

# The Liversidge e-Letter

An Executive Briefing on Emerging Workplace Safety and Insurance Issues

March 21, 2013

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

2 pages

## WSIB Rate Framework Review: A Solution Looking for a Problem or a Solid Foundation for Reform?

**A bit of both actually. But, if handled properly (which I expect) better building blocks for incremental change likely**

### The WSIB is proceeding cautiously on the Rate Framework Review

Even though the **Rate Framework Review** ["RFR"] is 100% a WSIB initiative (in other words, this is not a response to employer reform demands) right out of the gate let me state unequivocally that it is my well founded view the Board has no plans to shove anything down the throats of Ontario's employers. The RFR is an open, transparent consultation. The idea of adjustments to the employer classification system, the rate setting process and experience rating (the three pillars of the RFR), are not new initiatives. They all flow from the commissioning of the **Funding Review** in 2010. The RFR is a necessary next step following the release of the 2011 report, *Funding Fairness*.

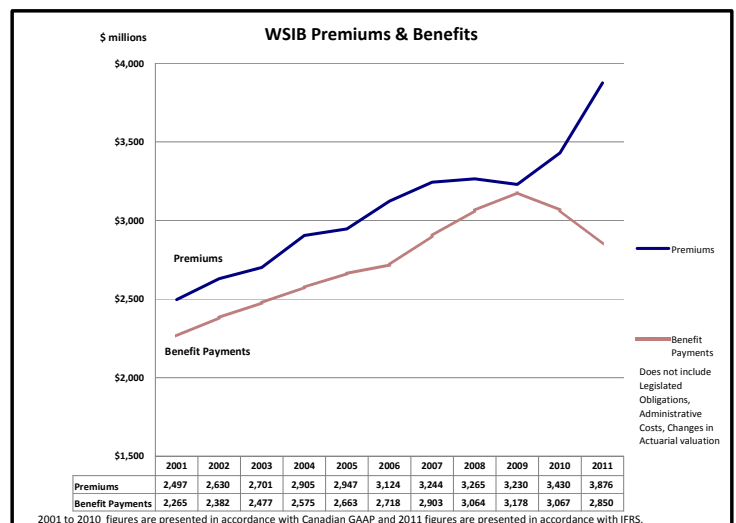
**But, a lot has changed since 2010.** Remember, after the release of the 2009 Auditor General's Report (see the December 18, 2009 issue of *The Liversidge e-Letter*, "**The Auditor General Report: WSIB UFL a threat to future benefits**" – AG McCarter stressed "*there is a risk that the WSIB may not be able to meet its obligations*". "*The time to start addressing this problem is now*") every WSIB related action, by the Board and the government, was focused on one thing – the financial viability of the system.

### An administrative revolution started in 2010

Starting in 2010 nothing less than an administrative revolution was commenced under the new leadership of **WSIB CEO David Marshall**. Three years ago, several distinct but related projects commenced, each and every one linked directly or indirectly to the 2009 AG Report. This included the **Funding Review**; the **KPMG Value for Money Audit** which quickly morphed into the **Jim Thomas Benefits Policy Review**; the Board revamped its approach to return to work through a massive administrative realignment; the Board began to re-evaluate its day-to-day claims

management practices to ensure better alignment with statutory requirements; and, a series of unique premium rate setting policies were developed during this period. Most of these projects continue. At the time they were initiated, the Board, reeling from the 2009 AG Report, was addressing a real financial crisis. The Board reasonably took a multi-pronged approach examining several administrative "soft spots" as it "battened down the hatches".

**But, by early 2013 the Board's renewed stewardship has achieved remarkable results.** Through these challenging times, in spite of several years of employer rate hikes, *the Board enjoys a surge in employer goodwill*. In four decades on this file this is a phenomenon I have not before witnessed – escalating employer goodwill while taxes are increasing. This is more than a notable success. *This is remarkable*. The credit goes to the Board's executive leadership, pure and simple. Not only have employer stakeholder relations improved through a new openness and engagement, employers are seeing results. The chart I first introduced in the November 23, 2012 issue of *The Liversidge e-Letter*, tells the story:



As a result of this success, the same "basket of initiatives" identified three years ago are not necessarily of

equal priority today. Classification and experience rating ["ER"] reform are two of those. A massive realignment of classification architecture and ER design will be disruptive for the Board and employers, will create uncertainty, and most assuredly risks eroding well earned employer goodwill. **Things have improved since 2009 and by all accounts this is a permanent shift**

The Board's success is best summarized by the Board itself in the **WSIB Third Quarter 2012 Report to Stakeholders** (the last financial report available – the Fourth Quarter 2012 Report should be released soon). While financial risks remain real and persistent, the Board notes:

- Premium revenues are increasing;
- Benefit payments are decreasing reflecting improved recovery and return to work;
- Entitlement decisions are being made more quickly;
- There are improving recovery and Return to Work outcomes;
- Health Care is more focused delivering better results;
- Stronger investment returns;
- Administration and other expenses remain tightly controlled.

### **The Board seems to be listening**

After the release of *Funding Fairness*, the Board could well have outlined its blueprint for new classification and ER schemes, and started a fast-track implementation. That it didn't speak volumes to the new style of executive stewardship under **CEO David Marshall** and **Chair Elizabeth Witmer**. Instead, the Board asked special advisor **Douglas Stanley** to lead an in-depth **Rate Framework Consultation**. This is what I said in the October 12, 2012 issue of *The Liversidge e-Letter*:

#### **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*.

I should add that Doug Stanley is a superb choice to lead the FRF, has shown remarkable energy in his initial outreach, speaking not only with the "*usual suspects*" but with all engaged employer and employer groups, all before his *official* consultation is to commence (hearings will be scheduled starting in April).

#### **A comment on WSIB commissioned 3<sup>rd</sup> party reviews**

As an aside, I want to comment on the recent tendency of the Board to engage 3<sup>rd</sup> party experts to assist in major policy reviews. So far, there have been three – the **Funding Review**, the **Benefits Policy Review** and the **Rate Framework Review**. I admit that at first I was a quiet sceptic. While I supported some of the reviews (I had been calling for a Funding Review since 2009), I didn't think

farming them out to third parties was necessarily the way to go, being of the view the Board should have conducted the reviews in-house with their direct resources. **I have changed my mind. Big time.** With the quality appointments of **Harry Arthurs**, **Jim Thomas** and **Doug Stanley** I have re-shaped my thinking. Third party reviews, properly conducted, with quality leadership (as has been the case so far), *are the only way to go on big-picture policy reforms*. These processes ensure a more vibrant exchange of views, weed out by design any potential for WSIB preferences to lead the debate (inadvertent or otherwise) other than through the terms of reference, and compel the engagement of the stakeholder community, demanding that they bring ideas not gripes to the table. *My hats off to the Board*. It would have been easier to do it differently and to more directly control each process every step along the way. It's a good thing they are working. The "*toothpaste is now out of the tube*" and I doubt the Board can go back to a strictly in-house process.

#### **The Rate Framework Review is seeking comment and ideas – not (necessarily) radical change**

In January 2013 Doug Stanley released his **WSIB Rate Framework Consultation Discussion Paper**. What follows is a summary assessment of that paper (I will offer a more detailed commentary after the hearings), not a critique of the process or the motives behind the process. As already noted, the Board is interested in sparking a debate – nothing more and nothing less. Should any change result, this will flow from the consultation. Nothing is pre-determined.

*Job 1 of the WSIB is long term financial viability.* The Consultation Paper makes it clear that there is no linkage between this project and the financial integrity of the system. It is distracting to engage on a massive project over a period of some years that will consume employer and WSIB resources, that will needlessly exhaust the Board when none of this contributes to the Board's primary focus.

*No real problem has been defined.* Employers have not been calling for a complete revamp of rate classification or experience rating. Absent employer support, radical redesign of the taxation scheme will likely be resisted.

*A massive reclassification was successfully developed over the period 1988 – 1993* (The Revenue Strategy). The primary focus of the **Revenue Strategy** was employer equity, even if WSIB administrative challenges increased. The Board commenced that project with the awareness that employer equity trumps administrative simplicity. Yet, a focus of this project is to simplify WSIB administrative needs. In other words, the paradigm has been turned upside down.

*One culprit has been effectively highlighted – lax WSIB administrative maintenance over the years.* That is a real problem. The solution is self evident – start effectively maintaining these programs. No case has been made for an architectural makeover. **A case has been made for better administration. Start that now.**