

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.

3 pages

WSIB Update

The Reform Agenda is in Full Motion

2012-16 will prove to be one of the most significant periods of reform since the adoption of the Weiler proposals a generation ago.

Even though there are few outwardly signs of change at the moment, there is so much workplace safety and insurance (WSI) reform activity going on that I predict by 2016 the Ontario WSI administrative fundamentals will have been significantly realigned. The landscape is changing. Other than the scope of benefit entitlement, pretty much everything else is in a state of flux. Some of these changes are imminent (such as a revamp of the Board's appeals process scheduled for implementation in January), while others will take several years to develop and more to implement (such as changes to experience rating and rate classification). Some have a clear focus (**Rate Framework**) while others are a little blurred in purpose (**Benefits Policy Review**). This issue of **The Liversidge e-Letter** presents a thumbnail sketch of some of these changes. Much more is coming over the next few months. Stay tuned.

150 days of Chair Elizabeth Witmer's Stewardship

As set out in the April 27, 2012 issue of **The Liversidge e-Letter**, I considered Elizabeth Witmer a superb choice for WSIB Chair. Now, before my lauding comments pile up too deeply, often praise for incoming leadership may be interpreted as criticism for exiting leadership. But, long-time readers of **The Liversidge e-Letter** are well aware that in these pages I often praised Steve Mahoney's leadership during his six years at the helm of the WSIB. In fact, I have always been complimentary (without being a sycophant) to the Board's leadership. More than five years ago, on February 27, 2007 during an appearance at the **Standing Committee on Government Agencies**, I said this:

... there's not a single chairperson of the Ontario Workplace Safety and Insurance Board who has not come into that office dedicated to make things better for the injured workers of Ontario -- not one; not a single one. . . . Everyone has come in rolling up their sleeves. They want to leave their mark. And I would say without exception that that has happened. (Hansard, page A-512, February 27, 2007)

Chair Witmer has been at the Board for just 150 days, a short but vital period. Pressures are mounting. Public expectations are increasing. The **Auditor General** is taking an unprecedented level of interest. In the immediate wake of the **Funding Review**, and at the start of many other reform initiatives, it is appropriate to take a pause and ask this simple question, "*How is she doing?*"

Now, I have to declare a bit of a bias. As countless others, I have been an ardent Elizabeth Witmer (EW) fan for over 20 years. I have seen her work ethic, her intelligence, her ability to get things done, but most important of all, her personal compassion targeted towards people who rely on government and government agencies. That she has assumed the Chair of the WSIB at this critical juncture and displayed a solid capacity for renewed leadership is no surprise to anyone. Certainly not me. That she deftly navigates new risks and old perils with skill and dexterity, all the while building a solid coalition of support within and outside the WSIB is simply part of the way she approaches public life. In just a few months the Ontario WSIB is being bettered, influenced through solid, thoughtful leadership, sensitive to the often competing labyrinth of interests between employers, workers, government and yes, the Board's administration. Yet, by far the most influential element is ever so simple – ***doing the right thing***. Over the past 150 days I have seen EW reach out, not as a perfunctory effort, but in a sincere way to get the best suggestions, the best advice, the best ideas, *before* the hard decisions. A new partnership is being forged, which when in full movement, will establish a high watermark for stakeholder participation. *The bottom line after 150 days?* The Board is in good hands.

2013 Premium Rates

The Board has yet to announce the 2013 premium rates. Usually of course, the next year's rates are announced in the early summer of the preceding year. Not this time. But, this is not bad news. The delay is a result of the Board working with a vigilance on rates I have not before seen. The Board is exercising extreme care, as if balancing a "fairness fulcrum" tempering competing forces of funding targets against a needless fast pace of premium hikes. There is a lot

going on behind the curtain at the moment. System and business interests are being responsibly assessed. While I have no idea as to the final result, I have confidence in the process. Expect an announcement soon.

Update on the Funding Review report, *Funding Fairness*

The **Funding Review** report, *Funding Fairness* (a brilliant double entendre) was publicly released May 4, 2012, although was in Board hands from at least the beginning of the year. In the May 4, 2012 issue of **The Liversidge e-Letter**, I outlined the core elements of the report, presented some cursory commentary, but fully expected to deal with the report chapter by chapter over the next several months, to assist in laying the policy groundwork for the extensive consultation I expected to immediately commence. Consistent with this idea, in the Board’s “**WSIB Policy Agenda 2012-13**” the Board commits that it will “*consult on the creation of a long term funding policy (aligned with Bill 135 and) . . . building on the critical advice contained in Funding Fairness*” (at p. 3). The “heart and soul” of *Funding Fairness* was Chapter 3:

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.

In case nobody noticed, I haven’t publicly written a word about *Funding Fairness* since May 4th. The promised consultation on developing a new funding strategy never got off the launching pad (other related issues *are* getting appropriate attention – read on). The day *Funding Fairness* was released, 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. *So much for a discussion on a funding strategy.* Frankly, it is my firmly held opinion that the government’s action was imprudent if not reckless. OK - setting the 60% target to be achieved within five (5) years was entirely consistent with *Funding Fairness*, and as the **Auditor General** was continuing to breath down the necks of the Board and government, perhaps well warranted. So, they get a “pass” on that one.

Surely though, the 80% target and the time line to get there could have, and should have, waited for input from the system’s funders. There was no immediate urgency on that pillar. And, the commitment to get to 100% within 15 years, which I suggest was not spelled out in *Funding Fairness* and is entirely the government’s creation, may trigger a new

era of “*the tail wagging the dog*” which may well set the stage for future premium hikes if the Board’s funding plans get zinged through unanticipated economic upheaval.

So, a detailed public discussion of the funding element of *Funding Fairness* didn’t happen. The Board however has set and published a **Strategic Plan**, although much of that was developed independent of *Funding Fairness* (see the chart following captured from the Board’s website).

Pillar	Priority Area	Transformational Programs
I. Sufficient Funding		
II. Revenue Must Cover Costs	Financial Integrity	Financial Strategy
III. Right Sizing Costs	Integrated Recovery & Return To Work	Health Care Strategy High Impact Claims - Backs, Shoulders, Fractures
IV. Efficient Administration	Defined Workers' Compensation Plan	Policy Framework Implementation Core Business Strategy (Business Architecture)
	Modern Organization	Integrated Channel Strategy & Case Management System Business Analytics Strategy
	Advanced Analytics	Cohort Study & Predictive Modeling
	Talent Management	Talent Management - Organizational Design, Recruitment, Development, Engagement
V. Stakeholder Relationships & Service Excellence	Stakeholder Respect & Trust	Corporate Reputation Branding Stakeholder Engagement Program

I should note that the Board has started to publicly release a new and fairly sophisticated report “**2012-2016 Strategic Plan: Measuring Results**” which is also found on the Board’s website. So far, Q1 and Q2 reports for 2012 have been released and along with the **Board’s Quarterly Financial Statements**, they present a pretty good assessment as to the “*state of the union*”. Hopefully this signals that disclosure and true transparency will be part of the core operating philosophy of the WSIB. With that said, I would be remiss if I did not point out that there is a lot more the Board can be doing disclosure wise. In fact, we still are not back to the disclosure practices of the late 1980s and early 1990s. More on this in a later issue. A final point on the *Measuring Results* reports – **read them**. They aren’t perfect and there is a lot of cheerleading (too much), but they are a great and timely start. Stay tuned for a full critique.

The WSIB Funding Modernization Office

Just the other day, the Board (quietly) announced through its website that it has established a “**Funding Modernization Office**.” (BTW, get used to the descriptor “modernization.” That’s clearly the new buzz word and perhaps while quite not classic “*newspeak*”, I suggest it will wear thin pretty fast. I think they should drop it.) I haven’t seen this new office perform yet, so I will just repeat what is on the Board’s website:

The **Funding Modernization Office** (FMO) is an internal office responsible for the planning, design, co-ordination and implementation of the recommendations, initiatives and actions stemming from the WSIB Funding Review.

The **Funding Review Steering Committee** (FRSC) reports to the WSIB's Executive Committee. It is an internal executive structure that represents all facets of the organization and has a mandate to set direction, support internal engagement and endorse deliverables stemming from the Funding Review.

My first range of interest is this – *how will the planning and design elements play out?*

The Jim Thomas Benefits Review

This is a fascinating project that is underway right now, that is getting more interesting with each passing day. While this all started with the release of a recent **KPMG Value for Money Audit** ["VFMA"] **Summary Report on WSIB Adjudication & Claims Administration Program Value for Money Audit**, this connection of late is being downplayed, if not outright ignored by the Board. From a public relations standpoint, I really don't blame them. The VFMA report has not been well-received. In the December 11, 2011 issue of **The Liversidge e-Letter**, "**Claims Value for Money Audit; A recipe for change or conflict?**", I said this:

Employer risk exposure may increase

The Report sets out several recommendations, which if adopted, could increase the workplace safety and insurance ["WSI"] risk for Ontario's employers, notably higher experience rating ["ER"] exposures, a loss or reduction of Second Injury and Enhancement Fund ["SIEF"] cost mitigation, and more forceful return to work ["RTW"] initiatives by the Board with a greater potential reliance on fines and penalties to be imposed on Ontario's employers.

Certain benefit entitlement policies may come under review

In addition, the Report raises several questions pertaining to benefit entitlement policies (entitlement on an aggravation basis for example) which, if adopted, could well trigger a new era of worker discontent.

Well, that last sentence has already been proved true. Workers are extremely concerned and based on my reading of the KPMG VFMA, I can't fault them. The "benefits consultation" will address several policies (initial entitlement; aggravation basis; recurrences; work disruptions; and permanent impairments). The Board has engaged **Jim Thomas** a former Vice-Chair of the Appeals Tribunal and Deputy Minister of Labour to lead this consultation exercise. Not only is **Jim Thomas** a good choice to chair this exercise, he is in my frank view, simply the *very best* choice. They could not have done better. This project is going to generate a lot of electricity (more from workers than employers) and Jim is well suited to be the lightning rod. He can take the heat and stay focused.

With that noted though, let me make it clear that I am not at all a fan of this review. It is not what is needed. It will consume time and resources and leaves an illusion of positive action. *It isn't*. We need something much bolder, larger, and with a broader purpose. Employers have been requesting a higher level review to address costs in much the

same manner as the **Harry Arthurs' Funding Review** addressed revenues. The benefits policy review is a poor substitute, a limited administrative action that does not touch on more fundamental issues facing the system. For example, one issue *screaming* for attention is the repealing of the 72 month benefit lock-in, an ill-designed, ineffective policy that gives rise to systemic overcompensation (see past issues of **The Liversidge e-Letter**). The benefits policy review has no mandate to address this yet, repealing the lock-in provisions has no negative impact on worker equity interests. It just stops over-compensation. *Isn't that fair? Should that not be a primary concern especially when the Board is wheezing under the weight of a \$14 billion unfunded liability? I say yes.*

This is my overall take on the **Benefits Policy Review** project. While it is a WSIB and not a government initiative, it gives the government a safe pass to do ... *well, nothing*. Unless the political will to do the heavy lifting, starting with the 72 month lock-in, materializes soon, the opportunity to effect real change will be lost. We need some legislative change (not a lot), not just administrative change. *Will we see the political will materialize?* I doubt it.

The dates for public hearings have been set and the overall project timetable is set out on the Board's website.

Appeals System Modernization

There's that word again. Now, this is one project I just don't get. The inspiration for this apparently flows from a burgeoning appeals backlog (doubling in two years). Yet, the Board hasn't defined the causes. This makes it pretty much impossible to conclude if the Board's proposals will reverse the caseload trends. *I present four basic questions:* a) What is the cause for the increase in the appeals backlog?; b) How will the proposals fix this problem?; c) How and when will the Board know the problem is being fixed? d) How will the Board be measuring success? In the December 15, 2011 issue of **The Liversidge e-Letter**, I set out a way to simplify the appeals process, without compromising fairness, and making it much faster to boot. They should look at that.

WSIB "Rate Framework Consultation"

The WSIB has just formally announced the launching of a stakeholder consultation to look at employer classification, rate setting, and experience rating, appointing special advisor **Douglas Stanley** to head this up. Mr. Stanley is a former CEO of WorkSafeNB, and recently chaired a **Workers Compensation Legislative Review Committee** in PEI. This **Rate Framework** project is a big deal, perhaps as big (or bigger) as the **Funding Review** itself, is a long-term project, and should spark the highest level of employer engagement. A Consultation Paper will be published in early 2013 followed by formal public consultations. Much more in future issues of **The Liversidge e-Letter**.

The bottom line – there's lots going on and the window to influence change is open. Of the initiatives underway, by far the most significant is the **Rate Framework Consultation**. This will define the next 20 years.