# The Liversidge *e*-Letter

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

**September 12, 2007 An *Electronic Letter* for the Clients of L.A. Liversidge, LL.B. 2 pages**

# *"Budget Reforms" & WSIB Premium Rates*

## *The Budget Reform Process*

## What the Budget Reforms Actually Did

### *Budget Reforms allow best of two worlds:* The *potential* for full benefit indexing without the requisite financial accountability

For a refresher of what the *Budget Reforms* are all about, go back to the March 26th and April 12th 2007 issues of **The Liversidge *e*-Letter**. The *Budget Reforms* reshaped several components of injured worker benefits.

**The main thrust of the *Budget Reforms* is "*temporary* benefit indexing"**

The main thrust (and the most expensive aspect of the reforms) relate to what may appear to be a limited *ad hoc* indexing of some benefit levels for past claims. As I noted in the March 26th issue of **The Liversidge *e*-Letter**:

> Presently, benefits are indexed for limited inflation adjustments based on a complicated formula [**set out in s. 49 of the WSIA**] which calls for annual inflationary hikes for workers receiving less than 100% loss of earnings ["LOE"] benefits equal to ½ of the change in the CPI (Consumer Price Index) *minus* 1.
>
> The "*indexing factor*" shall not be less than 0% and not greater than 4% [**WSIA, s. 49(1)**]. So, for example, if the CPI is 2.0%, the WSI index factor will be zero [(1/2 of 2) – 1 = 0]. Presently, for workers with an LOE of 100% and survivors, an "*alternate index factor*" is applied, which is 100% of the CPI [**WSIA, s. 50(1)**].

*WSIB "permitted" to enhance benefits*

Last week, the Government announced:

> **Many injured workers receive benefits that are partially indexed to inflation. The legislative changes, if enacted, would permit the WSIB to enhance the benefits of about 155,000 injured workers by 2.5 per cent on July 1, 2007 and on January 1 in each of 2008 and 2009.**

**The WSIB says that the *Budget Reforms* will cost between $700 - $750 million**

The WSIB's 2006 Annual Report (at page 31) reports that the estimated impact of providing for the *Budget Reforms* would be between "*$700 million to $750 million*".

And, we also discover that the Board had a 2006 windfall from its equity holdings, and so at first blush, the cost of the *Budget Reforms*, while expensive, for the most part seem to be absorbed in the Board's investment gains.

**And, WSIB still commits to retire the UFL by 2014**

Remember that the WSIB has already said that the *Budget Reforms* will not lead to an increase in employer premiums. And, as I reported in the April 4, 2007 issue of **The Liversidge *e*-Letter**, the "**. . . *unfunded liability is still on target for 2014***". While offering his strong support for the *Budget Reforms*, the Board's Chair strongly affirmed the WSIB's commitment to retire the unfunded liability ["UFL"] on target by 2014. This is what I wrote on April 4th:

> Putting aside the public intertwining of the Board and the Government on a legislative reform proposal, which as far as I can recollect is unusual on its own, the big news story is the affirmation of the commitment to retire the unfunded liability ["UFL"] by 2014. This is what the Chair said:
>
> ***At the same time, we are cognizant of our stewardship responsibilities, and want to assure the employers of this province that these proposed improvements will not impact our commitment to the elimination of the unfunded liability by 2014. We must ensure that the system entrusted to us by the employers and workers of this province remains financially viable now and for future generations.***

**WSIB declares (*with a few caveats*) that premiums *may* not rise for next 6 years and will likely drop after 2014**

In a meeting with the *Ontario Business Coalition* on April 25, 2007, having full regard for the *Budget Reforms*, the Board's Chair confirmed that riding on a few assumptions, the UFL will be zero as planned 2014, employer premiums will not likely rise in the interval, and will drop considerably after 2014, a thesis echoed by senior WSIB officials in the WSIB premium rate meetings held this past summer.

**Did my potential "*strike out*" prophesy jump the gun?**

I suggested in the September 6th issue of **The Liversidge *e*-Letter** that "*just as the Mighty Casey aroused high expectations and strode to the plate full of confidence before a throng of adoring fans*, ***a strike out is still possible here***".

Was I too hasty? At first blush, based on what WSIB officials right on top of the action are saying, that may well seem to be the case.

**There may well be reason for joy in Mudville after all!**

50 Acadia Ave., Suite 101, Markham, ON L3R 0B3 Tel: 905-477-2039 Fax: 905-477-4659 E-mail: lal@laliversidge.com ISSN 1710-5757

**The *Budget Reforms* did more than add a one-time $700 - $750 expenditure to the WSI system**

***But, wait a minute*** – the *Budget Reforms* did a lot more than just add $700 - $750 million to the WSI system on a "*once only*" basis. In fact, it is the structure of the *future* indexing elements of the *Budget Reforms* that I find most problematic. Frankly, and I can't sugar coat this, in my opinion the *Budget Reforms* detract from sound, accountable administration of the Ontario WSI system. Some may argue this is "good" politics (a chicken in every pot). But does it lead to more responsible overall WSI administration? I suggest that basic and well established accountability levers are weakened by the *Budget Reforms* .

**WSIB is not accounting for likely future increases - *because it doesn't know what they will be*!**

The way the *Budget Reforms* are structured, the WSIB does not have to account for what I construe as likely future increases (beyond the prescribed indexing commonly referred to as the "modified Friedland formula").

*Why*? *Because they haven't happened yet*! No finger-pointing at the Board here. The Board can't be expected to account for increases that have yet to be proclaimed, *even though annual adjustments equal to at least the rate of inflation are pretty much certain*.

**The *Budget Reforms* have a certain allure**

The *Workplace Safety and Insurance Act* [the "WSIA*"*] demands that the Board fully account today for tomorrow's (known) liabilities. This is the very reason we have an UFL calculated and tabled. The UFL is simply the shortfall between the value of the Board's *future* liabilities (future benefits for existing claims) and the value of the Board's financial assets (reserves). Arguably, there is not supposed to be *any* shortfall (hence the reason for the 2014 full funding and zero UFL plan). And, this is the allure of the *Budget Reforms* - increases for tomorrow are inferred without the need to account for them today.

**If the Budget Reforms had fully indexed worker benefits, the UFL would go up $2.3 billion *overnight***

Let me first note that had the *Budget Reforms* fully indexed worker benefits, as workers were actually demanding, $2.3 billion would have been added to the UFL immediately (the Board's estimate – not mine). That would have trashed the 2014 UFL target (unless premium rates were significantly increased or investment return estimates radically revised). Let that settle in a bit.

**Future indexing (beyond the prescribed indexing factor) is *temporary*, decreed by regulation**

But, now section 52.1 of the amended WSIA allows for a *temporary indexing factor* that may be more but not less than the already prescribed index factor. The amount is to be decreed by regulation.

**The Ontario Cabinet decides**

It will be the Ontario Cabinet (not the Ontario Legislature, not the WSIB Board of Directors, and not the WSIA itself), which will set the *ad hoc* indexing levels.

***OK, so what's wrong with that*?** If workers need higher benefits so that they are protected against inflation erosion should they not get them? **Well, my position on that is very simple – *absolutely*!**

**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. *But, raising taxes carries its own prevailing risks*.

There have been some that suggest opposition to the *Budget Reforms* is the same as being against benefit indexing, and against worker interests. *Nonsense*. This "*straw man*" argument deserves little comment, and ill-fits a serious and principled discussion on the *Budget Reforms*.

**The NDP stopped full indexing in 1995**

Never forget – *there was only one reason for less than full indexing of worker benefits* – the existence of the UFL. That it was an NDP government (that's right – the NDP) that eliminated full indexing is a very telling point. I should add that in 1995 Liberal MPPs (some still prominent) did not oppose the NDP measures to introduce the Friedland formula (less than full indexing). In fact, those same MPPs chastised the NDP's 1995 reforms for channelling *Friedland* savings to top up existing worker pensions (for pre-1990 accidents) suggesting that it would be more responsible to "*find the money from within the system*".

**If the UFL is no longer a problem – *then no worries***

If it's the case that the UFL is no longer a problem, fantastic, uncork the champagne and let's celebrate. Increase benefits *and* lower premiums. Unfortunately, the *Budget Reforms* appear to be more consistent than not with a former Minister's 1996 observations that past "*expansion and enrichment*" decisions were often unencumbered by the "*difficult problem of how to finance these benefit changes*". The *Budget Reforms* actually make it next to impossible for the Board to establish reserves for increases that rest within the exclusive *discretionary* purview of the Cabinet.

This delivers the best (or worse) of two worlds - *the promise of future increases is omnipresent, and they don't have to be paid for today*. However, as I said in the April 4th issue of **The Liversidge *e*-Letter**: "***Anything less than full ad hoc indexing will be political hara-kiri***".

**We now have *de facto* full indexing without the financial accountability expected by the WSIA**

I argue we now have *de facto* full indexing *untroubled by funding burdens* and without the expected and *essential* accountability levers. If the WSI system is on its way to an unprecedented state of financial health, all of this becomes interesting but irrelevant musings. If not, then the accounts will come due pretty fast. In short time we will know.

**On Friday: "Indexing increases *beyond inflation* may be part of the new reality"**