The Liverside *e*-Letter

An *Executive Briefing* on Emerging Workplace Safety and Insurance Issues

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"Budget Reforms" & WSIB Premium Rates

Budget Reform concerns are about accountability *not expenditures*

But, the WSIB does not have *unlimited* capacity to increase premiums

Overall economic impact always a core consideration

My concern with the *Budget Reforms* is not about increasing WSIB expenditures

While there is no doubt that the *Budget Reforms* will cost a lot of money (today *and* tomorrow), any disagreements I have expressed with the *Budget Reforms* so far in this series of **The Liversidge *e*-Letter** have nothing at all to do with increasing the costs associated with delivering a sound and equitable workplace safety and insurance ["WSI"] system. **My beef is about accountability**, and ensuring that the safeguards thoughtfully constructed and carefully set out in the *Workplace Safety and Insurance Act* ["WSIA"] are maintained.

As a single consideration, the cost of the Ontario WSI system is irrelevant. It costs what it must.

WSI *is* expensive

Compensating for workplace injuries *is* expensive. That it is expensive to compensate workers for say, back injuries, is immaterial to the question of whether or not workplace related back injuries should be compensated.

WSI benefits are provided as a matter of right

When assessing any major structural adjustment of the WSI system it is always helpful to start the analysis at "first principles". ***And, the very first WSI principle is that compensation for workplace personal injury or disease is made available as a matter of right, regardless of fault.***

The foundation of the Ontario WSI system *is and always will be* worker equity

This fundamental principle springs from worker equity considerations. Once it is determined as matter of public policy that all workplace injuries should be compensated, and once the levels of compensation are prescribed, ***then the tallying of costs becomes relevant only to the question of developing a mechanism to acquire sufficient revenues to cover those costs***.

Even the objective of full funding is tied to worker equity

Even fundamental design questions such as full funding (providing reserves to pay for tomorrow's projected costs arising from current claims) versus "*pay as you go*" (no reserves), flow mainly from worker equity considerations.

Full funding ensures secure benefits for workers seriously disabled and likely dependent upon the WSI system for the long-term. Those benefits "will be there" no matter the financial health of their employer, their industry or the state of the Ontario economy generally. Very simply, a fully funded WSI system *guarantees* worker benefits. That is a core reason why retiring the unfunded liability ["UFL"] is such a policy and operational priority.

An important *but secondary* consideration is inter-generational employer equity

An important *but secondary* consideration is intergenerational employer equity - to ensure that tomorrow's employers do not get stuck with today's bills.

Even though that principle is prescribed in the WSIA [WSIA, s. 96(3), "*The Board has a duty to maintain the insurance fund so as not to burden unduly or unfairly . . . employers in future years with payments . . . in respect of accidents in previous years*"] it hasn't been all that powerful. Today, about 1/3rd of an employer's premium goes towards the UFL (which represents yesterday's bills).

In fact, passing onto future employers yesterday's debts is the heart of the 1984 long-term funding strategy (the 2014 funding plan), the essence of which continues to this day.

Don't read this the wrong way** - I am not advocating an immediate move to full funding* (that would spike premiums and potentially spark other economic impacts). ***I remain an ardent supporter of "the plan". I am simply suggesting that in spite of certain legislative instructions, realism has demanded more than a slight deviation from full funding (at least in the medium term).

Discretion has been reasonably applied (with employer collaboration, I should add), and the goal of full funding was deferred as a matter of policy.

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There is no such discretion for worker benefits

There is no such legal capacity to limit prescribed worker benefits, or to deviate one inch off the legislated requirement to compensate injured workers at the levels set out in law (and it goes without saying, *nor should there be*).

Workers, not employers, are the *primary* beneficiaries of the Ontario WSI system

The primary organizing principle of the WSI system is worker equity – from beginning to end. It is workers who are intended to be the primary beneficiaries of WSI design elements – not employers.

Employer interests are also protected

Granted, employers acquire several core benefits through the WSI arrangement, and these are more than mere "spin-offs". Employers gain insurance protection. (This was a bigger deal 90^+ years ago than it is today. Today, if the WSIB was not an insurance provider, the insurance industry would step in.) Employers also benefit from cost predictability and overall premium stability, and of course, protection from civil litigation.

That employers have ongoing interests to preserve presents a durable and mutual reason for the WSI social contract to endure. *But at the end of the day, the principal focus of the WSI system is now and always worker equity*.

Worker equity issues trump employer cost issues

As I said more than five years ago in the June 26, 2002 issue of **The Liversidge *e*-Letter**, "***Worker equity issues will always trump employer cost issues***."

WSI is not a stand alone social and economic system

But, the WSI system is not a stand alone system – it is inherently linked to other social and economic systems. *The Board is not an island*.

There are in fact real limits on the Board's taxation powers

While legally the Board possesses an almost boundless capacity to tax employers (the WSIA gives the Board the exclusive power to determine the total amount of employer premiums and to set premium rates [WSIA, s. 81]), there are in fact real limits imposed on the exercise of WSIB discretion in setting premium rates.

Those limits are not set by distressed corporate shareholders

And, those limits are not set by distressed corporate shareholders who want higher profits and larger dividends. Remember, *the Board has no discretion at all with respect to worker benefit levels*. The WSIA prescribes the eligibility thresholds, the wage replacement rate and the duration of benefits. These design decisions rightly rest outside the boundaries of WSIB discretion and within the exclusive purview of elected representatives.

Even premium rate decisions are *ultimately* assessed from the perspective of worker interests

Even premium rate decisions are ultimately assessed not only from the vista of employer interests but also through the prism of worker equity.

The WSI system is linked to the broader economic system

In the June 23, 2005 issue of **The Liversidge *e*-Letter**, I commented on the roots of the 2014 funding plan, citing an excerpt from the Board's 1983 Annual Report:

> **In 1983 . . . it was hoped that, together, the Board and employers could determine the most appropriate methods of reducing the unfunded liability without, in any way, hampering the ability of Ontario's employers to carry on business. *After all, the ultimate health of the workers' compensation system depends on the continued strength of the province's economy*. [WCB 1983 Annual Report]**

In 2005 the Auditor General also linked premium rates to employment impacts

In the September 17, 2007 issue of **The Liversidge *e*-Letter**, I noted that in his 2005 Annual Report, the Auditor General explained the reluctance to increase premium rates:

> **A reluctance to increase premium rates . . . has also contributed to the rise in the unfunded liability. *We understand that this reluctance was driven by the potential impact on employers and employment*, and by the fact that Ontario's premium rates are already among the highest in Canada, because of the unfunded liability component. (Auditor General 2005 Annual Report, pp. 362-363).**

So called "employer interests" gain ground only in the absence of legitimate worker equity concerns

I have long argued that if worker inequities exist in the WSI system, and they can be solved by money, they will be. ***Employer concerns about costs gain ground only in the absence of legitimate worker equity issues***.

In other words, employers acquire a significant WSI policy voice only if the WSI system is fair to workers. In the late 1970s and early 1980s, the system wasn't fair and worker issues rightly carried the day (wage loss; Appeals Tribunal; return to work; to name a few).

The regulator on premium levels is not profit erosion - it is employment erosion (although they are linked)

This is not to suggest that the Board can set whatever tax levels it sees fit (assuming of course that there is a sound and principled justification for premium hikes). It can't. Nor can the Board ever veer off sound fiscal management principles. Fiscal prudence must always prevail.

But, the regulator on premium rates is not profit erosion. It is employment erosion. Righting a WSI inequity in a manner that contributes to job loss runs "against the grain". If the legislature can address an equity issue without any corresponding premium rate increase well, it's a "no-brainer." Contrary arguments won't get a foothold.

The *Budget Reforms* are consistent with this thesis

We just observed this dynamic in play with the *Budget Reforms*. (But not as clean; I predict future funding fallout).

If the Board's expenses were increasing (which they in fact are), *and* the Board's investment returns and holdings were plummeting (which they are not but were a few years ago), with an already high premium rate with a huge UFL component, I suggest that the *Budget Reforms* would have been a non-starter.

<u>It was essential that the *Budget Reforms* not deter the full funding commitment or lead to premium increases</u>

Had the *Budget Reforms* resulted in an immediate premium hike or curbed the 2014 full funding commitment, notwithstanding the worker equity issues, it is improbable that those reforms would have seen the light of day.

<u>The *Budget Reforms* may prove to be a serious miscalculation</u>

As I said in the September 24, 2007 issue of **The Liversidge *e*-Letter**, <u>while I sincerely hope that the Board meets all of its targets and expectations</u>, *I think it is playing a long-shot*.

For the *Budget Reforms* to be proved a successful policy innovation, the Ontario economy will have to perform at least reasonably well over the next many years. With the Canadian dollar at parity with the greenback, experts suggest that the Ontario mainstay - its manufacturing sector - is at risk. If the Ontario manufacturing sector continues to atrophy, the Board will start to feel that pinch rather quickly, as high wage jobs decline. Manufacturing represents about one full third of the Board's business (32% of premiums).

<u>A declining manufacturing base will impact WSI</u>

The impacts will be felt several ways. *First*, as manufacturing jobs dry up, premiums will decline. *Second*, reopened claims will increase. Workers who had returned to accommodated employment will go back on WSIB benefits, particularly those from major manufacturers who have been adept at return to work solutions. *And third*, claim durations, already a problem, will increase as major employers become less able to offer sustainable suitable work.

I earlier argued that WSI funding was fragile <u>before</u> the *Budget Reforms*. If there is an erosion of high paying jobs (manufacturing jobs on average pay about 13% more than the WSI system average) the situation will become worse.

<u>The UFL remains an albatross around the collective necks of the Board, workers and employers</u>

As noted, about 1/3rd of each premium dollar goes towards the UFL. That is 1/3rd that is not available to fund current accidents or occupational diseases. In the past, Board officials have lamented that Ontario would be performing at a superior level compared to other Canadian jurisdictions if it just did not have that darned UFL.

<u>Recently, the UFL is getting better, but it is still high</u>

At the end of 2006, the UFL sat at $5.997 billion. High, but better than it was the year before ($6.5 billion), far better than it was at its 1993 $11.5 billion peak, and about the same (accounting for inflation) as it sat at the end of 2002 (when it was $5.657 billion). ***It has long been my opinion that the UFL is the single most pressing policy issue that faces <u>both</u> workers and employers***. Yet, inexplicably, these groups do not seem to be on the same page on this urgent concern.

<u>Why are labour and management perpetually at odds on WSI reform questions</u>?

In the July 14, 2004 issue of **The Liversidge *e*-Letter**, "***Advocating Change: Be Principled; Be Fair***", I struggled with the reasons behind the seemingly perpetual divergence between labour and management perspectives on WSI reform issues. I remain puzzled that while there is still unwavering agreement on the basic tenets underpinning the WSI system, at almost every turn labour and management disagree on core design questions.

<u>Today there is no ongoing management/labour dialogue on WSI reform</u>

Outside the WSIB boardroom (members of the WSIB Board of Directors have both management and labour roots), there is no active WSI reform or policy dialogue between labour and management. The Board consults separately with labour and management on all issues, an approach which both groups seem to welcome. Disagreement on some individual initiatives is understandable – worker and employer interests simply do not align on all issues.

<u>I have concluded that the looming presence of the UFL deters a vibrant management/labour dialogue</u>

But, I have concluded that the very existence of the UFL impedes a labour/management dialogue. This is what I said in the July 14, 2004 issue of **The Liversidge *e*-Letter**:

> **The presence of the UFL remains a significant impediment to the development of a labour/management consensus on most issues. It is difficult, as but one example, to explore new means to pre-fund compensation for occupational disease so long as approximately one-third of all employer premiums goes towards the UFL. Employers, since they pay the bills, implicitly understand the power and constraining effect of the UFL. So long as there is an UFL, and so long as it continues to pose a serious financial drain on employer premiums, Ontario must temper change to fit within this fiscal reality. For the foreseeable future, change must be assessed through a financial prism clouded by the ubiquitous UFL.**
>
> **Therefore, from a perspective of pure principle, labour should be as supportive of the efforts to wrestle the UFL to the ground as management. Moreover, simply raising premiums to fuel the decline of the UFL is counter-productive if premiums rise to the point of impacting business investment and job creation decisions, an always delicate balance.**
>
> ***Unless there is a strong and mutual labour/management commitment towards the UFL policy, it will be difficult to promote "big picture" agreement.***

I suggested that:

> **Labour and management would be well advised to form a united approach to the long-term WSI funding strategy. It is in labour's interests as much as management's that the system is reasonably priced, is sustainable in the long-term and is debt free. *Once the albatross of the UFL is lifted, the system can be far more creative and focused on addressing pressing issues . . .* Until then however, progressive movement will be forever stalled, with the UFL acting as a deadweight on the legitimate expectations of all stakeholders.**

<u>The *Budget Reforms* render the retirement of the UFL a much more difficult task</u>

I predict that one potential legacy that will flow from the *Budget Reforms* will be the continuation of the UFL beyond 2014. If this comes to light, the ability of the system to respond to evolving demands will be even more strained.

<u>On Thursday</u>: "Are employer premiums destined to increase?"