought.