

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.

2 pages

Ontario Election 2011 Where Ontario Political Parties stand on the WSIB

Canadian Federation of Independent Business surveys Ontario political parties on WSIB

Where would the Liberals, Progressive Conservatives, New Democrats and the Greens take the WSIB post-election?

The Liversidge e-Letter has been “dark” for most of the past year. As I have been participating in the WSIB’s **Funding Review** through a number of employer coalitions, I considered it prudent to channel suggestions and opinions through that process, rather than the more public forum of **The Liversidge e-Letter**. With the lion’s share of that work completed, and as the workplace safety and insurance [“WSI”] reform agenda unfolds at breakneck speed, I will be spending the next three weeks focusing on the key WSI issues of the day as we move into the October 6th election. (Readers are invited to go to the **Funding Review** website to see 1st hand the many submissions from an engaged and diverse client public at: <http://www.wsibfundingreview.ca/consultation-details.php>). I predict that whatever the results October 6th, WSIB change will move forward at a significant pace.

The **Canadian Federation of Independent Business** [“CFIB”] has recently surveyed all four (4) of Ontario’s provincial parties to see where they stand on a variety of small business issues, including the WSIB. (Go to: http://www.cfib-fcei.ca/english/focus/85-ontario_election_watch_-_where_the_party_leaders_stand_on_small_business.html for a complete report on the survey).

In this issue we will be passing on the WSIB portion of this survey. In upcoming issues, I will be addressing the following: **The WSIB Funding Review** and while necessary and welcomed, why it will not fully resolve the pressures facing the WSIB; **A new WSIB focus on claim entitlements** (more claims are being denied) and why in my opinion this is an ill-advised approach which could trigger significant adverse future consequences for the system; **Why the 72 month “lock-in”** must be immediately removed from the **Workplace Safety & Insurance Act**; **A comment on the new**

Work Reintegration policy and an opinion as to why this a policy adverse to the interests of small business; **Expanding the NEER “window” from 3 to 4 years** and why such an *ad hoc* “on the fly” policy move during the **Funding Review** is ill advised; and finally, **a comment on the Board’s “submission” to the Funding Review itself**, and why in my opinion this sets up a needless risk of a future conflict between the Board and the **Funding Review**, and may well place the Board in a tough spot next year.

CFIB surveyed its members – a resounding majority listed WSIB as an important issue

The CFIB, as is its practice, first surveyed its membership to determine what issues were of importance to them. On WSIB premiums, 86% said they were either very or somewhat important, with an almost identical result on WSIB policies.

CFIB then surveyed Ontario’s political parties

Before the writ was dropped, CFIB surveyed the Green, NDP, Liberal and Progressive Conservative parties. These were the questions asked:

CFIB members continue to rate the Workplace Safety and Insurance Board (WSIB) among the worst government agencies for imposing costly regulations and providing poor customer service. Years of mismanagement by the WSIB have resulted in a huge unfunded liability, higher premiums and a \$500 million tax grab in the construction sector.

Will you . . . Hold the line on WSIB employer premiums, starting by cancelling the proposed hike in 2012 premiums?

Will you commit to the following changes to workers’ compensation?

Repeal Bill 119 by allowing owners, officers and independent operators in construction to buy workplace insurance from a provider of their choice;

Fix the ongoing “independent review” of the WSIB by broadening its mandate to include review and options to reduce expenditures; and

Appoint an independent commission to assess the feasibility of allowing employers to buy workers compensation insurance from a private insurer for their employees.

The remarks below are direct quotes pulled from the responses returned to the CFIB throughout late August:

The Green Party:

“The **Green Party** believes that the Workplace Safety and Insurance Board should hold the line on any additional premium increases until the independent review of WSIB is complete. The **Green Party** supports a sustainable WSIB system to compensate injured workers adequately, while limiting financial barriers to new job creation.

The **Green Party** supports legislation to allow owners, officers and independent operators to purchase workplace insurance for themselves from a provider of their choice. The **Green Party** supports a full independent review of WSIB’s revenues and expenditures. The **Green Party** is committed to a sustainable insurance system that provides injured workers with the compensation they require, while limiting the financial barriers to new job creation. We will work with WSIB to provide better, more efficient customer service so that premiums do not grow at unsustainable rates.”

The NDP:

“We support the independent third party review of WSIB funding issues being led by respected law professor – Harry Arthurs. This independent review will consult with the public on ways to make the WSIB a more financially sustainable system for the future and has involved input from workers, labour, employers and employer associations on a range of public policy issues relating to the WSIB’s financial future. We eagerly await Professor Arthurs’ recommendations which we understand will be released sometime in 2012.” The **NDP** answered “No” to repealing *Bill 119*, “No” to adjusting the mandate of the Funding Review, and “No” to appointing an independent commission to assess insurance options.

The Liberals:

“With respect to the Workplace Safety and Insurance Board (WSIB), we support *Bill 119* and are working with the WSIB to have executive officers and independent operators enrolled in 2012. In developing *Bill 119*, we listened to concerns from small business and provided important exemptions, including an exemption for one executive officer of a corporation, or one partner in a partnership, who does not perform construction work, and an exemption for home renovation work on private residences.

The Arthurs Funding Review has an important mandate to provide several recommendations on the WSIB’s ability to achieve financial sustainability. We, along with the WSIB, employers, labour and injured

workers await the delivery of the report in early 2012. The recommendations will assist in determining how best to move forward. We will not interfere with the mandate of the Arthurs Funding Review.

We support the WSIB as it works hard to provide a fair and cost-effective service for employers and workers. Workplace insurance is an important part of doing business in this province, and the coverage provided by the WSIB goes well beyond what is offered by private insurers.”

The Progressive Conservatives:

“On January 1, 2011, Dalton McGuinty hit dozens of business sectors with double-digit WSIB rate increases. In 2012, these job-killing payroll tax hikes are scheduled to increase yet again. This blatant tax on jobs and job creation comes as a result of Dalton McGuinty’s mismanagement of the Workplace Safety and Insurance Board – an organization that is infamous for its wasteful spending. We simply cannot allow the WSIB to pass the cost of that waste and mismanagement onto Ontario small businesses through continual tax hikes anymore. In order to ensure the WSIB is providing good value to Ontario’s small businesses, we will review it along with every other provincial agency, board, and commission. Our process will be straightforward. If it works, leave it alone. If it’s broken, fix it. If it cannot justify its existence, it goes.

We will also repeal *Bill 119*. One of the worst burdens placed on small businesses was Dalton McGuinty’s *Workplace Safety and Insurance Amendment Act, 2008*, which forces independent operators, sole proprietors, and even secretarial workers into the WSIB system. As the CFIB has pointed out, this bad bill will cost small construction companies an average of \$11,000 in additional taxes each year.

Ontario has almost 630 different agencies, boards and commissions. Every one of them will be reviewed to ensure they are providing good value to families. Our process will be straightforward. If it works, leave it alone. If it’s broken, fix it. If it cannot justify its existence, it goes. The WSIB will be a part of this review. And to ensure small business concerns are being heard, we will appoint a permanent member to the WSIB board who is also a small business owner.”

A thumbnail sketch review:

Not surprisingly, the **Liberals** are taking a “stay the course” approach, expressing confidence in the processes currently in motion, particularly the Funding Review. The **NDP** adopt a similar stance and on this file seem indistinguishable from the Liberals. The **Green Party** goes part way on the *Bill 119* issue, allowing a private insurance option for owners and independent operators. The **PCs** offer up the strongest commitments to change with a promise to fully review the WSIB, scrap *Bill 119*, and appoint a small business owner to the Board of Directors. For the WSIB *2012 will be a year of significant change.*