

The Liversidge e-Letter

An Executive Briefing on Emerging Workplace Safety and Insurance Issues

April 12, 2007

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

2 pages

WSIB Commits to Reinstate Voluntary Registration Program

Why this is an essential move to restore fairness

On March 1st, WSIB Chair, The Hon. S. Mahoney, commits to reinstate the WSIB Voluntary Registration Program

As I reported in the March 12, 2007 issue of *The Liversidge e-Letter* ["Standing Committee on Government Agencies, What the critics said about the WSIB: A mix of knocks & praise"], the WSIB Chair directly committed to reinstate the WSIB Voluntary Registration Program ["VRP"].

When I appeared before the *Standing Committee on Government Agencies* ["the *Standing Committee*"] on February 27, 2007, this is what I said:

Of late, the board has been eager to promote a joint initiative between the WSIB and the Canada Revenue Agency, CRA, to ensure increased employer compliance, **and nobody can quarrel with that objective**. Employers who do not pay their premiums should be found out and duly assessed. While this initiative ought to continue unabated, the board in my view foolishly abandoned a program called the **voluntary registration program**, which allowed for fairer treatment of non-compliant employers who voluntarily come forward.

As a result, and as I explained in a recent senior communication to the board, "*those employers that voluntarily come forward and those that wait to be found out are treated exactly the same way.*" This is, quite frankly, ridiculous.

Employers who voluntarily come forward should be treated better than those who wait to be found out. That's not just simple justice, although it is; that is also prudent WSIB administration.

As reported in the March 12th issue of *The Liversidge e-Letter*, the WSIB has accepted this suggestion. When he appeared before the *Standing Committee* again on March 1st, WSIB Chair Mahoney said this:

As was suggested on Tuesday by one of the deputants, **we will be reinstating the voluntary registration program** to give employers who continue to avoid the system the opportunity to come forward before we identify them through other means.

I credited: "... ***Mr. Mahoney's leadership and empathy for the special challenges facing Ontario's smaller businesses***" for the VRP reinstatement. (*continued, p. 2*)

L. A. Liversidge Executive Seminar Series

A Hands On Experience Rating Executive Briefing

is scheduled for:

May 16, 2007

9:30 A.M. - 12:30 P.M.

The Snakes and Ladders of NEER

Experience rating is a powerful management tool that allows management to "price a problem and price a solution". But – NEER only works as a decision-making tool if business managers understand and use the NEER mathematics to adopt a business case approach. Without this, NEER is nothing more than an elaborate (and impossible to understand) report card.

Ask yourself these basic questions: *Do you understand how NEER works? Do you know how the Board calculates expected future costs? Overheads? Can you do these calculations? Can you present a business case for management intervention and resource allocation?* If you answered "NO" to any of these questions, you are not using the power of NEER.

In a straight forward method that you can apply right away, you will be taught you how to use NEER as a powerful tool.

Invitations will be e-mailed

The policy reasons for the reinstatement of the VRP
Why this is an essential move to restore fairness

While the VRP will not impact any company that is subject to mandatory coverage and is properly registered with the WSIB (which includes every recipient of this e-Letter), the fairness *principles* are portable to other, if not all, WSIB revenue related transactions and interactions.

Fairness is fairness, and the essence of the VRP is fairness. **So, with Mr. Mahoney's announcement, I do not think it would be a stretch to suggest that we are entering a new era of employer fairness when it comes to the business end of the board's business. Time will tell (and so will I).**

VRP commenced in June 2001

In June 2001, the WSIB announced the creation of the VRP, designed to persuade employers not registered with the WSIB to *voluntarily* register. The VRP offered an inducement to register: *a reduction in the financial and prosecutorial risks associated with non-registration.*

Employers voluntarily registering got a break in back WSIB taxes

Employers voluntarily registering would only have to pay premiums from January 1st of the year registering, and avoided an additional two years of retrospective premium levies. *For the record, I never agreed with any retro-reach, and remain of the view that the VRP should be entirely prospective. The reasons are obvious:* A company using the VRP in January is assessed no retro- premiums, whereas the company using the VRP in December will be assessed back to January of that year. So, what will the company do? – wait a few weeks and register in the upcoming January! The VRP is fairer and makes more sense with no retro-reach.

Employers voluntarily registering avoided the risk of WSIB prosecution

In addition, the VRP registrant would avoid the risk of prosecution by the WSIB [upon conviction, *individuals* face fines up to \$25,000 and imprisonment not exceeding six (6) months, and *corporations* fines up to \$100,000 [*Workplace Safety & Insurance Act* (“WSIA”), s. 158].

While the program was initially intended to run for approximately six months, it actually ran from 2001 to March 31, 2003 and then suddenly stopped (no doubt, as a precursor of the next year's (2004) WSIB/CRA agreement). This was a mistake. Nonetheless, recent WSIB initiatives warrant its revitalization as a permanent program.

WSIB & CRA information sharing agreement

The Canada Revenue Agency [“CRA”] has the power under the *Income Tax Act* [s. 241(4)] to disclose taxpayer information to provincial bodies. The WSIB has a similar power pursuant to s.159(9) of the WSIA.

In 2004, the WSIB and the CRA entered into an information sharing agreement whereby the CRA would provide information to the WSIB to assist in identifying non-registered employers. Recently, this WSIB/CRA joint initiative was reaffirmed in a WSIB/CRA *Memorandum of Understanding* (as explained in a widely distributed letter of

June 30, 2006, “*Continued Cooperation of the CRA and WSIB on Exchange of Business Information*”).

These initiatives are supportable – but – will needlessly create an adversarial WSIB/employer environment if that's all there is

While initiatives such as this are supportable and attempt to ensure general compliance, an exclusive reliance on this process ensures that the Board will, for the most part, be acting in a real or perceived adversarial relationship with non-compliant employers.

One cannot quarrel with the effort to reach 100% employer compliance. But, reliance on the WSIB/CRA Agreement as the principal means to identify “non-compliant” employers brings its own set of problems.

Such an approach limits the exercise of discretion and does not take into account the multitude of *innocent reasons* an individual employer may find itself out of compliance.

Many companies may *inadvertently* not register with the WSIB, while their small business is growing. Many small businesses often start with self-employed entrepreneurs who do not initially have a legal requirement to register with the WSIB, which does not crystallize *until employment relationships are entered into.* In some industries (trucking is one good example), it often is unclear when such relationships begin, and whether or not an employer/employee relationship exists at all. Often, when it is realized that a company should have been reporting to the Board, a sizeable (and surprise) liability materializes.

Fear of prosecution and extensive penalties, heavy back taxes, and interest charges, may deter such companies from voluntarily coming forward.

Under the VRP, an employer who was not registered and voluntarily contacted the WSIB to register, was not charged premiums due from previous years, nor did the Board pursue penalty or interest charges or other offences.

Under the VRP, there was a distinction between employers who voluntarily came forward and those who did not voluntarily come forward. **Without the VRP, no such distinction exists.**

Under current WSIB operational policy, a company which voluntarily comes forward and cooperates with the WSIB, will be charged premiums for the current year and two previous years. **Under current WSIB operational policy, a company which does not voluntarily come forward**, but is “found out” by the WSIB and once contacted cooperates with the WSIB, will be charged premiums for the current year plus two previous years. **Exactly the same! This is wrong.** Pure and simple. And, the Board's Chair clearly agrees.

As the details get worked out (*the devil is always in the details*) I will return to this subject in future issues of **The Liversidge e-Letter**. I have recently written to the Board to ask about those details. I suspect that it will take a bit of time for the Board to work them out and formerly re-introduce this important policy. **Stay tuned.**