

# The Liversidge Letter

An Executive Briefing on Emerging Workplace Safety and Insurance Issues

January 29, 2024

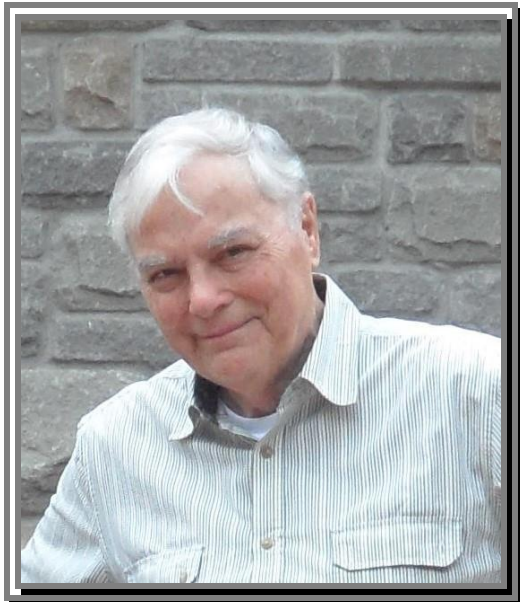
An ongoing policy discussion for the clients of L.A. Liversidge, LL.B.

3 pages

## Ron Ellis: 1934 - 2023

### A Giant Has Left Us

#### Ron Ellis had a profound impact on my life



The sadness of learning of the passing of Ron Ellis remains with me, with the last month being one of reflection and remembrance. Likely more than any other person, Ron influenced my life. Immeasurably. Ron was a mentor in many ways, perhaps the only mentor I have ever had. Without Ron's guidance, direct and through example, my life and career would be incalculably different. Every Ontarian, every Canadian, knowing or not, is in Ron's debt for his brave and selfless lifelong pursuit of justice, often against tremendous forces. Ron is the embodiment of a true Canadian hero. Ron's [obituary](#) presents a warm reflection of a magnificent life, as does the Appeals Tribunal's [remembrance](#), and many [others](#), setting out his magnificent and stellar achievements.

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I first met Ron in the summer of 1985 after I was asked to participate in the WCAT Advisory Group, struck to present feedback to Ron's initial design ideas for the brand-new

Appeals Tribunal, then just formed in law. The Tribunal then was only Ron and Vice-Chair Jim Thomas, and perhaps one or two others. While 1984's [Bill 101](#) codified the Weiler design as presented in the ground-breaking 1980 report, "[Reshaping Workers' Compensation for Ontario](#)" (Weiler I) it was Ron, through his brilliant operational design, that brought the Tribunal to life. I recall those discussions in the Summer of 1985 well. Today, the idea of the newly appointed Chair of the Appeals Tribunal reaching out for stakeholder guidance is not at all novel. The current Tribunal leadership carries on this tradition extraordinarily well with institutional ease. 40 years ago, however, it was a fresh innovative approach that caught us all by surprise. It was sincere. It was real. And, it was quintessential Ron Ellis. He proposed ideas. He listened to and critiqued the responses. He expected engagement. No wallflowers in those meetings. This was the very beginning of a thrilling and fascinating exploratory journey into a new legal method and a new administrative mindset in Ontario workers' compensation.

#### Ron's design survives intact 40 years later

The decision to publish decisions, a no brainer today but then controversial and the idea of a Tribunal Counsel Office, are just two of the many brilliant design features that continue pretty much unaltered to this day. The entire Tribunal process we see today remains pretty loyal to Ron's inaugural designs. I recall that I wrote a lengthy memorandum to Ron at that time following the first few discussions, suggesting that his plans should be pared down a tad, with the main point being this – it is easy to make simple processes more complicated but not so easy to make complicated systems simple. A few years later, after the Tribunal had been up and running, I spoke to Ron who had just again come across the memo I wrote a few years earlier. Ron remarked that he found new wisdom in those earlier cautionary views, which was rather ironic since by then I was fully convinced that Ron's brilliant design was now a proven and vibrant archetypical model of administrative

justice. In fact, about a decade ago, in the Summer of 2014, then almost 30 years after that initial exchange of ideas, Ron again wrote to me having come across this same memo:

In any event, perusing the letters – my main one ran to 14 pages and yours to 9 – reminded me of how strong a current Jim Thomas and I were swimming against as we tried to structure the new organization. Those were heady times.

I responded outlining a short parable that I believe is proven true every 5 years or so:

I see the Ontario workers' compensation system as a gleaming palace in the jungle, often over-run by weeds and vines. Every now and then, an energetic and courageous explorer hacks all of the vines away, and steps back to behold a glorious palace. The moment he turns away, the vines and weeds grow back with a vengeance, awaiting the next enthusiastic explorer. You were that enthusiastic explorer.

At the time I wrote those words, a new team was hacking away at the vines and we saw the gleaming palace appear again for a period of time.

#### **Ron's leading case approach transformed stakeholder engagement to a level then unimagined**

I had the great fortune to participate as advocate in all of the Appeal's Tribunal's leading cases, notably the groundbreaking decisions *Decision 72, 2 W.C.A.T.R. 28* and *Decision 915, 7 W.C.A.T.R. 1*, including the extraordinary pre and post hearing processes, bookended with the interventions of the WCB's Board of Directors in both of those cases under (then) **section 86n** of the 1985 *Workers' Compensation Act*. As an aside, I was always of the view that Weiler's original design feature of the Board calling up an Appeals Tribunal decision for review (**s. 86n, 1985 Act**), was the better design, and 1996's **Bill 99** which essentially reversed the process (**WSIA, s. 126(4)**) got it wrong. I so said in my **June 16, 1997 Standing Committee** appearance and still believe this. Weiler set out an expectation that the Tribunal be chaired by someone of high calibre, who "*should be the kind of person we would want appointed to the Supreme Court bench*" (**Weiler I, p. 116**). In Ron Ellis a better choice could not have been made.

It is impossible to detail the vastness of the impacts of Ron's direct engagement as a panel Chair in those and innumerable other groundbreaking cases, such as the leading reemployment case, *Decision 605/91*, to single out just one. I won't even try. Ron's influence was beyond immense. He sparked the beginning of an extraordinary period, what I have called the *renaissance of workers' compensation* (see the **June 26, 2002** and **January 28, 2005** issues of **The Liversidge Letter**), and which lasted from 1985 to around 1992. As a result of the Tribunal's early groundbreaking work, the WCB itself woke up from an entrenched institutional slumber and became vitalized in the policy reform arena in a manner never previously attempted. This was an exciting innovative time, none of which would have unfolded in the way it did absent Ron's intellect, courage

and commitment. This period, and Ron directly, profoundly influenced me.

I was more than enamoured by the Tribunal's rule of law approach and overall method, along with Ron's grace and style in advancing themes that had, until Ron's arrival, been pretty much absent from the Ontario workers' compensation scheme. In my **June 2, 2008** issue of **The Liversidge Letter**, I commented on the success of the Appeals Tribunal, noting "*the creation of the Appeals Tribunal in 1985, which for the ensuing 23 years delivered the archetypical standard of administrative justice in Ontario if not Canada, was a leading edge and novel concept not that many years ago, that shook the Ontario workers' compensation regime to its roots,*" a quote Ron very generously included in his seminal book **Unjust by Design** (at p. 9).

By the early 1990s, as a direct result of Ron's stellar leadership, and after seeing the fruits of the legal method he deployed on the workers' compensation system, I decided to apply to law school, and broached the idea with Ron. He was more than enthusiastic. He was exuberant. He became a strong and ardent supporter, and penned a very generous reference letter that I am sure was largely responsible for my acceptance. Without Ron at the helm of the Appeals Tribunal, without his mentoring, without his leadership, and without his example, that is a road I would not have travelled. I could not today imagine my life and career absent that step forward. I am forever in his debt. I know that Ron influenced and mentored hundreds, if not thousands, of law students and lawyers, in likely similar generous and profound ways.

Ron's generosity was without boundaries. He was a generous, engaged person. In casual conversation, I guess about 21 or so years ago now, several years after he had left the Appeals Tribunal, I mentioned that I had just purchased some raw recreational land and was thinking of building a log structure, but was unsure. Ron excitedly informed me that he had personally, with his own hands, built a log house many years before. He graciously invited my wife and I to his farm house north of Cobourg. That weekend remains a vivid memory. We had a very, let me say, "energetic" Boxer dog at the time. I asked if we could bring her along. "We LOVE dogs," he enthused, "Of course! We insist." So, a few weeks later, we arrived at Ron and Ruth's superb log house, picturesquely set atop a hill on his rolling farm, with clear views of Rice Lake not too distant. It was magnificent. As we pulled up, Ron was waiting, and as I was about to leash our rambunctious canine, Ron said, "that's OK – let her out." At that, she flew out of the car like a lightning bolt and in full gallop made a running jump right at Ron, knocking him down with a thud, then, to add to our mortification, proceeded to pin him to the ground. Some entrance! We were more than embarrassed. But, Ron, brushing himself off, thought it was all rather hilarious. Ron and Ruth regaled us with the stories of the construction of the massive, two story log house, with oodles of photos and

hilarious accounts. This was not some kit fabrication – this was the real deal, with 24+ inch massive timbers and a building process that would have been little different 100 years earlier. It was an eye opener. Right then and there, we decided that a log house was a clear no-go. I was impressed beyond words but the undertaking would have been too much. I don't know how he did it. It was an impressive achievement.

A few years later, after we did construct our home, we were finally able to reciprocate the visit, and Ron and Ruth, attended our place. They were the first to learn of our plans to adopt two girls and as we showed them a video of the girls, then 3 and 4, they became as excited as we were, and full of support and encouragement. A year later, they dropped in again to meet the girls, a wonderful remembrance and a day of great joy. Every discussion I had with Ron since, and as late as his June 21, 2022 Ontario Bar Association tribute, [The Legacy of Ron Ellis: A Symposium](#), when I had the chance of a too brief exchange, his first words were, "How are the girls?"

Several weeks after that wonderful OBA event, I dropped Ron a much delayed personal note, repeating what I had told him in our brief chat. While personal, I share it now.

It was such an honour and pleasure for me to be able to attend. Ron, as I said on that day, you have had a tremendous influence on my life. Not many have. Your influence was through your exemplary conduct, which I sought to emulate, as best I could. For me, your beacon has shone bright. I won't embarrass you any further except to say this. Many a time in my career when at a cross-roads, I asked of myself this very simple question, "*What would Ron do?*" The answer was always clear, freeing me to pursue principle for principle's sake. I am thankful for that silent guidance you have provided to me over these past almost 40 years now.

When I learned of Ron's passing, as everyone, I was profoundly saddened. As strange as this will read, the day I learned of his passing, I was reading the memoirs of a well-known American politician, active from the 1930s to the late 1980s. I was at a passage in the book where the author was lamenting about losing touch with old friends and acquaintances as one pursues one's career, and then learning of the passing of an old friend. To express this, the author quoted a poem, **Around the Corner** by Charles Hanson Towne:

Around the corner I have a friend,  
In this great city that has no end;  
Yet days go by, and weeks rush on,  
And before I know it, a year is gone,  
And I never see my old friend's face,  
For Life is a swift and terrible race.  
He knows I like him just as well  
As in the days when I rang his bell  
And he rang mine. We were younger then,  
And now we are busy, tired men:  
Tired with playing a foolish game,  
Tired with trying to make a name.

"Tomorrow," I say, "I will call on Jim,  
Just to show that I'm thinking of him."  
But tomorrow comes--and tomorrow goes,  
And the distances between us grows and grows.  
Around the corner! Yet miles away . . .  
"Here's a telegram, sir . . ."  
"Jim died today."  
And that's what we get, and deserve in the end:  
Around the corner, a vanished friend.

Ron was a great supporter of **The Liversidge Letter** and I could always count on his feedback. As I recounted in the [November 2, 2023 issue](#) of **The Liversidge Letter**, during the period bookended by the **Funding Review** and Elizabeth Witmer's term as WSIB Chair, I focused most of my attention writing directly to the Board's leadership and less on **The Liversidge Letter**. The one very regrettable effect of that approach is that I missed Ron's generous commentary which often led to additional interactions, and over time, shaped the personal disconnection suggested in "*Around the Corner*." I wish it were otherwise.

### Unjust by Design



Ron's extraordinary book, **Unjust by Design**, along with his splendid blog, "[Ron Ellis, Administrative Justice System Reform: A Transcendent Need](#)," should be required study for every WSIB employee and executive, especially those engaged in the adjudication processes, who should attempt to satisfy the simply stated goals of an administrative justice system: *Expert, optimally competent and implicitly independent; Admired on all sides for the impartiality and quality of their decisions; Respected for the fairness, fitness, proportionality, and timeliness of their process.*

One of my most valued possessions is Ron's inscription in my copy of **Unjust by Design**. That I managed to earn Ron's respect all the while following, as best I could, his exemplary example, is unquestionably my most important professional achievement. Everything else pales in comparison. With Ron's passing we have lost a giant, a remarkable human being, and a true Canadian hero. I am forever in his debt.

