

# The Liversidge Letter

An Executive Briefing on Emerging Workplace Safety and Insurance Issues

December 11, 2023

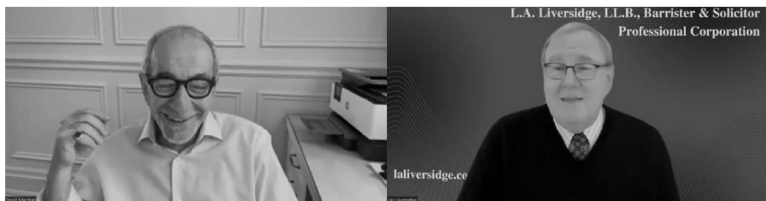
An ongoing policy discussion for the clients of L.A. Liversidge, LL.B.

4 pages

## Interview with former WSIB President & CEO David Marshall

### The interview, Part 3

My interview with former WSIB President and CEO David Marshall continues.



### April 2014 speech to the C.D. Howe Institute

**LAL:** On April 1, 2014, after you had achieved a fair amount of success, you delivered a momentous speech to the C.D. Howe Institute, “**The WSIB: An Historic Transformation**” (found [here](#) on the LAL website). We will get into that speech a little more later, but you commented on how substantial the Board’s benefits are to workers.

**DM:** Yes, in that CD Howe Speech, I said the benefits of the workplace safety system in Ontario are extremely generous. An injured worker has 85% of their wages replaced for as long as it takes, they have the best of medical care that can be had, they have support for their family, for their spouse and dependants in the case of work-related death. Run well, the system is entirely affordable.

Run badly, however, it can quickly fall off the rails and become an unbearable burden for businesses to support, I think is what I said. So, I never understood, Les, why the government never promotes the value that the WSIB brings to the economy and working families. It is a huge benefit.

**LAL:** Huge benefit, offers certainty and stability when it is run well.

**DM:** Yes, I thought, you know the Government should tout what it is doing, getting so many thousands of people back to work, so many people, thousands of people avoiding permanent impairments, but they just look at it as if the WSIB is just a potential for bad news or potential to gain points with labour or business. What a shame this is, but you know we are not going to change government, that is how they operate, so...

### 2012 to 2014 – Change is slowly presenting results

**LAL:** The Ontario Auditor General was keeping a close eye on the Board. The [2012](#) and [2013](#) AG reports though expressed hopeful, if constrained, optimism. Can you explain how you related to the AG during your time at the Board? The AG was in effect looking over the Board’s shoulder so-to-speak, and itself had skin in the game after the 2009 report. How did you keep the AG up to date and informed? As a past Assistant Auditor General for Canada, you, I am certain, were uniquely placed to see the AG’s office as complementary, essential even, to your work. It would be easy I am sure to see the AG’s ongoing interest as irksome, but as far as I can tell, it was as collaborative a relationship as one could expect. Often, we see AG reports be a one-day news wonder. That wasn’t the case on this file.

**DM:** Right. Very perceptive of you. Well, I was keenly aware that the AG had made possible the changes at the WSIB. You know, in the sense of creating the crisis. He also was influential. I remember several meetings with Cindy Morton and myself and Auditor General Jim McCarter in which he said to us, you know what, I am not going to hear any more excuses about this and that reason for failing to address the WSIB unfunded liability. I want you to reach this percentage of funding by this date and full funding by this date. And then the government was forced to negotiate and they put it in legislation. The Auditor General insisted that be put right in the legislation. So, I was enormously grateful to him because I knew without that we would be blown off course very quickly. I felt a moral obligation to this man to actually deliver.

In addition to my other convictions about the right thing to do, I related to him as my partner as opposed to my critic. So that was probably also my auditor general experience. I was on the other side myself. I knew better than to brush him off. So, I sat down with him every quarter.

He would come over to the Board with his chief assistant who was in charge of our file and we would go through with him the results of the quarter, the changes occurring, you know the charts that I shared with you. About halfway through our journey, he was actually cheering us on because

it felt to him that his work had actually made a difference. You know by insisting that something be done. So it was a wonderful partnership and relationship and in fact, when he retired he passed it on to Bonnie Lysyk who became the new Auditor General who came to our meetings in a mode of trusting us. It completely turned around the confrontational relationship that existed before, but it was based on results.

### You continued to express caution

**LAL:** In your commentary to the **2013 Annual Report**, you said this:

#### **A note of caution**

So, we have come a long way indeed, led by significant improvements in our fiscal position. However, we have been at this crossroads before: Some years ago, the WSIB realized a period of strong investment returns we relied on to cover costs. So our funding ratio was relatively healthy at the time; exceeding 70 percent.

But those returns didn't last, and neither did that funding ratio. Therefore, caution must be used to project financial results into the future based on current data, together with any decisions that impact the ever-delicate balance between employer premiums and worker benefits.

Our gains could easily be undone; we cannot afford to let that happen.

You reported that in 2012 the Board had core earnings of \$715 million and were able to apply \$2 billion in investment earnings against the unfunded liability. Quite the achievement. Yet, you remained openly cautious. Why was that? Results were starting to accrue.

**DM:** Well, Les, because I was getting a lot of heat from the minister at the time to be able to announce full indexation for partially disabled workers, and also to be able to reduce premiums. It went all the way up to the secretary of the cabinet who had three or four meetings with me, you know to say, well why can't you announce that you are ahead of schedule? Why can't you announce a premium reduction? That was behind my statement of look, "this can be easily undone." Almost a *déjà vu* of what happened before. Yeah, a lot of pressure internally.

So I suppose, Les that the qualification for CEO to the WSIB has to be somebody who is able to sort of steer their own ship, you know do the right thing despite the pressures. The pressures were very high.

I remember almost every day I would drive home to Mississauga in my Toyota Camry, and in traffic I would call up Scott Bujeya who was my chief of staff. A lovely man, just a lovely man. It would take me over an hour to get to Mississauga. For almost an hour I would be talking to Scott, just unwinding from the pressures of the day. You know: What does the Toronto Star say? Why does the Minister want to see me? Just talking through and kind of calming down from the pressures of the day. So, Les, I wanted excitement and engagement and I got it. For sure (laughing).

**LAL:** As mentioned, in April 2014 you spoke at the C.D. Howe Institute and gave a speech simply entitled, "**The**

**WSIB: An Historic Transformation.**" I recall it well. Here are a few excerpts, but the [entire speech](#) should be read. It is quite remarkable.

### Excerpts from, "The WSIB: An Historic Transformation"

In 2009, the Auditor General of Ontario reported that our costs had so outstripped our revenues that we had accumulated an unfunded liability which was threatening to collapse the system...

...and that unless urgent steps were taken, the government would have to add our financial deficit to the general liability of the province.

At the time, the Auditor General cited our financial statements as showing an unfunded liability of \$12B.

The prospect of dropping another \$12B onto the province's books understandably dismayed the then-Minister of Finance. Your organization, the CD Howe Institute, wrote an insightful report around the same time called "The Hole in Ontario's Budget", which estimated the unfunded liability of the WSIB at closer to \$19B than the \$12B we were reporting, and called for urgent action.

The practical impacts of carrying such a large unfunded liability were and are horrendous. In the first place, it puts workers' benefits at risk. Second it places an annual interest burden on employers amounting to hundreds of millions of dollars a year. And finally it moves to future generations and future new businesses in Ontario the cost of past deficits which they had no part in creating and acts as a significant damper on productivity and job creation.

And the bad news kept coming.

As we went through a grueling analysis – questioning every single thing we did – the way forward became clear.

The first thing we noticed was that expenses had exploded in the 10 years between 1999 and 2009, benefit costs went up by over 50 per cent – from \$2.0B to \$3.2B a year.

While at the same time injury claims had actually dropped by 40 per cent. The math just didn't add up. Why was this happening?

...

We concluded that there must be something fundamentally wrong with our business model.

And, indeed there was.

The answer was there all the time, hiding, so to speak, in plain sight.

To put it simply, we were passive players.

...

We were focused on process and not on results.

And we didn't pay attention to basic market signals that should have told us something was wrong. For a normal organization, when expense is greater than revenue it's a signal that something is going wrong. In our case, we spent the money we had collected in premiums, and when we didn't collect enough to pay expenses, we raided our investment fund and cashed in investments to pay the balance.

There's little surprise then, that we were heading for a financial cliff at a jaunty pace.

### **Can the tides change? In your view, can the unfunded liability return?**

**LAL:** We know the Board continued the successful path, and actually hit 100% funding in 2018 and at the end of 2021, the Board enjoyed a 121% funding ratio. A remarkable story. Right now, the funding ratio is a bit lower, for a host of reasons which I will be addressing in future issues, but about 115% (on a cash basis – 118.1% on a sustainability basis).

But, based on your 2014 speech, the lesson that seems to leap out to me is this – if the Board doesn't pay attention and remain ever vigilant, the UFL can easily and quickly return. When you left in 2016, the Board was well ahead of schedule in retiring the UFL. Return to work programs had been transformed, and were delivering tremendous results. 92% of injured workers returned to work at full pre-injury wage levels within 12 months. For 2013, 2014 and 2015 there were no premium increases, and as we know, starting in 2018, rates declined significantly.

You essentially said this, as I interpreted it: if the Board does not pay attention and be ever vigilant, all of this could go away. All those problems can come back. What did you mean by that? What is the vigilance that is needed? What's the discipline that that place needs, constantly over the course of time?

**DM:** Well, it needs focus and skill. I tried hard to impress that we needed an independent competency-based Board. I think the Board should be appointing the CEO, not leaving it the Minster of the day. And the Board should be closely monitoring results.

You know, I mean they never used to get any information from management until I got there and developed these "measuring results" reports. So, I think that is what it needs. Harry Arthurs laid down protocols in which the government of course could order the Board to reduce premiums or increase benefits or whatever, but it had to put it in writing and not just a phone call and a wink so to speak and that sort of thing.

So many of those features, an independent Board, gives it a fighting chance of surviving, but I don't think that is going to happen. I am happy with what we did, I am happy that it was successful. Quite frankly, it took me by surprise. I did not realize it would turn that quickly, you know. And I was so lucky. I had Elizabeth Witmer there, I had Scott, I had Slinger, I had you there, I had the advisory committees. It's just, it's not only one person, but I remember telling my wife at the time, I just feel like I ended up in a flower patch here and all I had to do was pick the flowers.

### **WSIB leadership matters a lot – in many ways, everything flows from the top**

**LAL:** I like that, a flower patch. From my experience, over a long period of time, the leadership matters a lot at the Board. In fact, everything flows from it, everything flows from the leadership. You were able to see the flowers. Some weren't.

### **When did you realize you had slain the dragon and it was OK to leave?**

**LAL:** I can't believe it is seven years since you left the WSIB. Still even in my mind when I think of WSIB I think of David Marshall.

When did you realize, at what point did you say OK, we've got programs going faster than we thought? When did you realize you slayed the metaphorical dragon and the Board was going to be OK? How did you know in 2016 that the place would be OK without you?

**DM:** Well, because we had set a path toward, I think 115%-120% of funding (**LAL:** Well, it got to 121%, so you did better) and then things were in the right place.

I didn't worry about who would take charge after but felt we had fundamentally put the place on the right footing and all it needed was to continue. There was no reason to make any major changes at that time for at least 5-10 years. Maybe after that, circumstances would be such that you would need changes. Elizabeth was still there as Chair, and I thought she was going to be there for the foreseeable future, and we had good operations managers, so I felt pretty good about it. I didn't know in the bottom of my heart if it wasn't going to continue, but there was nothing I could do about that.

**LAL:** I think you and I had a chat when you were leaving and I said the same thing. The tide, unfortunately, would come back in. The funding ratio right now, on a cash basis, while down from its high-water mark, is still around 115%, which is not bad at all. On a sustainability basis (i.e., unplanned gains and losses are amortized over the next five years), it is at 118.1%. Some warnings signs though are starting to appear, as perhaps is to be expected. If there is an economic slowdown, an increase in time on claim, the most powerful driver, is inevitable. 2024 will be a key year.

### **After you left the WSIB, your public service continued**

So, you left the Board, but that was not the end of your public service in the country. After you left the Board, you continued your public service work and focused on the pressing issue of auto insurance, writing and presenting a significant report to the government, "**Fair Benefits Fairly Delivered: A Review of the Auto Insurance System in Ontario.**" In a [September 2017 actuary seminar in Montreal](#) to the leading actuaries in Canada, you described the Ontario auto insurance system this way:

Automobile insurance in Ontario has been a problem child for a long time, over 30 years of tinkering and so forth. Just a little bit of background. I don't think anybody feels it's functioning properly or well today, or optimally. The cost is very high and customers are not happy.

In terms of its cost, it might interest you to know that over the past 15 years injuries from auto collisions have gone down by 44 percent. Particularly the most serious types of injuries. While premiums have gone up by 26 percent. And Ontario's premium, which accounts for about 5 percent of disposable income for most Ontario residents, is double that of what it is right here in the Province of Québec, and about 40 percent

higher than the average of Canadian provinces, excluding Ontario.

And so what you have is an opportunity to examine this cost in terms of what it's delivering and an opportunity if we can at least reach the average premium for the rest of the provinces. Even though we have the lowest accident rate amongst all the provinces, we could save Ontarian families \$4 billion a year. So, it's worth looking at.

**LAL:** The text of that introduction could have been adapted with very few changes from something you could have delivered about the Ontario WSIB seven years earlier! How did your role at the helm of the WSIB assist you in tackling automobile insurance?

**DM:** You are quite right, the problems with auto insurance almost exactly mirrored those that had existed at the WSIB. In terms of how I got involved, let me think about the connections here. What happened was this. There was a wonderful fellow called Dr. Bob Bell, he was the CEO of UHN and then subsequently became deputy Minister of Health. A particular senior surgeon at UHN by the name of Dr. Nizar Mahomed was instrumental in helping us design the Programs of Care. He was a prominent surgeon, and interestingly, he also had a PHD from Harvard in public health policy. So, it was a very unusual combination. Anyway, I had gotten to know him through a mutual friend. Dr. Mahomed helped us design these Programs of Care, healthcare and the whole business of early assessment if things are not going right. Dr. Bob Bell was his boss, the CEO of UHN and very supportive of what we were trying to do.

So, when Bob retired from the UHN and became Deputy Minister of Health, he called me up, I think a year into his term as Deputy Minister. At that point I was getting close to the end of my term (it was late 2015). He called me up and said you know you did some very interesting things at WSIB and we helped you out. Do you mind giving a talk to a group of people in the Department of Health. You know head of policy, and other senior people in his group.

So, I said sure, and I went over there. I believe I took my Chief of Staff, Scott Bujeya with me and lo and behold sitting in the room was Ed Clark, the former President and CEO of TD Bank, who was advising Kathleen Wynne at the time and a couple of people from the Premier's office.

I went through my spiel about how we realized we needed to be a return-to-work company, programs of care and what they contain and then the reduction in durations and so on. Ed Clark said, you know what, this applies to auto insurance because they have exactly the same problems and what you have done makes sense. Bob Bell agreed and thought the WSIB experience could hold lessons more broadly for healthcare in Ontario.

Also, in the background the C.D. Howe people were saying to me: what you have done there is so indicative of the healthcare industry, generally. The idea of having a concierge if you like to help individuals navigate the silos in

the healthcare space. They were referring to the fact that our claim managers were acting as pathfinders for injured workers, making connections, clearing obstacles instead of letting workers go off and navigate the system on their own.

So, this collapsed the time for injured workers to receive care and actually helped them through all the silos. That aspect, the aspect of a managed care path was of great interest to CD Howe (and Ed Clark). So, then what happened was the Minister of Finance, Charles Souza got in touch with me. Charles had been a former minister of labour and had seen what I had done at WSIB and said: Can you take a look at this auto insurance situation and see if you can apply some principles of the WSIB and give us a report. And that is what happened.

**LAL:** It was directly linked.

**DM:** Yes. Directly linked. Auto insurance in Ontario had exactly the same problems as WSIB had.

### **This interview has been an immense pleasure**

**LAL:** Well, David this has been an immense pleasure for me. I don't want to embarrass you but the Ontario workers' compensation system would not exist in its present form but for you and what you did. You know, two names that should be forever associated with workers' comp are Sir William Meredith and David Marshall. I think perhaps you should be a "sir" as well! I know you will find that embarrassing, but you ought not to. But for what you achieved in those six years, who knows what would have happened? Eventual collapse was foreseeable. Certainly, it would be different than what it is. This has been a wonderful chat. Let's keep in touch. Thank you so much for this.

**DM:** Les, you were my partner in many, many, many ways and I really appreciate it and I wish you were given a lot more credit than you have been. But those in the know, know what you did.

**LAL:** It was a wonderful time, an important time, I enjoyed it thoroughly. I am getting a little Dickensque here, but in many ways, "*it was the worst of times, it was the best of times,*" much more the latter. In that time from 2010 there was a real mission and a real opportunity to do the mission, all the while cultivating a deep sense of collegiality. I miss that. That really had not happened in that way before. Thank you for your kind words, but it really was your leadership that allowed that all to happen. It was a remarkable time.

**DM:** Yes, it was. It was. Thank God it worked out (laughing)!

In an upcoming issue of **The Liversidge Letter**, I interview former **WSIB President & CEO, Tom Teahen**. Tom worked with David as Chief Corporate Services Officer (2010 – 2013) during the critical early years of that extraordinary period. After a time as Chief of Staff to the Premier of Ontario, Tom rejoined the Board as President & CEO 2016, presiding over the milestone of the Board achieving full funding. The remarkable story of a remarkable time continues soon.