

The Liversidge e-Letter

An Executive Briefing on Emerging Workplace Safety and Insurance Issues

November 16, 2009

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

2 pages

A Plan for Change

Reform of the Ontario WSIB (Part I of III)

The Case for a Large Scale Review of the Ontario WSIB: A Summary

Ontario: Injuries down, Benefits up

In the first instalment of “*The Case for a Large Scale Review of the Ontario WSIB*” (November 2, 2009), I argued that while the “*global financial crisis*” was impacting the Board’s finances, the system was in trouble long before. I suggested that the real problem was pretty basic – *benefits are up and injury rates are down*. I noted that 2003 was a key year – a year when the average cost per lost time injury [“LTI”] started to skyrocket.

Ontario vs. B.C. and Alberta: Fewer LTIs, lower benefit rates, higher premiums, much lower funding level

In the second instalment November 5, 2009, I noted that while Ontario has fewer LTIs than B.C. and Alberta combined and, while Ontario’s LTI rate is half of B.C.’s and 23% lower than Alberta’s (and getting better), Ontario still has higher employer premiums (by far), a poorer funding level (by far), and benefits regularly exceed revenues.

Ontario: Injured workers stay on claim longer

In the third instalment November 9, 2009, I showed that Ontario injured workers stay on claim longer, and that the number of workers still receiving wage-loss benefits six (6) years post-injury is on the rise.

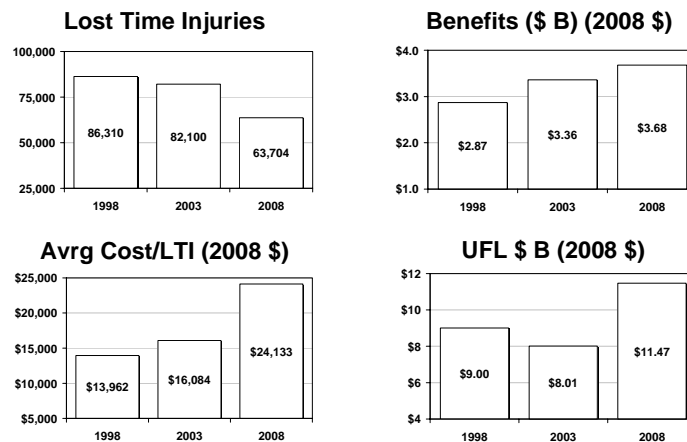
Ontario: High administration cost per LTI

Ontario’s administration costs per lost-time injury [“LTI”] is higher than every Canadian province and more than double that of B.C.’s (2007: Ontario - \$7,300 admin costs per LTI; B.C. - \$3,621).

Ontario: WSIB employees per 1,000 LTIs on the upswing

I noted that in 1988 the WSIB employed 23 people for every 1,000 LTIs. By 1998 it was 47. By 2003, 52. But, by 2007, it had jumped to an all time high of 70 WSIB employees per 1,000 LTIs. I noted that the Ontario WSIB was staffed by the most dedicated, committed and hard working groups of public servants one would find everywhere. One of the challenges facing the system is not a lack of high quality, professional employees.

The thumbnail case for reform



LTIs Down; Benefits Up; Cost/LTI Up; UFL Up

These four charts show quite succinctly that there is a big problem requiring a big solution. *LTIs are down*. This is a permanent trend going back to the 1980s (see the November 2, 2009 issue, **The Case for Reform Part I, Figure 1**). Reducing LTIs must remain a priority which are *first and foremost* about human suffering and loss, not money. However, a continued reduction in LTIs will not be enough to solve the system’s financial problems. *Benefits are up*, even though the number of LTIs and the rate of LTI are way down. *LTIs cost more*. While fairly constant 1998 to 2002, the average cost of each LTI is up 72% 2002 to 2008, from \$14,016 to \$24,133 (in constant 2008 \$). *The UFL is up*. Even though I never believed the Board’s boast two years ago that it had “*turned the financial corner*” [2006 WSIB Annual Report (released Summer 2007)], even if the Board’s investments improve (which they eventually will), the UFL will still be a pressing concern. *More injured workers are staying on claim longer*. That seems to be the essence of the problem. **So, where is the road out of this?**

If it’s not the **Road to Zero**, just where is the road out of this? Let me say this – it will be a *long and winding road* to reform the Ontario workplace safety and insurance [“WSI”] system. *There is no quick fix*.

The “Mahoney Report” at best will just be a start

The *Mahoney Report* will be a good start. As I have been saying for months, don't expect a cry of *Eureka!* with the release of the *Mahoney Report*. This is the best I expect:

First, recognize that the Ontario WSIB is at a critical cross-roads. Acknowledge the need for change.

Second, admit that while a goal of LTI reduction remains a core focus, that's not the fix. The primary problem is more Ontario injured workers staying on claim longer.

Third, pick the low hanging fruit first. *And, quickly*. There are several moves the Board can make that won't require major restructuring, and that will add a lot to the system's *capacity* to change. More on that next issue.

Fourth, recommend the major reform processes that will ensure a vibrant and ongoing reform mechanism finally forms part of the WSI landscape. Again, more on that later. As long-time readers of *The Liversidge e-Letter* know, for years I have quarrelled with the “*feast or famine*” approach to WSI reform. There are few mechanisms in place for ongoing incremental change and system evolution.

Fifth, get the funding and sustainability dialogue going right now. I first suggested this as a critical first step a year ago. **Yes, a year ago**. In the November 21, 2008 issue of *The Liversidge e-Letter*, “**WSIB Funding Crisis: Everything Old is New Again**” I said this:

The WSIB must organize an urgent Funding Summit

By no later than mid-January, 2009, the WSIB should facilitate an urgent funding summit with Ontario's business leaders and senior government officials, to develop a new long-term funding strategy - a newly conceived 20 or 30 year plan.

Without a funding summit with Ontario business, no plans can proceed. ***A new funding accord is the lynchpin***. While delayed, I expect it to get on track early next month.

The push for change is not an indictment against the incumbent leadership

I don't want to seem too much of an “*apple polisher*” here, but the problems the WSIB is currently facing is not about the facility of the current leadership. The Board is in competent, dedicated hands. It is about the need for *new* processes to seek out *new* ideas, to consider *new* innovative ways to incrementally improve. *It is about a new way*.

OK, so where should the reform plans start?

Before I set out my views as to where the reform process should start, let me just point out where it shouldn't go.

The level of benefits should not be touched

Currently, the WSIB compensates workers at “85 per cent of the difference between the worker's net average earnings before the injury the net average earnings that (the worker) is able to earn in suitable and available employment or business after the injury [Workplace Safety and Insurance Act [“WSIA”], s. 43 (2)]. ***This must remain***.

Whatever reforms eventually flow, the wage replacement level of 85% should not be touched. It is reasonable, fair and itself a compromise. More to the point, this along with a

few other “untouchables” should be clearly declared so there are no misunderstandings.

The current inflationary protections should stay

The so-called “*modified Friedland formula*” [WSIA, s. 49(1)] should stay (inflationary adjustments for less than 100% benefits: (50% of CPI) -1, but adjustments not to be less than 0% and not more than 4%). 100% wage loss benefits receive full inflationary protection and that should remain [WSIA, s. 50]. I even have no quarrel with the special “*temporary indexing factor*” [WSIA, s. 52.1] which arose from the 2007 “**Budget Reforms**” so long as the government sets out clear guidelines and rules as to how that discretion will be exercised and so long as the system is able to afford it. An unfettered discretion is untenable and adds uncertainty. Refer to the discussion in the September 12, 2007 issue of *The Liversidge e-Letter*, where I said this:

Full indexing is very supportable

Full benefit indexing *is* a good idea. Worker benefits should not be eroded over time by inflation. **But, indexing must be responsible, and achieved in a way that does not risk pushing the Ontario WSI system back into yesterday's malaise, where expedient political decisions to increase benefits without the requisite funding almost bankrupted the system.**

More on what the guidelines and “rules” should be in future issues. In short, they must stick to those principles.

A multi-faceted comprehensive approach to reform

I propose what I will call a “*circle of change*” for want of a better descriptor, which should prove be an adaptive, vibrant, multi-faceted approach to immediate and perpetual reform. Over the next two issues of *The Liversidge e-Letter* I will set out some details of my suggestions, some of which have been published before in these pages. I have often suggested that the price of admission to be a critic is the offering of doable solutions. These are mine.

Circle of Change