

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

A Plan for Change Reform of the Ontario WSIB (Part II of III)

A new way is vital

It is time for major change

The last four issues of **The Liversidge e-Letter** have shown the need for change to Ontario's workplace safety and insurance ["WSI"] system. While the "*global financial crisis*" has impacted the Board, trouble was brewing before. *The real problem?* Benefits are up, injury rates are down, and injuries cost more. There's no quick fix.

The "Mahoney Report" will be a good start

The *Mahoney Report* will be a good start, but don't expect a cry of *Eureka!* These are my suggestions to the Board's Chair: *One*, recognize the need for *fundamental* change. *Two*, admit that the primary problem is claim duration and the reasons must be investigated and understood. *Three*, move quickly on the easy changes (the "*low hanging fruit*"). *Four*, recommend major reform *processes* as that is the ticket to the future. *Five*, get the funding and sustainability dialogue going - now.

Big reforms are driven by big processes

While the system has made substantial progress over the last thirty years that change has generally been reactionary. This remains true today. The *Mahoney Report*, if presenting the right recommendations, could start to change this.

A WSIB REFORM PRIMER:

The 1970s: Customer service and organizational changes

The 1970s responded to an environment of growing "rights based" discontent through the establishment of the **Aird Task Force**, which championed customer service changes at the Board. Even with a senior member of the **Aird Task Force** becoming Chair (The Hon. Michael Starr), the Board was unable to respond to increasing discontent. By the end of the decade, the government of the day commissioned an in-depth review by **Prof. P.C. Weiler**, which presented the blueprint for the next two stages of massive structural reforms.

The 1980s: A focus on worker equity

After an extensive (and unprecedented) public consultation process, which included the publishing of a

reform **White Paper**, legislative committee debates culminating in an extensive **Standing Committee Report**, significant change focused principally on worker equity. **1985's Bill 101** made great strides in accountability and fairness with the establishment of the **Appeals Tribunal** and a **Representative Board of Directors**. Coincident with this design change were complementary administrative changes, and a corresponding "changing of the guard".

A new stakeholder empowerment

The mid-1980s gave rise to a **new stakeholder empowerment**. Make no mistake. This was not a Board initiative. It was a stakeholder demand. It didn't last long.

The end of the 1980s – A new benefit deal

Demands for a fairer deal for workers during the late 1980s culminated in a dramatic adjustment of the benefit delivery model [1990's Bill 162].

Leadership was confused in the early 1990s

In the early 1990s as political direction for change was confused and without deep rooted stakeholder support, legislative reforms of 1995 (Bill 165) were not sustained.

By the mid-1990s, focus shifted to system sustainability

With a re-ordering of WSIB priorities -- *financial sustainability, prevention and individual responsibility* -- fuelled by a Minister responsible for WSI reform (a first), a period of significant change and restructuring took root.

At this decade's end, many of the old problems reappear

Yet, as we near the end of this decade, we are witness to the re-emergence of many of the old problems, heightened by contemporary challenges.

The broad stroke history lesson

Five lessons are gleaned from the past 35 year history. *First*, all reform has been externally driven – the WSIB did not drive change, it administered change. *Second*, each WSI reform era was distinct and identifiable. *Third*, each reform phase was preceded by a long period of stakeholder discontent, eventually acquiring political potency. *Fourth*, WSI reform has been divisive and tumultuous. *Fifth*, the end of one era of reform simply marked the beginning of another era of reform. The system does not progress smoothly – it moves in "jerks". *It doesn't have to be this way.*

A commitment to change

I am firmly convinced that one of the weak links of the current scheme is untapped stakeholder insight and ideas. Goodness knows there is not an absence of complaints, criticisms and advice. But, to change the detractor from critic to partner requires some structural adjustments. In the November 16, 2009 issue of **The Liversidge e-Letter**, I introduced what I called, for want of a better descriptor, a “**Circle of Change**” suggesting three main reform planks: **Stability, Sustainability, Empowerment.**

Stability

- Get “**Back to Basics**”
- **Stable Premiums until 2012**
- **Strategic Administrative Review**

Stability: Get “Back to Basics”

In 1998 more than the name changed from **Workers’ Compensation Board** to **Workplace Safety & Insurance Board**. Prevention was added as a strong plank in a revamped mandate. The Board initially interpreted its prevention mandate as being *complementary* to its insurance mandate. *I agree with that approach.* The Board funded and acted as broad overseer of the **Safe Workplace Associations** and aligned its insurance mechanisms (experience rating, safety groups, etc.) to promote prevention. That was (is) the appropriate way to go.

Prevention is important. No question. But, more recently the Board has been blurring the roles between the *enforcement* Ministry of Labour and the more *advisory* WSIB, with the Board pursuing prevention as a “stand-alone” business. This is not, in my view, what was intended by the changes to the *Workplace Safety and Insurance Act* [“WSIA”] in 1998. This is not the time to expand mandates and duplicate resources. **The Board should get back to basics, focus on its insurance business, and use those levers to promote prevention.** The *primary* purpose of the Board is to provide insurance and fair compensation in a manner that compliments injury prevention.

Immediate suggestions: Cancel ineffective programs such as **Workwell** (which doesn’t), and related programs. Shut down the standalone **Prevention Division**, which should be realigned from a direct operational department, to a tightly staffed strategic and policy “think-tank”. Get rid of the duplicative WSIB Safety Advisors. Demand that the **Safe Workplace Associations** fulfill that role, with existing resources. Trim the staff down to the bare bones and elevate the role of the **Chief Prevention Officer** to a key policy and strategic one, reporting directly to the Board of Directors.

Stability: Premium Rates

Several months ago, Premier McGuinty commented that “*the worst thing you can do in times of an economic slowdown*” would be to raise taxes. I strongly urge the

WSIB to signal premium rate stability through an announcement that premiums will not increase until 2012 (if then), while a new funding plan is being devised.

Stability: Strategic Administrative Review

As a priority in the 1st half of 2010, the Board should evaluate every department, every position, every program to ensure its newly articulated strategic direction (“**Back to Basics**”) is carried forward with every organizational move, and that it truly executes a cultural realignment.

Sustainability

- An immediate “**Funding Summit**”
- **Guidelines for Future Benefit Indexing**
- **Dealing with the Unfunded Liability**
- **Tackling Increasing Claims Duration**
- **Labour Markey Re-entry – a New Plan**

Sustainability: An Immediate Funding Summit

More than a year ago, in the November 21, 2008 issue of **The Liversidge e-Letter**, “**WSIB Funding Crisis: Everything Old is New Again**” I suggested that the WSIB organize an urgent summit with business leaders to develop a new funding strategy. While I have been calling this a **Funding Summit**, much more than that is needed. The Board needs to commit to a long-term process, 18 months or more, “open its books” and engage in a continuing dialogue with employer stakeholders. **A new funding accord is the lynchpin to system sustainability.** To his credit, starting in mid-December, the Board’s Chair will be meeting with employer and business groups and representatives. While delayed, better now than never.

Sustainability: Future Benefit Indexing

The **2007 Budget** increased worker benefits beyond the statutory indexing provisions, with future increases at the call of Cabinet. I strongly recommend that pursuant to s. **161(2)** of the WSIA (which imposes a WSIB *duty* to evaluate proposed benefit changes), the Board develop guidelines for future indexing, and present those to the government in an advisory capacity. At a minimum, the WSIB funding ratio should be in the mid-seventy percentile range (where it was in 2007) before contemplating any indexing beyond prescribed levels.

Sustainability: The Unfunded Liability [“UFL”]

The May 28, 2004 **Third Party Audit of the Workplace Safety & Insurance Board** on behalf of the Minister of Labour noted that “*addressing the unfunded liability is fundamental to achieving financial stability*” [p. 3]. In his **January 1996 Discussion Paper, “New Directions for Workers’ Compensation Reform”**, the then **Minister Responsible for Workers’ Compensation Reform**, in speaking to enhancements to worker benefits in the late 1980s and early 1990s, noted:

... (benefit) expansion and enrichment in the name of improved equity have proved popular. However, governments in the past

have chosen not to address the critical but difficult problem of how to finance these benefit changes.

Exactly. Last January, WSIB Chair Mahoney advised that he will be assessing WSIB programs through “a new economic lens”. The most critical element of that lens is the UFL. The UFL is not only a management issue; it remains a significant impediment to the development of a labour/management consensus on most issues. So long as there is an UFL, and so long as it continues to pose a serious financial drain on employer premiums, Ontario must temper change to fit within this fiscal reality. For the foreseeable future, change must be assessed through a financial prism clouded by the ubiquitous UFL.

Sustainability: Increasing Claims Duration

In recent issues of **The Liversidge e-Letter** I showed that the primary challenge facing the WSIB is increasing time on claim. I won't repeat those arguments. The causes must be discovered and suitable recommendations made. *Fast.* I urge the WSIB to establish a credible third party external “**Claims Persistency Task Force**” comprised of impartial legal and insurance experts to assess within broadly defined parameters the claims persistency problem. The Board is already moving in part on this suggestion. In the recently released “**Request for Proposals: RFP 2010**” the Board has identified two related priorities: “**Fair Compensation, Ontario Workers' Compensation System, and Policy**” and, “**Return-to-Work, Disability Management and Rehabilitation**”. While a good first step, I strongly urge the commissioning of a “**Claims Persistency Task Force**” to manage this broad project.

Sustainability: The Debacle of Labour Market Re-entry

LMR continues to be a problem. The Board has commissioned a third party review of LMR, but that will not be enough. Once the review is received, I urge the WSIB BOD to immediately strike a bi-partite “**LMR Task Force**” with the mandate to: a) assess the true effectiveness of LMR; b) to consider approaches in other Canadian jurisdictions; c) to develop innovative, creative and incentive based solutions with an emphasis on sustainable reemployment within industrial sectors. A labour and management consensus on LMR is vital. Each are critics. Each has an interest. Each has the ability to formulate innovative, cooperative solutions. Together, finding a durable solution is achievable.

Empowerment

- A New Board of Directors
- Permanent Stakeholder Advisory Committees
 - Enhancing WSIB Accountability
 - A New Way for Future Reforms

Empowerment: A new Board of Directors

The current WSIB Board of Directors, with the exception of the Chair (who is very accessible), is not nearly as engaged with stakeholder communities as past Boards. This is to the disadvantage of the WSIB, employers and workers.

This is the model I propose: A tri-partite board, operating under the leadership of a strong Chair, with representatives from labour, business, prevention, medicine, and finance, **plus full-time expert employer and worker members, who would jointly co-chair a board of director policy committee.** Board members would be expected to maintain community links, and contribute in a significant manner to a vibrant social dialogue.

Empowerment: Permanent Advisory Committees

While the “*Mahoney Consultation*” has been well received (even if the results are delayed), the initiative itself is recognition of a failed WSIB outreach protocol. *Involvement and participation is to be provided as a matter of stakeholder right.* I recommend that the Board strike permanent sector based advisory committees. The **Advisory Committees** will meet directly with the Board's Chair no less frequently than quarterly to address emerging policy issues. The WSIB will disclose the policy and background material provided to the WSIB BOD (except that material which is of confidential human resource content). A model very close to this was in place 20 years ago. It worked well.

Empowerment: Enhancing WSIB Accountability

Presently, the WSIB Administration is accountable to the WSIB BOD through the President. There is little direct accountability to stakeholders. *Accountability can be easily enhanced with one simple refinement:* that the WSIB Business Plan is placed on the Board's website; that the Business Plan set out measurable objectives and timetables; that the Board report on those objectives in a clear and straightforward manner quarterly on the WSIB website.

Empowerment: Broad Reform Initiatives

Every government of recent memory has addressed WSI reform. Typically, following a period of reform, the political file is closed. Pressures re-accumulate, political momentum re-builds, and inevitably, the appetite returns for massive change. *We are there yet again.* In the long-term, this “on and off” approach to WSI reform is ineffective. Legislative refinement or evolution is rarely possible. Yet, the WSIA provides the Board with the power to recommend statutory and regulatory amendments and “*establish, maintain and regulate advisory councils or committees, their composition and their functions*” [WSIA, s. 159]. I recommend that the WSIB BOD assume a leadership role for investigating, assessing and recommending wide-ranging legislative reform, and that the Board strike a permanent, representative and external “**Legislative Reform Advisory Committee**” for that purpose. I further recommend that those recommendations flow directly to a special and permanent **Standing Committee of the Legislature**. Such an approach, over time, will reduce the “cut and thrust” politics often associated with WSI reform, as WSI legislative maintenance becomes routine and normalized.

In the next issue of **The Liversidge e-Letter**, I will suggest how these recommendations can be implemented. It is not that difficult providing the will to change exists.