

The Liversidge e-Letter

An Executive Briefing on Emerging Workplace Safety and Insurance Issues

May 4, 2012

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

2 pages

The Funding Review Report

Funding Fairness

Released Today

Dr. Harry Arthurs' Extensive Funding Review Report Aptly Named "*Funding Fairness*" Released Today

Early this afternoon, the **Harry Arthurs Funding Review Report – *Funding Fairness*** - was released. The report appears at: <http://www.wsibfundingreview.ca/finalreport.php>.

A comprehensive document at 188 pages, the report sets out an impressive analysis along with wide-ranging recommendations from the current funding risks, suggestions for appropriate targets, and some recommended paths as to how to get there.

This writer was actively engaged in the **Funding Review** consultation process from the outset, and has therefore refrained from any significant public comment on the process and the expected content of the recommendations until the report was released. In this issue of **The Liversidge e-Letter**, I am simply intending to introduce readers to *Funding Fairness* and will comment in-depth on the myriad of issues over the next several weeks. Let me start my commentary with a return to a theme introduced in the last issue of **The Liversidge e-Letter**, and that is the overall approach of the **Funding Review** under the impeccable stewardship of Dr. Arthurs. I have now been witness to more workplace safety and insurance ["WSI"] reviews than I could possibly catalogue here from the *1973 Aird Task Force Report on the Administration of Workmen's Compensation in Ontario*, to Prof. Paul Weiler's 1980 *Reshaping Workers' Compensation for Ontario*, to the later report from the *Legislature's Standing Committee on Resources Development*, to the *New Directions for Workers' Compensation Reform* in January and June, 1996, to many, many more. It can never be said that the WSI file has not received high profile attention from time to time. Yet, even with that periodic extensive review pattern, many problems persist, or if once solved, reappear a

few short years later. That is why a concluding **Chapter 10, Reflections on the Review**, is a good place for a reader to start their study of *Funding Fairness*. While readers know that I had been calling for a **Funding Review** (I called it a *Funding Summit* but it was the same thing) for several years before the **Funding Review** appeared, I have always been of the view that sound and effective stewardship from *everyone* engaged and responsible for this essential public program could have, and *should* have, avoided the need for a **Funding Review** in the first place. If **Chapter 10** is heeded, the need for a future **Chapter 11** (with the American bankruptcy pun perhaps being a fortuitous coincidence) is hopefully avoided.

Now, let me get back to Dr. Arthurs' review – it was outstanding in every way. From this don't conclude that I agree with all of Dr. Arthurs' recommendations. I don't. I should say, I most certainly don't (for the record, as will be clearer in the next few issues of **The Liversidge e-Letter**, I agree with most of the big picture funding recommendations – it is in some of the other issues that we part company). But, he knows where I disagree and where I agree and where pretty much every participant agrees or disagrees. For the first time in a long, long time stakeholders were invited to openly, thoroughly and passionately advance, discuss, challenge and critique ideas, all the while being afforded an opportunity to reassess, recalibrate and rethink views based on merit alone. Starting positions were rarely ending positions. That this was achieved in the time frame available (about a year and a half top to bottom) was remarkable. That Dr. Arthurs was able to get through the material let alone digest it, and quietly lead an intense public dialogue, and at the end formulate a series of cogent recommendations, all the more so. It is no overstatement to suggest that something this large had never been delivered so fast before.

I start with an introduction to some of the main recommendations. Among the recommendations are:

Chapter 3: A New Funding Strategy for the WSIB

Recommendation 3-1: The WSIB is about 50% funded right now (the current “target” is 100%). A new WSIB funding strategy should be based on realistic assumptions, get the Board to 60% funding (the “tipping point”) as soon as possible, get to 90% funding within 20 years, and allow for a mechanism to trigger timely re-pricing of the unfunded liability [“UFL”].

Recommendation 3-2: The WSIA should be amended to require that new benefits/ entitlements be accounted for in premium rates.

Recommendation 3-3: The WSIB/OHIP relationship should be reviewed.

Recommendation 3-4: Schedule 2 (self-funded) should be reviewed to ensure fair contribution to non-benefit system costs.

Chapter 4: Premium Rate Setting: Principles and Processes

Recommendation 4-1: WSIB actuarial services should be evaluated with a Chief Actuary reporting to the WSIB BOD.

Recommendation 4-2: WSIB should convene annual technical briefings to assess progress, plan compliance and methodologies.

Recommendation 4-3: Premiums should be based on actual costs not whether rates are “affordable”.

Recommendation 4-4: WSIB BOD should publish a formal funding policy, supplemented annually. The BOD is to be guided by the recommendations of the Chief Actuary or publish reasons if contrary decisions taken.

Recommendation 4-5: There should be no government interference with rate setting unless the province is experiencing a serious economic crisis and proposed rates would have a significant adverse impact, with such action publicly explained.

Recommendation 4-6: WSIB should not announce preliminary rates but should publish actual rates no later than July of the preceding year.

Chapter 5: Who Pays How Much?

Recommendation 5-1: Current rate groups should be replaced with sectoral groups, with the definition of sectoral groups to be a joint undertaking by the WSIB and the Chief Prevention Officer.

Recommendation 5-2: A clear set of principles must be developed by the WSIB governing the creation and maintenance of rate groups.

Recommendation 5-3: Without altering the extent of current coverage, going forward, all employers should be covered unless expressly excluded. Classification units should be abandoned.

Recommendation 5-4: Implementation of rate group realignment should take place over several years, with appropriate transitional measures to avoid sudden premium rate increases.

Recommendation 5-5: Each rate or sectoral group should pay the full current and future cost of new claims, which the WSIB must accurately price. Gains and losses should be attributed to the sectoral groups that generated them, with losses amortized in accordance with a formula to be developed by the WSIB. Gains are to be used to reduce the current cost portion of the premium in any given year.

Recommendation 5-6: UFL allocation rules should be revised such that 5% of the annual cost of paying down the UFL should be distributed equally among all Schedule 1 employers, with half of the remaining UFL to be allocated to industry classes in accordance with the degree of responsibility for its growth.

Recommendation 5-7: The government should consider requiring currently excluded employers to fund the new prevention function.

Chapter 6: Employer Incentives and Experience Rating

Recommendation 6-1: Experience rating [“ER”] should be maintained only if the Board declares the purpose is injury reduction and return to work [“RTW”]; the program achieves these purposes; and, it is adequately resourced to eliminate abuses.

Recommendation 6-2: Every employer is to advise the Board of a designated Health, Safety and Insurance Officer who will be responsible for WSIA compliance, and whose acts or omission will be the acts of the employer. The WSIB should take steps to ensure all participants act fairly and honestly, and take steps to detect and punish acts or omissions that interfere with the right of a worker to claim benefits. The WSIA should be amended to protect whistleblowers. A failure to report or a misreport will be presumed deliberate unless the contrary is proved, and fines for individuals should be increased to \$100,000 (from \$25,000) and to \$500,000 for corporations (from \$100,000). Should the Board not commit to making such changes within 12 months and/or fail to initiate all necessary changes within 30 months, ER should be discontinued.

Recommendation 6-3: The WSIB should initiate a time limited ER experiment in one industry class with a representative advisory committee headed by a neutral expert chair monitoring the experiment, and if that experiment meets the objectives, the approach should be extended to other classes. ER redesign should be introduced following extensive stakeholder consultation.

Chapter 7: Funding Occupational Disease Claims

Recommendation 7-1: The WSIB should re-establish a medical/scientific panel to assist in identifying Occupational Disease [“OD”]. The WSIB should monitor disease trends and make prudent financial provisions for future benefit costs but should not establish a special segregated OD fund.

Recommendation 7-2: OD costs should continue to be covered under the WSIA.

Recommendation 7-3: OD costs should be allocated to the sectoral group were the OD originated. Long latency OD costs should not be used in connection with ER.

Chapter 8: Benefit Indexation for Partially Disabled Workers

Recommendation 8-1: All benefits should be fully indexed on the same basis, with current statutory *ad hoc* adjustments repealed.

Recommendation 8-2: Beginning in the budget year following release of the report, the benefits for both partially and fully disabled workers should be increased by 100% of the CPI.

In upcoming issues I will present a more detailed commentary. There is a lot of meat in those 188 pages. *Let everyone be clear – this is a big deal. Funding Fairness* coupled with the WSIB changes already underway will set the stage for the next 15-20 or more years. With the release of the report, the **Minister of Labour** announced that the government will require the WSIB to reach 60% funding in 2017, 80% in 2022 and 100% by 2027. The government will also increase partial disability benefits by 0.5 per cent in 2013 and another 0.5 per cent in 2014.

Over the next while, while *Funding Fairness* will pretty much suck all of the available oxygen out of the policy review room, I will continue to discuss other important and emerging WSI issues, such as, **Work Reintegration**, and the **WSIB Fatal Claim Policy**. 2012/13 will prove to be one of the most significant periods in the continuing WSIB story.