

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

Special Issue:

Ontario Budget Introduces Significant Workplace Safety & Insurance Reforms

Last week's budget announced Government's intentions to reform Ontario workplace safety and insurance

In last week's budget speech, the Hon. G. Sorbara, Minister of Finance, announced:

Mr. Speaker, workers injured on the job deserve our support. Many of them have benefits that have not kept pace. We propose to improve Workplace Safety and Insurance Board (WSIB) benefits for about 155,000 injured workers. The increases would be 2.5 per cent each year for the next three years.

They will be doing that – and a lot more. The budget was used as an opportunity to announce wide-ranging changes to workplace safety and insurance [“WSI”], which as far as my recollection goes, is a first. The *Budget Measures and Interim Appropriation Act, 2007* [the “Budget”] sets out a series of significant and far-reaching WSI reforms, that dramatically alter the WSI landscape.

Very surprisingly, these initiatives will be approved along with the Budget, and (with one exception) will come into force July 1, 2007. *This is most unusual as far as WSI reform goes*, which is usually complex enough on its own, (even when not included in the very back pages of a 275 page draft statute). It looks like the normal full legislative consultation process, which is usually a prerequisite and valuable step in WSI reform, is a no-go this time around. Worse, it looks like very significant WSI reform may just get lost as a small insignificant element of the larger Budget debate.

More on the process in the ensuing weeks. I will be keeping readers of *The Liversidge e-Letter* up-to-date, and will be introducing “issue specific” discussions in future issues of *The Liversidge e-Letter*, starting very soon.

What follows is an introductory discussion based on the budget announcements. Readers are going to be extremely surprised with the scope of these reforms, the way they have been introduced, and the effect they will have on the future of the Ontario WSI scheme. [continued page 2]

L. A. Liversidge Executive Seminar Series

A Hands On Experience Rating Executive Briefing is scheduled for:

May 16, 2007

9:30 A.M. - 12:30 P.M.

The Snakes and Ladders of NEER

Experience rating is a powerful management tool that allows management to “price a problem and price a solution”. But – NEER only works as a decision-making tool *if business managers understand and use the NEER mathematics* to adopt a business case approach. Without this, NEER is nothing more than an elaborate (and impossible to understand) report card.

Ask yourself these basic questions: *Do you understand how NEER works? Do you know how the Board calculates expected future costs? Overheads? Can you do these calculations? Can you present a business case for management intervention and resource allocation? If you answered “NO” to any of these questions, you are not using the power of NEER.*

In a straight forward method that you can apply right away, you will be taught you how to use NEER as a powerful tool.

Invitations will be e-mailed

Budget proposes several far-reaching changes

In the Budget, the government proposed a number of far reaching changes, focused principally but not entirely, on benefit adjustments, administrative and financial. The Budget itself amends the *Workplace Safety and Insurance Act* ["WSIA"].

Reform No. 1: Benefit indexing "enhancements"

Presently, benefits are indexed for limited inflation adjustments based on a complicated formula [set out in s. 49 of the WSIA] which calls for annual inflationary hikes for workers receiving less than 100% loss of earnings ["LOE"] benefits equal to ½ of the change in the CPI (Consumer Price Index) minus 1.

The "indexing factor" shall not be less than 0% and not greater than 4% [WSIA, s. 49(1)]. So, for example, if the CPI is 2.0%, the WSI index factor will be zero [(1/2 of 2) - 1 = 0]. Presently, for workers with an LOE of 100% and survivors, an "alternate index factor" is applied, which is 100% of the CPI [WSIA, s. 50(1)].

WSIB "permitted" to enhance benefits

Last week, the Government announced:

Many injured workers receive benefits that are partially indexed to inflation. The legislative changes, if enacted, would permit the WSIB to enhance the benefits of about 155,000 injured workers by 2.5 per cent on July 1, 2007 and on January 1 in each of 2008 and 2009.

This is more than a time limited ad-hoc fix

As I will explain in an upcoming issue of **The Liversidge e-Letter**, this amendment is far more than just an *ad hoc* one time, temporary fix. It in effect supplants the current inflation protections in the WSIA. The upcoming discussion, I assure you, will be very interesting.

Reform No. 2: More flexibility for benefit "lock in" after 72 months

Right now, workers in receipt of LOE benefits, have benefits reviewed "every year or if a material change in circumstances occurs" [WSIA, s. 44(1)], but there is no review of benefits being issued "more than 72 months after the date of the worker's injury" [WSIA, s. 44(2)].

This is what the Government announced last week:

The government also proposes to give the WSIB greater flexibility to review and determine injured workers' loss of earnings benefits after the benefits are locked in at 72 months. Currently, if a worker's condition deteriorates significantly, the legislation does not permit a review of the worker's situation more than 72 months after the date of injury. This change would affect about 750 individuals annually.

While the Board is able to currently review a case after 72 months in certain and limited instances, the door for ongoing reviews is being swung open rather widely. The amendments themselves are quite technical and legally complex, but the principles are straight forward enough. Claims will be able to be more freely re-opened after the 72 month so-called "lock-in" has passed. Readers will likely be quite surprised of the scope of this change.

Reform No. 3: The deeming provisions are to be dramatically changed

Currently, the WSIA directs the WSIB to ". . . deem the worker's earnings after the injury to be the earnings that the worker is able to earn from the employment or business that is suitable for the worker . . ." [WSIA, s. 43(4)]. This provision has always been controversial, and steadfastly opposed by labour. This is what the Government announced with the Budget:

Another proposed amendment would require that earnings be based on what a worker would likely earn from suitable as well as available employment, rather than the current more restrictive standard.

The term "deeming" is expunged from the WSIA, and the very concept repudiated. The Board will no longer be "deeming" anything – but, it will be "determining". Readers will be interested to learn that in many respects, the proposed law is similar to the *1990 Workers' Compensation Act*. I will get to that discussion within a few weeks.

Reform No. 4: Housekeeping change to retirement payments

The government proposes to raise the threshold below which a lump-sum instead of a monthly retirement benefit payment is made, from \$1,166.41 to \$3,000. A threshold of \$1,145.63 was established in the legislation in 1997 and has been partially adjusted to inflation to the current level of \$1,166.41 [see WSIA, s. 45(6)]. Nothing here requiring comment.

Reform No. 5: Increase in members of the WSIB Board of Directors

Currently, besides the Chair and President, the WSIB Board of Directors shall have ". . . a minimum of three and a maximum of seven members. . ." [WSIA, s. 162(1)(c)]. **This will be changed to a minimum of seven and a maximum of nine members.** I will be introducing a brief dialogue not only on the substance of this change, but on the efficacy of the WSIB Board of Directors itself.

Reform No. 6: Office of the Worker Advisor funding increased by \$1.4 million

The Offices of the Worker Advisor ["OWA"] and the Employer Advisor ["OEA"] [WSIA, ss. 176(1), (2)], are both funded by the WSIB, and the Minister of Labour "shall determine the amount of the costs that may be incurred by each office" [WSIA, s. 176(3)]. **The Government is increasing the funding to the OWA by \$1.4 million in 2007–08 to "improve and expand its services"**. Instead of just increasing the funding, it may be worthwhile to uncover why there are increased demands and focus on that.

Stay tuned – the discussion will continue

Stay tuned for an interesting discussion. I will be releasing future issues of **The Liversidge e-Letter** on the following subjects: i) indexing; ii) 72 month benefit "lock-in"; iii) deeming; iv) the WSIB Board of Directors, and v) the overall reform process, for a total of at least five (5) separate issues of **The Liversidge e-Letter**.