

# The Liversidge e-Letter

An Executive Briefing on Emerging Workplace Safety and Insurance Issues

January 7, 2009

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

2 pages

## Urgent action required by WSIB and Government to ensure long-term viability

*But, the Board cannot do it alone*

New mechanisms are needed to involve stakeholders in system re-design

***A reinvigorated Board must be buttressed by a vibrant reform and policy development mechanism external to the WSIB***

### 2009 will be a defining year

In the last issue of **The Liversidge e-Letter** for 2008, I presented a very strong and personal endorsement of the incumbent Chair of the Workplace Safety & Insurance Board ["WSIB" or "Board"], the Hon. Steve Mahoney, P.C. This is what I said:

2009 will be difficult, and while I am not bullish on the state of the WSIB a year from now, *I have confidence that the Board's future prospects will start to brighten by the end of next year and that Mahoney's leadership is key.*

I stand 100 percent behind this endorsement. Success though is not going to happen by magic. Nor can the Board be expected to do it all alone. In fact, it is my view that it is in the system's best interests (and by extension, in the interests of all stakeholders), that a very different, and very participatory approach be designed and adopted for future major WSIB reforms with long-term structural implications.

### An official external process is necessary

As long-time readers of **The Liversidge e-Letter** are aware, for several years now I have been promoting the establishment of an external review process, which I believe is needed today more than ever. 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**), I said this:

### The longer-term picture – WSI reform

At its core, WSI is not an insurance contract but a social contract between capital and labour. *Insurance is but the tool that promotes that contract.* Essential to this contract is a continued requirement and perception of system fairness – for both groups, management and labour. **If three decades of WSI reform history has established two constant truths**

they are these. First, *the loss of confidence of a core constituency will spark a petition for reform.* Second, *the Board is unable in the long term to maintain constituent confidence.*

Ongoing WSI reform is inevitable, but it is neither smooth or incremental - it is divisive and tumultuous. Change is massive or non-existent. Feast or famine.

*There is a better way.* A conduit for incremental change is required. I propose a routine large scale external review, reporting directly to the Ontario Legislature. This will allow for a perpetual opportunity to address statutory and administrative shortcomings. This simple innovation ensures that WSI reform becomes routine, less partisan, and considered absent a crisis of confidence, while still ensuring political oversight. This would enhance stakeholder participation and move the critic from detractor to partner (See April 3, 2006 **The Liversidge e-Letter, Workplace Safety & Insurance Reform, "The WSIB is a Government in Miniature"**).

### In 2007, the government proceeded with an unprecedented omnibus bill approach to reform

Shortly thereafter, in an unprecedented move, and one with which I strenuously disagreed (then and now), the government proceeded to significantly reform the *Workplace Safety and Insurance Act* ["WSIA"] through the **Budget Measures and Interim Appropriation Act, 2007**. I slammed this omnibus bill approach to reform (see the September 10, 2007 issue of **The Liversidge e-Letter, "The Budget Reform Process: Why employers and workers alike were let down"**). I suggested this was an unprecedented approach for good reason – it defied decades of sound, fair and open workers' compensation policy reform process practiced by all governments of all political stripes over the past 30 years. The **Budget Reforms** sounded the return of a partisan political calculus to workplace safety and insurance ["WSI"] reform, a style that had been abandoned for good reason a generation ago.

### A year ago, I predicted future fall-out from these reforms

More than a year ago (see September 10, 2007 issue of **The Liversidge e-Letter**) I suggested that there will likely be substantive negative fallout from the **Budget Reforms**.

While the *Budget Reforms* are not on their own the cause of the current fiscal malaise the Board is experiencing, it certainly contributes to it and more importantly, represents a short-sighted style to WSI reform, a style that cannot be allowed to continue.

**Since then there have been additional examples of WSIB unilateral policy action without stakeholder participation**

Since that time we have also been witness to significant, controversial and unilateral adjustments to WSIB experience rating ["ER"] policy (see the series of issues of **The Liversidge e-Letter** from April 9 through to May 16, 2008, a total of 8 issues).

I have long held that WSI reform demands a stand-alone process and stand-alone legislation. This is what I said last Fall:

**Omnibus style Budget Reform process – a bad fit for WSI**

Bill 187 (the "*Budget Reforms*") introduced significant omnibus style reforms to the *Workplace Safety and Insurance Act* ["WSIA"] through the Ontario budget. As I made clear then, I oppose this method of reform (see September 10, 2007 issue of **The Liversidge e-Letter**, "*Why employers and workers alike were let down by the Budget Reform process*"). I argued that *all* prior significant workplace safety and insurance ["WSI"] reforms included stand-alone legislation and stand-alone process, involving public legislative committee hearings (this was true of the legislative reforms of 1985 [the Tories' Bill 101], of 1990 [the Liberal's Bill 162], of 1995 [the NDP's Bill 165], of 1997 [the Tories' Bill 99]).

**Without an open and public reform process, sound, sustainable reform is not possible**

I said then that without fair process, sound reforms are not possible, in the short or long term. *There were none of the customary WSI reform processes engaged in the Budget Reforms*. Without an accountable public process, WSI reforms too easily become about good politics and not about good policy. Accountability garners responsibility.

**A sound, inclusive process is needed**

Now, after the market melt-down, at a time when it is likely the Board will be hitting a new high watermark for the Unfunded Liability ["UFL"] (see the December 31, 2008 issue of **The Liversidge e-Letter**), a new cooperative partnership must be forged.

No longer can the Board and/or government, either independently or in concert, proceed to develop and implement far-reaching workers' compensation reform without formal and official stakeholder participation. Over the last several issues of **The Liversidge e-Letter** I have set out a list of 10 suggestions. To remind, these are:

1. Employer premiums must stand pat (Premier McGuinty has commented that "*the worst thing you can do in times of an economic slowdown*" would be to raise taxes).
2. Defer the January 1, 2009 2.5% benefit hike (I am confident that had the WSIB been funded at current levels when those political decisions were taken, they never would have seen the light of day).
3. Establish sound guidelines to future indexing calls (at a minimum, the WSIB funding ratio should be in the mid-

seventy percentile before contemplating any additional indexing beyond prescribed levels).

4. The WSIB must provide a special financial report declaring its performance to the end of October, 2008 and every quarter thereafter.
5. WSIB funding plan should be revisited to set out a renewed and more realistic long term funding plan (see # 10).
6. The WSIB should slow down its reorganization plans.
7. As part of its "persistency study" the WSIB should encourage a review of the structural elements of *Workplace Safety and Insurance Act* ["WSIA"] which in my view are driving higher claims costs through the inability to distinguish between unemployment caused by an injury and unemployment caused by economic reasons.
8. The Board should get back to basics and promote prevention through its insurance levers, not as a stand alone business.
9. It is time for an external review of the WSIB.
10. The WSIB must organize an **urgent Funding Summit** no later than mid-January, 2009 with Ontario's business leaders and senior government officials, to develop a new long-term funding strategy - a newly conceived 20 or 30 year plan. The Board should make this announcement right away, and commit to a process to be completed no later than the end of the 1<sup>st</sup> quarter of 2009. *A new era must start today.*

**The Board must act and be seen to act**

So far, the Board has not responded to any of these suggestions, or more to the point, has not set out any plan or disclosed *any* information. While I have every confidence that the Board is seriously contemplating these urgent matters and is in the throes of developing some ideas and/or plans, there must be some sign of action right away. Stakeholder confidence may otherwise be needlessly eroded.

Of the 10 LAL suggestions, one is now quite redundant – the government did not retrench on the indexing suggestion (even though, as I have said in past issues of **The Liversidge e-Letter**, it is highly unlikely the Board would have recommended or the government would have approved, such indexing rules in the *Budget Reforms* if the funding levels were at current levels).

Of the remaining suggestions, two require *immediate* attention. The first is easy enough - **Suggestion No. 4** - the Board must disclose to the public the current state of its finances, and update with quarterly statements thereafter. By the way, this is not a new approach. The last time the Board was in a very serious financial squeeze (in the early 1990s) the then Board of Directors insisted that the WSIB release quarterly financial statements. It did and they were of tremendous value to stakeholders to assess "the state of the union". I strongly encourage the Board to immediately (like, right now) release an interim financial statement and to commit to ongoing quarterly reports.

The second urgent suggestion is also pretty easy - **Suggestion No. 10** – an urgent *Funding Summit*. This is critical. I urge the Board to conduct a summit later this month. **However, the most significant suggestion, an ongoing external review, is the most important. It is time for a new way. More on that in a future issue.**