

The Liversidge e-Letter

An Executive Briefing on Emerging Workplace Safety and Insurance Issues

October 9, 2007

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

3 pages

The WSI “Budget Reforms”

How the reforms should have been developed

What can now be done to restore accountability

**The Budget Reforms spark need
for endless politicking**

Workers must go “cap in hand” each year

Employers lose premium predictability

There is a better way!

The Budget Reforms spawn perpetual politicking

Among other things, the *Budget Reforms* vest in Cabinet the authority to override the “general index factor” (the so-called “modified Friedland formula”) [$\frac{1}{2}$ of the change in the CPI (Consumer Price Index) *minus* 1] with a higher “temporary indexing factor” [*Workplace Safety & Insurance Act*, (“WSIA”), s. 52.1]. No approval from the legislature is needed. And, as I reported in the September 14, 2007 issue of *The Liversidge e-Letter*, in a recent legislative committee meeting a government member suggested that workers should appreciate the new approach:

So, ideally, the next time you (worker groups) have to be back here in that regard it would be to lobby a government, whoever it might be, to make those changes but not necessarily to have to lobby them from the standpoint of creating legislative change, which is obviously always more cumbersome and difficult than being *able to lobby a government through its effective ministers in cabinet to make appropriate changes*. [Hansard, April 26, 2007, page F-1104].

On September 14th, I argued that this usurps ongoing legislative involvement, and leaves the matter in the exclusive hands of the Executive Council. *This is wrong*.

This undermines worker dignity

Setting up a system that requires workers to petition the government of the day every year *is in my opinion simply undignified*. The government will appear benevolent, all the while being unwilling to give something as a matter of right. There is no sound policy argument for this approach. *This is wrong*.

Employers lose premium predictability

Equally troubling, employers who after all remain the exclusive funders of the Ontario workplace safety and insurance [“WSI”] system, may see costs fluctuate

depending on the “thumbs up or thumbs down” of Cabinet. *This too is wrong*.

Sound WSIB governance is impaired

Finally, the WSIB - which *is* accountable for the WSI system - is unable to effectively price future liabilities because it cannot predict the year to year Cabinet diktat. *This is also wrong*.

WSI reforms should be delivered early in a government’s mandate; they almost never are

For the last four (4) major reforms (1985; 1990; 1995 & 1997), only the 1997 reforms were unveiled early in a government’s mandate. And, for all but the 1997 reforms a different government had the task of overseeing implementation.

Previous reforms shared one common denominator – public debate

But, while the 1985 reforms were not fully implemented by the Tory government that introduced them (the Peterson Liberals got much of that job), those particular reforms underwent years of public debate before being introduced. Everyone knew what to expect.

This was pretty much the same story for the Liberal 1990 reforms (for the most part put into action by Rae’s NDP). The NDP’s 1995 reforms were less successful, but at least they had the benefit of a legislative committee review (during which some Liberal MPPs, some still prominent on these questions, offered support for the Friedland formula approach to benefit indexing). But, the NDP decision to establish a Royal Commission in the final months of its mandate (that had no hope of finishing its task) was window dressing, nothing more.

But, all past major reforms had one common denominator - a spirited and focused public debate, *this time absent*.

Never before have we seen reforms delivered in a manner of the Budget Reforms

Never before have we seen anything like the recent WSI reforms, which appeared to spring out of nowhere and were tagged onto the *Budget Measures and Interim Appropriation Act, 2007*.

Process-wise the Budget Reforms get an enthusiastic “thumbs down”

There was no open disclosure before hand, no public debate and no real capacity to scrutinize the legislation in any meaningful way. All in all, for the reasons canvassed in earlier issues of **The Liversidge e-Letter**, process-wise I give the *Budget Reforms* an enthusiastic “thumbs-down”.

The Budget Reforms process is anything but an inspiring standard of public policy development

To springboard far-reaching reforms in this fashion, and to leave so many issues calling out for change untouched (such as appeal time limits just to name one – see the January 28, 2005 issue of **The Liversidge e-Letter**) is a less than stellar standard for public policy development, particularly in the often fractious and complicated WSI arena. **So, what should have happened?**

Lost opportunity #1 - Ideas were not cultivated: The government should have floated the idea of WSI reform early in its mandate, and given sufficient time to canvass ideas for change. Leading with a *White Paper* (or even a *Green Paper*) creates a focus and allows for competing ideas to emerge. This is exactly what past governments have done, and with remarkable success. In this field, nothing beats a vigorous public debate. Real progress cannot emerge from a backroom approach to WSI reform. The WSI community (workers and employers) is a sophisticated and experienced group, armed with an arsenal of ideas. These ideas were never tapped.

Lost opportunity #2 – Budget Reforms not factually backed up: As part of the consultative process, relying on WSIB analysis and Board facts and figures, the government should have presented the factual argument to enhance the indexing formula. Remember, as I pointed out in the September 12, 2007 issue of **Liversidge e-Letter**, the *only* policy reason for less than full indexing was the presence of the unfunded liability [“UFL”].

Such disclosure would have given the government the opportunity to deflate the very arguments I have been making in this series of **The Liversidge e-Letter** (if in fact, a factual based counter-argument does indeed exist). As it stands, the WSI system appears weakened and more financially vulnerable. The government (and Board) never convincingly made the case this was the responsible way to go. The WSI system can ill-afford an erosion of stakeholder confidence.

Lost opportunity #3 – Stakeholder partnerships not encouraged: Given full disclosure and time to assess proposals and develop counter-proposals, a sense of partnership tends to emerge amongst stakeholders. While stakeholders will no doubt always be fuelled by self-interest, in the past, pursuit of those interests has often been tempered by a longer-term vision. The 2014 funding plan is perhaps the best example. At its commencement in 1984, employers agreed to several years of fairly high year-to-year increases, to give the WSI system time to steer a course towards full

funding without eroding benefit levels or upsetting an agenda of fairness and enhanced benefits. Having a sense of “*being in the same boat*” with the Board and government inspires inclusiveness. This time around, none of that was possible. Stakeholders were strangers to the process.

Lost opportunity #4 – Consensus for change not explored: As I have said before, the Ontario WSI system is *more social contract than insurance contract*. At its core, it is inherently political. I have also said that a lot of good, solid change has flowed from the political character of this system. Yet, the *Budget Reforms* process never tapped the opportunities inherent in such a paradigm, playing instead to a different style and level of politics. I am convinced that had a different approach been adopted, one that was based on openness, fuelled by an objective of consensus, a very different result, agreeable to both principal stakeholders, would have emerged.

Lost opportunity #5 – “The bridge not built”; linking the UFL to benefit indexing: One approach, never considered, could have “bridged the gap” between worker and employer interests. That approach? Link the UFL and the indexing questions. This would require certain funding targets to be linked with certain indexing levels. Right now, the WSI system sits at about a 73% funding level (as at the end of 2006, as per the **WSIB 2006 Annual Report**). At the end of 1997 when the “*modified Friedland formula*” was introduced, the funding ratio was 52% (**WSIB 1997 Annual Report**). With the funding level improved by an impressive 40% 1997 to 2006, the case for enhancing benefit indexing levels is more easily made. This recognition opens the door for a more responsible policy position – *one that respects the financial implications of the UFL while still acknowledging the need for better benefit indexing.*

How about this (as but one alternative)? Set say 85% funding as the threshold for full indexing. At 73% funding (where we are now), the indexing rate could be set at $\frac{3}{4}$ of the way to full indexing, much better than the modified Friedland, but still not quite to full indexing. Full indexing would be reached at 85% funding. This delivers several net gains: i) it links the UFL to the indexing question (the policy key); ii) that in itself creates a policy partnership between the funders and the beneficiaries as both groups now have aligned interests; and, iii) the Cabinet discretion set out in the *Budget Reforms* now acquires a rational base – there is a clearer set of parameters for the annual temporary indexing enhancements.

How to restore good ol’ fashioned accountability to Ontario WSI

OK, all of that is now water under the bridge. The process for the *Budget Reforms* was what it was. **No point dwelling on the past – it is time to move forward.** Too much is at stake to do otherwise. If the incoming government (no matter the party) acknowledges that the recent reform process was hurried and less than desired, the legacy of the *Budget Reforms* could be quite positive.

If full indexing is desired, stop pussy-footing around, prescribe it in the WSIA

Bigger picture reforms beyond tinkering with the *Funding Framework* (see the October 4, 2007 issue of **The Liversidge e-Letter**) are called for. **If full indexing is the preferred government policy, then stand behind it – put it in the WSIA.**

Ad hoc yearly indexing commandeered in a process that is entirely political (yearly appeals to Cabinet to exercise purely discretionary powers), unencumbered with any of the accountability levers so carefully developed and prescribed in the WSIA is retrogressive. We've seen the long-term effects when accountability is removed from the mix. The UFL spikes.

Since we already have *de facto* full indexing – restore accountability

Since we effectively have full indexing without the discipline, I strongly urge the next government, whatever stripe, to put accountability back into the WSIA. It is essential to the long-term fiscal integrity of the WSI system that the Board be required to fully price its future liabilities.

The Auditor General should first be consulted

But, first I recommend that the Ontario Auditor General ["AG"] be brought in *right away*, assess the landscape and present a full and open assessment of the Board's financial state of affairs. The AG has stepped into this debate several times before. Only the assessment of the AG can restore stakeholder confidence.

I am surprised neither the Board or the government consulted with the AG before now

I am surprised that noting the Auditor General's 2005 comments and the Board's obvious respect and deference for the AG's outlook (see the **WSIB 2005 Annual Report** as summarized in the September 17, 2007 issue of **The Liversidge e-Letter**), that neither the Board nor the Government ran recent indexing and funding plans past the AG. ***That should happen now.***

Change the way the WSI system can be changed

The next essential big picture reform must be about the WSI reform process itself. While any democratic parliament must not be constrained to introduce and enact legislation, minimum standards and the process for future reforms should be clearly prescribed. The omnibus bill approach as found in the *Budget Reforms*, is simply inappropriate. WSI reform must be a stand alone process, with full and *sincere* public participation required.

Right now, WSI stakeholders on all sides are free to "demand the moon"

Over the last twenty years, full public participation has assisted in cultivating a sense of partnership - shared ownership if you will - from which has sprouted *stakeholder accountability*. With input tempered by the long-term impact of change, stakeholder parties tend to be more constrained in demands. Left exclusively to the backroom political process, stakeholders are able to leave politicians

solitarily answerable and accountable. Stakeholders are then free to demand the moon. A more responsible process, forcing stakeholders to be publicly accountable for their demands instils accountability and more responsible reform.

Five easy steps to restore accountability

This series of **The Liversidge e-Letter** dealing with the *Budget Reforms* ends with this issue – one day before a provincial election. The timing is deliberate. The advice peppered throughout this series is tailored to no particular political audience. After tomorrow's election, no matter which party forms the government, or whether majority or minority, the question of the future direction and fiscal integrity of the Ontario WSI must be addressed. And, I suggest it must be addressed with some dispatch.

Good old fashioned accountability can be added to the WSI system in five easy steps.

Step 1: With the clock set at "zero" on October 11, the Auditor General should be immediately asked by the government to assess the "state of the union" and comment on the viability of the *Budget Reforms*.

Step 2: Within 90 days of the release of the AG report, if compatible with the findings of the AG, full inflation indexing should be enshrined in the WSIA, stopping in its tracks the "indexing by decree" approach required in the *Budget Reforms*.

Step 3: Concurrently, the *WSIB Funding Framework* should be reviewed and the 2014 full funding target reevaluated, if necessary. A key commitment must be that premiums will not increase as a result of the indexing adjustments.

Step 4: At the same time, the government should announce a new parliamentary protocol requiring all future major reforms (not housekeeping matters) to be preceded by a White Paper or similar statement, followed by at least a three month public process. Any legislation must then be subject to full public committee hearing debate.

Step 5: The White Paper approach would run ancillary to a routine ongoing external review process akin to that which I set out in the February 28, 2007 issue of **The Liversidge e-Letter**, "***Standing Committee on Government Agencies***", where I proposed a routine external review, reporting directly to the Ontario Legislature. This would allow for a perpetual opportunity to address statutory and administrative shortcomings, ensuring that WSI reform becomes less partisan and considered absent a crisis of confidence, while still ensuring political oversight.

With these five simple steps, accountability is restored and the future of Ontario WSI brightened.

Upcoming issues of **The Liversidge e-Letter:** In upcoming issues, the following topics will be covered; The OFL demands an end to experience rating ("***The Perils of Experience Rating Exposed***"); after that, a series on the "business end of the Board's business" starting with "***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***", a fascinating account of a true story of how the Board's offer to help cost a company close to half a million dollars.