

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

Chair Mahoney's Consultation A Starting Point: Reviewing Past Suggestions

A lot of good ideas have been cast aside
(*The Mahoney dialogue hopefully will change this*)

Never a shortage of suggestions

As I introduced in the February 2, 2009 issue of **The Liversidge e-Letter**, "**WSIB Chair Mahoney to personally lead wide-ranging consultation**", the Board's Chair is spearheading a new consultative process that provides endless opportunity for the Board and stakeholders together. To me, the message set out in a widely distributed letter is loud and clear – *today is a new day*.

I recall several months ago, sometime last summer actually, WSIB Chair Mahoney (perhaps somewhat plaintively) noted that there was never a shortage of people giving him "suggestions". He's right. Nor should there be. More to the point, this ever-present stream of complaints, criticisms, suggestions and ideas is actually a very valuable *resource pool* for the Board. However, too often, the Board is unable to see the fertility of these ideas.

The WSIB must transform "the culture of NO"

As long-time readers of **The Liversidge e-Letter** know, in these pages there never has been a dearth of suggestions. But, as also chronicled in these pages, far too often the Board responds to new ideas and suggestions predictably - and poorly. With a few pedantic reasons setting out why the *status quo* is the way to go, suggestions for a new way are often quickly cast aside. Instead of focusing on why the idea just might work, the Board is all too often too eager to find comfort "in the way things are". **More to the point**, the Board misses the key issue - *why in the world did the originator of the suggestion take the time to identify a problem, assess it, develop a solution or suggestion and communicate this to the Board?* But, alas, too many innovative ideas get quashed by what I have referred to over the years as "**the culture of no**". Progress is stalled.

I have been witness to this phenomenon first hand

Perhaps the best and classic example is when I appeared before the Ontario legislature's **Standing Committee on Government Agencies** two years ago (see the February 28, 2007 issue of **The Liversidge e-Letter**). At that time, I

proffered what I believed were three thoughtful and helpful suggestions:

One: The WSIB Board of Directors should conduct a high level review of the Board's Audit and Collection departments.

Two: The Board should immediately restore the **Voluntary Registration Program**.

Three: The Board should suspend collection activity while an assessment is being actively appealed.

Three ideas – three changes to WSIB policy

Well, to make a long story short, all three ideas (or a reasonable variation) were quite soon after adopted as WSIB policy. I received a lot of positive feedback. Many thought the suggestions were quite helpful. I agree. They were. And, were intended to be.

But, well before the Standing Committee, each idea was summarily rejected by the same WSIB

But, *each and every one* of those suggestions had been provided to senior levels of the Board well in advance of my February, 2007 appearance before the Standing Committee. Some of the ideas had been repeatedly put to the Board for well over a year, and others, for even longer than that. The response? *Thanks, but no thanks*. **Each and every one was outright rejected**.

Yet, when the same ideas were profiled in a more public forum – well, they were suddenly brilliant, and immediately picked up by the Board.

And, that captures the essence of the problem. I don't want to cast too broad a net here. Many individual WSIB executives take a very different approach, and have time and again been open to ideas and suggestions. But, that is very much left to individual executive style and prerogative. In recent years, the Board, as an organization, has culturally reflected a different approach. **With the Mahoney consultation initiative, that is about to change**.

After the **Mahoney Consultation** announcement, I began dusting off several old "reform" files and came across a 2004 letter sent to the then Minister of Labour. While five (5) years have passed, many of the ideas are still relevant and vibrant today. In fact, had a few of those suggestions been examined in earnest, the Board may well have avoided a few "bumps in the road" over the last few years. What follows are edited excerpts from that letter:

Workplace Safety and Insurance Reform

Dear Minister:

Ontario WSI has been in a constant state of flux since the late 1970s. In my opinion, the system has only one major reform left in it. After that, unless long-term stability is ensured, credibility in the scheme will irreparably erode. Allow me this opportunity to present you with some views on areas that warrant serious “doable” reform. These ideas are not to be construed as being necessarily representative of a business or labour viewpoint.

On the question of corporate governance: It was not until the late 1980s that the (then named) WCB board of directors reached out to the Board’s client constituency. The governance model then put in place under the chairmanship of Dr. Robert Elgie, allowed for constituency involvement through interaction with a representative board, without the truculent qualities of the official bi-partite board which was in place in the early 1990s, and with more stakeholder involvement than experienced with the current board. **Recommendation:** Establish a tri-partite board, under the leadership of a strong chair, with representatives from labour, business, prevention, medicine, and finance, *plus full-time employer and worker advocate expert 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.

On the question of linking WSIB programs to occupational health and safety: It is time to think “outside the box” and coordinate a new approach with existing tools. At present, experience rating, Workwell, safety groups, safe communities, safe workplace association [“SWA”] programs, etc. are all programs with the same objectives, but which suffer from a systemic disconnect. While all chase the same goals, there is a dearth of program coordination. Each program operates in a *de facto* policy vacuum while being administered independently. With some simple realignment, a coordinated administration, building on program strengths and recognizing program limitations, will enhance success. **Recommendation:** Link the administration and policy objectives of all prevention focused programs.

On the question of WSIB funding: The “funding plan” calls for full funding of current liabilities and the retirement of the unfunded liability by 2014. This 30 year plan, forged in 1984 at a time of fiscal crisis (burgeoning unfunded liability and increasing employer premium rates), reduces program flexibility. The Ontario WSI system has never been fully funded. While there would be resistance to moving off this target, adherence to the plan may well lead to higher premium rates. If presented with policy options of reviewing the funding plan or increasing premium rates, employers almost certainly would choose the former. In the 1994 policy document **Back to the Future**, then **Liberal Labour Critic Steve Mahoney** suggested a funding target of 75% (*ed:* recall that this was written two years before Steve Mahoney was appointed WSIB Chair). **Recommendation:** When and if circumstances warrant, review the long-term funding strategy and consider setting funding targets at less than 100%.

On the question of coverage: The question presently being asked is “Who should the WSI system cover?” I propose that the question should be: “How can all Ontario workers be covered?” The former question assumes a *status quo* focus, whereas the latter opens the door for a different regime altogether. WSI predates the insurance revolution and universal Medicare. If one were to design a workers’ compensation scheme from scratch today, I

doubt it would be at all similar to the present system.

Recommendation: Renew the coverage question from a broader vista. If viewed within parameters of the current system, the issue should be assessed from the perspective of “coverage gap”.

On the question of compensation for occupational disease: The problems inherent with disease compensation have less to do with adjudication policy guidelines and more to do with funding design. **Recommendation:** Address disease entitlement questions through a differently funded model.

On the question of experience rating: Controversy has plagued this program. Most employers support it. Most organized labour groups do not. ER certainly promotes employer equity. If it is the case that ER does not contribute in a significant way to accident prevention, and the policy objects are more appropriately focused towards RTW and employer equity, the program must undergo redesign. **Recommendation:** *Step 1:* initiate a comprehensive study to determine the effectiveness of ER towards prevention and RTW. *Step 2:* revamp ER policy as required.

On the question of WSIB administration – executive compensation: WSIB administration costs are at an all time high. WSIB executive salaries significantly outpace public sector salaries. **Recommendation:** Peg the WSIB Chair’s salary relative to the Minister’s salary and the WSIB President’s salary relative to the Deputy Minister’s salary, and all other WSIB internal salaries relative to those benchmarks. This is the historic balance that has been in place (until more recently).

On the question of WSIB administration – program outsourcing: Medical and vocational rehabilitation services [“VR”] are now almost entirely outsourced. In the past, the majority of VR services were in-house. Labour Market Re-entry [“LMR”] is now entirely outsourced, even though the effectiveness of this approach is not known. **Recommendation:** Initiate a comprehensive review of the effectiveness of LMR. Refocus WSIB accountability controls to ensure that new programs are publicly evaluated on an ongoing basis. Consider an end to outsourced programs where in-house administration is more effective and cost efficient.

On the question of the role of the Ontario legislature: Every government of recent memory has legislatively addressed WSI reform. The legislature, when it moves, moves decisively and resolutely and WSI reform is usually conducted on a massive scale. 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 legislative change. Legislative refinement or evolution is rarely possible. While WSI remains politically charged (and appropriately so – it is a fundamental public institution), the legislature is effectively disengaged until public pressures, in response to systemic concerns, again create a political potency. The legislature then reacts to that potency. **Recommendation:** That a special and permanent Standing Committee of the Legislature assume the legislature’s carriage of WSI. 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.

Remember, that letter was sent five years ago. Several of those issues saw some significant “play” over the past few years. Many very recently. **The bottom line lesson?** The WSIB should listen more. **The good news?** Appears quite clear it will be. **Actions over the next two months? Pivotal.**