

The Liversidge e-Letter

An Executive Briefing on Emerging Workplace Safety and Insurance Issues

October 22, 2012

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

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Minister of Labour Press Release: *Commits to amend WSIA to change 72 month lock-in*

In an announcement headlined “Promoting Sustainability of Ontario’s Workers’ Compensation System” government commits to review 72-month lock-in provisions

Of course, there is one inconvenient element – the legislature is prorogued

In a press release issued this afternoon, the Ministry of Labour announced what is essentially a promise to introduce amendments to the WSIA “*once the Legislature resumes*” to change the WSIA to . . . well. . . . *here is the full announcement:*

Promoting Sustainability of Ontario's Workers' Compensation System

October 22, 2012 1:00 PM

McGuinty Government Moving Forward with Proposed Amendments to Workplace Safety and Insurance Act

Ontario is moving toward amending the Workplace Safety and Insurance Act (WSIA) to promote the long-term stability of the workers' compensation system.

Proposed changes to the WSIA would, if passed, allow the Workplace Safety and Insurance Board (WSIB) to:

- Review Loss of Earnings benefits after 72 months -- currently benefits are generally 'locked in' after 72 months, even if an injured worker's condition improves or they rejoin the workforce.
- Base survivor benefits on the average earnings of the deceased worker's occupation or trade rather than the statutory minimum currently provided under the Act.

A financially stable workplace safety and insurance system is part of the McGuinty government's commitment to the safety and well-being of Ontario workers and to a fair and balanced insurance system for injured workers and their employers.

QUICK FACTS

These proposed amendments will be introduced once the Legislature resumes.

Ontario is the only province in Canada to ‘lock in’ Loss of Earnings benefits after 72 months.

The Workplace Safety and Insurance Board was created in 1915 as the Workmen’s Compensation Board, through an Act of the Ontario government.

"Our government is helping employers and workers find better ways to get people back to work. The proposed amendments would also help ensure fairness for the survivors of those who die from occupational disease."

Linda Jeffrey, Minister of Labour

10 days ago I said the political will to address the 72-month lock-in must materialize soon

In the October 12, 2012 issue of **The Liversidge e-Letter, WSIB Update - The Reform Agenda is in Full Motion**, I said this as part of my continuing dialogue on the 72-month lock-in (see issues of **The Liversidge e-Letter** over the past two years):

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.

Of course, that statement was made when we had a legislature in session. At one level, today’s announcement may be liberally interpreted as the materialization of that political will. However, the legislature is prorogued, will be for some time it seems, and of course, there is no draft legislation to even review or critique. A Liberal leadership convention is in the works first and then when the legislature gets back to business, the first orders of business for a new session of parliament will be a **Speech from the Throne** and budget. *Even if*, after all of this, the 72-month reform commitment continues to garner political will, and is and remains a sincere political commitment, the government has to survive a vote of confidence. Even if it does, I doubt WSI 72-month lock-in reforms will be an immediate priority for next Spring.

The case for a change to the 72-month lock-in has been well made by myself and many, many others for a few years now. It is now long recognized as bad law. *If the government was truly committed to changing this, would it not have been preferable to make this announcement at the time of the release of the Harry Arthurs’ Funding Fairness report earlier this year? And, then act on it?* I think so. But, the announcement is better than nothing I guess, and at least represents a strong public statement which before this, we didn’t have. *Draw your own conclusion.*