

The Liversidge e-Letter

An Executive Briefing on Emerging Workplace Safety and Insurance Issues

February 6, 2007

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

2 pages

Early and Safe Return to Work Policy Revision

Final Comment (for now)

WSIB now says objective is to reduce long-term claim duration

My Opinion: New policies will miss that mark

**WSIB finally admits ESRTW a success
& reasons for claim duration unknown**

My advice: Stop “tilting at windmills”

Slay the real giants!

In the October 27, 2006 issue of *The Liversidge e-Letter*, “WSIB Releases Revised Draft Policies on Early and Safe Return to Work, Closer – but – still no cigar!” I continued the dialogue on the Board’s ill-fated efforts to needlessly re-write early and safe return to work [“ESRTW”] policies. Readers will recall that the Board released a series of “revised” policies in October, 2006, replacing an earlier batch released almost exactly a year earlier.

I argued in the January 19 and 23, 2006 issues of *The Liversidge e-Letter*, “WSIB Releases Draft Policies on Early and Safe Return to Work: *The Board Should Re-Group; Re-Think and Re-Draft*”, that the first batch of ESRTW policies were ill-conceived. *No kudos to the Board for those*. I called for the Board to pull them back and re-think the entire approach, and as I reported earlier, the Board did just that. While I commended the Board for this retrenchment and commented that overall the *new* policies were vastly superior to the first batch (and went so far as to award the *Palm d’Or* to the Board!), I questioned the need for any policy change at all! I still do.

When the Board released the impugned and now reworked October 2005 drafts, I could not see that any serious policy problem was identified. Those policies seemed to be a “*a solution looking for a problem*”. They still are. While I am all for continuous improvement and policy refinement *when needed*, the new policies still do not identify any serious deficiencies with the current policies and do not focus on a true policy problem.

Not only is ESRTW successful, it has evolved from concept, to practice, to law, to policy, to where it now sits – as part of the cultural fabric of Ontario workplaces. *What could be a better outcome than that?* [continued page 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 ability, 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 and easy to understand 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 ESRTW policies lack purpose

As readers of *The Liversidge e-Letter* are well aware, I have been very critical of the Board, not for its efforts to seek continuous and incremental improvement (if that was what it is doing), but for the absence of a definable and real policy objective.

The WSIB now says what it wants to achieve

Until recently that is. Just before Christmas, senior WSIB policy officials finally let the cat out of the bag and explained why the Board was doing all of this in the first place. Better late than never. WSIB officials recently agreed that ESRTW has been a tremendous success in Ontario, and concede that Ontario business has, overall, accepted the challenge to promote and practice ESRTW in the workplace. OK – good.

The problem is long-term cases

But, the Board notes that there is a very serious problem with long-term cases. In spite of ESRTW, overall time on claim is increasing, not decreasing. I agree completely that this is a significant and serious concern, and one that the Board has been discussing for some time (*refer to the Board's presentations released during the Spring, 2005 consultation exercises*).

WSIB is tagging ESRTW to increases in long-term cases

So, what we have now is the Board tagging the ESRTW policy revisions to an appropriate, real and pressing policy problem – increasing time on claim. The Board is now properly presenting a policy problem, and recommending a policy solution. So, a good step forward? *Well...* actually, not so much.

ESRTW policy changes will do nothing to reduce long-term claims

The fact is that the ESRTW policy revisions will do nothing to solve the long-term claim problem. Simple common sense and logic tells us that. First of all, ESRTW has been a resounding success. I have been asserting this for some time and now the Board finally concedes this point. Second, other than the inclusion of employer fines, the revamped ESRTW policies are effectively little more than a reworking of existing policies. Nothing *really* is changing [*refer to my analysis set out in October 27, 2006 issue of The Liversidge e-Letter, "WSIB Releases Revised Draft Policies on ESRTW, Closer – but – still no cigar!"*]. So, this means that with the exception of the adoption of employer fines, the new ESRTW policies are really no more than a tweaking of the *status quo* policies.

The revamped policies, for the most part, affirm current practices

Don't get me wrong - other than the employer penalties (which will add nothing to the long-term claim problem), I do not harbour any strong disagreement with the revamped policies. They are, if *anything*, *a clear affirmation of the current ESRTW approach*. Kudos to the Board for that. But, to suggest that the objective is to reduce long-term cases is disingenuous. They won't. They can't.

The WSIB revamped policies won't fix the long-term claim problem

The Board's approach reminds me of this old story: Upon leaving work late one evening, a worker notices a co-worker on his hands and knees in the parking lot under a bright streetlight, obviously desperately searching for something. "*What are you looking for?*", asks Worker No. 1. "*My keys*", replies Worker No. 2. "*OK, I'll help*", Worker No. 1 kindly offers, "*Drop them around here, did you?*". "*No*", says Worker No. 2, "*Over there*" he says pointing to a dark and unlit area of the parking lot 30 feet away. "*Why in the world then are you looking here?*", queries Worker No. 1. "*Because there is no light over there!*", retorts Worker No. 2 indignantly.

The Board has to shine some light on the real problem

There is no question that the Board "*is looking for its keys*" (the "fix" to the long-term claim problem) "*under the streetlight*". ***But, it won't find the solution there!*** The Board is looking for an easy answer to a hard problem. What likely is a deep-rooted, multi-faceted problem has very little, if anything, to do with ESRTW. The Board must begin to look where it has a chance to find a solution. And, that is not through a needless revamp of one of the biggest WSIB success stories – ESRTW!

The Board must define the real problem and seek the real solution

ESRTW will not fix long-term claim issues, which are not at all linked to deficiencies in ESRTW practices, but more likely tied to the *Workplace Safety and Insurance Act*, ["WSIA"] itself (deeming [WSIA, s. 43(4)] and the 72 month benefit "lock-in" [WSIA, s. 44(2)]), WSIB administrative and claims management practices, and the Labour Market Re-entry program ["LMR"].

I will be touching on all of these points in future issues of *The Liversidge e-Letter*, but what is clear at this juncture is that *the Board does not know why long-term cases are on the incline*. This is particularly perplexing because ESRTW has been such a remarkable success.

The Board must first find out why time on claim is increasing before any changes are proffered

Rather than needless policy reform that has little chance of success, the Board should be devoting its resources to real problem solving and find out why time on claim is on the rise for longer term cases - and - fix *that* problem.

The real problem is multi-faceted and deep-rooted

My informed sense is that the problem is multi-faceted, deep-rooted, complex and not very easily resolved. The solution may very well require a change in the law, most assuredly a change in the Board's approaches and practices, and quite likely a complete re-vamping and re-tooling of major WSIB programs (such as LMR). The Board recently admits that it does not know the answer, and concedes that a major study would be required to get to the root causes.

Hard problems generally require hard solutions

If a major study is required, my advice is ever so simple - ***Do the study!*** Stop this Quixotic quest of "*tilting at windmills*" – the giants the Board seeks to slay are as yet undiscovered. ***Seek them out.***