

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.

2 pages

The Auditor General Report WSIB UFL a threat to future benefits

The involvement of the Auditor General was inevitable

In the May 23, 2008 issue of **The Liversidge e-Letter**, I predicted that Ontario's Auditor General ["AG"] would get around to again reviewing the unfunded liability ["UFL"] sooner or later. I said, "*I predict that the AG will again enter the funding debate later this year or next . . . it is inevitable*".

Over the years I have repeated that the primary problem for employers *and* workers is the existence of the UFL. On July 14, 2004, I wrote:

The presence of the UFL remains a significant impediment to the development of a labour/management consensus on most issues. It is difficult, as but one example, to explore new means to pre-fund compensation for occupational disease so long as approximately one-third of all employer premiums goes towards the UFL. Employers, since they pay the bills, implicitly understand the power and constraining effect of the UFL. 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.

Therefore, from a perspective of pure principle, labour should be as supportive of the efforts to wrestle the UFL to the ground as management. Moreover, simply raising premiums to fuel the decline of the UFL is counter-productive if premiums rise to the point of impacting business investment and job creation decisions, an always delicate balance.

2004 Minister's Audit said eliminating UFL was essential

I have reminded readers time and again that the **May 28, 2004 Third Party Audit of the Workplace Safety & Insurance Board on behalf of the Minister of Labour**, said:

Addressing the unfunded liability is *fundamental* to achieving financial stability of the WSIB. [MOL 2004 Audit, at page 3]

The Auditor General's Report is a powerful read

I will focus on some of the more fascinating and controversial elements of the AG's Report. I encourage readers to download the full report (<http://www.auditor.on.ca/>). In short, the AG Report affirms themes set out in **The Liversidge e-Letter** over the past two years.

The bottom line: The UFL is a threat to future benefits

The AG's press release plainly makes the point that the UFL is the mutual problem of employers *and* workers. Under the headline, "**WSIB's Unfunded Liability Could Threaten Future Benefits**", AG McCarter stresses "*there is*

a risk that the WSIB may not be able to meet its obligations". "*The time to start addressing this problem is now*".

But, the Board's UFL was a threat 26 years ago!

Actually, the UFL was recognized as a serious problem requiring immediate action **26 years ago!** In the **Board's 1983 Annual Report** the Board noted the UFL "*has been rising steadily over the last few years*". 1983 is a pivotal year with historical significance. That was the year the "*30 year funding plan*" (zero UFL by 2014) was developed. It was then that the Board expressed the prevailing policy view that has survived this past quarter century:

. . . together, the Board and employers could determine the most appropriate methods of reducing the unfunded liability without, in any way, hampering the ability of Ontario's employers to carry on business. After all, the ultimate health of the workers' compensation system depends on the continued strength of the provinces economy. (1983 WCB Annual Report, p. 13)

For a detailed account of the Board's progress and various (and endless) approaches to tackling the UFL over the years, read the December 1, 2008 issue of **The Liversidge e-Letter**, "*It's déjà vu (all over again)*".

In June, 2009, WSIB confident on funding

On June 16, 2009, in a speech to the **Economic Club of Canada**, WSIB Chair Mahoney said:

I want to make it clear that our ability to fund the current obligations of the workplace safety and insurance system remains secure.

In speaking to the overall implications of the UFL, Chair Mahoney said:

It's like looking at the balance on your home equity loan and determining whether you'd have enough money to pay off the loan if it was called today.

My interpretation of the WSIB position: Until the "*loan is called*" while the UFL is a big concern, there is no crisis.

Minister of Labour also confident

In a November 9, 2009 letter to the **Canadian Federation of Independent Business** (which has been pushing for an independent review of the WSIB), Labour Minister Fonseca repeats, "*. . . the WSIB confirms that its ability to fund the ongoing obligations of the workplace*

safety and insurance system remains secure” (go to: <http://www.cfib-fcei.ca/> for a copy of the letter).

The Auditor General has a different take

In his report, the AG responds to the argument that “because the workers’ compensation system is a perpetually ongoing operation, the unfunded liability is meaningless”:

We do not agree with this argument and are concerned that the trend of selling off the WSIB’s investments to fund current operations and benefit payments is not financially sustainable. (AG 2009 Annual Report, p. 322)

On the challenge of paying down the UFL, the AG notes, . . . the WSIB’s lack of success in eliminating the unfunded liability has been more directly the result of benefit expenses not being adequately funded by the premium-revenue and investment revenue streams (*supra*, p. 326).

The AG repeats, almost exactly, the themes I advanced in the issues of **The Liversidge e-Letter** more than two years ago dealing with the **Budget Reforms**. (See the series “**Budget Reforms**” September 6, 2007 to October 9, 2007, a total of seven issues.) In the September 6, 2007 issue of **The Liversidge e-Letter**, I argued that the **Budget Reforms** put employer premiums and worker benefits at risk:

Accountability, an endless demand for it and an earnest commitment to it, is all the Ontario WSI system needs, and has, to keep it on an even keel. We have seen what has happened in the past when financial accountability principles were eroded. In his January 1996 Discussion Paper, “*New Directions for Workers’ Compensation Reform*”, the . . . Minister Responsible for Workers’ Compensation Reform . . . said this, which remains relevant today. In speaking to the enhancements to worker benefits in the late 1980s and early 1990s, Minister Jackson noted:

However, the costs of these improvements were not balanced by measures to guarantee adequate reserves to meet current and future financial obligations. Understandably, 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.

So, let’s hope we are not back to the mind-set recognized by Minister Jackson. If we are, it is not only employer premiums that are at risk – future worker benefits may be placed at risk as well. Let’s not go “*back to the past.*”

The AG echoed these sentiments

The AG referred to the same excerpt from the 1996 report (at p. 330), adding:

Our office is not questioning the government’s policy decision to increase workers’ benefits – the government has the sole responsibility for setting benefits and coverage through legislation. However, we do want to highlight how a government’s decision to increase benefits can impair the WSIB’s ability to address the unfunded liability (at p. 330).

Legislative reform may be necessary

While the AG acknowledges the Board’s efforts and commitment to reduce claims duration (at pp. 317 and 331), the most powerful and significant comment in the entire report suggests:

However, in addition to improved investment returns and further cost reduction measures, more significant structural changes, including legislative reforms, may be needed to ensure that the Board continues to have the ability to meet future financial obligations. (at p. 317)

Has this message been received?

It is no secret that the Board has been moaning about the plight of its finances, and rightly so. In the June 23, 2009 issue of **The Liversidge e-Letter**, “**WSIB Unfunded Liability at Historic High**”, I noted the Board was in a “perfect storm” of declining investment values and returns, a declining revenue base, and increased claims costs. Recently, the Board has been ringing alarm bells because 2009 revenues are \$250 million or so *less* than expected.

Benefit indexing went through

But, in spite of the AG’s involvement and in spite of the increasingly perilous WSIB financial position, on December 2, 2009, five days before the release of the AG’s report, the government approved **Regulation 454/09** which provided a 0.5% “temporary indexing” increase to worker benefits. **The cost to the system?** \$157 million (which goes right to the UFL). **The impact for individual workers?** Almost negligible. (Example: A worker receiving \$25,000 in partial loss of earnings, will get 34 cents more per day from the WSIB.)

In the October 5, 2009 issue of **The Liversidge e-Letter**, “**Does WSIB have the moral authority to increase premiums for 2011 or 2012?**”, I suggested it didn’t. This action on the part of the government adds to that argument, but more importantly, seems to defy the AG’s core advice.

The significance of the AG Report

The AG’s assessment is unprecedented. It represents a milestone. While the AG commented on the UFL in his **2005 Annual Report**, that discussion was covered in a few columns. This time the section on the UFL *alone* took 21 pages. **More to the point, the observations get to the essence of the contemporary debate.** Everything else is now a side show. **The key debate right now, and for the next many years, is the very sustainability of the Ontario workers’ compensation system.**

AG is generally supported by “the powers that be”

And just what do “the powers that be” think about the AG generally? Well, just go back to the words of the current Chair of the WSIB spoken in 1993 at the **Standing Committee on Government Agencies**. At the time the **Standing Committee** was examining (. . . ♪ ta da ♪ . . .) the **Workers’ Compensation Board**. This is what then MPP Steve Mahoney said, “**Regardless of who is in power in the province of Ontario, the Provincial Auditor, as I see it, is a watchdog the public should have some confidence in.**” (Hansard, October 27, 1993).

So, what’s next?

The **AG’s 2009 Annual Report** is now the lens for tomorrow’s analysis. The ultimate solutions themselves are easy to conceive (the “*silver bullets*”). Revenues have to be increased and benefits have to be reduced. **That’s the easy part.** **But, how can either, let alone both, be achieved without ripping the system apart? That’s the challenge.** I may forever be an optimist, but, I see opportunity around the corner with the timing of the incoming CEO and the release of the Chair’s Report. *This discussion continues next issue.*