VISION TO REALITY

WSIAT ANNUAL REPORT

2018

Ontario

Workplace Safety and Insurance

Appeals Tribunal

Tribunal d'appel de la sécurité professionnelle et de l'assurance contre les accidents du travail

WSIAT 2018
ANNUAL REPORT

Workplace Safety and Insurance Appeals Tribunal
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INTRODUCTION

The Workplace Safety and Insurance Appeals Tribunal (WSIAT or Tribunal) considers appeals from final decisions of the Workplace Safety and Insurance Board (WSIB or the Board) under the *Workplace Safety and Insurance Act, 1997* (WSIA).

The WSIA, replacing the *Workers' Compensation Act*, came into force January 1, 1998. The Tribunal is a separate and independent adjudicative institution. It was formerly known as the Workers' Compensation Appeals Tribunal, until the name was changed pursuant to section 173 of the WSIA.

This volume contains the Tribunal's Annual Report to the Minister of Labour and to the Tribunal's various constituencies, together with a Report of the Tribunal Chair. It is primarily a report on the Tribunal's operations for fiscal year 2018 and comments on some matters which may be of special interest or concern to the Minister or the Tribunal's constituencies.

The Tribunal Report focuses on Tribunal activities, financial affairs and the evolving administrative policies and practices.

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MESSAGE FROM THE CHAIR

I am pleased to provide the 2018 Annual Report of the Workplace Safety and Insurance Appeals Tribunal. The Tribunal had an excellent year in 2018.

The theme of this year's report is "Vision to Reality." The 2018 Tribunal Business Plan detailed the goals that the Tribunal set for 2018. I am pleased with the progress the Tribunal made in 2018. You will find in the Annual Report a discussion of that progress. Allow me to highlight our success in key areas of Tribunal focus along with what we have in plan for 2019.

Last year's Annual Report projected that in 2018 we would reduce the Tribunal's active caseload to 4,750 cases. The purpose of reducing the active caseload is that it has a direct effect on our ability to hold timely hearings. Our goal in 2018 was to reduce the time to hearing to less than one year across the Province (some regions in the last few years waited significantly longer for hearing dates than other regions). By the end of 2018, the active caseload was 4,081, and the time to hearing was in the 11-month range in all regions. We have achieved our goals of reducing our active caseload, reducing the time to hearing and providing consistency of hearing dates in all regions. This has been achieved one year ahead of what was called for in our three-year plan.

Of course achieving the "numbers" goals, while key to providing access to justice, would not be a success if there was any compromise in the quality of the work for which the Tribunal is known. Our relentless focus in 2018 remained providing quality adjudication and excellent service to our stakeholders in accordance with our operating business model. Our business model's foundation is built on our organization being agile, efficient and sustainable.

Quality adjudication is dependent on the work of the entire Tribunal – our staff, our Vice-Chairs and our Members. Continuous education and providing opportunities for growth and reflection is a Tribunal core value. In 2018, we put in place a Professional

Development Program for all Vice-Chairs and Members. As well, in 2018 we instituted a 360 review program for our senior staff. These new programs support the development of our people, allow us to tailor professional development programs and promote accountability.

Professional development training has for a number of years been conducted at hotel venues (at significant expense) due to a lack of internal training space. As part of our process review, the transfer of WSIB files from the Board was changed from the Board transferring paper files to the Board transferring files electronically. This change resulted in significant space being freed up as we no longer need to store paper files. We were able to convert the former file storage space to a training room. The training room is equipped to allow us to conduct webinars. Webinars avoid unnecessary travel expenses and allow us to effectively connect with our people who are not residents in Toronto.

A further example of our focus on delivering value is our new Hamilton hearing facility. Hamilton is the Tribunal's busiest hearing centre outside of Toronto. Those appearing in Hamilton had the longest wait times for hearing dates. While over the course of the last two years we successfully brought the wait times in line with other regions, the Hamilton case volume resulted in expensive hotel venue costs. In 2018, we began planning for the opening of a hearing facility in Ontario government space. I am pleased to report that our new Hamilton hearing facility will open in early January 2019. In addition to conducting hearings, the new facility will allow us to conduct training sessions for those located in the Hamilton, Kitchener, Niagara and surrounding areas.

We welcome the opportunity to try new initiatives such as the Hamilton facility. All of our processes and initiatives will be subject to continuous examination to ensure they are consistent with our operating business model and provide quality adjudication and excellent service to our stakeholders.

What is in store for 2019 and beyond?

In setting goals going forward it is useful for the Tribunal to measure itself against the operations, standards and initiatives of other Canadian workers' compensation appeals tribunals. In 2018, the Tribunal played a leading role in establishing the Council of Canadian WCATs. The Council consists of most of the Canadian WCATs. We have learned a lot from our participation in the Council.

It is clear that best practices require the increasing use of technology. Technology opens possibilities ranging from hearings being held by video-conference and the electronic filing of appeals to "paperless hearings." Some tribunals are more advanced than others in their review and implementation of available technology. In our case, in 2018 we held an increasing number of hearings by video-conference and we began our work of preparing for the implementation of the filing of appeals electronically. In 2019, in consultation with our stakeholders, we will finalize our arrangements for the filing of appeals electronically and determine an implementation date. We are at the very early stage in our consideration of the concept of paperless hearings. In 2019, further evaluation of the practicality of this concept will take place.

Through our participation in the Council we learned that the standard set by several of the Council members is a one-year appeal turn-around. At these WCATs appeals are expected, in the normal course, to be dealt with, including the release of a decision, one year from the date the appeal was filed. For the Tribunal to attain this standard our processes require change. In 2019, we will be evaluating what process changes we need to make and we will determine the time frame required for us to achieve it.

In 2019, the Tribunal will be evaluating the effectiveness of our alternative dispute resolution processes (including mediation). We have dedicated the full time of one of our former experienced Vice-Chairs to this project. In addition to internal consultation, he will be reaching out to the community and seeking your input.

I am proud of the work of the Tribunal staff and our Vice-Chairs and Members. I thank them as well as our stakeholders and the Government for their unwavering support.

David N. Corbett
Chair, Workplace Safety and Insurance Appeals Tribunal

This section reviews some of the many legal, factual and medical issues which the Tribunal considered in 2018.

The Tribunal decides cases under four Acts. The *Workplace Safety and Insurance Act, 1997* (WSIA) came into force on January 1, 1998. It establishes a system of workplace insurance for accidents occurring after 1997, and continues the pre-1985, pre-1989 and pre-1997 *Workers' Compensation Acts* for prior injuries. The WSIA and the pre-1997 Acts have been amended a number of times since 1998. In addition, the Tribunal considers and applies policies adopted by the Workplace Safety and Insurance Board. The substantive provisions and terminology contained in Board policies vary over time. This section uses the policy terms considered in the Tribunal decisions discussed.

Appeals Under the WSIA

The WSIA provides loss of earnings (LOE) benefits for workplace injury and non-economic loss (NEL) benefits for permanent impairment (PI). The amount of LOE benefits depends on the extent to which the worker can return to the workplace and approximate pre-injury earnings. There are statutory provisions setting out worker and employer obligations to co-operate in early and safe return to work (ESRTW) and worker obligations to co-operate with labour market re-entry (LMR) services (now work transition (WT) services). The WSIA also creates a re-employment obligation where workers have been continuously employed for one year. LOE benefits are reviewable on "material change in circumstance," or annually at the Board's discretion, for 72 months following the accident. When the WSIA was initially enacted, LOE benefits could not generally be reviewed after 72 months; however, subsequent amendments to section 44 in 2002 and 2007 allow for review in a number of circumstances. More recent amendments, which came into effect in 2018, expand entitlement for chronic mental stress, including transitional provisions, and entitlement for post-traumatic stress disorder (PTSD), including transitional provisions.

While the 2002 and 2007 amendments provide for greater flexibility after the final LOE review at 72 months, the implications of a Board decision at the final LOE review lock-in date can still be much more significant than earlier decisions on LOE benefits. ***Decision No. 1000/15R2*, 2017 ONWSIAT 3338**, recognized that this increased significance may cause the

Board to review the circumstances at the final LOE review date more carefully. There is no requirement that there must be a change in circumstances for the Board to reach a different decision at the final LOE review. If the Board makes a different decision, the Tribunal must examine the evidence in order to decide which is correct. Otherwise, frontline decision-makers could effectively issue binding decisions not only on future Board decision-makers but also on appeal-level decision-makers at the Board and the Tribunal.

In ***Decision No. 1223/17*, 2017 ONWSIAT 3510**, the Board had found that the worker was entitled to a zero LOE award at the final LOE review where the worker was in a three-month contract, following completion of his WT program, which restored his pre-injury earnings. While there was no applicable statutory review provision, the Tribunal found that the worker was entitled to partial LOE benefits at the final review date, since he was not working in an SO (suitable occupation) identified by the Board, but in an opportunity arranged by a friend, which only had a potential to continue. The earnings at the final LOE review date did not reflect the amount the worker could earn from sustainable employment and did not represent the same or similar future potential earnings as SO-identified jobs, as set out in Board policy.

As noted in previous Annual Reports, complicated issues may arise when an injured worker, who has been provided with modified work by his employer, is terminated. One line of decisions, exemplified by *Decision No. 2520/08IR*, 2010 ONWSIAT 546, has focused on whether the termination was related to the injury. If the termination was not related to the injury, decision-makers consider whether there was suitable work available on a sustainable basis that could have continued to be offered to the worker but for the termination. The second approach, exemplified by *Decision No. 690/07*, 2009 ONWSIAT 2087, requires a two-step analysis to determine whether the injury continued to make a significant contribution to any continuing loss of earnings, and whether the worker remained disadvantaged in his ability to match pre-injury earnings. ***Decision No. 925/15*, 2018 ONWSIAT 3112**, considered both approaches and adopted an approach closer to that in *Decision No. 690/07* based on the wording in section 43(3). *Decision No. 925/15* noted that under section 43(3), a worker is entitled to LOE benefits if the worker is co-operating in ESRTW. While an employer may view a worker as no longer co-operating when it decides to fire the worker, the WSIA requires a broader consideration which includes the worker's intentions and actions. An injured worker can fail to co-operate and frustrate ESRTW efforts in a number of ways that would cause suspension of benefits, for example, absence from the workplace or stealing from the employer. If the worker did not fail to co-operate, however, there is a loss of earnings flowing from the injury and termination does not break the chain of causation.

Different issues may arise when a worker in modified work is terminated due to the employer's closure. In 2018, the Tribunal gave further consideration to how severance pay affects entitlement to LOE benefits. ***Decision No. 569/18*, 2018 ONWSIAT 2392**, agreed with a number of prior decisions that pay in lieu of notice, severance or termination does not constitute earnings and cannot be used to deny LOE benefits for an overlapping period. The severance package represented compensation for a number of items, as well as constituting a release from any action. While the severance package was called "salary continuance," that terminology may have been used because it was paid in installments; however, it was not earnings within the WSIA as there was no remuneration for services provided. To the extent that the decision considered similar facts, *Decision No. 569/18* disagreed with the distinction drawn in *Decision No. 2210/13*, 2013 ONWSIAT 2670, between the minimum termination pay under the *Employment Standards Act* and additional termination pay negotiated as part of an agreement.

Also as noted in prior Annual Reports, NEL appeals often require the Tribunal to interpret the complicated *American Medical Association Guides to the Evaluation of Permanent Impairment* (3rd edition revised) (AMA Guides), which is prescribed as the NEL rating schedule by Ontario Regulation 175/98. Interesting NEL cases in 2018 included ***Decision No. 2639/17*, 2017 ONWSIAT 3303** (which considered how a NEL award for a head injury, which resulted in entitlement on an organic and non-organic basis, should be rated to ensure that all aspects of the PI were recognized but not duplicated), ***Decision No. 2239/17*, 2017 ONWSIAT 3749** (which found that a NEL award for a hip injury should include not only a 4% rating for range of motion but also a 20% rating for altered gait under the table in the AMA Guides for station and gait), and ***Decision No. 3587/17*, 2018 ONWSIAT 1071** (which considered which of two AMA rating scales applied to a hyperactive bladder: the one in Chapter 4, on the nervous system, or the one in Chapter 11, on the urinary and reproductive system). If there is no rating in the AMA Guides for a particular condition, O. Reg. 175/98 prescribes that the rating schedule for the most analogous condition should be used. ***Decision No. 3095/17*, 2018 ONWSIAT 1973**, found that the analogous rating method should be used for rheumatoid arthritis, which was related to silica-dust exposure. The worker argued that the most analogous condition was scleroderma, another auto-immune disease that may be caused by silica exposure; however, *Decision No. 3095/17* found that scleroderma, which is primarily a skin disease, was not an analogous condition to rheumatoid arthritis, which affects joints. The Board's use of the ratings for the spinal cord as an analogous rating method was reasonable.

In 2018, the Tribunal decided several appeals under the transitional provisions applicable to expanded entitlement to mental stress. As of January 1, 2018,

section 13(4) and (5) of the WSIA, which limited mental stress to "an acute reaction to a sudden and unexpected traumatic event," was repealed and replaced with new provisions regarding mental stress. Transitional provisions in section 13.1(8) provide that claims "pending" at the Tribunal on January 1, 2018, must be referred back to the Board to be decided according to the new provisions. Prior to these amendments, ***Decision No. 371/17I*, 2017 ONWSIAT 1333**, had found that the worker did not have entitlement for traumatic mental stress under section 13(4) and (5), and had adjourned proceedings for the worker to bring an application under the *Canadian Charter of Rights and Freedoms* (Charter). ***Decision No. 371/17*, 2018 ONWSIAT 2115**, found the appeal constituted a claim which was "pending" at the Tribunal on January 1, 2018, and referred it back to the Board to be decided according to the new provisions. The common meaning of a claim that is pending before the Tribunal is a claim in which the issue before the Tribunal has not been finally determined. This was consistent with the dictionary definition of "pending," the English and French language versions of the WSIA and other indicators of legislative intent. While the worker raised concerns about financial responsibility and the cost of returning the matter to the Board, the Tribunal found that it had no discretion to refrain from referring the case back to the Board. And see ***Decisions No. 1835/15*, 2018 ONWSIAT 423**, and ***1759/18*, 2018 ONWSIAT 2084. *Decision No. 1852/18*, 2018 ONWSIAT 2168**, rejected arguments that an appeal should not be referred back because the worker had not diligently pursued the appeal and that there is an implied exception in the transitional provisions for claims pre-dating April 29, 2014. The transitional provisions do not allow for an examination of why an appeal is pending and the date of April 29, 2014, was irrelevant as it pertains to situations in which a worker has not filed a claim for mental stress with the Board before January 1, 2018, whereas this worker filed his claim in 2005.

There are a few situations in which the Tribunal may continue to hear a mental stress appeal. Mental stress appeals under the pre-1997 Act are not covered by the WSIA amendments. Accordingly, the transitional provisions, which provide for referral back to the Board, do not apply. See ***Decision No. 1892/18I*, 2018 ONWSIAT 2102**. ***Decision No. 3235/17*, 2018 ONWSIAT 3513**, considered whether the transitional provisions applied to an appeal for a recurrence of a compensable mental stress condition, as opposed to an appeal of initial entitlement. The Tribunal reasoned that both the ordinary meaning of "claim" in the workplace insurance context and in the larger statutory context indicated that "claim" refers to initial entitlement. Accordingly, section 13.1(8) did not apply and the Tribunal had jurisdiction to decide the appeal.

The Tribunal has taken a similar approach to transitional provisions in section 14(14) to first

responders and PTSD appeals, which also provide that if a claim for entitlement for PTSD is pending at the Tribunal, the Tribunal must refer the matter back to the Board. See ***Decision No. 493/18I*, 2018 ONWSIAT 644**, which agreed with *Decision No. 57/17*, 2017 ONWSIAT 803, that where there is a diagnosis of PTSD from a psychologist or psychiatrist, a claim for traumatic mental stress should be treated as if it were a claim for PTSD for the purposes of section 14 and should be referred back to the Board. *Decision No. 493/18I* also agreed with *Decision No. 1064/12*, 2016 ONWSIAT 1922, that the Tribunal's jurisdiction is to consider whether the criteria in section 14(14) for referral back are met; if they are, the Tribunal is not empowered to consider the merits of the claim under section 14(3).

Finally, the Tribunal reviewed its approach to the six-month time limit to appeal which was introduced by the WSIA, in light of recent jurisprudence from the Ontario Court of Appeal. The Tribunal's Practice Direction on *Time Extension Applications* identifies a number of factors which the Tribunal considers in time extension appeals. ***Decision No. 2634/15ER*, 2018 ONWSIAT 215**, noted the importance of considering *all* the relevant factors and not focusing solely on the failure of the representative to file on time. More recent Tribunal decisions have also considered the Ontario Court of Appeal decisions in *Cunningham v. Hutchings*, 2017 ONCA 938, and *Laski v. Laski*, 2016 ONCA 337, which have identified factors relevant to a request for a time extension and the need to take a holistic approach to determine the justice of the case. See, for example, ***Decisions No. 2635/15ER*, 2018 ONWSIAT 774, *2418/15ER*, 2018 ONWSIAT 1300, *2572/18E*, 2018 ONWSIAT 3331**, and ***2189/18E*, 2018 ONWSIAT 3153**, which found that the principles which the Tribunal considers in determining time extensions are consistent with those set out in *Laski v. Laski* and considered all relevant factors. And see ***Decisions No. 2847/16*, 2018 ONWSIAT 625, *653/18*, 2018 ONWSIAT 1019, *3286/17*, 2018 ONWSIAT 115**, and ***3289/17*, 2018 ONWSIAT 160**, which took a similar approach to appeals of Board time extension decisions.

Board Policy Under the WSIA

While the Tribunal has always considered Board policy, section 126(1) of the WSIA expressly states that if there is applicable Board policy, the Tribunal shall apply it in making its decision. Section 126(2) provides that the Board is to notify the Tribunal of the applicable policy. Section 126(4) sets out a process for the Tribunal to refer a policy back to the Board, if the Tribunal concludes that the policy is inapplicable, unauthorized or inconsistent with the Act. Under section 126(8), the Board is then to issue a written decision with reasons. While section 126(4) referrals are rare, policy issues may arise in other circumstances; for example, it may be necessary for the Tribunal to interpret a Board policy or decide which version of a policy applies, or the Board might ask the Tribunal to reconsider a decision in light of Board policy.

There were no section 126(4) referrals in 2018; however, Board policy was considered in detail in a number of decisions.

The Tribunal considers applicable statutory provisions when interpreting Board policy. For example, ***Decision No. 2510/17*, 2017 ONWSIAT 3860**, considered calculation of partial LOE benefits when an older worker elected the no-review option under WSIA, section 44(3). The Tribunal found that the no-review option does not trigger a final LOE benefit review under applicable Board policy. Rather, it directs the Board not to review the LOE benefits and to maintain LOE benefits as they stand at the time the conditions for the no-review option are met. Accordingly, the worker's entitlement to benefits was correctly considered under the applicable Board policy. The worker's age, lack of expertise outside of his prior work, and limited opportunities in the SO, were significant barriers to the worker finding work in the mid-range of the SO. And see ***Decisions No. 15/18*, 2018 ONWSIAT 200**, and ***123/18, 2018* ONWSIAT 751**, on the Board's revised policy, dated November 3, 2014, on entitlement to LOE benefits following temporary work disruptions. Consistent with section 43(1) of the WSIA, additional LOE benefits may be paid to a worker who is partially impaired and fit for work, whether modified or otherwise. The policy provides that the Board generally maintains LOE benefits that a worker is receiving at the start of a temporary work disruption. The provisions regarding payment of additional LOE benefits apply to workers who are partially impaired and fit to work at or subsequent to the start of the temporary work disruption and who want to claim LOE benefits beyond the level of LOE benefits they were receiving when the disruption began.

The 2017 Annual Report discussed several Tribunal decisions interpreting the Board's new policy on pre-existing conditions and amendments to a number of related policies, effective November 1, 2014. On December 15, 2017, the Board issued a policy clarification memo on pre-existing conditions and permanent impairment, stating that it would no longer reduce benefits for people with asymptomatic pre-existing conditions if the condition is non-measurable. The clarification memo indicated that this approach was consistent with the approach taken by most Tribunal decisions. Generally, Tribunal decisions have found that a NEL award should not be reduced for a pre-existing condition which would not have resulted in a rating under the AMA Guides; for example, because it was an asymptomatic pre-existing condition. In 2018, the Tribunal continued to apply this analysis to the Board's policy on pre-existing conditions. For a good example of this reasoning, see ***Decision No. 1252/15*, 2018 ONWSIAT 3066**. Several recent cases have also noted and applied the approach set out in the Board clarification memo. See ***Decisions No. 897/17, 2018 ONWSIAT 1451***, and ***1275/18*, 2018 ONWSIAT 2700.**

***Decision No. 2882/17*, 2018 ONWSIAT 53**, discussed the older Board policy on the effect of

a pre-existing impairment. The new Board policies clearly state that a pre-existing condition does not need to have caused a disruption of employment to be factored out of the NEL rating. The question is whether there is a level of impairment sufficient to be rateable under the AMA Guides. The deduction is applicable only when there is a symptomatic pre-existing impairment since a non-symptomatic impairment would generally attract a zero rating under the AMA Guides. *Decision No. 2882/17* found that the express provisions in the November 2014 policies should properly be understood as a clarification of the older policy, rather than a change in policy.

The Board requested a reconsideration of ***Decision No. 3349/17*, 2018 ONWSIAT 346**, on the grounds that it contained errors of law regarding the application of Board policy and section 44 of the WSIA. The policy provides that the amount of net average earnings the worker is able to earn in a suitable occupation after the injury must reflect any *Canada Pension Plan* (CPP) disability payments. The policy also provides that, if LOE benefits are granted as a result of a Tribunal decision, CPP disability benefits may be offset when LOE benefits are granted from the date of notification of entitlement to CPP disability benefits, as long as the notification occurs prior to the final LOE review. In this case, the worker's workplace injury was in June 2007. In a prior Tribunal decision [*Decision No. 1510/15*, 2015 ONWSIAT 2742], the worker was awarded full LOE benefits from February 2010. In implementing that Tribunal decision, the Board offset the worker's LOE benefits by the amount of CPP disability benefits, as of May 2011, which was the date of notification of the CPP disability benefits. ***Decision No. 3349/17R*, 2018 ONWSIAT 3089**, agreed with the Board that section 44 did not preclude the CPP offset when the offset was applied as a consequence of the worker being awarded full LOE benefits by the Tribunal. The Tribunal noted an additional policy provision that in cases when LOE benefits are granted as a result of the Tribunal decision, the retroactive portion of the CPP disability benefits is not offset. It was not clear whether the Board decision implementing the Tribunal's original decision was consistent with this aspect of Board policy. The hearing will reconvene to consider the merits of this aspect of the appeal.

There may also be situations where a party's circumstances are not specifically covered by Board policy and judgement must be exercised in light of the statutory wording and the general guidance provided in Board policy. See, for example, ***Decision No. 3147/17*, 2017 ONWSIAT 3595,** where the worker had completed an LMR plan and had been working in the SO but was laid off before the date of the final LOE review. And see ***Decision No. 342/17*, 2018 ONWSIAT 492**, regarding the earnings basis for long-term benefits. Board policy provides that production bonuses for achieving production quotas should be included in long-term earnings basis. The Tribunal found that there was no provision for inclusion of the types of bonuses involved in this appeal, which related to settlement of a pension

grievance and a reward to senior employees on ratification of a new collective agreement.

While section 126 only requires the Tribunal to apply Board policy, the Tribunal may also consider informal Board practice and Adjudicative Advice documents if they provide useful guidance. Unlike section 126 Board policy, less formal Board practice may be applied retroactively. ***Decision No. 1137/18*, 2018 ONWSIAT 1470**, noted that there was a Board Administrative Practice document on maintenance treatment which replaced a Best Approaches document on maintenance treatment. While neither document was Board policy, they provided relevant and helpful guidance. The first Board decision on maintenance was made after the Administrative Practice document replaced the Best Approaches document; accordingly, the Administrative Practice document was considered.

Right to Sue Applications

The WSIA and earlier Acts are based on the "historic trade-off" in which workers gave up the right to sue in exchange for statutory no-fault benefits. The Tribunal has exclusive jurisdiction to decide whether a worker's right to sue has been removed. Right to sue applications may raise complicated issues, such as the interaction between the WSIA and other statutory schemes in Ontario and other jurisdictions.

***Decision No. 2594/16*, 2018 ONWSIAT 119**, considered whether the Tribunal has jurisdiction to decide whether a federal agency employee's right of action is taken away by WSIA and/or the federal *Government Employees Compensation Act* (GECA). GECA, section 4(2), provides that an employee is entitled to receive compensation at the same rate and under the same conditions as under the laws of the particular province. Section 4(3) provides that compensation is to be determined by the same board as established by the law of the province. Section 12 bars claims against the federal Crown, by providing that where an accident occurs in such circumstances as entitle the worker to compensation under GECA, the worker does not have any claim against the Crown other than for compensation under GECA. *Decision No. 2594/16* agreed with an earlier Tribunal decision, *Decision No. 485/90* (1991), 17 W.C.A.T.R. 173, which found that the Tribunal does not have jurisdiction to decide right to sue applications under GECA, rather than with *Decision No. 771/16I*, 2016 ONWSIAT 2352. Section 4(3) does not confer general jurisdiction on provincial boards over federal employees and section 12 of GECA does not extend to parties to an action. *Decision No. 2594/16* also found that *Hill v. Tomandl*, 2016 YKCA 5, is recent persuasive authority that provincial right to sue provisions do not apply to actions by federal employees. The finding that the Tribunal lacks jurisdiction does not leave the parties without a remedy; a party to an action may apply to the Court for determinations under GECA.

A number of right to sue applications in 2018 involved claims of sexual assault and sexual

harassment. The Tribunal has continued to find that sexual assault against a worker in the course of employment is considered an accident under the WSIA. Workers who commit intentional physical or sexual assaults may take themselves out of the course of their employment but the victims of such assaults are still workers entitled to claim benefits under the WSIA. See ***Decision No. 3096/17*, 2018 ONWSIAT 1563**, which rejected arguments that the employer and an executive officer were not entitled to protection against civil action because of alleged violations of the *Occupational Health and Safety Act* (OHSA) regarding maintaining a safe workplace. The Supreme Court of Canada decision in *Pasiechnyk v. Saskatchewan (Workers' Compensation Board* (1997), 149 D.L.R. (4th) 577, establishes that the bar to actions against employers is integral to the no-fault workers' compensation scheme. There were no allegations that the employer engaged in any criminal or quasi-criminal conduct to the point that it ceased being an employer, or against the executive officer such that he could no longer be seen to be acting in his capacity as an executive officer. A worker is not removed from the course of employment through acts of negligence or recklessness. There is no basis for applying a different standard with regard to the right to sue an employer or executive officer. One of the allegations, however, related to an assault that did not occur in the course of employment. The right of action regarding this allegation was not taken away. Similarly, see ***Decision No. 2477/17*, 2017 ONWSIAT 3469**, where the plaintiff was assaulted at a staff party after the end of her summer job. Since the worker was no longer employed on the date she was assaulted, she was not a worker within the meaning of the WSIA and her right of action was not taken away. And see ***Decision No. 1256/18*, 2018 ONWSIAT 2103.**

While Tribunal decisions have found that an action for wrongful dismissal is not statute-barred, a claim that an action is for wrongful dismissal does not automatically displace the application of the WSIA. Rather, the fundamental nature of the action must be considered to determine whether it arises with respect to the worker's compensable injury. In ***Decision No. 3836/17*, 2018 ONWSIAT 593**, a portion of the claim was for negligence causing the workplace accident, pain and suffering, and lack of accommodation for the accident. This was inextricably linked to the compensable accident and the right of action with respect to this portion of the claim was removed. Another portion of the claim was for lost pay resulting from dismissal and reflected a wrongful dismissal action. The right of action with respect to this portion of the claim was not taken away.

The Tribunal may also need to adjudicate issues affecting an employer's status in right to sue applications. In ***Decision No. 2386/17*, 2018 ONWSIAT 513**, the defendant company was a federal corporation under the *Canada Business Corporations Act* (CBCA), which had been dissolved pursuant to section 212 of the CBCA at the time of

the accident due to default in payment of annual registration fees. It was revived in March 2014. The Tribunal agreed with *Litemor Distributors (Ottawa) Ltd. v. W.C. Somers Electric Ltd.* (2004), 73 O.R. (3d) 228 (Ont. S.C.), that once the company was revived, the revival extended back to the moment of dissolution. Accordingly, the dissolution did not affect the employer's status as a Schedule 1 employer on the date of the accident. ***Decision No. 3343/16*, 2018 ONWSIAT 2448**, rejected the plaintiff's submission that a Schedule 1 employer lost its status as a Schedule 1 employer when it was hired by a Schedule 2 municipal corporation to clear snow. The contractor had workers who were in the course of employment, who were either clearing snow or should have been clearing snow. The right to sue the contractor was removed, since it retained its status as a Schedule 1 employer and WSIA, section 28(3), is broad enough to include acts of nonfeasance as well as misfeasance.

Finally, in ***Decision No. 2903/17*, 2018 ONWSIAT 212**, neither the deceased worker nor his estate had commenced an action, but there were actions by various family members. The Tribunal agreed with *Decisions No. 1921/06*, 2008 ONWSIAT 650, and *1921/06R*, 2009 ONWSIAT 1501, that, in the circumstances, it was appropriate to determine whether the worker's right of action would have been taken away under section 31. The defendants intended to bring a Court motion seeking a decision that the action of the plaintiff family members was derivative in nature, but the Court would not make that determination in the absence of a Tribunal decision as to whether the worker's right of action would have been taken away.

Employer Issues

Appeals involving employer issues, such as classifications, transfers of costs, adjustments of experience-rating accounts and applications for Second Injury and Enhancement Fund (SIEF) relief, continued to form a significant part of the Tribunal's caseload in 2018.

A number of cases considered appeals for cost transfers under section 84, where the injury is caused by the negligence of another Schedule 1 employer. While fault is not generally relevant in workplace safety and insurance matters, negligence is considered for the purposes of cost transfers. Board policy provides that negligence is failing to do something which a reasonable and prudent person would do, or doing something which a reasonable and prudent person would not do. Cost transfer appeals generally require a detailed review of the mechanics of the accident and any relevant statutory or contractual obligations. In ***Decision No. 2438/17*, 2018 ONWSIAT 1730**, the accident employer argued that a management company breached the standard of care created by section 72 of O. Reg. 213/91 under the *Occupational Health and Safety Act* (OHSA), to clear snow and ice. While the Tribunal accepted that statutory duties are useful in establishing a standard of reasonable conduct, there was no indication that the management company

was investigated, charged or convicted under OHSA, and a general lack of evidence to establish that it had breached its duty of care under the Regulation. A similar result was reached in ***Decision No. 250/18*, 2018 ONWSIAT 1279**, where it was found that neither a parking lot owner nor the snow removal company was negligent in failing to clear snow from a parking lot. The parking lot owner took reasonable steps in setting up arrangements with the snow removal company, as evidenced by the terms of the contract and the snow removal company's policy, which ensured a reasonable expectation of public safety on the site. The evidence established that the snow removal company had used salt or grit at the location, which was appropriate for the conditions. ***Decision No. 762/18*, 2018 ONWSIAT 914**, increased a transfer of costs to a parking lot owner from 50% to 75% when the parking lot owner was negligent in failing to maintain the sidewalk and curb, and for not posting warning signs. The Tribunal considered the Court's approach to contributory negligence in *Michalak v. Oakville (Town)*, [2000] O.J. No. 4466 (Ont. S.C.J.), in determining the appropriate level of cost transfer. And see ***Decision No. 3474/17*, 2018 ONWSIAT 167**, which allowed a general contractor's appeal from a 100% cost transfer where a worker slipped and fell on ice while walking between two buildings. While the general contractor was responsible for providing appropriate access, it would have been virtually impossible and largely unnecessary to clear and maintain the full 65-acre site. The general contractor acted reasonably when, in consultation with the subcontractors, it developed and cleared access routes. The worker was injured when he slipped and fell on ice when taking a shortcut over an undesignated and uncleared route. ***Decision No. 487/18*, 2018 ONWSIAT 684**, awarded a full cost transfer to the employer of a worker who suffered post-traumatic stress after going to the aid of another worker, who was killed when a concrete pump truck overturned. The Ministry of Labour investigation found that the driver of the pump truck, who was employed by a different employer, failed to extend four stabilizing outrigger supports while the boom was extended in the air, causing the truck to tip over. This was negligence in the operation of machinery by the truck operator.

As of January 1, 2013, executive officers in the construction industry were deemed to be workers pursuant to section 12.2(1) of the WSIA. Partnerships, corporations with workers, and corporations without workers but with multiple executive officers, were able to exempt one partner or one executive officer from coverage if that individual did not perform any construction work. In addition, the Board created Rate Group 755 for non-exempt partners and executive officers in Rate Group 719, who do not perform construction work on the site. In 2018, the Tribunal considered the first appeals under these new provisions. ***Decisions No. 606/18*, 2018 ONWSIAT 1223**, and ***733/18*, 2018 ONWSIAT 2003**, considered requests for retroactive relief from assessments which were imposed before signed declarations of exemption were received. The Tribunal found

that in neither case were there exceptional circumstances justifying retroactive relief. *Decision No. 606/18* rejected a submission that the employer detrimentally relied on the Board. Ignorance of the law does not preclude application of the law and, in any event, the Board had not made any misleading statements. The legislative changes put the onus on the employer to take steps under the Regulation to avoid having one of its executive officers considered a deemed worker. The Board also conducted an extensive media campaign prior to enactment of the changes, including mailings to all construction employers, and the premium remittance form included notification of the changes on the reverse side.

Other interesting employer issues considered in 2018 include the effect of amalgamation on two companies who were in the MAPP experience-rating plan, which resulted in the new company migrating to the NEER experience-rating plan (***Decision No. 1103/18*, 2018 ONWSIAT 2078**) and the specific provisions in the Board SIEF policy regarding vibration-induced white-finger disease and industries involving vibratory hazards (***Decision No. 2809/18*, 2018 ONWSIAT 3113**).

Occupational Disease

Occupational disease cases, which involve workplace exposures to harmful processes or substances, raise some of the most complicated legal, medical and factual issues. Occupational diseases are compensable if they fall under the statutory definition of "occupational disease" or "disablement." The WSIA contains various rebuttable and irrebuttable presumptions for specified occupational diseases and exposures, and the Board has adopted policy on other diseases and exposures. There are also Adjudicative Advice documents which apply to other occupational diseases.

A question which has arisen in a number of cases is whether a worker's entitlement for chronic obstructive pulmonary disease (COPD) (also known as chronic obstructive lung disease or COLD) should be apportioned or reduced where it is established that the worker has both occupational dust exposure and a smoking history. While in the past Tribunal decisions have taken different approaches, it now appears established that causation of COPD should not be apportioned in the absence of unusual circumstances, since COPD is an indivisible injury with multi-factoral causes. ***Decision No. 1301/15*, 2018 ONWSIAT 345**, considered a somewhat related issue where a worker had entitlement for COPD with an accident date in March 1998, and separate entitlement for asbestos-related pleural fibrosis, also known as pleural plaques, with a 1975 accident date. The Tribunal considered whether a settlement received from a Personal Injury Settlement Trust (PIST) set up by the employer should be deducted from future compensation or other benefits under the Act, for compensable conditions with a 1975 accident date. While the Tribunal does not have jurisdiction under the WSIA over appeals from Board

decisions on subrogation and elections, Tribunal decisions have found that the Tribunal retains jurisdiction over appeals under section 8(3) of the pre-1985 Act, which requires Board approval of settlements. *Decision No. 1301/15* found that this principle extended to consideration of a surplus under section 8(4) of the pre-1985 Act. The PIST provided for a number of categories, and the worker had received a settlement under Category III of the PIST for bilateral interstitial lung disease. The Tribunal was satisfied that the pleural plaques, for which the worker received the pension, was the same injury for which the worker received payment from the PIST. Section 8(4) uses mandatory language that any such surplus shall be deducted from future compensation or other benefits. The Tribunal found that the Board correctly deducted the amount of the PIST from the worker's benefits for pleural plaques.

***Decision No. 1702/10*, 2018 ONWSIAT 1**, considered a worker's claim for breast cancer due to exposure to diesel fumes and vehicle exhaust, second-hand smoke, and shift work. The Tribunal did not consider evidence of the incidence of breast cancer in other workers as the evidence was insufficient to establish a cluster argument. *Decision No. 1702/10* recognized that while studies in the future may be more conclusive or better designed, the Tribunal has to base its decision on existing studies. The scientific evidence was not sufficient to support a relationship between the worker's exposures and her breast cancer. In addition, the worker had a family history of breast cancer and evidence indicated the worker's breast cancer was genetically-linked breast cancer rather than environmentally-linked breast cancer. The worker also had farm exposure to chemicals sprayed on a farm, when she was a child.

***Decision No. 2533/17*, 2017 ONWSIAT 3696**, considered the Board's policy on lung cancer among workers in the uranium mining industry, which provides that a radiation index of at least 100 cumulative Working Level Months (WLMs) for workers diagnosed at age 64 or older is persuasive evidence that the lung cancer is work-related. While the Board had found that the worker did not have sufficient WLMs, a careful analysis of the evidence indicated that the worker had additional exposure for the last six months of his employment and that specially-weighted WLMs should be used for a number of years, as opposed to regular WLMs, since the worker worked in the least well-ventilated parts of the mine. Considering these additions, the worker's total radiation index was above the standard in Board policy of 100 WLMs.

***Decision No. 538/18*, 2018 ONWSIAT 2052**, considered the worker's entitlement for mesothelioma resulting from workplace exposure to asbestos in the 1950s and 1960s. The Board had found that the worker met the policy criteria for mesothelioma but denied entitlement on the basis that, at the time of most recent exposure in 1975, the worker was self-employed without optional

insurance. Under section 94(2) of the WSIA, the Schedule 2 employer who last employed the worker in the employment in which the disease occurred is the employer for the purposes of the insurance plan. The worker's activities fell within Schedule 1. While the WSIA does not address cost allocation for Schedule 1 employers, the Board appeal decision indicated that the Board adopted the same practice for Schedule 1 employers, and denied entitlement as the worker was self-employed without optional insurance in 1975. *Decision No. 538/18* allowed the worker's appeal as the worker met the Board policy criteria and had developed mesothelioma as a result of employment in the 1950s and 1960s, not due to self-employment in 1975. Further, section 94 did not apply as there was no Schedule 2 employer.

***Decision No. 2691/08R*, 2018 ONWSIAT 928**, considered the Board's request to reconsider denial of entitlement, based on new evidence that the Board had discovered following a re-examination of more than 250 disallowed claims at a particular plant. The decision to re-examine was based on evolving scientific evidence about the link between different chemicals and certain cancers, and updated information about exposure to chemicals at that plant. The vast majority of the disallowed claims had not been appealed to the Tribunal, and the Board had jurisdiction to reconsider them. The Board could not reconsider *Decision No. 2691/08*, 2009 ONWSIAT 2766, since the Tribunal had reached a final decision. The Tribunal Chair found that the circumstances of the case were exceptional, if not unique, since the worker would be in a fundamentally different position from the vast majority of other workers whose claims are being re-examined by the Board, simply because the worker appealed to the Tribunal. One of the fundamental concepts that guide the entire Tribunal process is the duty of fairness. The Tribunal's threshold test for reconsideration was not designed with the unusual circumstances of this case in mind. Several recent amendments to the WSIA include transitional provisions for a referral back to the Board to adjudicate in light of the new provisions. A similar pragmatic approach should apply in this case, consistent with the systemic need that like cases should receive like treatment. *Decision No. 2691/08R* revoked the original decision and remitted the matter to the Board. And see ***Decision No. 1052/12R*, 2018 ONWSIAT 3729**, which applied a similar analysis to a joint request to reconsider by the Board and the worker's estate.

***Decision No. 1612/17IR2*, 2018 ONWSIAT 1490**, contains a good discussion of the Tribunal's use of medical assessors and the wording of questions posed to medical assessors. The Tribunal has exercised its authority under section 134 to create a list of health professionals, called medical assessors, who are highly qualified to provide medical opinions in Tribunal proceedings. A Vice-Chair or Panel determines whether it is necessary to enlist the assistance of a medical assessor. The Medical Liaison Officer selects the assessor with the relevant specialty. Medical assessors

provide expert medical opinions and can be asked to clarify questions of diagnosis or to help adjudicators understand the nature of an illness or injury. It is the role of the Vice-Chair or Panel to formulate the questions to a medical assessor. *Decision No. 1612/17IR2* recognized that it can be problematic for experts to opine on the ultimate issue to be determined and this is an important factor to consider in determining the appropriate questions. The wording is important, since the questions need to elicit relevant and useful information. They must also be fair and maintain the boundaries between the Vice-Chair or Panel and the assessor. The request for an assessor to explain the opinion is a safeguard against a monocausal response.

Other Legal Issues

***Decision No. 483/18I*, 2018 ONWSIAT 2494**, considered a challenge under the *Canadian Charter of Rights and Freedoms*, section 15(1), to WSIA, section 43(1)(c), which limits LOE benefits to two years after the date of injury, if the worker is 63 years of age or older on the date of the injury. The case had been placed in inactive status pending a determination of the same issue in another case, *Decision No. 512/06*, 2011 ONWSIAT 2525. After reviewing extensive evidence, including expert evidence, and submissions, the majority in *Decision No. 512/06* found that section 43(1)(c) did not violate section 15(1) of the Charter. An application to reconsider was denied in *Decision No. 512/06R*, 2013 ONWSIAT 2621, and the Tribunal's decisions were subsequently upheld by the Divisional Court in 2014 ONSC 7289. Given that the worker in *Decision No. 483/18I* did not intend to call new evidence, the Tribunal found that the decision on the judicial review was determinative of the Charter challenge.

Since the 2007 amendments to the *Law Society Act* introducing paralegal regulation, the Tribunal has taken steps to ensure that paralegals meet the Law Society's requirements. In ***Decision No. 109/18I*, 2018 ONWSIAT 2302**, the representative did not meet the requirements of section 30 of By-Law 4 regarding acting for a friend or neighbour, since one of the requirements is that the individual not provide legal services for more than three matters per year. The representative was representing nine other workers before the Board or the Tribunal. The representative, however, fell within the exemption in section 32(2) of By-Law 4 for a volunteer representative of a trade union. It is not sufficient for someone to be acting in a voluntary, unpaid capacity and be a member of a trade union; rather, the representative must also be a representative of the trade union in the sense that the representative has been appointed, elected or otherwise recognized by the union to act as its representative. That was the situation in *Decision No. 109/18I* as the union president clearly indicated that the representative had the authority of the union to act on behalf of the worker.

The Tribunal is often required to resolve evidentiary disputes. ***Decision No. 667/13R*, 2018 ONWSIAT 841**, is of interest for its guidance on the role of the presumption in section 13(2) of the WSIA and how to weigh medical opinion evidence. The worker was working alone and found dead following snow shovelling duties. There was an expert opinion supporting entitlement, but there were flaws in the way it was requested. *Decision No. 667/13R* noted that an expert is expected to provide fair, objective and non-partisan evidence, and representatives are expected to exercise the care required to properly frame questions for experts and to provide the necessary factual foundation. If not, there is a risk that the medical opinion will be found lacking. Despite certain flaws, *Decision No. 667/13R* found that the expert opinion should be given weight as it was thoughtful; directly addressed the connection between the underlying heart disease, the coronary risk factors and snow shovelling; was consistent with the Tribunal Medical Discussion Paper and articles about snow shovelling; and was not inconsistent with the opinion of the Board consultant. The Tribunal also granted a request for reimbursement for the cost of the report, but declined the request for reimbursement for a follow-up report, which did not add any useful information.

Surveillance evidence was considered in a number of cases in 2018. ***Decision No. 1315/18*, 2018 ONWSIAT 2922**, is an example of a case where weight was given to surveillance evidence in light of the relatively lengthy period of surveillance which was contemporaneous with the issues in dispute, and the worker's responses which did not adequately explain the inconsistencies put to her by the employer's representative. ***Decision No. 3463/17*, 2018 ONWSIAT 1020**, allowed the worker's appeal in part, as the surveillance evidence did not provide evidence that the worker's injuries had resolved or were fabricated. It did, however, show that the worker was operating a business and performing some work during the period in which he indicated he was not capable of any work. He was entitled to the reinstatement of his NEL award, to LOE benefits during some periods, and to a WT assessment. Compare ***Decision No. 545/18*, 2018 ONWSIAT 1024**, where the Board's decision to rescind the worker's entitlement based on surveillance evidence was upheld. The worker had been convicted under section 149(2) of the WSIA with wilfully failing to inform the Board of a material change in circumstances, and the clear implication in the Court decision was that the worker was not restricted in her mobility and physical abilities. The doctrine of abuse of process applied, since there would be a duplication of judicial proceedings which might undermine the administration of justice by leading to potentially conflicting results.

***Decision No. 2246/16R*, 2018 ONWSIAT 1350**, is of interest for its discussion of the nature of surveillance evidence as equivalent to written evidence which is included in the case materials.

The Tribunal rejected a request to reconsider on the grounds that the original Panel placed inappropriate weight on the surveillance evidence, given that it was not viewed during the hearing. While some portions of surveillance evidence can be very significant, there is also much surveillance evidence that is almost completely irrelevant. Video recordings can be lengthy, and hearing time is a scarce and expensive resource. There is usually a written summary of surveillance evidence in the appeal record. Based on the written summary, the Tribunal may decide to play all or a portion of a video and ask questions of the witnesses about the video. A party has the right, subject to considerations of relevance, to play any portion of the video evidence and to question witnesses about that evidence. Regardless of whether it is played during the hearing, however, it is still evidence within the appeal record and may be relied upon in reaching a decision. The worker's representative had a copy of the video before the hearing and had the opportunity to question the worker about the video and to make submissions on it in her closing submissions.

Other interesting procedural and legal issues considered in 2018 included ***Decision No. 2903/17*, 2018 ONWSIAT 212**, which found that Board employees are not compellable witnesses before the Tribunal under section 180(1) of the WSIA; ***Decision No. 1334/17*, 2018 ONWSIAT 954**, which found that, when a mediated agreement is accepted and incorporated into a Tribunal decision as set out in the Practice Direction on *Mediation*, findings and conclusions are binding in the same way as a decision resulting from a hearing; ***Decision No. 2434/17*, 2017 ONWSIAT 3837**, which considered the doctrine of issue estoppel, which applies to prevent a party from asking a court or tribunal to decide a matter that has already been decided; ***Decision No. 3804/17*, 2018 ONWSIAT 185**, which applied the Tribunal's Practice Direction on *Interpreters*, which provides that relatives and friends cannot interpret at a Tribunal hearing but that the Tribunal will provide a qualified, impartial interpreter if a party needs one; and ***Decision No. 1451/18*, 2018 ONWSIAT 2034**, which considered the provisions of O. Reg. 285/01 under the *Employment Standards Act* on public holiday pay in the construction industry in determining a worker's short-term average earnings. ■

APPLICATIONS FOR JUDICIAL REVIEW AND OTHER LITIGATION MATTERS

Since its creation in 1985, the Tribunal has released over 80,000 decisions. Both the Divisional Court and the Ontario Court of Appeal have recognized the specialized expertise of the Tribunal and the deference that Tribunal decisions deserve. The Tribunal's judicial review record is a demonstration of the Tribunal's excellence in adjudication and the outstanding work of the Tribunal's staff and adjudicators.

This Annual Report summarizes judicial review applications and other litigation matters where there has been significant activity during 2018.

General Counsel and lawyers from the Tribunal Counsel Office represent the Tribunal in judicial review applications and other Tribunal litigation, and also co-ordinate all representation when external counsel is utilized.

Judicial Review Applications

1. *Decisions No. 1791/07,* 2007 ONWSIAT 2212*, 1791/07R,* 2008 ONWSIAT 634, *1791/07R2,* 2009 ONWSIAT 2214, and a decision letter dated December 5, 2016

The worker, a kitchen helper, injured his neck in November 2004. He was granted loss of earnings benefits from May 9, 2005, until the end of 2010. Entitlement was extended to include his low back, shoulders, and chronic pain disability. The worker was also granted a 45% non-economic loss award for chronic pain.

The worker appealed the denial of entitlement for carpal tunnel syndrome, entitlement for a psychotraumatic disability, and the amount of the NEL award for chronic pain. The Tribunal held that the worker had no entitlement for carpal tunnel syndrome, that he was not entitled to a psychotraumatic award, and that he was not entitled to an increase in his NEL award. The worker made a request for reconsideration, which was denied in *Decision No. 1791/07R*.

The worker commenced an application for judicial review. His judicial review was adjourned while he pursued a further reconsideration. The worker's second reconsideration request was denied in *Decision No.1791/07R2*.

The worker then proceeded with his application for judicial review. In June 2010, the Divisional Court [at 2010 ONSC 3580] unanimously dismissed the application for judicial review of *Decisions No. 1791/07*, *1791/07R* and *1791/07R2*.

Almost nine months after the Divisional Court released its decision, the worker sought leave to appeal to the Ontario Court of Appeal. The worker was out of time to seek leave and was therefore required to bring a motion for an extension of time. The worker made motions for a time extension to both the Ontario Court of Appeal and the Supreme Court of Canada. Ultimately, the worker's motion for leave was dismissed by the Supreme Court of Canada on February 28, 2013 and the worker's motion for reconsideration of this decision was not accepted by the Court for filing.

On April 27, 2016, the worker made a new request for reconsideration to the Tribunal on the basis of new medical evidence. In a letter dated December 5, 2016, the Tribunal Chair dismissed the request for reconsideration, determining that the worker had not provided significant new medical evidence. On December 20, 2016, the worker commenced an application for judicial review.

The worker's second application for judicial review was heard on April 13, 2017, by a Divisional Court Panel of Justices Nordheimer, Corbett and DiTomaso. The worker's application was dismissed [at 2017 ONSC 2345]. The Court recognized that the worker was attempting to re-argue the same issues which had been dealt with in earlier proceedings.

In late April 2017, the worker commenced a motion to seek leave to appeal the Divisional Court's decision to the Ontario Court of Appeal. The worker's motion was dismissed in a brief endorsement dated August 25, 2017. The worker commenced an application for leave to appeal to the Supreme Court of Canada, which was dismissed on June 28, 2018. In October 2018, the worker's motion for reconsideration of this decision to the Supreme Court of Canada was not accepted for filing.

2. *Decisions No. 2329/10,* 2012 ONWSIAT 1287, *2329/10R,* 2013 ONWSIAT 2690, *2329/10R2,* 2015 ONWSIAT 2695, and *2329/10R3*, 2016 ONWSIAT 1875

The worker, an off-duty paramedic, was injured while assisting a person who had collapsed. The WSIB denied the worker entitlement for a right arm injury on the grounds that the worker was not in the course of employment at the time of the accident.

In *Decision No. 2329/10*, the majority of the Panel allowed the worker's appeal. The worker, while off-duty, assisted on-duty paramedics who requested his assistance. The majority of the Panel found that, when the on-duty paramedics requested the worker's help, the worker became in the course of employment. The Employer Member stated in his dissent that he would have held the worker was not involved in employment at the time of the accident.

In *Decision No. 2329/10R*, the employer's request for reconsideration was granted by a different

Vice-Chair on the basis that there had been a breach of procedural fairness. Specifically, the Vice-Chair found that the employer had not been provided with the opportunity to make submissions on the novel theory of work-relatedness which had been adopted by the majority in granting the appeal, and which had not been argued by the worker.

The same Vice-Chair re-heard the appeal. In *Decision No. 2329/10R2*, the Vice-Chair applied the relevant WSIB policy and found that the worker was in the course of employment. The Vice-Chair found the policy criterion of "activity" was satisfied because the worker was providing assistance in a medical emergency, which was what his job required, at the time of the injury and was not engaged in a personal activity. The "place" criterion was also satisfied because, like the paramedics he assisted, the location for a paramedic is never fixed.

The Vice-Chair identified that the "time" criteria was the most challenging aspect of the case because, although the prevailing culture was for paramedics to render assistance when off-duty, the worker was not legally required to do so. The Vice-Chair found it was significant that the worker followed the employer's policy about not using the defibrillator while off duty, which demonstrated he was acting pursuant to the employer's direction at the time of the accident. It was also recognized that the worker's assistance to the other paramedics in the emergency medical situation provided a benefit to the employer.

The employer commenced an application for judicial review. A simultaneous WSIB request that the Tribunal clarify *Decision No. 2329/10R2* because of an alleged typographical error was denied.

The judicial review application was heard on November 22, 2017, by a Divisional Court Panel of Associate Chief Justice Marrocco and Justices Kiteley and Quigley. In a decision dated March 1, 2018 [2018 ONSC 1319], the judicial review application was dismissed, with the Panel concluding that the Tribunal's decision was reasonable.

The employer sought leave to appeal at the Ontario Court of Appeal. On May 30, 2018, the application for leave was denied by the Ontario Court of Appeal in a brief endorsement.

3. *Decision No. 88/16,* 2016 ONWSIAT 1188

The worker had a compensable shoulder injury in 2008. He returned to work in a modified position for five months. In May 2009, the worker was laid off for noncompensable reasons.

The WSIB determined the worker's employability had been affected by the accident, and granted the worker LOE benefits and an LMR assessment. However, the worker contacted the WSIB in June 2009 to advise that he was absent for non-compensable reasons and did not want these

benefits. Accordingly, the WSIB rescinded the worker's benefits at that time.

In November 2009, the worker had surgery on his shoulder. The WSIB granted LOE benefits in September 2010, as well as LMR services. He was granted a 10% NEL award in 2011.

The employer objected to these LOE benefits and LMR services on the ground that the worker had voluntarily resigned and therefore should not be entitled to further benefits.

The worker decided not to participate in the employer's appeal at the Tribunal. At the Tribunal hearing, the employer asked that a negative inference be drawn from the worker's non-participation. The Panel did not agree to draw such an inference as the employer did not ask to summons the worker or ask for the hearing to be adjourned.

The Panel noted that, where a worker voluntarily ceases suitable employment, the worker loses entitlement to benefits because his loss of earnings is no longer a result of the injury. However, in this case, the Panel determined that the worker had been involuntarily laid off. The Panel also found there was no suitable modified work available at the time the worker was laid off. Accordingly, the Panel found the worker was entitled to LMR services and LOE benefits after he was laid off and after his surgery.

In August 2016, the employer commenced an application for judicial review. The employer's application was heard on June 23, 2017. In a decision released on July 26, 2017 [2017 ONSC 4537], Justices Kiteley, Nordheimer and Edwards of the Divisional Court granted the application and ordered that the Tribunal's decision be quashed. The Court also provided the employer with declaratory relief, declaring that, except for a short time between the worker's surgery and his recovery period, the worker was not entitled to LOE benefits or LMR services.

The Tribunal sought leave to appeal the decision at the Ontario Court of Appeal. In a brief endorsement dated January 19, 2018, the Tribunal's application for leave was denied.

4. *Decisions No. 841/16,* 2016 ONWSIAT 1432, *and 841/16R,* 2017 ONWSIAT 3427

The worker was a bus driver who stopped working in November 2011, due to claimed stress and depression. The worker received sick benefits until he retired in January 2012. In September 2012, the worker made a claim to the WSIB for initial entitlement for traumatic mental stress, which he related to stressful incidents which had occurred on the job.

The Tribunal Panel did not accept that the worker was entitled to benefits for traumatic mental stress on the basis of occurrences of stress on

a cumulative basis. The Panel found the worker's psychological condition was caused by personal life stressors, rather than workplace stress. The Panel also found that the worker did not have an acute reaction to the workplace incidents, and that the culminating event in his stress was a disciplinary action by the employer, for which the worker was not entitled to benefits for stress under the WSIA.

The worker commenced an application for judicial review in August 2016, and the Tribunal filed its Record of Proceedings. The Tribunal and the worker were engaged in discussions about the worker's pleadings when the worker decided to request a reconsideration of *Decision No. 841/16* instead. The worker, employer and Tribunal agreed that the judicial review application would be put on hold and that the time for the worker to perfect his application would be extended until February 6, 2018.

Decision No. 841/16R was released on November 9, 2017. The Vice-Chair determined that the Tribunal's threshold test for granting a reconsideration request was not met.

Following the release of the reconsideration decision, the worker advised that he intended to proceed with his application for judicial review. The application was heard on October 22, 2018, by a Divisional Court Panel of Associate Chief Justice Marrocco and Justices Gordon and Morawetz.

The application was dismissed at the hearing with reasons provided in an endorsement on November 5, 2018 [2018 ONSC 6649]. In the endorsement, the standard of review was confirmed to be reasonableness and the reasoning in both of the Tribunal's decisions was found to be justified, transparent and intelligible.

5. *Decisions No. 224/16,* 2016 ONWSIAT 1423, *and 224/16R*, 2017 ONWSIAT 1595

In May 1991, the worker, who was 61 years old at that time, injured her back when she slipped going down some stairs. The worker's back injury was recognized as compensable and she received entitlement to benefits. Eventually, the worker was granted benefits for chronic pain disability.

In June 1993, the worker was granted a 20% NEL award with respect to her chronic pain disability which was then increased to 25% in July 1993. The worker objected to the quantum of the NEL award and the matter was appealed to the Tribunal.

At the Tribunal hearing [*Decision No. 264/95* (April 27, 1995)], the Panel provided the worker with two options. She could have her NEL assessment reviewed by the WSIB or the Panel could proceed with the hearing. The worker decided to return to the WSIB. After another assessment, the worker's NEL award was increased to 35% by the WSIB in December 1995.

In 2015, the worker contacted the WSIB to ask that her NEL award that had been paid as a lump sum benefit be converted to a monthly payment retroactive to 1993 and ongoing. In 2014, the worker also asked the WSIB for a retroactive adjustment of her clothing allowance for the period from 1996 to 2006. Both of the worker's requests were denied by the WSIB, and the decisions were appealed to the Tribunal.

In *Decision No. 224/16*, the worker's appeal for a retroactive adjustment of her clothing allowance between 1996 and 2006 was granted. However, her appeal for her NEL benefits to be converted to monthly payments was denied.

In June 2016, the worker requested that the decision to deny her request to convert her NEL benefits to monthly payments be reconsidered.

In April 2017, the worker commenced an application for judicial review seeking review of the same issue that she was seeking reconsideration. The worker's reconsideration request was denied in *Decision No. 224/16R*.

The worker's judicial review application was heard on October 25, 2017. Prior to the hearing date, the worker initiated a second judicial review application concerning *Decision No. 224/16R*. The Tribunal filed a motion seeking that the two applications be heard together. Prior to this motion being heard, the worker withdrew the second judicial review application.

In a decision dated November 16, 2017 [2017 ONSC 6657], a Divisional Court Panel of Justices Fragomeni, Pattillo and Firestone dismissed the worker's application for judicial review. Following the release of this decision, the worker initiated a new judicial review application of *Decision No. 224/16R*. The Tribunal brought a motion seeking to strike the second judicial review application as an abuse of process. The Tribunal's motion was heard and granted on March 1, 2018 [2018 ONSC 1432], by Justice Swinton. In an endorsement dated March 2, 2018, Justice Swinton confirmed that the judicial review application was an abuse of process and an improper collateral attack on the Divisional Court's November 16, 2017 decision.

The worker missed the deadline to appeal the November 16, 2017 Divisional Court decision to the Ontario Court of Appeal and filed a motion seeking a time extension in December 2017. The worker's motion was allowed and the worker was given until January 26, 2018, to file an application for leave to appeal. In an endorsement dated April 6, 2018, the worker's motion for leave was dismissed by the Ontario Court of Appeal.

The worker also brought a motion pursuant to Rule 59.06(2)(a) of the *Rules of Civil Procedure* asking that the Divisional Court's November 16,

2017 decision be set aside. Specifically, the worker alleged fraud, relying on a Tribunal decision that the worker argued was inconsistent with the decision in her case and which had been located after the release of the Divisional Court's decision. On June 18, 2018 [2018 ONSC 3823], Justices Horkins, Conway and Sheard dismissed the worker's motion in an oral decision, determining that the new Tribunal decision that had been submitted was neither evidence nor new, and that the motion was an abuse of process.

6. *Decision No. 2027/17*, 2017 ONWSIAT 3263

The sole issue raised in this employer appeal was the worker's entitlement to FEL benefits from April 2013 to the age of 65.

The worker was injured in April 1996, when the hydro bucket device that he was working in collapsed. The worker sustained multiple injuries and was found to be entitled to various benefits. In 1999, after returning to modified work in various capacities, the worker went off work due to a post-traumatic stress condition related to his workplace accident. In 2002, the worker received a 43% NEL award. A final review of the worker's FEL benefits was conducted in 2003, and it was concluded that the worker was unable to return to work as a result of his physical and psychological injuries and would therefore continue to receive full FEL benefits from May1, 2003 to November 1, 2033, when the worker would reach 65 years of age.

In 2013, the employer advised the WSIB that the worker had resumed full employment and that he was no longer experiencing a wage loss. The employer appealed a decision of the Appeals Resolution Officer denying review of the worker's FEL benefits.

The employer's appeal was dismissed as it was concluded that the worker did not come within any of the exceptions in s. 44(2.1) of the WSIA that would allow review of the worker's FEL benefits after the final review.

In January 2018, the employer commenced an application for judicial review. The application is scheduled to be heard in January 2019.

7. *Decisions No. 515/14*, 2014 ONWSIAT 945, and *515/14R*, 2017 ONWSIAT 2450

The worker began working as a firefighter in March 1992. In April 2010, after working a 24-hour shift, the worker suffered a heart attack and passed away.

Pursuant to section 15.1 of the WSIA and Ontario Regulation 253/07, if a firefighter sustains a heart injury within 24 hours of attending a fire scene in the performance of his or her duties, the heart injury will be presumed to have occurred in the course of the firefighter's employment. The WSIB conducted

an investigation and ultimately concluded that the worker's heart injury and subsequent death could not be attributed to his employment as a firefighter.

The worker's estate appealed the WSIB's decision to the Tribunal. Following an oral hearing, the Panel dismissed the estate's appeal in *Decision No. 515/14*, concluding that the worker's firefighting duties did not significantly contribute to his death. The Panel also determined that the presumption under section 15.1 of the WSIA and Ontario Regulation 253/07 was not applicable.

The worker's estate sought reconsideration of the Tribunal's decision. In *Decision No. 515/14R*, the request for reconsideration was denied as it was determined that the Tribunal's threshold test for granting reconsideration had not been met.

Following the release of *Decision No. 515/14R*, the estate submitted additional documentation and filed a second request for reconsideration. The Tribunal did not accept this request because the reasons provided by the estate were not sufficient for the Tribunal to begin to process a reconsideration request.

In June 2018, the estate commenced an application for judicial review seeking, among other things, an order setting aside *Decisions No. 515/14* and *515/14R*. The application is scheduled to be heard by the Divisional Court in February 2019.

8. *Decisions No. 87/03* (August 26, 2003 and November 5, 2003), 2003 ONWSIAT 1849, *87/03R*, 2004 ONWSIAT 2056, *1246/07*, 2008 ONWSIAT 40, *1246/07R*, 2008 ONWSIAT 2191, *1246/07R2*, 2011 ONWSIAT 749, *1631/09*, 2009 ONWSIAT 2341, and *1631/09R*, 2018 ONWSIAT 1137

In May 2018, the worker initiated a judicial review application in relation to three separate Tribunal appeals. The decisions in all three of the appeals relate to a low back injury that the worker suffered in 1994 and for which the worker was granted a 17% NEL award.

In the first appeal, the worker appealed three issues: the denial of his request to include fringe benefits when calculating his earnings; the denial of his request for reimbursement for a MRI; and the manner in which his net average earnings were calculated post-injury when determining his FEL benefits. In *Decision No. 87/03*, dated August 26, 2003, the worker's appeal with respect to the calculation of his net average earnings post-injury was allowed. In an addendum decision dated November 5, 2003, the remaining two issues being appealed were denied. The worker sought reconsideration of this decision, which was denied in *Decision No. 87/03R*.

In the second appeal, the worker appealed the denial of entitlement for psychotraumatic disability

and a full FEL award. In *Decision No. 1246/07*, the Vice-Chair concluded that the worker did not have entitlement for psychotraumatic disability. The Vice-Chair also determined that, as there was evidence of deterioration of the worker's organic condition, the worker was entitled to a further medical assessment to determine if an increase in his NEL award was warranted. If the NEL award was increased after the medical assessment, it would then be appropriate to review the worker's FEL award. The worker sought reconsideration of this decision twice. The first request was denied in *Decision No. 1246/07R* as the Tribunal concluded that it did not have jurisdiction to grant the worker's request. The second request was denied in *Decision No. 1246/07R2* because the new evidence submitted by the worker did not meet the Tribunal's threshold test.

In the third appeal, the worker appealed the determination that the SEB identified of general office clerk, remained suitable as well as the denial of his request for full FEL benefits. In *Decision No. 1631/09,* the Panel confirmed that the SEB remained suitable and that the worker was not entitled to a full FEL award. Seven years after the release of *Decision No. 1631/09*, the worker sought reconsideration of the decision, which was denied in *Decision No. 1631/09R*.

Since the initiation of the application for judicial review in May 2018, the Tribunal has served and filed its Record of Proceedings and is waiting for the applicant to advance the application.

9. *Decisions No. 1379/15*, 2015 ONWSIAT 1552, and *1379/15R*, 2018 ONWSIAT 519

In April 2005, the worker suffered an ankle injury. In a prior decision [*Decision No. 2022/07*, 2010 ONWSIAT 1184], the Tribunal determined that the worker had entitlement for chronic pain disability but did not have entitlement to ongoing LOE benefits beyond September 2005. The worker was subsequently granted a 35% NEL award by the WSIB but was denied further LOE benefits.

The worker appealed the quantum of the NEL award and the denial of further LOE benefits to the Tribunal. At the hearing, the Vice-Chair identified a possible "downside risk" of proceeding with the appeal, particularly in relation to the quantum of the NEL award, and the worker decided at the hearing to withdraw the NEL issue. In *Decision No. 1379/15*, the Vice-Chair determined that the worker was not entitled to further LOE benefits as the work offered by the employer to the worker was suitable, and the appeal was dismissed. The worker sought reconsideration of this decision, which was denied in *Decision No. 1379/15R*.

In May 2018, the worker initiated an application for judicial review. The application is scheduled to be heard in May 2019.

Other Litigation Matters

1. Action in Superior Court – *Decisions No. 691/05*, 2008 ONWSIAT 402, and *691/05R*, 2013 ONWSIAT 1292

Following four days of hearing, the Panel allowed this self-represented worker's appeal in part. The worker was granted initial entitlement to benefits for his neck, and for various periods of temporary partial disability benefits. He was denied initial entitlement for an injury to his upper and mid-back, for a permanent impairment for his upper, mid-back and neck, for LMR, and for reimbursement of travel expenses. The WSIB's determination of the worker's FEL benefit and his SEB was found to be correct.

Three days prior to the release of *Decision No. 691/05*, the worker wrote to the Tribunal alleging he had been threatened by one of the Panel members. Although the Tribunal informed the worker about the appropriate complaint procedures, no response was received from the worker for two and a half years. In September 2010, the worker made further allegations of Panel misconduct, and requested reconsideration. The reconsideration was denied by a different Vice-Chair in *Decision No. 691/05R*, which was released in June 2013.

In July 2013, the Tribunal and the WSIB were served with a Notice of Application, issued out of the Superior Court of Justice, asking that *Decisions No. 691/05* and *691/05R* be set aside. The Tribunal advised the worker that he had commenced proceedings in the wrong court. The worker abandoned his action in August 2013.

In February 2014, the worker commenced a new action against the WSIB and the Tribunal, this time claiming relief of several million dollars. Much of the worker's claim contained allegations against the WSIB, but his claim also took issue with the Tribunal's decisions, alleging errors and bad faith. The worker again made allegations against one of the Panel members.

The Tribunal and the WSIB each brought a motion to dismiss the worker's action. The motion was heard on August 15, 2016. In a decision dated February 22, 2017 [2017 ONSC 1223], the worker's statement of claim was struck and leave to amend the statement of claim was denied. In reaching this conclusion, Justice Price determined that the Court did not have the jurisdiction to order some of the categories of relief sought by the worker and that further litigation of the worker's entitlements to WSIA benefits would constitute an abuse of process. Justice Price also concluded that the worker's claim disclosed no reasonable cause of action and therefore had to be struck in its entirety.

The worker initiated an appeal to the Ontario Court of Appeal of Justice Price's decision, which was heard on December 18, 2017. In a decision dated February 6, 2018 [2018 ONSC 108], Justices Laskin,

Huscroft and Paciocco dismissed the worker's appeal, concluding that the motion judge did not err in dismissing the worker's claim for lack of jurisdiction and failing to disclose a reasonable cause of action. The Court of Appeal also upheld the motion judge's decision refusing to grant the worker leave to amend his statement of claim.

Following the release of this decision, the worker initiated new litigation pertaining to three outstanding issues that were before the WSIB, including the denial of reimbursement for non-prescription pain mediation, the cessation of coverage for reimbursement of prescription medications and a request for benefits for certain dates in 1998. Although the worker had not appealed the decisions of the WSIB to the Tribunal at that time of initiating this litigation, both the WSIB and Tribunal were named as parties to the application.

In the application, the worker sought an order of *mandamus*, specifically that the WSIB be ordered to hold an oral appeal hearing within five days and then render a written decision within five days (or such reasonable timeframe as the court directed). In the event that the worker disagreed with the WSIB's decision, he sought a similar order for the Tribunal to conduct an oral hearing within a specified expedited timeframe. The worker also submitted a motion to bring the application for judicial review before a judge in the Superior Court of Justice rather than the Divisional Court.

The motion and application were heard on March 20, 2018 [2018 ONSC 3791] by Justice Petersen. The worker's motion to bring the judicial review application before a Superior Court of Justice judge was denied as the worker had not met the relevant test. Justice Petersen also stated that, even if the motion had been granted, the judicial review application would be denied on the basis of prematurity as the worker had failed to exhaust the adjudicative processes at the WSIB and the Tribunal.

The worker then appealed the decision of Justice Petersen to the Ontario Court of Appeal. The worker's appeal was heard on September 13, 2018. In a decision dated September 21, 2018 [2018 ONSC 771], Justices Rouleau, Benotto and Miller dismissed the appeal, agreeing with Justice Petersen's analysis. The worker also brought a motion for an order permitting him to live-stream the Court of Appeal hearing of the appeal via a Facebook page. The motion for live-streaming was also denied.

2. Application in Superior Court – *Ontario Network of Injured Workers' Groups, Injured Workers' Consultants and Margery Wardle v. The Crown in Right of Ontario as represented by the Ministry of Labour*

and Ministry of the Attorney General of Ontario, Workplace Safety and Insurance Board and Workplace Safety and Insurance Appeals Tribunal

In late June 2017, the Ontario Network of Injured Workers' Groups, Injured Workers' Consultants and an individual worker initiated an application in Superior Court pursuant to Rule 14 of the *Rules of Civil Procedure*. The Crown in Right of Ontario, as well as the WSIB and the Tribunal were named as respondents.

In the Notice of Application, the applicants sought the following:

a) an order declaring section 13(4) and (5) (first sentence only) of the WSIA invalid and of no force and effect and, in particular, with respect to claims made to the WSIB for accidents predating January 1, 2018;

b) an order in the nature of *mandamus* against the WSIB and the Tribunal directing that any claims, requests for reconsideration or appeals must be determined on the basis that the impugned sections are of no force and effect.

In early January 2018, the application was abandoned.

3. Application in Superior Court – *Toronto Star Newspapers Ltd. v. Attorney General of Ontario and the Workplace Safety and Insurance Appeals Tribunal*

In February 2017, the Toronto Star Newspapers Ltd. initiated an application in the Ontario Superior Court seeking a declaration that the application of the *Freedom of Information and Protection of Privacy Act,* R.S.O. 1990, c. F.31 (FIPPA) to certain administrative agencies performing adjudicative functions was unconstitutional. The Toronto Star specifically argued that FIPPA's application to these adjudicative agencies violated the open court principle embedded in section 2(b) of the *Canadian Charter of Rights and Freedoms*.

The only named respondent in the application was the Attorney General of Ontario, however the focus of the application was the applicability of FIPPA to specific adjudicative administrative tribunals, including the Tribunal, and the manner in which access to "adjudicative documents" in the control of these agencies is determined and provided to external parties.

In October 2017, the Tribunal was granted leave to intervene in the application as a party. In a decision of Justice Morgan dated December 18, 2017 [2017 ONSC 7525], the Ontario Judicial Council and Justice for Children and Youth organization were granted leave to intervene as friends of the court.

The Advocacy Centre for Tenants Ontario and Workers' Health and Safety Legal Clinic and Ontario Network of Injured Workers' Group were denied leave to intervene. The parties consented to several other organizations intervening as friends of the court.

The application was heard in early April 2018 by Justice Morgan. In late March 2018, the Toronto Star withdrew the application against the Tribunal on consent and with prejudice after reviewing the Tribunal's factum.

In a decision dated April 27, 2018 [2018 ONSC 2586], Justice Morgan ultimately found that the application of FIPPA to the adjudicative documents of the remaining agencies named in the application infringed section 2(b) of the Charter and was not saved by section 1 and therefore was of no force or effect. Justice Morgan suspended the declaration of invalidity for 12 months from the date of the decision in order to allow the legislature sufficient time to revise FIPPA, should it choose to do so, and the affected agencies to establish appropriate processes to determine requests for access to adjudicative records.

4. Action in Superior Court – *Decisions No. 1277/03, 2003 ONWSIAT 1801,* and *1277/03R, 2006 ONWSIAT 2425*

In January 1972, the worker fell while trying to climb down a ladder. The WSIB recognized the worker's facial and neck injuries as compensable and the worker returned to his regular duties in February 1972. There was no further activity with respect to the worker's claim until 1998, when he requested initial entitlement for injuries to his hip, leg, shoulder, back and kidney that he related to the 1972 accident. The WSIB denied the worker's claims and refused to extend entitlement beyond the worker's face and neck injuries.

The worker's appeal to the Tribunal seeking initial entitlement for his left hip, neck, left leg, back, shoulder and right kidney was denied in *Decision No. 1277/03*. In the decision, the Vice-Chair determined that he was unable to satisfy himself on a balance of probabilities that the worker's injuries were related to the 1972 accident.

In 2006, the worker's request for reconsideration was denied in *Decision No. 1277/03R*.

In June 2018, the worker initiated an action in the Ontario Superior Court of Justice naming the WSIB, the Tribunal and the Attorney General of Ontario as defendants. In the statement of claim, the worker sought various damages in relation to allegations pertaining to his workplace injury and medical issues, as well as other allegations of negligence, conflict of interest and corruption.

Counsel for the WSIB, the Attorney General of Ontario and the Tribunal all submitted written

requests to the Superior Court of Justice asking that the worker's statement of claim be dismissed pursuant to Rule 2.1.01 of the *Rules of Civil Procedure*. On September 6, 2018, Justice Mew ordered that the worker's action be dismissed pursuant to Rule 2.1.01.

5. *Minister of Citizenship and Immigration v. Vavilov; Bell Canada, v. Attorney General of Canada; National Football League v. Attorney General of Canada.*

In May 2018, the Supreme Court of Canada granted leave to appeal in the following three appeals:

- *Minister of Citizenship and Immigration v. Vavilov*
- *Bell Canada v. Attorney General of Canada*
- *National Football League v. Attorney General of Canada.*

The Court directed that these three appeals be heard together. In the three judgements granting leave, the Court also noted that the appeals provided an opportunity to consider "the nature and scope of judicial review of administrative action." The Court therefore invited the appellants and respondents to address the question of standard of review in their written and oral submissions.

The Supreme Court of Canada last addressed the appropriate approach to judicial review in an extensive manner in its seminal 2008 decision, *Dunsmuir v. New Brunswick*, 2008 SCC 9. In light of the significance of the nature and scope of judicial review being addressed by the Supreme Court of Canada once again, the Tribunal determined that it would seek to intervene.

In August 2018, the Tribunal submitted a motion to intervene on behalf of a "coalition" of five workers' compensation appeals tribunals (WCATs) consisting of the Tribunal, the Northwest Territories and Nunavut WCAT, the Nova Scotia WCAT, the New Brunswick WCAT and the Appeals Commission for Alberta Workers' Compensation.

In a decision dated September 24, 2018, Justice Karakatsanis granted all of the motions to intervene that had been submitted, entitling each intervener to serve and file a factum not exceeding 10 pages in length. The Court deferred making any decision with respect to the requests to present oral argument until after the written arguments of the 27 interveners had been received and considered.

On October 25, 2018, the Coalition submitted its factum. On November 23, 2018, the Chief Justice granted permission to a limited number of interveners to make oral argument, including the Coalition.

The three appeals were heard on December 4 to 6, 2018, with the Court reserving its judgement. ■

OMBUDSMAN REVIEWS

The Ombudsman's Office has the authority to investigate complaints about the Ontario Government and its agencies, including the Tribunal.

When the Ombudsman's Office receives a complaint about a Tribunal decision, the Office considers whether the decision is authorized by the legislation, whether the decision is reasonable in light of the evidence and whether the process was fair. In some cases, the Ombudsman's Office may make informal inquiries in order to satisfy itself that the decision was reasonable and the process fair. If the Ombudsman's Office identifies issues which indicate the need for a formal investigation, the Tribunal will be notified of the Ombudsman's intent to investigate.

While an Ombudsman investigation may result in a recommendation to reconsider, this is unusual. Generally, the Ombudsman concludes that there is no reason to question the Tribunal's decision.

While the Tribunal has received a few notifications of the Ombudsman's intent to investigate in the past, it has not received any intent to investigate notifications since 2012. There were no outstanding intent to investigate files in 2018. ■

VICE-CHAIRS, MEMBERS AND STAFF

Lists of the Vice-Chairs and Members, senior staff and Medical Counsellors who were active at the end of the reporting period, as well as a list of 2018 reappointments and newly appointed Vice-Chairs and Members, can be found in Appendix A.

Executive Offices

The Chair, the Executive Director, the Manager, Executive Offices, and a small group of dedicated staff comprise the Executive Offices of the Appeals Tribunal.

The Chair is the Chief Executive Officer of the Tribunal and leads the organization to attain its mandate in a manner consistent with its guiding principles. The Chair is responsible for the overall strategic direction and performance of the Tribunal.

The Executive Director leads and directs the programs, services and day-to-day operations of the Tribunal through the development, execution and continuous improvement of program delivery strategies.

The Manager, Executive Offices, manages department staff and co-ordinates the recruitment, appointment and re-appointment process for Order in Council (OIC) appointed adjudicators. The Office also co-ordinates all adjudicator training activities. Further, the Adjudication Support Group, which processes all decisions prepared by Vice-Chairs and Panels, reports to the Manager, Executive Offices.

2018 was a successful year at the Tribunal in both operations and administration.

Firstly, the agency significantly reduced the caseload and the time to hearing.

The caseload reduced to 4,081 active cases at the end of 2018, a decrease of 32% at the end of 2017 (from 6,035). Reducing the active caseload was a key step to improve the timelines to hearing and case resolution. During the year, the agency focused significant OIC adjudicator resources on oral hearings in the regional hearing centres to reduce the time to hearing. By the end of the year, the agency achieved the goal to reduce the time to hearing in the regional centres to under a year.

The time to hearing throughout the province for oral and written appeals reduced to 10.9 months (compared to 16.6 months in 2017).

A related focus for caseload reduction was the dedication of key resources to reduce the inventory of reconsideration applications and improve the time to resolution.

A second area of focus in 2018 was an expansion of pilot project work that partnered staff and adjudicators to review cases at an early stage in the process and to assess the possibility of resolving some cases without the need for an oral hearing. This work will continue in 2019.

Also, a key strategic initiative was launched in 2018. The Executive Offices implemented a comprehensive professional development and review program for OIC appointed Vice-Chairs and Members.

The Professional Development and Review program includes peer review of hearings and decisions. The individual adjudicator also completes a self evaluation. The program is focused on professional development, providing constructive feedback and recognizing contributions. The program also supports the re-appointment process.

Lastly, facilities and technology projects were at the forefront of agency administration work in 2018. In particular, the sections that follow outline the work to build and equip the Hamilton Hearing Centre, establish internal training space at the agency premises in Toronto and a focus to enable the use of webinars.

The WSIAT appreciates the community's dedication and commitment to accept more hearings dates during 2017 and 2018 to resolve worker and employer appeals and improve timelines to hearing and appeal resolution at the final level of appeal in the workplace safety and insurance system.

We look forward to working with you in 2019.

Human Resources and Administration Department

The Tribunal's Human Resources and Administration Department is led by the Director of Human Resources and Administration. The Human Resources team delivers the full range of human resources and labour relations programs and services. These functions include: payroll, pension and benefits; staffing and recruitment; compensation and performance management; employee and labour relations; health, safety and wellness; corporate staff training and development; and support for the business planning cycle.

The Tribunal's Human Resources plan consists of three main priorities: leveraging organizational efficiencies, strengthening organizational capacity, and cultivating an inclusive, accessible and healthy work environment. These key priorities strategically align with the Tribunal's guiding principles to provide exceptional quality public service.

In 2018, key human resources initiatives were directed in support of reducing the active caseload, time to hearing and time to appeal resolution. The Tribunal's caseload reduction strategy called for a continued investment in adjudication and production resources. Building organizational capacity through merit-based recruitment and learning and development programs was top priority. Further, organizational efficiency has been enhanced through strategic initiatives, including the review of workflow processes, practices and procedures, and migration to a new human resources information and payroll system.

The commitment to an inclusive, accessible and healthy workplace was underscored by policy development, enhancements to the employee assistance program, accessible online learning and development tools, and corporate training initiatives related to respect in the workplace, and occupational health and safety, including the new Workplace Hazardous Materials Information System.

The Tribunal's Administration unit is responsible for emergency management and security (EMS), and facilities management, including accommodations and upgrade requirements, surplus assets, and building support issues.

In 2018, the Tribunal's commitment to the protection of physical health, well-being and security included investments in the Tribunal's EMS program and facility enhancements. In addition, the Administration unit is responsible for capital projects such as the construction of the training conference centre in Toronto and the new hearing centre in Hamilton, which includes dedicated video-conferencing resources and is scheduled to open in January 2019.

Finance Department

The Tribunal's Finance Department is responsible for the agency's finances and is led by the Manager, Financial Management and Controllership.
The Department provides financial, budgetary and purchasing and procurement support, and assistance to the Tribunal's senior management group, staff and OICs. The Finance group performs all the transactional based activities to ensure that payments to vendors and OIC appointees are properly verified and paid on a timely basis. They maintain the bank accounts and request monthly reimbursement and settlements of expenditures from the WSIB. All purchasing and procurement activity for the Tribunal is managed and performed through the Finance Department. Other activities include: the maintenance of the Tribunal's financial systems; the planning and development of the annual budget; the production and distribution of monthly, quarterly, and annual financial reports to senior management and the Ministry of Labour; and the planning and directing of the financial audit for the preparation and completion of the annual audited financial statements. The Department is

also responsible for the design, implementation, and maintenance of appropriate internal financial controls.

Office of the Counsel to the Chair

The Office of the Counsel to the Chair (OCC) has been in existence since the creation of the Tribunal in 1985. Under the direction of Counsel to the Tribunal Chair, it is a small expert legal department which is separate from the Tribunal Counsel Office (TCO) and is not involved in making submissions at hearings. Publications Counsel is also a member of OCC.

OCC Lawyers

Draft review, which has been described in prior Annual Reports, is the responsibility of OCC lawyers and is conducted in accordance with principles of natural justice. OCC lawyers also provide advice to the Chair, Executive Director and the Executive Offices with respect to a range of matters, including accountability documents, practice and procedure, complicated reconsideration requests, post-decision inquiries, Ombudsman inquiries, conduct matters and other complaints.

The reconsideration process was a particular priority in 2018. A delay had developed in reconsideration assignments due to extra resources being devoted to reducing the appeal backlog in 2016. Beginning in late 2017 and continuing in 2018, a project was undertaken involving OCC as well as the Tribunal Chair, the Scheduling Department and two experienced Vice-Chairs, to address the delay by increasing review of reconsideration requests for assignment to approximately 10 per week. By the end of the 2018, the backlog in assignment reviews had been eliminated and assignments were being reviewed on a current basis.

Another priority in 2018 was orientation training for new OIC appointees in order to support them in their role as expert decision-makers. This included updating the orientation materials for use by these OICs and in anticipation of further Order-in-Council appointments. OCC lawyers provided orientation training to four Vice-Chairs and eight Members appointed in 2018. In addition, follow-up orientation sessions were provided to a number of OICs appointed over the last few years. Professional development for OICs and staff continued to be important, given the four different legislative schemes, statutory amendments, extensive Board policy and policy amendments. OCC lawyers also continued work on various knowledge management resources to facilitate OIC access to information on law, policy and procedure through electronic means.

OCC lawyers are responsible for assisting the Tribunal in meeting its obligations under the Freedom of Information and Protection of Privacy Act (FIPPA). They handle FIPPA requests and appeals and provide advice on privacy matters.

Assistance is also provided with respect to records management issues.

Publications Counsel

During 2018, the Tribunal released 4,016 decisions (final, interim, special section and reconsideration). This is about 400 more decisions than released in 2016 and about the same number as released in 2017. Publications Counsel processed 4,011 decisions, of which he wrote summaries for 1,247 (or 31%). These decisions form part of the 80,685 decisions released since the Tribunal's creation in 1985. The interval between the release of a decision and its addition to the Tribunal's database is now two months.

All Tribunal decisions are published and available free of charge through the Tribunal's searchable databases on the Tribunal's website at wsiat.on.ca. A database record is created for each decision, and includes keywords and a link to the full text. Approximately one-third of the database records also contain a summary of the decision. The Tribunal database is searchable on various fields, including the decision number, keywords, summary, release date, section number of the Act and references. The full text of Tribunal decisions is also available free of charge on the website of the Canadian Legal Information Institute (CanLII) and on a paid basis on the LexisNexis (Quicklaw) website.

Since 2010, the Tribunal has also identified selected noteworthy decisions on the home page of its website. This service is designed to provide information about key decisions on medical, legal and procedural issues in a timely and easily accessible manner.

Office of the Vice-Chair Registrar

Staff in the Office of the Vice-Chair Registrar (OVCR) are the primary point of contact for appellants, respondents and representatives with an appeal or application at the Tribunal. Staff complete all initial processing of appeals and applications, ensure that cases are ready for hearing, monitor cases up to the hearing date and perform any post-hearing work that may be required.

The Office of the Vice-Chair Registrar operates under the guidance of the Vice-Chair Registrar and is led by the Director of Appeal Services.

The Vice-Chair Registrar

The Tribunal's Vice-Chair Registrar is Martha Keil. The Vice-Chair Registrar provides adjudicative advice to OVCR staff and may make rulings on preliminary and pre-hearing matters such as admissible evidence, jurisdiction and the issue agenda. The Vice-Chair Registrar also determines whether a case has been abandoned during the early stages of an appeal.

In 2018, in addition to her OVCR duties, the Vice-Chair Registrar assisted with the development of the Early Intervention Program (EIP) within the Alternative Dispute Resolution (ADR) Department. The goal of the EIP is to review cases early in the appeals process to determine if they can be resolved without the need for an oral hearing. The Tribunal will continue to develop the EIP and monitor its outcomes in 2019.

The Vice-Chair Registrar's Office is divided into a number of areas.

The Alternative Dispute Resolution Department

ADR staff, trained in communication and conflict resolution, review all incoming Notices of Appeal to determine if they are complete and to identify any jurisdictional or evidentiary issues that would prevent the Tribunal from deciding a case. After initial review, ADR staff refer cases to the appropriate department for further processing. On occasion, cases may be withdrawn by the appellant while the parties pursue other options.

ADR services may be offered to the parties of an active case in an attempt to resolve the issues in dispute without a formal hearing, to simplify multi-issue appeals prior to proceeding to a hearing, and/or discuss significant problems with the case (e.g., the absence of evidence, alternative courses of action). For suitable cases, the ADR services offered may include a formal mediation held by a Tribunal Vice-Chair/Mediator. If an agreement consistent with law and Board policy is reached by the parties, the Vice-Chair/Mediator will issue a decision incorporating the terms of the executed agreement. If issues remain in dispute following ADR services, the case will be resolved via a hearing.

Staff in the ADR Department also monitor dormant and inactive cases and work with the Vice-Chair Registrar to close cases that have been abandoned. This work allows other pre-hearing staff to focus on active cases proceeding to hearing.

Applications for reconsideration of Tribunal decisions are also processed by ADR staff.

The focus for this department in 2018 was the development of the Early Intervention Program, which was supported by a full-time Vice-Chair. Early results of the EIP showed that by having frank, substantive discussions with the parties early in the process, it is possible to resolve some cases without the need for an oral hearing. Based on these results, the Tribunal assigned additional staff and adjudicative resources to expand the program in the fall of 2018.

The Early Review Department

The Early Review Department is responsible for the initial processing of all Tribunal appeals and time extension applications. Staff review

all Notice of Appeal and Confirmation of Appeal forms to ensure that they are complete and meet legislative requirements, provide notice of appeals to respondents, obtain relevant policy and claim file material from the Board, and prepare Case Records for all appeals.

In 2018, the Early Review Department processed 2,383 new cases and reduced the wait time for Case Records from 70 to 35 days.

Vice-Chair Registrar Teams

Pre-hearing Work

Before cases are released to the Tribunal's Scheduling Department, they are all substantively reviewed to confirm the hearing format and ensure that they are ready for a hearing. The Tribunal continued to offer hearings via video-conference this year for those parties who met the technological requirements and had cases suitable for this hearing format.

Substantive review reduces the number of cases that are adjourned or require post-hearing investigation due to an incomplete issue agenda, outstanding issues at the Board, or incomplete evidence. The majority of cases are reviewed by legal workers in the OVCR but those involving more complex legal matters are referred to a lawyer in the Tribunal Counsel Office. The legal workers respond to party correspondence and queries and implement Vice-Chair or Panel instructions up to the hearing date. The more complicated cases and those involving self-represented workers are assigned to senior legal workers.

In 2018, the legal workers cleared the backlog of work at this stage in processing and by year-end, were working at the speed of appellants. Legal workers reviewed and released 2,800 cases to the Scheduling Department this year.

Post-hearing Work

After a hearing, a Tribunal Vice-Chair or Panel may conclude that additional information or submissions are required before a decision can be made. In those circumstances, the Vice-Chair or Panel sends a written request for post-hearing assistance, which is directed back to the legal worker or lawyer who prepared the case for hearing. The legal worker or lawyer carries out the directions of the Vice-Chair or Panel and co-ordinates any necessary input from the parties to the appeal. Typical post-hearing requests include instructions to obtain additional evidence (usually medical information that was not identified or made available pre-hearing) or a report from a Tribunal medical assessor, and requests for written submissions from the parties and/or Tribunal lawyers.

Appeal Services Department

This Department includes staff in the Tribunal's Call Centre and Registrar Information Centre (RIC). RIC staff monitor any activity on cases from the time they are sent to Scheduling up to the hearing date. They respond to incoming correspondence, refer more complex matters to appropriate staff and finalize case materials.

The Tribunal's Call Centre staff responded to over 15,500 telephone calls in 2018.

Support Services Department

Support Services is comprised of the Records area, Mail Room, and Print Shop. Together, they provide operational support including records services, mail, courier, and scanning and print services to the Tribunal and other Agencies under the Shared Services Agreement (SSA). Records staff implement and monitor aspects of Records and Information Management (RIM) for the Tribunal and liaise with the Board to resolve issues relating to records.

In addition to their daily tasks, this group continued working towards a more electronic environment in 2018. Major accomplishments included reviewing 3,000 appeal folders to ensure the contents were in the Tribunal's electronic case management system, and converting over 600 administrative folders to electronic format so they too could be uploaded to our case management system. Staff completed these conversion projects in late summer of 2018, which enabled the Tribunal to repurpose the space previously used for file storage into an in-house training room.

In late 2018, the Support Services group began another conversion project focusing on the less frequently used resources in the Ontario Workplace Tribunals Library. They will continue this work in 2019.

Tribunal Counsel Office

The Tribunal Counsel Office (TCO) is a centre of legal and medical expertise at the Tribunal. Under the direction of the Tribunal's General Counsel, the TCO group provides assistance with both appeal-related and non-appeal-related issues. The TCO group consists of TCO lawyers, TCO support staff and the Medical Liaison Office.

TCO Lawyers

The General Counsel and TCO lawyers provide legal assistance with respect to both appeal-related and non-appeal-related issues. All of the Tribunal's litigation is also managed by the General Counsel with assistance from the TCO lawyers and occasionally external legal counsel.

Appeal-related Legal Assistance

TCO lawyers have significant expertise in a number of legal areas including workplace safety and insurance law and administrative law.

The appeal-related work of TCO lawyers includes providing legal assistance for the most legally and medically complex appeals at the Tribunal. Particularly complex appeals are streamed to TCO during the pre-hearing process and can also be assigned to TCO at any point during the appeal process at the direction of a Vice-Chair or Panel.

During the course of an appeal, TCO lawyers provide assistance by identifying and helping to resolve legal, policy and evidentiary issues that have arisen pre-hearing. This assistance often involves TCO lawyers engaging with parties directly.

TCO lawyers also attend hearings and provide neutral assistance by questioning witnesses as well as making legal and procedural submissions as directed by a Vice-Chair or Panel. TCO lawyers also make written submissions post-hearing in relation to complex legal, procedural and medical issues that have arisen and handle the most complex post-hearing requests.

Examples of appeals in which TCO lawyers often provide legal assistance include complicated occupational disease appeals, appeals concerning novel legal or policy issues, appeals involving difficult procedural issues, and appeals which raise constitutional or human rights issues. Bilingual TCO lawyers are also available to assist with French language appeals.

In addition, the General Counsel and the TCO lawyers also frequently provide appeal-related legal advice to staff in the Office of the Vice-Chair Registrar with respect to the processing of appeals pre-hearing and post-hearing. The General Counsel and TCO lawyers also provide legal assistance with respect to legal and procedural matters and projects pertaining to the Tribunal and appeals generally.

Non-appeal-related Legal Assistance

A large component of the work of the General Counsel and TCO lawyers involves providing non-appeal-related legal advice and assistance to other departments of the Tribunal. This work routinely involves providing assistance with contract and procurement issues, security matters, human resources issues and training. General Counsel and the TCO lawyers also frequently act as liaisons with external organizations.

Tribunal Litigation

The General Counsel and TCO lawyers also represent the Tribunal on applications for judicial review of Tribunal decisions and on other Tribunalrelated litigation matters. More information about the Tribunal's litigation can be found in

the "Applications for Judicial Review and Other Litigation Matters" section of the Annual Report.

Medical Liaison Office

The Tribunal must frequently decide appeals that raise complex medical issues, or require further medical investigation. The Tribunal thus has an interest in ensuring that Panels and Vice-Chairs have sufficient medical evidence on which to base their decisions. The Medical Liaison Office (MLO) plays a major role in identifying and investigating medical issues, and obtaining medical evidence and information to assist the decision-making process.

To carry out its mandate, MLO seeks out impartial and independent expert medical expertise and resources. The Tribunal's relationship with the medical community is viewed as particularly important since, ultimately, the quality of the Tribunal's decisions on medical issues will be dependent on that relationship. MLO co-ordinates and oversees all the Tribunal's interactions with the medical community. MLO's success in maintaining a positive relationship with the medical community is demonstrated by the Tribunal's continuing ability to readily enlist leading members of the medical profession to provide advice and assistance.

MLO is overseen by the Manager of MLO, Jennifer Iaboni. The MLO Manager is assisted by MLO Officers.

Medical Counsellors

The Medical Counsellors are a group of eminent medical specialists who serve as consultants to the WSIAT. They play a critical role in assisting MLO to carry out its mandate of ensuring the overall medical quality of Tribunal decision-making. The Chair of the Medical Counsellors is Dr. John Duff. A list of the current Medical Counsellors is provided in Appendix A.

Prior to a hearing, MLO identifies those appeals where the medical issues are particularly complex or novel. Once the issues are identified, MLO may refer the appeal materials to a Medical Counsellor. The Medical Counsellor reviews the materials to verify whether the medical evidence is complete and that the record contains opinions from appropriate experts. The Counsellor also ensures that questions or concerns about the medical issues that may need clarification for the Panel or Vice-Chair are identified. Medical Counsellors may recommend that a Panel or Vice-Chair consider obtaining a Medical Assessor's opinion if the diagnosis of the worker's condition is unclear, if there is a complex medical problem that requires explanation, or if there is an obvious difference of opinion between qualified experts.

At the post-hearing stage, Panels or Vice-Chairs may need further medical information to decide an appeal. These adjudicators may request the assistance of MLO in preparing specific questions

for Medical Assessors. Medical Counsellors assist MLO by providing questions for the approval of the Panels or Vice-Chairs, and by recommending the most suitable Medical Assessor.

Medical Assessors

As the Courts have recognized, the Tribunal has the discretion to initiate medical investigations, including consulting medical experts, in order to determine any medical question on an appeal (Roach v. Ontario (Workplace Safety and Insurance Appeals Tribunal, [2005] O.J. No. 1295 (Ont. C.A.)). These medical experts are known as the Tribunal's "Assessors."

Only the most outstanding medical experts are retained as Assessors. Most Assessors are members of a College as defined in the Regulated Health Professions Act, 1991. All Assessors must be impartial. They cannot be employees of the WSIB, and neither the Assessor nor their business partner can have treated the worker or a member of the worker's family or acted as a consultant for the worker's employer.

Medical Assessors may be asked to assist the Tribunal in a number of ways. Most often, they are asked to give their opinion on some specific medical question, which may involve examining a worker and/or studying the medical reports on file. They may be asked for an opinion on the validity of a particular theory which a Hearing Panel or Vice-Chair has been asked to accept. They may be asked to comment on the nature, quality or relevancy of medical literature. Medical Assessors also assist in educating Tribunal staff and adjudicators in a general way about a medical issue or procedure coming within their area of expertise.

The opinion of a Medical Assessor is normally sought in the form of a written report. A copy of the report is made available to the worker, employer, the Panel or Vice-Chair, and (after the appeal) the Board. On rare occasions, a Hearing Panel or Vice-Chair may wish to question the Medical Assessor at the hearing to clarify the Assessor's opinion. In those cases, the Medical Assessor will be asked to appear at the hearing and give oral evidence. The parties participating in the appeal, as well as the Panel or Vice-Chair, have the opportunity to question and discuss the opinion of the Medical Assessor.

Although the report of a Medical Assessor will be considered by the Panel or Vice-Chair, the Courts have recognized that the Medical Assessor does not make the decision on appeal (*Hary v. Ontario (Workplace Safety and Insurance Appeals Tribunal)*, [2010] O.J. No. 5384 (Ont. Div. Ct.)). The actual decision to allow or deny an appeal is the sole preserve of the Panel or Vice-Chair.

The Appointment Process for Medical Assessors

The Medical Counsellors identify highly qualified medical professionals eligible to be Tribunal Assessors. Those medical professionals who agree to be nominated as candidates have their qualifications circulated to all the Medical Counsellors, and to members of the WSIAT Advisory Group. The Tribunal has the benefit of the views of the Medical Counsellors and the Advisory Group when it determines the selection for Assessors. Assessors who are a member of a College may be named to a list of Assessors for a three-year term, and may be renewed. Assessors who are not a member of a College may also be named to a separate list of Assessors.

MLO Resources Available to the Public

MLO makes the Tribunal's Medical Discussion papers and anonymized medical reports on generic medical or scientific issues available in the Ontario Workplace Tribunals Library. This publicly-accessible collection of medical information specific to issues that arise in the workers' compensation field is unique within the Ontario WSIB system. New medical information is announced and available on the WSIAT website.

Of all the medical information made available by MLO, WSIAT Medical Discussion Papers are the most frequently requested. The Tribunal commissions Medical Discussion Papers to provide general information on medical issues which may be raised in Tribunal appeals. Each Medical Discussion Paper is written by a recognized expert in the field selected by the Tribunal, and each expert is asked to present a balanced view of the current medical knowledge on the topic.

Medical Discussion Papers are intended to provide a broad and general overview of a topic, and are written to be understood by lay individuals. Medical Discussion Papers are not peer reviewed and do not necessarily represent the views of the Tribunal. A Vice-Chair or Panel may consider and rely on the medical information provided in the Discussion Paper, but the Tribunal is not bound by a Medical Discussion Paper in any particular case. It is always open to parties to an appeal to rely on or distinguish a Medical Discussion Paper, or to challenge it with alternative evidence.

Medical Discussion Papers are available to the public through the WSIAT website.

TCO Support Staff

The General Counsel and TCO lawyers as well as the Medical Liaison Office staff work with a group of dedicated support staff. Working under the direction of the Supervisor of Administrative Services, TCO support staff assist with case-tracking input, file management, preparation and filing of litigation documents and general support duties.

Scheduling Department

The Tribunal's Scheduling Department is led by the Manager, Scheduling Administration. Once an appeal is hearing ready, the Department receives a request to schedule a hearing date from the Tribunal Counsel Office or the Office of the Vice-Chair Registrar. The Department co-ordinates the hearing schedule for all appeals, oral and written, heard by the Tribunal. As well, the Department schedules video-conference hearings. The Tribunal conducts hearings in both English and French.

The Tribunal schedules hearings in Hamilton, Kitchener, London, Oshawa, Ottawa, Sault Ste. Marie, Sudbury, Thunder Bay, Timmins, Toronto and Windsor. The wait time to hearing in the regional centres was a matter of concern that the Tribunal addressed in 2018. As a result of an increase in the allocation of adjudicative and staff resources to the regional appeal inventory, the Tribunal was able to successfully significantly reduce the timelines for the scheduling of hearing dates in all regional centres. These efforts are ongoing to ensure that there is continued improvement in the timelines.

The Department uses a long-standing scheduling model that allows for consultation with parties in the setting of hearing dates. As well, the Department arranges for interpreters, regional boardrooms, service of summonses, the scheduling of pre-hearing conferences and determines the amount of time designated for a hearing and the hearing location. Pre-hearing adjournment requests are decided by the Manager, Scheduling Administration. In situations where hearings are adjourned or withdrawn prior to the hearing date, written appeals are often assigned to the adjudicators as replacement assignments to ensure that adjudicators are utilized to full capacity.

Information and Technology Services (ITS)

The Tribunal's ITS Department provides and supports the information technology infrastructure and the information systems for the Tribunal. There are five main service lines within the Department: information services; systems technology; database and application development; user support services; and systems security.

Information Services

This team's primary role is to operate the Ontario Workplace Tribunals Library (OWTL). The library is a shared resource of the WSIAT, the Ontario Labour Relations Board (OLRB) and the Pay Equity Hearings Tribunal (PEHT). It provides research and reference services to staff and adjudicators of the client tribunals, as well as current awareness services. The Library's collections function as a regulatory archive, preserving and making available the client tribunals' decisions, superseded versions of relevant statutes, regulations, rules and policies as well as providing the current state of the law and commentary. The

collections and expertise of the staff are available to members of the public to use, when licensing permits.

In 2018, Library staff answered over 744 reference questions concerning workplace safety, workers' compensation, labour relations, union certification, pay equity matters and general legal/legislative research. The staff also delivered workshops and training programs to adjudicators and other staff on topics such as labour/legal and legislative research, and searching within the WSIAT decision databases. Library staff also administered the transfer of Tribunal decisions to legal vendors such as CanLII, Quicklaw and Thomson Reuters.

A print collection reduction project was undertaken with over 2,000 labour and workplace safety documents digitized. The OLRB collection was expanded with 347 new bargaining union certificates added to the existing collection of 35,000 certificates. All collections are available in the library in accessible electronic format.

The Tribunal's French language translation program is also managed within the Information Services portfolio. In 2018, the Tribunal's French language translator produced 520 official translations, which included web pages, intranet pages, letters to appellants and representatives, official policy and business documents and highlights of noteworthy decisions for the website.

Public floor reception is one additional line of service that was provided by the Information Services team in 2018.

Systems Technology

This team builds and supports the Tribunal's computing infrastructure. In 2018, the main technology procurements and equipment upgrades included: the replacement of the server room 20kVA UPS system; the refresh of eight high-speed scanners; the migration of BlackBerry device fleet to Android-based BlackBerry smartphones; the deployment of Citrix remote access for mobile devices; and the implementation of IT infrastructure in the Tribunal's Hamilton hearing centre.

Database and Application Development

In 2018, the software development team made numerous upgrades and improvements to the Tribunal's websites, portals and case management software systems. Noteworthy in this regard were: the deployment of two open datasets to our publicly facing internet site; deployment of a caseload volume countdown display on our internally facing dashboard; development of new workflows that improve the efficiency of the decision draft review process; the integration of audio hearing recordings into the case management software application; and the conversion process that made all of the exhibit documents in the case management database fully text searchable.

User Support Services

Throughout 2018, ITS staff ensured that IT resources and services were available to all of the Tribunal's OICs and employees. As part of their regular duties, technicians granted and revoked access privileges, created and managed permissions profiles for applications and shared folders, and managed the Tribunal's information back-up protocols. The staff also conducted new user orientation and topical seminars for adjudicators and for staff throughout the course of the year. They partnered with service providers to ensure that internet sites were effectively hosted, incoming email was effectively routed and filtered, and that the Tribunal's computer room protection equipment was continually monitored and serviced at the regular quarterly and annual service intervals.

The Department's regular hours of business were supplemented by four pre-scheduled weekend shut-downs when software patches and software updates were applied.

The Department maintains a comprehensive IT Help Request service. This service is accessed electronically by staff and by OICs from any computer workstation at the Tribunal and from any Tribunal-configured remote connection. In 2018, through this service, the Department handled on average 609 support service requests each month. The distribution of types of support services was similar to the distribution in previous years. Fifty-four per cent of the support requests were for software application support. This was followed by network account management (14%), requests for equipment servicing (9%) and connection assistance (8%). Equipment bookings accounted for 6%, and the remaining 9% was divided among various other categories (including ordering and set up of telephone sets, USB encryption services and topical training service requests.

In 2018, the statistical support technicians provided regular feedback to individuals, teams and to the senior management team regarding caseload intake, caseload movement and productivity. As in previous years, they compiled and distributed these reports according to weekly, monthly and quarterly schedules.

Systems Security

In 2018, the Tribunal's cyber security team ensured the Tribunal's technical environment and systems processing activities conformed to the requirements laid out in the Tribunal's Information Technology Security Framework. Into this framework the team integrated new rules and best practices for use of cloud services and the team developed guideline documents for end users of webinar software services. ■

CASELOAD PROCESSING

Introduction

The Workplace Safety and Insurance Appeals Tribunal is the final level of appeal to which workers and employers may bring disputes concerning workplace safety and insurance matters in Ontario.

At the Tribunal, appeals proceed through a two-part application process. To start an appeal and meet the time limits in the legislation, an appellant files a Notice of Appeal form (NOA). Appeals remain at this "notice" stage while preliminary information is gathered and until the appellant indicates readiness to proceed toward an appeal hearing. The appellant indicates readiness by filing the Confirmation of Appeal form (COA). Once the COA is received at the Tribunal, the appeal enters the second, or "resolution" processing stage.

Caseload

At the end of Year 2018, there were 4,081 active cases within these two process stages. Chart 1 shows the distribution in more detail.

Active Inventory

The level of the Tribunal's active inventory is affected by three factors: the number of incoming appeals in a year, the number of appeals that are confirmed as ready to proceed in that year, and the number of hearings and other appeal dispositions

CHART 1: Active Cases on December 31, 2018

NOTICE PROCESS	
Cases active in Notice stage processing	773
	773
RESOLUTION PROCESS	
Early Review stage	45
Substantive Review	495
Hearing Ready	103
Scheduling and Post-hearing	2,004
WSIAT Decision Writing	661
	3,308
TOTAL ACTIVE CASES	**4,081**

that are achieved in the year. In 2018, these factors combined to produce a 32% overall decrease in the active inventory as compared to the 2017 year-end figure. Chart 2 shows the active inventory in comparison to previous years.

CHART 2: Active Caseload

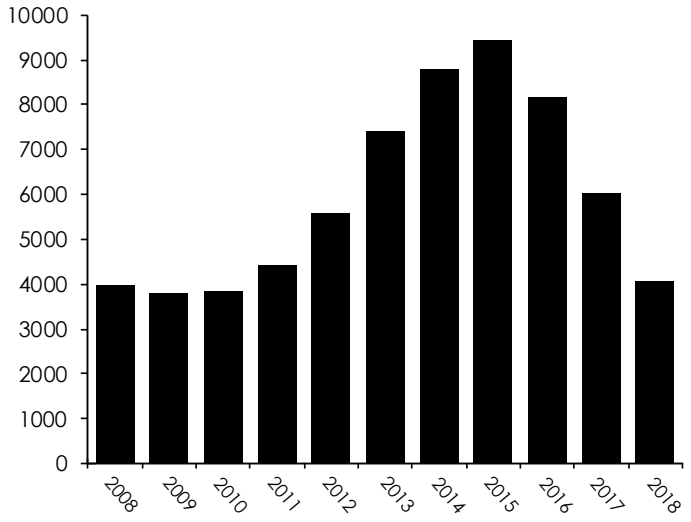
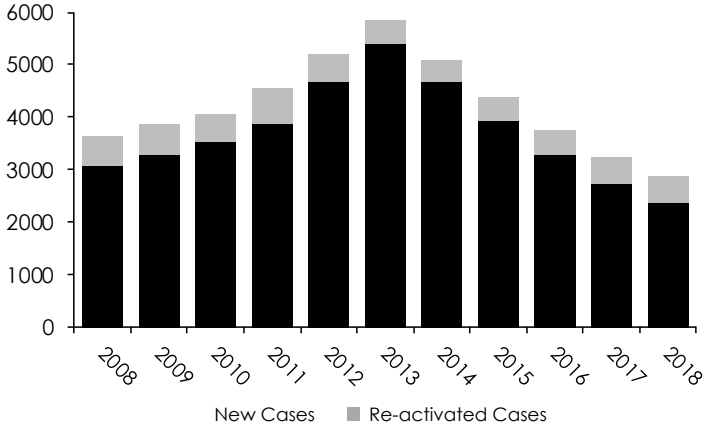


CHART 3: Incoming Appeals



Incoming Appeals

The incoming caseload trend is shown in Chart 3. In 2018, the Tribunal's overall intake from new appeals and reactivations totaled 2,890 and this represented a total decrease of 11% as compared with the 2017 intake total. "Reactivations" are appeals in which the appellant has indicated a readiness to proceed with the appeal following an inactive period during which the appellant may have acquired new medical evidence, received another final decision from the Board or sought new representation. New appeals to the Tribunal are appeals of final decisions at the Board's Appeals Branch.

Case Resolutions

The Tribunal achieves case resolutions (also known as case dispositions) in a number of different ways. The most frequent source of case resolution is through a written Tribunal decision following an oral or written hearing

process. The WSIA requires written reasons. Also, the Board requires written reasons to implement a decision. Other common methods of dispute resolution, used primarily in the pre-hearing areas, are telephone discussions regarding issue agendas and evidence, and file reviews for jurisdiction issues or compliance with time limits.

As shown in Chart 4, the Tribunal disposed of 5,169 cases in 2018. This included 1,409 "Pre-hearing" and 3,760 "Hearing" dispositions.

CHART 4: Cases Disposed of in 2018

Pre-hearing Dispositions	
Without Tribunal Final Decisions	
Made Inactive	601
Withdrawn	808
	1,409
Hearing Dispositions	
Without Tribunal Final Decisions	
Made Inactive	93
Withdrawn	8
With Final Decisions	3,659
	3,760
Total (Pre-hearing and Hearing)	
Without Tribunal Final Decisions	1,510
With Tribunal Final Decisions	3,659
	5,169

CHART 5: Issues in the Dispositions

Loss of earnings	23%
Non-economic loss (NEL) and NEL quantum	13%
New area of injury	10%
Initial entitlement	8%
Ongoing entitlement	7%
Work transition	7%
Health care benefits	5%
Other	4%
Psychotraumatic disability	4%
Chronic pain	4%
Recurrence	3%
SIEF (Second Injury and Enhancement Fund)	3%
Permanent disability (PD) and PD quantum	2%
Labour market re-entry and safe return to work	2%
Occupational disease	1%
Future economic loss (FEL)	1%
Mental stress	1%
Earning basis	<1%
Supplementary benefits	<1%
Temporary total disability	<1%

Issues in the Appeals

Chart 5 shows the percentage breakdown of issues among the cases disposed in 2018.

Timeliness of Appeal Processing

Chart 6 illustrates performance in terms of time frame for completing cases. The time frame begins when the appellant confirms readiness to proceed to a hearing and ends when the case is disposed.

In 2018, the percentage of cases resolved within nine months was higher than it was in 2017. (In 2018, 24% of cases were resolved within nine months, compared to 20% in 2017.)

The Tribunal also measures the median interval of the first offered hearing date. This interval is measured from the date on which cases are confirmed ready to proceed to the future hearing date first offered to the parties. Chart 7 shows that the typical length of time for this stage in the appeals process was shorter than it was in 2017 (10.9 months in 2018, compared to 16.6 months in 2017).

An additional performance target for the Tribunal is to release final decisions within 120 days of completing the hearing process. As shown in Chart 8, in 2018, this target was achieved 87% of the time.

CHART 6: Percent Disposed of Within 9 Months

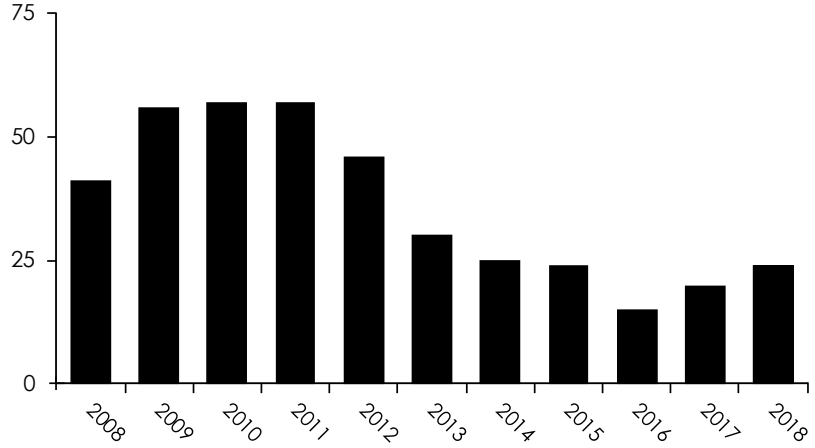


CHART 7: Time to First Offered Hearing (Months)

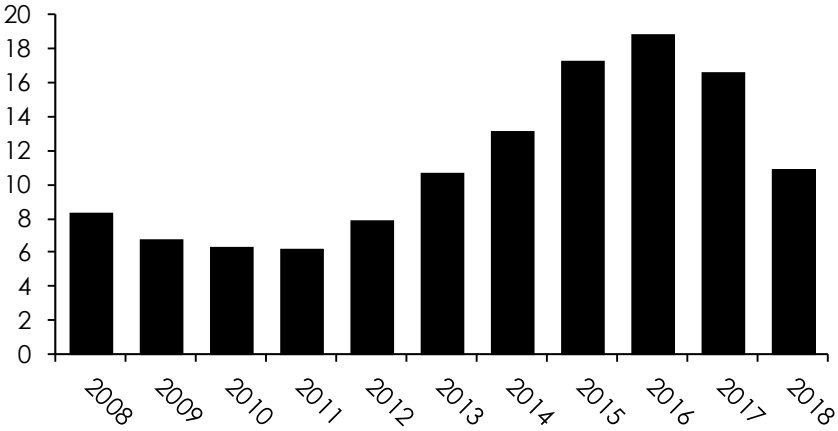
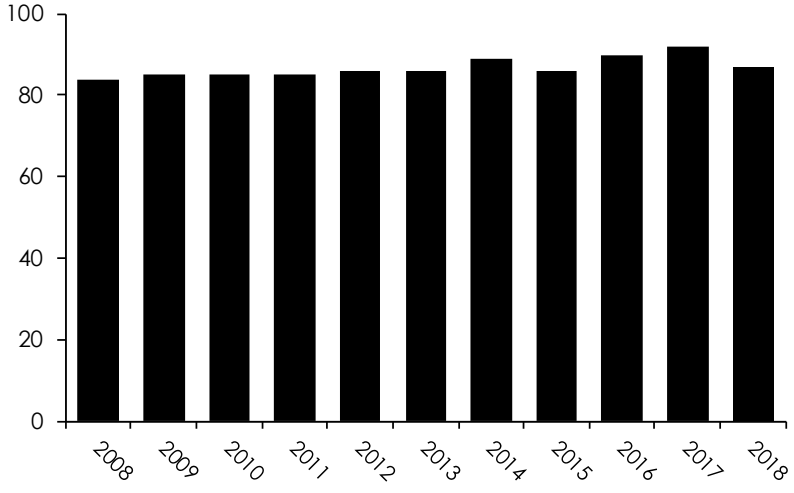


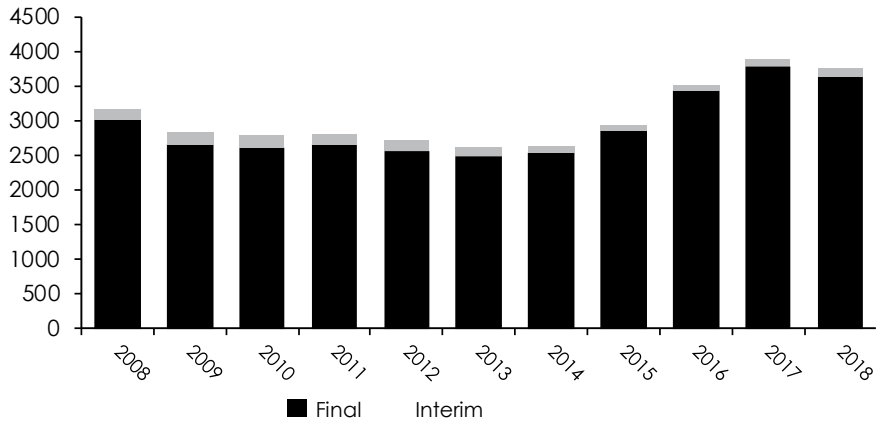
CHART 8: Final Decisions (Percent Released Within 120 Days)



Hearing and Decision Activity

In 2018, the Tribunal conducted 3,888 hearings and issued 3,749 decisions. The Tribunal strives to achieve decision-readiness following completion of the first hearing. Some cases require post-hearing work following the first hearing, and some hearings are adjourned requiring a subsequent hearing before the same or a different Vice-Chair or Panel. Most cases require only a single hearing. Chart 9 depicts the Tribunal's decision production.

CHART 9: Decisions Trend

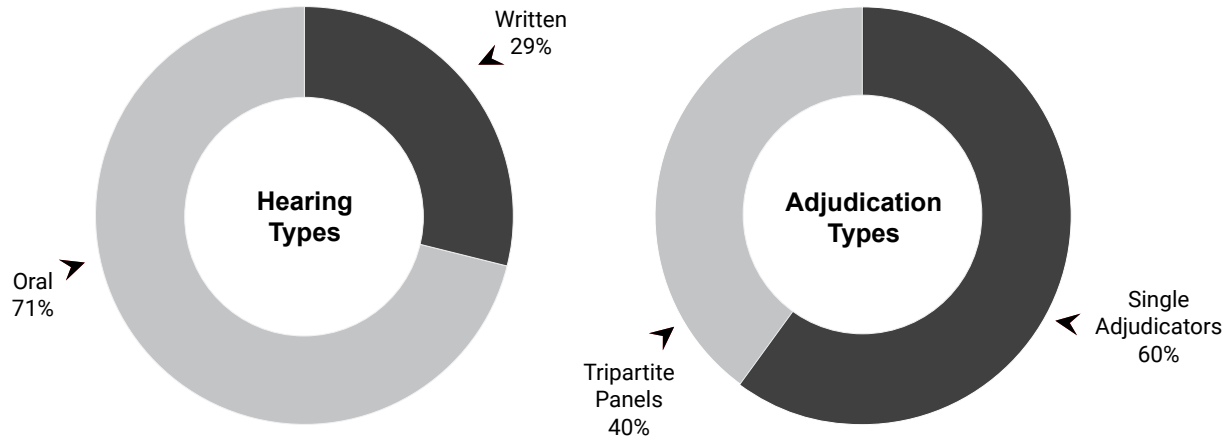


Hearing Type

In 2018, the percentage breakdown of hearing types was as follows: oral hearings continued to be the most common hearing type at 71%, followed by written hearings at 29%.

The breakdown included 60% by single adjudicators and 40% by tripartite hearing panels. Chart 10 presents these hearing characteristics.

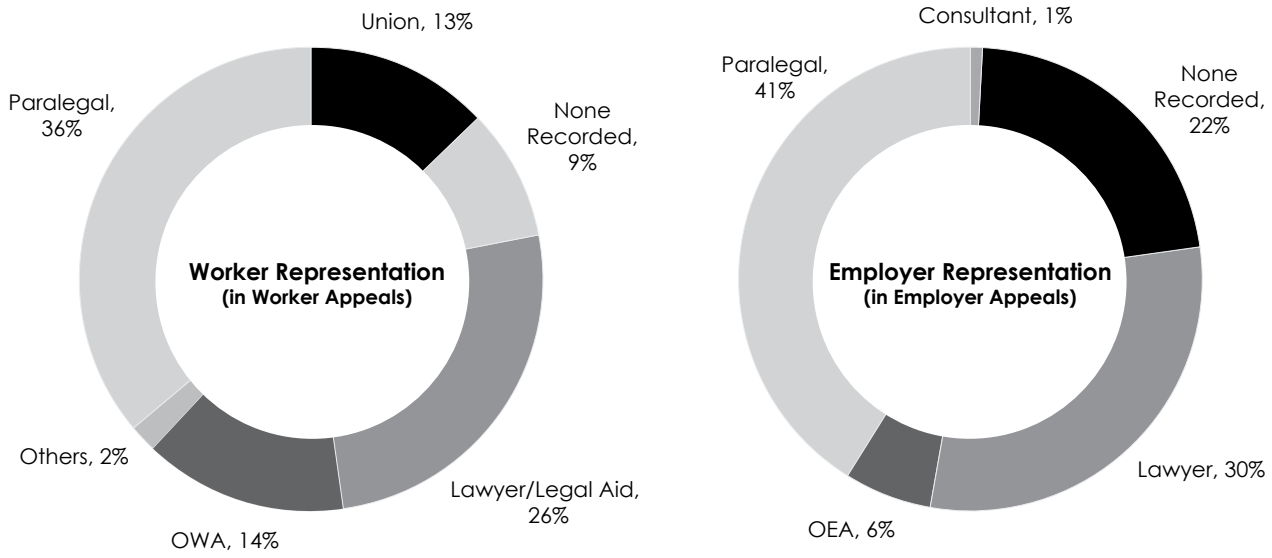
CHART 10: Hearing and Adjudication Types



Representation at Hearing

Tribunal statistics show that for injured workers, 36% were represented by paralegals, 26% by lawyers and legal aid, 14% by the Office of the Worker Adviser and 13% by union representatives. The remaining percentage is allocated among various non-categorized representation, for instance, family friend, family member or MPP office. Employers were represented before the Tribunal as follows: 41% were represented by paralegals, 30% were represented by lawyers, 6% by the Office of the Employer Adviser, 1% by consultants and less than 1% by firm personnel. The remaining 22% are non-categorized. Chart 11 presents these characteristics.

CHART 11: Worker and Employer Representation



Caseload by General Appeal Issue Type

In 2018, Entitlement-related cases constituted the majority of cases (94% to 97%). Special Section cases (Right to Sue and Access) comprised typically small portions (4% to 6%). Charts 12 and 13 provide historical comparisons of incoming cases and cases disposed in 2018.

Dormant and Inactive Cases

The Tribunal's overall caseload includes some that are not active. This includes cases at the preliminary notification (or Notice of Appeal) stage, specifically those cases which have not been moved into resolution processing because the appellants have not completed the necessary

CHART 12: Incoming Cases by Appeal Type

	2015		2016		2017		2018	
TYPE	**No.**	**(%)**	**No.**	**(%)**	**No.**	**(%)**	**No.**	**(%)**
Leave	0	0.0%	0	0.0%	0	0.0%	0	0.0%
Right to Sue	75	1.7%	66	1.8%	62	1.9	60	2.1%
Medical Exam	0	0.0%	0	0.0%	0	0.0%	0	0.0%
Access	56	1.3%	55	1.5%	101	3.1%	108	3.7%
Total Special Section	**131**	**3.0%**	**121**	**3.2%**	**163**	**5.0%**	**168**	**5.8%**
Preliminary (not yet specified)	1	0.0%	63	1.7%	56	1.7%	99	3.4%
Pension	0	0.0%	1	0.0%	20	0.6%	13	0.4%
N.E.L./F.E.L.	2	0.0%	34	0.9%	208	6.4%	125	4.3%
Commutation	1	0.0%	0	0.0%	0	0.0%	0	0.0%
Employer Assessment	257	5.9%	88	2.3%	239	7.4%	178	6.2%
Entitlement	3860	88.0%	3294	87.8%	2434	75.1%	2180	75.4%
Ext post WSIB dec deadline	126	2.9%	125	3.3%	106	3.3%	117	4.0%
Jurisdiction Time Limit	0	0.0%	0	0.0%	0	0.0%	2	0.1%
Reinstatement	1	0.0%	0	0.0%	0	0.0%	0	0.0%
Vocational Rehabilitation	0	0.0%	2	0.1%	4	0.1%	0	0.0%
Classification	0	0.0%	10	0.3%	10	0.3%	6	0.2%
Interest NEER	0	0.0%	0	0.0%	1	0.0%	1	0.0%
Total Entitlement-related	**4248**	**96.8%**	**3617**	**96.4%**	**3078**	**95.0%**	**2721**	**94.2%**
Jurisdiction	9	0.2%	14	0.4%	0	0.0%	1	0.0%
	4388		**3752**		**3241**		**2890**	

This chart excludes the post-decision components of workload (requests for Reconsiderations, Ombudsman investigations and Judicial reviews).

CHART 13: Dispositions by Appeal Type

	2015		2016		2017		2018	
	No.	(%)	No.	(%)	No.	(%)	No.	(%)
Leave	0	0.0%	0	0.0%	0	0.0%	0	0.0%
Right to Sue	58	1.4%	72	1.4%	76	1.4%	69	1.3%
Medical Exam	0	0.0%	0	0.0%	0	0.0%	0	0.0%
Access	63	1.5%	45	0.9%	79	1.4%	112	2.2%
Total Special Section	**121**	**2.8%**	**117**	**2.3%**	**155**	**2.8%**	**181**	**3.5%**
Preliminary (not yet specified)	1	0.0%	23	0.5%	16	0.3%	126	2.4%
Pension	0	0.0%	0	0.0%	0	0.0%	9	0.2%
N.E.L./F.E.L.	3	0.1%	5	0.1%	43	0.8%	152	2.9%
Commutation	0	0.0%	2	0.0%	0	0.0%	0	0.0%
Employer Assessment	296	7.0%	298	5.9%	146	2.7%	218	4.2%
Entitlement	3652	85.8%	4443	87.7%	4977	91.1%	4346	84.1%
Ext post WSIB dec deadline	169	4.0%	162	3.2%	121	2.2%	124	2.4%
Jurisdiction Time Limit	1	0.0%	0	0.0%	0	0.0%	1	0.0%
Reinstatement	1	0.0%	0	0.0%	0	0.0%	0	0.0%
Vocational Rehabilitation	1	0.0%	1	0.0%	1	0.0%	2	0.0%
Classification	1	0.0%	0	0.0%	4	0.1%	9	0.2%
Interest NEER	0	0.0%	0	0.0%	1	0.0%	0	0.0%
Total Entitlement-related	**4125**	**96.9%**	**4934**	**97.4%**	**5309**	**97.2%**	**4987**	**96.5%**
Jurisdiction	9	0.2%	16	0.3%	0	0.0%	1	0.0%
	4255		**5067**		**5464**		**5169**	

This chart excludes the post-decision components of workload (requests for Reconsiderations, Ombudsman investigations and Judicial reviews).

filing requirements. These cases are referred to as “dormant” at the notice of appeal stage. Cases that are dormant will be moved again into active processing when appellants resume active participation. When this does not occur within the overall maximum timeframe for the notice stage, the Tribunal will close the case.

The second category of “not active cases” is used to describe appeals that were made inactive after the notice process had been completed (i.e., after the cases had been “confirmed” ready to proceed and after they had been moved into the Tribunal’s resolution processing stage). Cases are placed in this inactive category by request of the appellant or by a

Tribunal Vice- Chair. The most common reasons for placing a file in the inactive category are to allow an appellant to pursue additional medical reports, obtain a representative or/and obtain a final ruling from the Workplace Safety and Insurance Board pertaining to an issue raised at the Tribunal hearing.

In 2018, the number of dormant cases decreased to 811 from 1,133 at the end of 2017, and the number of inactive cases decreased to 1,172 from 1,482. Taken as a whole, this meant that the number of not active cases decreased by 24% in 2018.

Post-decision Workload

The post-decision workload is derived from three sources: Ombudsman follow-ups (Chart 14), reconsideration requests (Chart 15) and judicial reviews (Chart 16). The post-decision workload is predominantly driven by reconsideration requests. In 2018, 194 reconsideration requests were received. ■

CHART 14: Ombudsman Complaints, Activity and Inventory Summary

New Complaint Notifications Received	0
Complaints Resolved	0
Complaints Remaining	0

CHART 15: Reconsideration Requests, Activity and Inventory Summary

Inquiries (Pre-reconsideration) Remaining	45
Reconsideration Requests Received	194
Reconsideration Requests Resolved	263
Reconsiderations Remaining	133

CHART 16: Judicial Reviews, Activity and Inventory Summary

Judicial Reviews at January 1st	11
Judicial Reviews Received	5
Judicial Reviews Resolved	6
Judicial Reviews Remaining	10

A Statement of Expenditures and Variances for the year ended December 31, 2018 (Chart 17) is shown below.

CHART 17: Statement of Expenditures and Variances for the Year Ending December 31, 2018 (in $000s)

	2018 BUDGET	2018 ACTUALS*	VARIANCE $	VARIANCE %
OPERATING EXPENSES				
Salaries and Wages	11 272	13 718	(2 446)	(21,7)
Employee Benefits	2 427	3 110	(683)	(28,1)
OTHER DIRECT OPERATING EXPENSES				
Transportation and Communication	909	973	(64)	(7,0)
Services	6 666	9 273	(2 607)	(39,1)
Supplies and Equipment	418	459	(41)	(9,8)
Total Other Direct Operating Expenditures	7 993	10 705	(2 712)	(33,9)
Total - WSIAT	21 692	27 533	(5 841)	(26,9)
Services - WSIB	530	521	9	1,6
Interest Revenue	(5)	(25)	20	409,6
TOTAL OPERATING EXPENSES	**22 217**	**28 029**	**(5 812)**	**(26,2)**
ONE-TIME EXPENSES				
Severance Payment	50	38	12	23,6
CRA 2010-2014 CPP & EI Re-Assessment	0	(3)	3	n/a
Active Caseload Reduction	8 901	1 474	7 428	83,4
TOTAL EXPENDITURES	**31 168**	**29 538**	**1 630**	**5,2**
The total annual remuneration for all OIC appointees included above:		9 321		

Note:

The above 2018 actuals are presented on the same basis as the approved budget and differ from the year-end audited Financial Statements presentation (see note 2 to the financial statements). The Difference of ($460) is comprised of the following:

CAPITAL FUND		
Amortization	424	
Fixed Assets acquired	(786)	(362)
OPERATING FUND		
Accrued Severance, Vacation Benefits, & HCSA	15	
Prepaid Expenses	(113)	(98)
		(460)

*The 2018 Actuals for the Tribunal's Operating Expenses includes $5 812 from one-time funding for active caseload reduction. The WSIAT has asked to discuss the base funding with the Ministry of Labour and the topic will be brought forward in the 2020-22 planning process.

The accounting firm of Deloitte LLP has completed a financial audit on the Tribunal's financial statements for the year ended December 31, 2018. The Independent Auditor's Report is included as Appendix B.

APPENDIX A

VICE-CHAIRS AND MEMBERS IN 2018

This is a list of Vice-Chairs and Members whose Order-in-Council appointments were active at the end of the reporting period.

Full-time	Initial appointment
Chair	
Corbett, David	September 6, 2016
Vice-Chairs	
Baker, Andrew	June 28, 2006
Basa, Rosemary	February 18, 2016
Crystal, Melvin	May 3, 2000
Dee, Garth	June 17, 2009
Dimovski, Jim	November 19, 2014
Iima, Katherine	January 7, 2015
Kalvin, Bernard	October 20, 2004
Keil, Martha	February 16, 1994
McCutcheon, Rosemarie	October 6, 1999
Netten, Shirley	June 13, 2007
Patterson, Angus	June 13, 2007
Perryman, Natalie	January 7, 2015
Petrykowski, Luke	October 3, 2012
Shime, Sandra	July 15, 2009
Smith, Joanna	August 28, 2013
Woodrow, Rebecca	June 22, 2016
Members representative of employers	
Christie, Mary	May 2, 2001
Sacco, Carmine	February 21, 2018
Thomson, David	May 18, 2017
Members representative of workers	
Ferrari, Mary	July 15, 2005
Hoskin, Kelly	June 13, 2007
Kosny, Agnieszka	January 8, 2018

Part-time	Initial appointment

Vice-Chairs

Allen, Paul	February 24, 2016
Bell, Robert	March 15, 2017
Bradbury, Laura	January 5, 2015
Brossard, Liane	February 21, 2018
Burns, Beverley	November 28, 2016
Cappell, Barbara	February 24, 2016
Carlan, Nicolette	August 17, 2017
Dempsey, Colleen L.	November 10, 2005
Evans, Katharine	October 4, 2017
Frenschkowski, JoAnne	March 4, 2013
Gehrke, Linda	November 4, 2015
Hale, Donald	January 15, 2016
Hoare, Rhea	October 26, 2016
Hodis, Sonja	July 15, 2009
Horne, Ronald	May 10, 2017
Huras, Christina	February 10, 2016
Illion, Brian	July 11, 2017
Jacques, Karen	February 15, 2017
Jepson, Kenneth	December 10, 2014
Kosmidis, Elizabeth	June 17, 2015
MacAdam, Colin	May 4, 2005
Mackenzie, Ian	October 9, 2013
Marafioti, Victor	March 11, 1987
McBey, Donald	June 22, 2016
McCaffrey, Grant	July 22, 2015
McGarvey, Matthew	July 22, 2015
McKenzie, Mary E.	June 22, 2006
Mitchinson, Tom	November 10, 2005
Nairn, Rob	April 29, 1999
Noorloos, Sue	June 14, 2017
Onen, Zeynep	November 4, 2015
Peckover, Susan	October 20, 2004
Pollock, Bruce	February 15, 2017
Ramsay, Christopher	May 18, 2016
Revington, Dan	January 8, 2018
Roberts, Catherine	November 28, 2016
Salisbury, Robert	February 2, 2017
Samaras, Constantine	November 1, 2017
Smith, Eleanor	February 1, 2000

Part-time	Initial appointment

Vice-Chairs (continued)

Somerville, Ann	October 4, 2017
Sutton, Wendy	May 27, 2009
Tanzola, Carissa	August 4, 2016
Wales, Shirley	February 15, 2017
Zehr, Chantelle	October 4, 2017
Zigler, Robert	March 12, 2018

Members representative of employers

Blogg, John	November 14, 2012
Boshcoff, Kenneth	January 8, 2018
Burkett, Gary	February 2, 2017
Davis, Bill	May 27, 2009
Falcone, Mena	October 21, 2015
Greenside, Patricia	January 8, 2018
Lipton, Mary	February 24, 2016
Ouellette, Richard	April 26, 2017
Phillips, Victor	November 15, 2006
Soden, Kristen	October 18, 2017
Tracey, Elaine	December 7, 2005
Trudeau, Marcel	April 16, 2008
Watters, Michelle	March 7, 2018

Members representative of workers

Agnidis, Zoe	February 21, 2018
Broadbent, Dave	April 18, 2001
Carlino, Gerry	October 3, 2012
Crocker, James	August 1, 1991
Jackson, Faith	December 11, 1985
Mannella, Cosmo	April 5, 2017
O'Connor, Sean	January 8, 2018
Pernal, Nicholas	January 8, 2018
Roth, Stephen	February 24, 2016
Salama, Claudine	October 3, 2012
Signoroni, Antonio	September 29, 2010
Thompson, James	April 5, 2017
Tzaferis, Mary	December 7, 2016

VICE-CHAIRS AND MEMBERS – REAPPOINTMENTS EFFECTIVE 2018

	Effective
Paul Allen	February 24, 2018
Andrew Baker	May 17, 2018
Dave Broadbent	April 18, 2018
Beverley Burns	November 28, 2018
Barbara Cappell	February 24, 2018
Jim Dimovski	February 24, 2018
Mary Ferrari	July 15, 2018
Donald Hale	January 15, 2018
Rhea Hoare	October 31, 2018
Christina Huras	February 10, 2018
Mary Lipton	February 24, 2018
Colin MacAdam	May 4, 2018
Ian Mackenzie	October 31, 2018
Victor Marafioti	February 18, 2018
Donald McBey	June 22, 2018
Tom Mitchinson	November 10, 2018
Robert Nairn	April 29, 2018
Luke Petrykowski	April 20, 2018
Christopher Ramsay	May 18, 2018
Catherine Roberts	November 28, 2018
Stephen Roth	February 24, 2018
Eleanor Smith	October 31, 2018
Joanna Smith	May 18, 2018
Carissa Tanzola	October 31, 2018
Marcel Trudeau	April 16, 2018
Mary Tzaferis	December 7, 2018

NEW APPOINTMENTS DURING 2018

	Effective
Zoe Agnidis, part-time Member representative of workers	February 21, 2018
Rosemary Basa, full-time Vice Chair	February 8, 2018[1]
Kenneth Boshcoff, part-time Member representative of employers	January 8, 2018
Liane Brossard, part-time Vice Chair	February 21, 2018
Patricia Greenside, part-time Member representative of employers	January 8, 2018
Katherine Iima, full-time Vice-Chair	February 21, 2018[1]
Agnieszka Kosny, full-time Member representative of workers	January 8, 2018
Sean O'Connor, part-time Member representative of workers	January 8, 2018
Nicholas Pernal, part-time Member representative of workers	January 8, 2018

New Appointments (continued)	Effective
Natalie Perryman, full-time Vice Chair	February 8, 2018[1]
Dan Revington, part-time Vice Chair	January 8, 2018
Carmine Sacco, full-time member representative of employers	February 21, 2018
Michelle Watters, part-time Member representative of employers	March 7, 2018
Rebecca Woodrow, full-time Vice Chair	February 21, 2018[1]
Robert Zigler, part-time Vice Chair	March 12, 2018

The Tribunal grieves the passing of Richard Briggs, Member representative of workers.

SENIOR STAFF

Susan Adams	Tribunal Executive Director
Michelle Alton	Tribunal General Counsel
David Bestvater	Director, Information and Technology Services
Nicole Bisson	Director, Appeal Services
Wesley Lee	Manager, Financial Planning and Controllership
Janet Oulton	Manager, Scheduling Administration
Carole Prest	Counsel to the Chair
Lynn Telalidis	Director, Human Resources and Administration

MEDICAL COUNSELLORS

Dr. John Duff, Chair of Medical Counsellors	General Surgery
Dr. Paul Cooper	Neurology
Dr. Emmanuel Persad	Psychiatry
Dr. Marvin Tile	Orthopaedic Surgery
Dr. Anthony Weinberg	Internal Medicine

1 The part-time Order In Councils of these four Vice-Chairs were revoked by the same Order In Councils that appointed them as full-time Vice-Chairs.

Deloitte.

Deloitte LLP
400 Applewood Crescent
Suite 500
Vaughan ON L4K 0C3
Canada

Tel: 416-601-6150
Fax: 416-601-6151
www.deloitte.ca

Independent Auditor's Report

To the Chair of the Workplace Safety and Insurance Appeals Tribunal

Opinion

We have audited the financial statements of Workplace Safety and Insurance Appeals Tribunal ("WSIAT"), which comprise the statement of financial position as at December 31, 2018, and the statements of operations, changes in fund balances, and cash flows for the year then ended, and notes to the financial statements, including a summary of significant accounting policies (collectively referred to as the "financial statements").

In our opinion, the accompanying financial statements present fairly, in all material respects, the financial position of WSIAT as at December 31, 2018, and the results of its operations, changes in fund balances, and its cash flows for the year then ended in accordance with Canadian public sector accounting standards.

Basis for Opinion

We conducted our audit in accordance with Canadian generally accepted auditing standards ("Canadian GAAS"). Our responsibilities under those standards are further described in the Auditor's Responsibilities for the Audit of the Financial Statements section of our report. We are independent of WSIAT in accordance with the ethical requirements that are relevant to our audit of the financial statements in Canada, and we have fulfilled our other ethical responsibilities in accordance with these requirements. We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our opinion.

Responsibilities of Management and Those Charged with Governance for the Financial Statements

Management is responsible for the preparation and fair presentation of the financial statements in accordance with Canadian public sector accounting standards, and for such internal control as management determines is necessary to enable the preparation of financial statements that are free from material misstatement, whether due to fraud or error.

In preparing the financial statements, management is responsible for assessing WSIAT's ability to continue as a going concern, disclosing, as applicable, matters related to going concern and using the going concern basis of accounting unless management either intends to liquidate WSIAT or to cease operations, or has no realistic alternative but to do so.

Those charged with governance are responsible for overseeing WSIAT's financial reporting process.

Auditor's Responsibilities for the Audit of the Financial Statements

Our objectives are to obtain reasonable assurance about whether the financial statements as a whole are free from material misstatement, whether due to fraud or error, and to issue an auditor's report that includes our opinion. Reasonable assurance is a high level of assurance, but is not a guarantee that an audit conducted in accordance with Canadian GAAS will always detect a material misstatement when it exists. Misstatements can arise from fraud or error and are considered material if, individually or in the aggregate, they could reasonably be expected to influence the economic decisions of users taken on the basis of these financial statements.

APPENDIX B

As part of an audit in accordance with Canadian GAAS, we exercise professional judgment and maintain professional skepticism throughout the audit. We also:

- Identify and assess the risks of material misstatement of the financial statements, whether due to fraud or error, design and perform audit procedures responsive to those risks, and obtain audit evidence that is sufficient and appropriate to provide a basis for our opinion. The risk of not detecting a material misstatement resulting from fraud is higher than for one resulting from error, as fraud may involve collusion, forgery, intentional omissions, misrepresentations, or the override of internal control.
- Obtain an understanding of internal control relevant to the audit in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of WSIAT's internal control.
- Evaluate the appropriateness of accounting policies used and the reasonableness of accounting estimates and related disclosures made by management.
- Conclude on the appropriateness of management's use of the going concern basis of accounting and, based on the audit evidence obtained, whether a material uncertainty exists related to events or conditions that may cast significant doubt on WSIAT's ability to continue as a going concern. If we conclude that a material uncertainty exists, we are required to draw attention in our auditor's report to the related disclosures in the financial statements or, if such disclosures are inadequate, to modify our opinion. Our conclusions are based on the audit evidence obtained up to the date of our auditor's report. However, future events or conditions may cause WSIAT to cease to continue as a going concern.
- Evaluate the overall presentation, structure and content of the financial statements, including the disclosures, and whether the financial statements represent the underlying transactions and events in a manner that achieves fair presentation.

We communicate with those charged with governance regarding, among other matters, the planned scope and timing of the audit and significant audit findings, including any significant deficiencies in internal control that we identify during our audit.

"Original signed by Deloitte"

Chartered Professional Accountants
Licensed Public Accountants
February 25, 2019

WORKPLACE SAFETY AND INSURANCE APPEALS TRIBUNAL
Statement of Financial Position
As at December 31, 2018

	2018	2017
ASSETS		
CURRENT		
Cash	**$ 4,293,808**	$ 3,220,636
Receivable from Workplace Safety and Insurance Board	**-**	941,116
Prepaid expenses and advances	**429,213**	316,226
Recoverable expenses (Note 3)	**221,028**	247,475
	4,944,049	4,725,453
CAPITAL ASSETS (Note 4)	**947,129**	584,936
	$ 5,891,178	$ 5,310,389
LIABILITIES		
CURRENT		
Accounts payable and accrued liabilities	**$ 1,980,645**	$ 2,610,484
Payable to Workplace Safety and Insurance Board	**$ 735,752**	$ -
Accrued severance benefits and vacation credits	**2,760,499**	2,746,018
Operating advance from Workplace Safety and Insurance Board (Note 5)	**1,800,000**	1,800,000
	7,276,896	7,156,502
FUND BALANCES		
OPERATING FUND (Note 6)	**(2,332,847)**	(2,431,049)
CAPITAL FUND	**947,129**	584,936
	(1,385,718)	(1,846,113)
	$ 5,891,178	$ 5,310,389

APPROVED ON BEHALF OF WORKPLACE
SAFETY AND INSURANCE APPEALS TRIBUNAL

..... Chair

WORKPLACE SAFETY AND INSURANCE APPEALS TRIBUNAL
Statement of Operations
Year ended December 31, 2018

	2018	2017
OPERATING EXPENSES		
Salaries and wages	**$ 13,718,402**	$ 13,527,432
Employee benefits (Note 7)	**3,159,799**	3,037,894
Transportation and communication	**1,277,324**	1,161,074
Services and supplies	**10,002,684**	10,865,183
Amortization	**423,518**	230,094
	28,581,727	28,821,677
Services - Workplace Safety and Insurance Board ("WSIB") (Note 8)	**521,385**	532,033
TOTAL OPERATING EXPENSES	**29,103,112**	29,353,710
BANK INTEREST INCOME	**(25,479)**	(10,072)
NET OPERATING EXPENSES	**29,077,633**	29,343,638
FUNDS RECEIVED AND RECEIVABLE FROM WSIB	**(29,538,028)**	(29,628,205)
ANNUAL SURPLUS	**$ (460,395)**	$ (284,567)

WORKPLACE SAFETY AND INSURANCE APPEALS TRIBUNAL

Statement of Changes in Fund Balances

Year ended December 31, 2018

	Capital	Operating	Total
BALANCE - JANUARY 1, 2017	199,680	(2,330,360)	(2,130,680)
Additions to capital assets	615,350	-	615,350
Amortization of capital assets	(230,094)	-	(230,094)
Severance benefits, vacation credits, and Health Care Spending Account (Note a)	-	(6,301)	(6,301)
Prepaid expenses (Note b)	-	(94,388)	(94,388)
Annual Surplus	385,256	(100,689)	284,567
BALANCE - DECEMBER 31, 2017	584,936	(2,431,049)	(1,846,113)
Additions to capital assets	785,711	-	785,711
Amortization of capital assets	(423,518)	-	(423,518)
Severance benefits, vacation credits, and Health Care Spending Account (Note a)	-	(14,481)	(14,481)
Prepaid expenses (Note b)	-	112,683	112,683
Annual Surplus	362,193	98,202	460,395
BALANCE - DECEMBER 31, 2018	947,129	(2,332,847)	(1,385,718)

Note a) Severance benefits, vacation credits, and Health Care Spending are not funded by WSIB until they are paid.

Note b) Prepaid expenses are funded by WSIB when paid and not when expensed.

WORKPLACE SAFETY AND INSURANCE APPEALS TRIBUNAL
Statement of Cash Flows
Year ended December 31, 2018

	2018	2017
NET INFLOW (OUTFLOW) OF CASH RELATED TO THE FOLLOWING ACTIVITIES		
OPERATING		
Funding revenue received from Workplace Safety and Insurance Board	**$ 31,214,895**	$ 29,449,727
Cash receipts for recoverable expenses	**1,029,717**	911,020
Bank interest received	**25,479**	10,072
Expenses, recoverable expenses net of amortization of $230,094 (2016 - $102,862)	**(30,411,208)**	(29,319,277)
	1,858,883	1,051,542
CAPITAL		
Acquisition of capital assets	**(785,711)**	(615,350)
NET INCREASE (DECREASE) IN CASH	**1,073,172**	436,192
CASH, BEGINNING OF YEAR	**3,220,636**	2,784,444
CASH, END OF YEAR	**$ 4,293,808**	$ 3,220,636

WORKPLACE SAFETY AND INSURANCE APPEALS TRIBUNAL
Notes to the Financial Statements
December 31, 2018

1. GENERAL

Workplace Safety and Insurance Appeals Tribunal (the "Tribunal") was originally created by the Workers' Compensation Amendment Act S.O. 1984, Chapter 58 - Section 32, which came into force on October 1, 1985. The Workplace Safety and Insurance Act (the "Act") replaced the Workers' Compensation Act in 1997 and came into force January 1, 1998. The Workplace Safety and Insurance Board ("WSIB"), (formerly, Workers' Compensation Board) is required to fund the cost of the Tribunal from the Insurance Fund. These reimbursements and funding amounts are determined and approved by the Ontario Minister of Labour.

The purpose of the Tribunal is to hear, determine and dispose of in a fair, impartial and independent manner, appeals by workers and employers in connection with decisions, orders or rulings of the WSIB and any matters or issues expressly conferred upon the Tribunal by the Act.

2. SIGNIFICANT ACCOUNTING POLICIES

The following summarizes the significant accounting policies used in preparing the accompanying financial statements:

Basis of presentation

The financial statements have been prepared in accordance with Canadian accounting standards for government not-for-profit organizations, including Sections PS 4200 to PS 4270 "PSAS-NPO" of the CPA Canada Public Sector Accounting Handbook using the restricted fund method of reporting revenue.

Revenue recognition

WSIB funds expenses as incurred, except for severance benefits and vacation credits, which are funded when paid, and prepaid expenses which are funded when paid and not when expensed.

Accounting estimates

The preparation of financial statements requires management to make estimates and assumptions that affect the reported amounts in the financial statements and in the accompanying notes. Due to the inherent uncertainty in making estimates, actual results could differ from these estimates. Accounts requiring estimates and assumptions are included in accrued severance benefits and vacation credits.

Capital assets

Capital assets are recorded at cost and are amortized on a straight-line basis over their estimated useful life of 4 years.

Funding for capital assets provided by the WSIB is reported in the Capital Fund. The Fund is reduced each year by an amount equal to the amortization of capital assets and increased by the additions to capital assets.

WORKPLACE SAFETY AND INSURANCE APPEALS TRIBUNAL
Notes to the Financial Statements
December 31, 2018

2. SIGNIFICANT ACCOUNTING POLICIES (continued)

Employee benefits

(a) Pension benefits

The Tribunal provides pension benefits for all of its permanent employees (and to non-permanent employees who elect to participate) through the Public Service Pension Plan ("PSPP") and the Ontario Public Service Employees' Union Pension Fund ("OPSEU Pension Trust") which are both multi-employer plans established by the Province of Ontario. The plans are defined-benefit plans, which specify the amount of retirement benefit to be received by employees based on their length of service and rates of pay.

(b) Severance benefits

Severance benefits are recognized and accrued over the years in which employees earn the benefits. The severance benefit is recorded once an employee has worked for the Tribunal for a minimum term (of five years). The maximum amount payable to an employee shall not exceed one-half of the annual full-time salary. A unionized employee who retires or voluntarily resigns is entitled to severance benefits for service accrued up to June 30, 2010. A non-union employee who retires, and is eligible for a PSPP is entitled to severance benefits for service accrued up to December 31, 2015. A non-union employee who voluntarily resigns is only entitled to severance benefits for service accrued up to December 31, 2011.

(c) Vacation credits

Vacation entitlements are accrued in the year when vacation credits are earned. Employees may accumulate vacation credits to a maximum of one year's vacation entitlement at December 31 of each year. Senior Management Group is also eligible to time bank up to ten vacation days per year (maximum of one hundred and twenty five days). Employees are paid for any earned and unused vacation credits at the date they cease to be an employee.

(d) Non-pension future benefits

The Tribunal also provides for dental, basic life insurance, supplementary health and hospital benefits to retired employees through a self-insured, unfunded defined benefit plan established by the Province of Ontario.

The Tribunal does not accrue for non-pension future benefits liability since the information is not readily available from the Province of Ontario.

(e) Health Care Spending Account ("HCSA")

Consistent with the Province of Ontario's employee benefit plan, the Tribunal provides an annual health care spending component for every eligible employee. Any unused amounts in the current year can be carried forward for up to one year.

WORKPLACE SAFETY AND INSURANCE APPEALS TRIBUNAL
Notes to the Financial Statements
December 31, 2018

3. RECOVERABLE EXPENSES

Recoverable expenses consist of amounts recoverable for shared services, secondments and other miscellaneous receivables.

	2018	2017
Shared services		
Ontario Labour Relations Board	**$100,176**	$83,156
Pay Equity Hearings Tribunal	**6,018**	5,620
Others		
Canada Revenue Agency HST rebate receivable	**101,900**	141,738
Employee amounts receivable	**-**	17,061
Miscellaneous	**12,934**	-
Total	**$221,028**	$247,575

4. CAPITAL ASSETS

			2018	2017
	Cost	**Accumulated Amortization**	**Net Book Value**	Net Book Value
Leasehold Improvements	**$ 4,017,246**	**$ 3,445,847**	**$ 571,399**	$ 204,860
Furniture and Equipment	**624,970**	**521,513**	**103,457**	146,593
Computer Equipment and Software	**824,685**	**552,412**	**272,273**	233,483
	$ 5,466,901	**$ 4,519,772**	**$ 947,129**	$ 584,936

5. OPERATING ADVANCE FROM WSIB

The operating advance is interest-free with no specific terms of repayment.

6. OPERATING FUND

The Operating Fund deficit of $2,332,847 as of December 31, 2018 (2017 - $2,431,049) represents future obligations to employees for severance, vacation credits and health care spending account credits, less prepaid expenses. Funding for these future obligations will be provided by WSIB in the year the actual payment is made.

WORKPLACE SAFETY AND INSURANCE APPEALS TRIBUNAL
Notes to the Financial Statements
December 31, 2018

7. EMPLOYEE BENEFITS OBLIGATIONS

a) Pension plan costs

Contributions by the Tribunal on account of pension costs amounted to $1,182,564 (2017 - $1,119,162) and are included in employee benefits in the Statement of Operations.

b) Severance benefits

Severance benefits are recognized and accrued over the years in which employees earn the benefits. The net severance benefits accrued in 2018 amounted to a decrease of $57,478 (2017 – $57,890) over the prior year amount and is included in employee benefits in the Statement of Operations.

c) Vacation credit entitlement

Vacation entitlements are accrued in the year when vacation credits are earned. The net vacation credits accrued in 2018 amounted to an increase in the accrual of $78,531 (2017 - $52,173) over the prior year amount and is included in employee benefits in the Statement of Operations.

d) Non-pension future benefits

The Tribunal does not accrue for non-pension future benefits, since the information is not readily available from the Province of Ontario.

e) Health Care Spending Account ("HCSA")

Eligible employees are entitled to an annual health care spending account as part of the their health benefits. Unused amounts can be carried forward for up to one year. The net HCSA accrued in 2018 amounted to a decrease of $6,572 (2017 - $12,018 increase) over the prior year and is included in employee benefits in the Statement of Operations.

f) Prior year CPP & EI Contribution

In 2018, the Tribunal recovered from Canada Revenue Agency ("CRA"), an amount of $2,835 (2017 – $12,524) for CPP & EI contributions (employer and employee shares) for the years 2007-2014 for a small group of part-time Order-in-Council ("OIC") appointees. The recovery resulted from interest rate relief on prior year payments and a refund of prior year EI premiums. These amounts have been included in employee benefits in the Statement of Operations.

8. SERVICES – WSIB

The expense represents administrative costs for processing claim files of the WSIB, which are under appeal at the Tribunal, pursuant to section 125 (4) of The Workplace Safety and Insurance Act, 1997.

WORKPLACE SAFETY AND INSURANCE APPEALS TRIBUNAL
Notes to the Financial Statements
December 31, 2018

9. COMMITMENTS

The Tribunal has commitments under several leases and maintenance contracts relating to computer and office equipment, software license fees and workplace learning solutions service contracts with terms from 1-5 years. The minimum payments under these commitments are as follows:

2019		**278,956**
2020		**223,408**
2021		**207,558**
2022		**17,268**
2023		**1,047**
Minimum payments	**$**	**728,237**

The Tribunal is also committed to minimum lease payments for premises, including building operating costs. The minimum lease payments for the next five years are as follows:

2019		**1,746,938**
2020		**1,804,736**
2021		**1,858,158**
2022		**1,913,903**
2023		**1,971,320**
Minimum operating lease payments	**$**	**9,295,055**

The current lease was renewed for ten years commencing November 1, 2015 with two further options to extend the lease for 5 years each.