

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

Involving the Auditor General *Review will benefit stakeholders & WSIB*

A request for an audit is not a signal of non-confidence in WSIB governance

Events have been taking the lead

As readers of *The Liversidge e-Letter* are aware, the WSIB experience rating ["ER"] story has taken on a life of its own. I have suggested that the Ontario Auditor General ["AG"] become engaged in both a review of the ER question as well as a broader review of the funding pressures facing the Board. I will expand on the case for involving the AG.

The WSIB enjoys exceptional leadership

Understandably, one may interpret a request for involving the AG as a signal inferring non-confidence in current WSIB leadership. *In the case of the WSIB, nothing could be further from reality.* In these pages I have always been a strong supporter of the current executive team of the Chair, Mr. Mahoney and the Board's President and CEO, Ms. Jill Hutcheon (for example, please refer to the March 12, 2007 issue of *The Liversidge e-Letter*). For the most part, the Board has *always* been led by exceptional people, dedicated to a single objective – the betterment of the system for workers and employers. This is as true today as it has been at any point in the Board's distinguished history. This is not "apple polishing". As my writings attest, I am no cheerleader for the Ontario WSIB. This support is earned.

These words are written just after I have heard Chair Mahoney masterfully deliver another passionate address at the annual meeting of the **Transportation Health & Safety Association of Ontario** [THSAO], aptly titled *The Road to ZERO*. The message: *Deliver more than a cultural shift in Ontario workplaces - create a "habit of safety"*. I first noted this theme in the November 16, 2006 issue of *The Liversidge e-Letter*, "*Mahoney Hits a Home Run!*". All this is said as a prelude to a broader discussion for the need to involve the AG, and to cast aside any suggestion that this somehow speaks negatively on the current Board or on the Board's leadership. It doesn't.

Policy differences though will arise

Policy differences will arise. Counter opinions will emerge. With a system as intricate as the Ontario workplace

safety and insurance ["WSI"] scheme, anything otherwise is not only not possible, it is not desired.

The thoughtful presentation of differing views helps

Much progress flows from discussion of what may first appear as competing or critical views, which upon deeper thoughtful assessment, may trigger a constructive bridging of viewpoints. Sometimes the chasm may take time to bridge. Sometimes the abyss is too wide. But never should disagreement, reasonably and respectfully presented, be construed as insurgence. Certainly not in the WSI field. (In saying this, I part company with those that express disagreement through cries for someone's head or resignation - that throws down an entirely different gauntlet.)

The case for involving the AG in the ER review

For the reasons I am about to outline, the Board itself should welcome the involvement of the AG as a vehicle for practical and strategic assistance.

On the ER story, labour went from critic, to getting (in part) what it asked for (a high level review of ER), to (ill-advisedly) demanding the firing of the WSIB Chair and the entire WSIB Board, to pushing this to a long-running media and political story, culminating in the legislative debate of an NDP motion to kill ER (see the May 16 2008 issue of *The Liversidge e-Letter*, "*NDP Motion Defeated in House*").

This has been fuelled more by a media, not policy cycle

The Board's response has been frenetic and in my view paced more by a media cycle and less by a policy development cycle. As I recently noted, ER initially took over 12 years from idea to full implementation, and this time was well-spent policy development wise. A remarkable and brilliant policy emerged. I have repeatedly said, contrary to recent images painted in the media, the current ER design represents the Board at its best and brightest.

A "fast track" policy is the last thing needed

The Board has committed to a process that will fast track the ER policy review and the eventual "new" policy. While the time frame keeps shifting from 30 days, to less than that, to a year, to less than that, a year seems to be the outside target limit. *This is a serious mistake.* I remain resolute that any element of policy "fast tracking" will be a recipe for disaster. A program this complex, this important and so

closely linked with the need to cultivate understanding and support *before* implementation can easily be undone.

WSIB Chair Mahoney remains a supporter of ER

I remain convinced that WSIB Chair Mahoney remains an ardent supporter of ER. The story has though, to a large degree, slipped through the Board's hands, and I am sure the Board is deeply frustrated by this. I don't blame the Board, although sage "*Monday morning quarterback*" advice would have been to announce the review - which I agreed with - and stick to that single comment (but we will never know if a different approach would have driven a different result).

WSIB review is motivated by the recent controversy

Notwithstanding that the WSIB is conducting its own study, let us not forget *why* the Board is doing this. This came about only after an extraordinary amount of negative publicity. But for this recent controversy, and but for the tenacity of those pushing for the death sentence of ER, this review never would have happened.

The WSIB looked at ER just three years ago

Before too much history undergoes revision, remember that the WSIB looked at its ER programs just a few years ago. After a lengthy process, in a July 21, 2005 press release the Board announced significant changes to ER (which came into effect 2006). *Yet, none of the triggers of the recent controversy inspired any changes by the Board three years ago.* So, while I have been supportive of a WSIB led ER review, let no one be under any illusion that this is running at all independent to the recent media clamour. If it were not for the recent media and political attention, the Board would not likely be reviewing ER today.

Anything that leads to the continuation of ER, even if in a different form, will not quell the critics

Given that the ER review has been sparked by the critics and not the supporters of ER, and not by the Board itself, does anyone think that a "new and improved" ER will in any way quell the campaign to kill ER? *Not a chance.* In fact, given that the Board has already voiced support for ER as a concept, an external review will, in all likelihood, come to the conclusion that ER in some form or another *is* necessary. (I would be flabbergasted if any other conclusion flowed from a credible third-party review.) The review may well recommend a "new and improved" ER model.

If ER continues the critics will reappear – if ER is killed, employers will then lead a new protest

What I said on May 16 bears repeating:

... if the WSIB ER review *does* call for the end of ER, the outrage will be transferred to employers who will cry "*political interference*".

... if the WSIB ER review results in a "*new and improved*" ER design, the critics will cry "cover-up" or "shell-game"

Involving the AG restores the Board's moral authority

As it stands, the Board can't win, no matter what it does. If the AG reviews the Board's ER programs, I would suspect that the AG would conclude something along the lines that, as a concept, ER is important to employer insurance equity. I would also expect that the AG will note some program deficiencies, perhaps along the lines of the critics', or new

ones. *It is my view that the AG may well conclude that the Board is on the right track to proceed with the third-party technical review of ER.*

While it may appear that all of this is a circular route to simply get us back to where we are today, there would be one vital "value added" to the AG's involvement – the management of the wild-card political element to this debate. The critics may be able to pounce on the Board but the AG is impervious to that style of attack. ***The bottom line:*** If the AG is not involved, whatever the result of the Board's review, the critics' verdict is preordained and little is gained.

The case for involving the AG in the funding question

More controversial is whether or not the AG should review the funding pressures facing the Board. I am of the view that it is not a matter "if" the AG gets involved, but "when". I think it is inevitable. My position on the involvement of the AG has been consistently put forward for almost a year now and I will not repeat all of the arguments set out in past issues of **The Liversidge e-Letter** (which are available at www.laliversidge.com).

In 2005, the AG saw the UFL as a continuing problem when it was about \$6.5 billion, well before the additional pressures arising from the **Budget Reforms** and the recent economic downturn. The last figures from the Board peg the UFL at about \$8 billion at the end of 2007, and peaking at about \$9 billion within a few years.

"Plan A" versus "Plan B"

There are two funding approaches being discussed of late, with the "official plan" being **Plan A** (*no rate hikes, no UFL by 2014*). Many, including me, view **Plan A** as desirable but likely unobtainable. I have consistently suggested that **Plan B** (*extend out 2014 and/or reduce the target funding ratio*) is the more viable option.

Plan B does not make the problems disappear

WSIB Chair Mahoney has never said that **Plan A** will be easy. Just the opposite. I should add that **Plan B** will be no cake-walk either. Just pushing out the UFL a few years or even as much as a decade does not at all ease the pressure points – it simply adjusts the funding formula by lifting anchor on 2014 (the "*tail wagging the dog*" idea). All of the targets – lower injury rates and shorter time on long-term claims, survive. The core problems persist. ***No policy magic wand can grant a vacation from reality.***

I predict that the AG will again enter the funding debate later this year or next once the Board officially posts an \$8.0 billion UFL. As I said, it is inevitable. While it is far better, in my view, to invite the AG in, get an independent assessment of the "*state of the union*" and then proceed to develop the appropriate policy response, at the end of the day, it doesn't really matter. I suspect that the AG will arrive on the scene soon, one way or another.

Timing wise, whether the AG is invited in look at the funding question is of lesser importance than getting the AG in on the ER question. ***On funding, it will happen sooner or later. On ER, the Board is hamstrung without it.***