

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.

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WSIB Benefits Policy Review: *Six steps to enhance WSIB Policy Development*

Reviewing WSIB policy development is a significant element of the Benefits Policy Review

While not initially a fan of the Benefits Policy Review, as said before, it may prove to be a turning point

In the November 23, 2012 issue of *The Liversidge e-Letter*, I indicated that I have changed my mind on the **Benefits Policy Review**, now being of the view that it can be a turning point. The policy reform element is particularly important. I still hold that WSIB expenditures must be addressed to get to the **Auditor General's** suggestion that "*fundamental legislative changes may also be needed before any significant progress can be made in reducing claims duration*" (2009 Auditor General Annual Report, p. 331).

The present policy development model is too inert

The current model is essentially this: a) WSIB administration identifies policies for change; b) new policies are developed; c) after consultation, policies are approved, implemented and survive until some future periodic review, during which time the Board expects compliant application. The Board is sincerely seeking a better process. The Chair, President and entire executive team is seeking out and listening to input in a way I have not seen before. It is remarkable - *refreshing in fact* - and sets the stage for what I have always envisioned - perpetual, seamless incremental change. Currently, large scale friction accompanies even small scale change. To lend a hand, I suggest a more vibrant series of related processes that will allow change to evolve as part of the landscape. Change as business as usual.

A more vibrant model for policy development

Approach 1: WSIB identifies policy; consults; policy is changed, approved and implemented. Same as today, except all major policy change is driven by the WSIB Board of Directors ["BOD"] through the Chair.

Approach 2: A greater reliance on the dynamics of the WSIB/WSIAT relationship. *Step 1:* More routine application of s. 126(4) by the Tribunal. *A simple catalyst* – a high level invitation from the Board to the Tribunal to regularly apply it, and a streamlined method at the Board to receive referrals. *Step 2:* As noted on December 3rd, the old *Workers' Compensation Act* required the WCB BOD to act when it was concluded "*the Tribunal was wrong*". That

changed. Now, the Tribunal must apply Board policy or advise the WSIB BOD when it is of the view that policy is beyond the law (s. 126(4)). To my knowledge, there has never been a suggestion that the Tribunal has violated the instructions of s. 126 and ignored WSIB policy. But a conundrum is ever present – *what does the Board do if the Tribunal adheres to an interpretive stream that the Board believes undermines the intent of their policy?* Well, the logical suggestion is simple – revamp the policy. But to unilaterally do that would seriously undermine stakeholder confidence unless it was preceded by a fair and open process. ***This is what I suggest:*** When a diverging decision trend is observed, use those Tribunal decisions to trigger a public review (akin to the old s. 86n process). The Board should not unilaterally change policy for these reasons without invoking an open, robust and direct public process. This is actually quite consistent with the Board's new protocol - except the identifying Tribunal decisions part - so its not much of a stretch. This obliges the Board to publicly monitor Tribunal decisions, and act as needed. Address disagreement head-on and openly. Silence is acceptance.

Approach 3: Develop an internal administrative process equivalent to s. 126(4) to allow the Board's internal appeals process policy reform capacity. Expect policy development accountability from senior WSIB decision-makers.

Approach 4: Greater utilization of the **Chair's Advisory Groups** in cultivating policy reform ideas, including more dynamic use of the WSIB website. Actually, I am confident most of this is part of the plan and the **Advisory Groups** are key. This is a good move and the Chair's leadership pivotal.

Approach 5: The WSIB BOD with the Chair should tour the province once every 24 months or so for an open-ended policy review consultation, a never ending conversation if you will, in a manner similar to scheduled statutory reviews in some provinces (PEI for example).

Approach 6: Amend *Freedom of Information* legislation so that WSIB advice to government falls within a prescribed exemption and is always public.

These are a few suggestions which, if adopted, create a multi-faceted and versatile approach, all of which are very consistent with the Board's genuine aim to truly modernize WSIB policy development. ***I am sure we will get there.***