

# The Liversidge e-Letter

An Executive Briefing on Emerging Workplace Safety and Insurance Issues

November 15, 2007

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

4 pages

## “Voluntary Registration Program”

*Allow employers partially in compliance the same protections as those not even registered with the WSIB*

While the return of the “*Voluntary Registration Program*” is positive (and reflects WSIB Chair Mahoney’s commitment to a fairer way for small business) a few changes are needed

*The VRP can and should be more*

### The Voluntary Registration Program while an improvement, still needs some tweaking

I argued in the November 5, 2007 issue of *The Liversidge e-Letter* that “*the VRP is a step forward – but not the “full step” it could and should have been*”.

### Nonetheless, the VRP is a positive step forward

I want it to be clearly understood, that the introduction of the *Voluntary Registration Program* [“VRP”] is a very positive move. *On several fronts.* (I just think that it can and should be better.)

### Before the VRP, the voluntary and non-voluntary employer were treated exactly the same

Before the VRP, the non-compliant employer that voluntarily came in out of the cold was treated exactly the same as the company that just waited to be found out. *That was unfair. Simple justice demanded change.*

Moreover, this worked against the overall system interest of encouraging non-compliant employers to voluntarily come forward. Before the VRP, an employer’s “best case” was identical to the employer’s “worse case”. *Hardly an inducement.* The VRP is a huge advancement in employer fairness.

The re-introduction of the VRP (as I mentioned in the November 5<sup>th</sup> issue, it was former WSIB Chair Glen Wright who initially spearheaded the VRP several years ago, but it was later cancelled) sends some encouraging signals.

### The VRP signals a renewed interest in employer fairness – especially for smaller businesses

At a minimum, it suggests a renewed and sincere commitment to the interests of smaller business. All-in-all, this is not surprising noting the very strong gestures from current WSIB Chair Mahoney since his appointment about 18 months ago. (*continued page 2*)

L. A. Liversidge Executive Seminar Series  
*November 21, 2007*

In the morning:

*WSIB Policy & Reform Conference*

### Get the *BOTTOM LINE* on the top issues:

Impact of the Budget Reforms

The future of experience rating

Future reforms: the next four years

How can the WSIB treat employers more fairly?

What changes do YOU want?

In the afternoon:

*A Hands-On Experience Rating Executive Briefing*

*The Snakes and Ladders of NEER*

*⌘ 4 spaces left for morning policy session*

*⌘ 2 spaces left for afternoon NEER session*

*Morning program: Sign-up form page 3*

*Afternoon program: Sign-up form page 4*

### One of WSIB Chair's initial commitments was towards small business – a fairer deal

One of his first commitments right out of the gate after being appointed was a fairer deal for smaller businesses.

Exactly a year ago today, in the November 15, 2006 issue of *The Liversidge e-Letter*, “*Report on Town Hall Meeting with WSIB Chair; Mahoney Hits a Home Run!*”, I said this:

**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.**

### The VRP shows that the Chair is backing up that commitment with real action

While there is a lot more improvement needed with respect to “*the business end of the Board's business*” (and I will be writing extensively about many of the still existing deep-seated problems facing smaller employers in upcoming issues of *The Liversidge e-Letter*), the VRP is an encouraging signal. It is a sign the Board is moving in the right direction, and is not averse to pursuing ongoing improvement.

### That said, the VRP is still a shadow of what it could and should have been

So as to not get too carried away as a cheerleader here, let me say that while the VRP is an improvement, as currently structured, it is far less than what it should be.

### There are two fundamental flaws in the VRP – both easily fixed

There are two fundamental flaws which in my view undermine the very objectives being sought by the Board. Notwithstanding that the VRP is certainly an improvement, two very small and reasonable refinements, I respectively suggest, will be in the mutual interest of the WSIB and small business. (For the details on the workings on the VRP, please see the November 5, 2007 issue of *The Liversidge e-Letter*, “*WSIB reinstates Voluntary Registration Program*”.)

### Suggested Refinement Number One: Abandon the “current year plus one” approach

After April 1, 2008, the VRP will have a retroactive reach of past assessments for the voluntarily complying employer amounting to the premiums for current year (the year the employer comes forward) *plus* the previous year.

As I discussed at length in the November 5<sup>th</sup> issue, the Board would be well advised to abandon this “*current year plus one*” approach. I won't repeat the entire argument, but as I explained, this actually will encourage certain employers to wait to comply.

As presently written, the VRP will discourage the non-compliant employer from coming forward, say at this time of year. As an illustration, if an employer comes forward at the end of November, the employer will be assessed approximately 23 months in premiums (11 months for the year coming forward and 12 months for the previous year).

### In some instances, if a non-compliant employer waits, the employer gets a better deal

But, if that employer instead chooses to delay compliance for a few months and comes forward in early January instead, the employer will be assessed a few days premiums (current year) plus 12 months premiums (1 previous year). A much better deal. Yes. But does it make sense? Not at all. ***The objective being sought is employer compliance.***

**Period.** The whole purpose of the VRP is to encourage non-compliant employers to come forward, not to encourage them to determine the most opportune time to come forward.

### A better way: A three month retro reach

My suggestion for a blanket three (3) month retroactive reach I think makes imminent sense, is easy to understand and administer, and most importantly, promotes the very objective being sought. *Compliance.*

### Suggested Refinement Number Two: Apply the VRP principles to partially compliant employers

The principles of the VRP only apply to non-registered employers. An employer that has been registered but is only partially in compliance is outside the scope of the VRP.

***This makes little sense.***

That class of employers should have the opportunity to come forward and “clean up their record” in the same way as the fully non-compliant employer. ***Frankly, it simply sends the wrong message when an employer that is not in compliance at all gets a better deal than an employer that is partially in compliance.***

### A true life example

*Consider this:*

- An employer in the transportation sector has duly registered with the Ontario WSIB according to the rules.
- That employer engages transportation owner/operators and has been of the view that those owner/operators are “independent operators” (as understood in the terms of the Workplace Safety and Insurance Act and WSIB policy).
- However, contrary to Board policy, the appropriate questionnaires have not been completed or submitted to the WSIB.
- The employer is now worried that the Board may in fact eventually hold a different view as to the status of the owner/operators (i.e., conclude that they are indeed “workers” and not “independent operators”)

***That employer is reticent to complete the questionnaires for fear of triggering a retrospective assessment (current year plus two years plus interest plus penalties – the same penalty if the employer just waits to be found out).***

Yet, an employer in the exact same circumstances ***except not registered at all*** is given a better deal than the employer that innocently has found itself out of strict compliance.

I encourage the Board to “fine tune” the VRP program to take into account these two ideas and make the VRP the “giant step” forward that it could and should have been.

***Upcoming issues of The Liversidge e-Letter: Anatomy of a WSIB Audit, followed by, A WSIB Classification Horror Story, and then “I am from the Board and I am here to help”.***

With a *fresh governing mandate* expect workplace safety & insurance issues to continue to receive attention over the next four years

As part of our *Executive Seminar* policy series L.A. Liversidge is holding a special

# WSIB Policy & Reform Conference

November 21, 2007 9:30 A.M. – 12:00 P.M.  
Centre for Health & Safety Innovation  
5110 Creekbank Road, Mississauga

As a valued client and colleague, **YOU ARE INVITED**  
*Change is inevitable – You can watch it happen, or you can make it happen!*

### Get the **BOTTOM LINE** on the top issues:

- The impact of the Budget Reforms: *Are there alternatives to premium rate hikes?*
- Experience Rating: *Does experience rating have a future?*
- The future reform agenda: *What can you expect over the next four years?*
- Business end of the Board’s business: *How can employers be more fairly treated?*
- Your issues: *What changes do YOU want?*

E-mail, Fax or mail your registration: **Register NOW.** There are *very limited spaces*  
50 Acadia Avenue, Suite 101, Markham, Ontario L3R 0B3 Tel 905-477-2039 Fax 905-477-4659 email [lal@laliversidge.com](mailto:lal@laliversidge.com)

Company: \_\_\_\_\_  
 Address: \_\_\_\_\_ City: \_\_\_\_\_ Postal Code: \_\_\_\_\_  
 Tel # \_\_\_\_\_ E-mail: \_\_\_\_\_ Fax: \_\_\_\_\_

As a valued client and colleague, you may bring up to three (3) people from your organization:

**Names of Participants:**

1. \_\_\_\_\_
2. \_\_\_\_\_
3. \_\_\_\_\_



In response to client requests, we are again offering:

**A Hands On Experience Rating Executive Briefing  
The *Snakes and Ladders* of NEER**

is scheduled for:

**November 21, 2007 1:45 P.M. – 4:45 P.M.**

**Centre for Health & Safety Innovation**

**5110 Creekbank Road, Mississauga**

**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?

Do you know how to determine the cost-effectiveness of a return to work plan? Can you determine the investment return of RTW expenditures? Do you know if it is cost-effective to even ask for Second Injury Fund relief? Can you calculate the cash impact of a WSIB decision? Can you present a business case for management intervention and resource allocation? Do you understand the impact of claim limits? Of firm limits?

If you answered “NO” to any of these questions, you are not using the power of NEER.

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

**In a straight forward and easy to understand method that you can apply right away, I will teach you how to use NEER as a powerful tool. You can’t afford to miss this.**

**E-mail, Fax or mail your registration: There are only 20 spaces available**

50 Acadia Avenue, Suite 101, Markham, Ontario L3R 0B3 Tel 905-477-2039 Fax 905-477-4659 email lal@laliversidge.com

Company: \_\_\_\_\_  
 Address: \_\_\_\_\_ City: \_\_\_\_\_ Postal Code: \_\_\_\_\_  
 Tel # \_\_\_\_\_ E-mail: \_\_\_\_\_ Fax: \_\_\_\_\_  
 Register me, Cheque Mailed (must be received by November 12)  Register me, Cheque Enclosed  
 GST registration #86587 5215 RT001 Cheque payable to: L.A. Liversidge, LL.B. Professional Corporation

Pay by Visa Credit Card # \_\_\_\_\_ Exp: : \_\_\_\_\_  
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**Registration Fee** [note multi-participant discount]  
 First Participant at \$375 = \$375  
 Subsequent Participants: at \$125 each \_\_\_\_\_  
 Total Registration fees: \_\_\_\_\_  
 Plus 6% GST: \_\_\_\_\_  
 Total Amount: \_\_\_\_\_

**Names of Participants:**

1. \_\_\_\_\_  
 2. \_\_\_\_\_  
 3. \_\_\_\_\_

