

The Liversidge e-Letter

An Executive Briefing on Emerging Workplace Safety and Insurance Issues

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

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“Budget Reforms” & WSIB Premium Rates ***Budget Reforms: Indexing Beyond Inflation?***

At Standing Committee on Finance, a government MPP noted *Budget Reforms* will allow benefit indexing beyond inflation

While it is clear that the core element of the *Budget Reforms* is to ensure worker benefits keep pace with inflation on a “go forward” basis, the reforms have the capacity to do much more than that. In fact, adjustments beyond inflation may well be an intended objective.

On April 26, 2007 at the **Standing Committee on Finance** examining the *Budget Measures and Interim Appropriation Act, 2007*, a government MPP offered this in response to an injured worker delegation:

One element of the legislation, though, allows for increases to be put in place at the discretion of the government of the day without further legislative change. So, ideally, the next time you 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. So we’re certainly hopeful that that inclusion, although it doesn’t index the increases to the cost of living, allows for changes that ideally would go beyond a cost-of-living range in any given year at any given point in time. So it’s six of one and half a dozen of the other. If it’s built in as a COLA adjustment, you’re going to be locked in to a number. If it’s not locked in in the longer term to a COLA number, it gives you the opportunity to lobby effectively and appropriately for enhancement to do some of the catch-up that’s needed, that has been long outstanding in that regard. [Hansard, April 26, 2007, page F-1104].

(ed: The reference to “we’re certainly hopeful...” can only be interpreted as “the government is hopeful”.)

“Catch-up” increases may well be part of the new reality

Future benefit increases may well be *greater than inflation* to allow for a “catch up”. Again, I really have no principled quarrel with this. But, workplace safety and insurance [“WSI”] public policy should be developed in a manner that does not usurp basic accountabilities now expected in the governance of the Ontario WSI system.

Budget Reforms guarantee ongoing politicking but outside the control of the legislature

Equally troubling is the lauding of the *Budget Reforms* design “efficiencies” that manoeuvre future indexing around the Ontario legislature. Admittedly this is more efficient, but

in my respectful view is a giant step backwards. Democracy has a nasty tendency to take a lot of time, even in majority government situations. But competing views are not a nuisance. And, public consultations are not wasteful especially when they introduce alternate ideas, different approaches, or even outright opposition (if well articulated, and principle based). The Ontario legislature is important.

Similar sentiments were expressed several years ago (in 1999) in an environmental law context. In a paper entitled *Democracy and Environmental Accountability in Ontario* (Mark S. Winfield and Paul Muldoon, Toronto, April 1999) the following points were made:

There has also been dramatic erosion of the role of the Legislature, and its ability to oversee and limit the exercise of power by the cabinet and bureaucracy.

These developments have been accompanied by significant losses of opportunities for public participation in decision-making. [p. 9]

Prof. Paul Thomas’ comments to the Ontario Standing Committee on Regulations in 1988, were quoted [at p. 10]: *Parliamentarians, as elected representatives of the people, must not forfeit their responsibility to control ultimately what becomes law.*

I will not comment on the relevancy of those opinions in the context of environmental law, but they hit the nail on the head in WSI law.

If full indexing is the desired policy, prescribe it

If full indexing (or more) is desired, fine. But, prescribe it in the governing statute. Do not erode accountability. As soon as full indexing is codified in the WSIA, the Board must account for it in its pricing models, and in the calculation of the unfunded liability [“UFL”]. The Board arguably *could* take likely temporary indexing projections into account now – *they just don’t have to.*

With full indexing something would have to give: the UFL target or the hold on employer premiums – or both

If the law required full indexing, the commitment for zero UFL by 2014 would be toast. Either employer premiums will have to *dramatically* increase or the whole funding strategy will be re-worked. **Bingo!** Remember back on April 4th when I suggested there just might be a rabbit in the Board’s hat? [April 4, 2007 issue of *The Liversidge e-Letter, Special Budget Issue No. 2*]. Well, changing the rules is the only rabbit around. More on this in later issues.

On Monday: “Is the UFL no longer a problem?”