

ACHIEVEMENT

2017

2018

2019 ◀ **WSIAT Annual Report**

2020

2021



Workplace Safety and Insurance
Appeals Tribunal

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

WSIAT 2019 ANNUAL REPORT

Workplace Safety and Insurance Appeals Tribunal

505 University Avenue, 7th floor, Toronto ON M5G 2P2

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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, Training and Skills Development 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 2019 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

2019 in Review

I am pleased to report on the Tribunal's achievements in 2019, as well as provide an update on the Tribunal's plans for the future. While the Tribunal has engaged in a variety of initiatives, all of the Tribunal's activities are directed toward our chief goal: delivering justice for our stakeholders.

The success of any organization depends on its people. The Tribunal's Order in Council (OIC) appointees and all staff are unified in our commitment to acting with integrity, in order to maintain the trust of our stakeholders. Operating with integrity means that we are guided by the values of fairness, consistency, transparency, and efficiency.

Progress and Transition

In August 2019, our then Chair, David Corbett, was appointed the Deputy Minister of Labour (now the Deputy Minister of Labour, Training and Skills Development). We thank him for his excellent leadership and we are confident he will be successful in his new role. In addition, we acknowledge and appreciate the Deputy Minister's continuing support of the Tribunal's commitment to modernization, adjudicative excellence, and providing timely justice to our stakeholders.

I was appointed Tribunal Chair for a six-month term in August 2019, and then for a two-year term, effective January 9, 2020. Due to the professionalism and dedication of our staff and OICs, the Tribunal's operations and level of service continued seamlessly throughout this period of transition. I am very grateful to be supported by such an excellent team.

Progress on Caseload Reduction and Compressing Timelines

Since 2016, the Tribunal has steadily reduced its caseload and shortened the time to hearing. That trend continued in 2019.

As noted in the Tribunal's previous annual reports, there is a direct correlation between the number of cases in progress at the Tribunal and the time to hearing: the larger the backlog of cases, the longer the time to hearing. Therefore, I am pleased to highlight the information contained in the Caseload Processing Report, which shows that the caseload at the end of 2019 was 20 percent lower than the total at the end of the previous year.

I am also happy to report that, in the fourth quarter of 2019, the median time to hearing was 8.9 months, compared to 9.9 months the previous year.

These achievements are the result of the continuing dedication of OICs to producing decisions in a timely manner, as well as efforts by the Alternative Dispute Resolution (ADR) Department to resolve appropriate cases without a hearing. The Tribunal's intake of new cases also declined by 8 percent.

Section 127 of the *Workplace Safety and Insurance Act, 1997* (the WSIA), requires the Tribunal to issue decisions within 120 days, or such longer time as the Tribunal may permit. The vast majority of Tribunal decisions—approximately 87 percent—are released in accordance with this guideline. In the Chair's Office, we also undertook additional proactive monitoring of overdue decisions. While it is vital that the monitoring of decision release respects the adjudicative independence of the Vice-Chair or Panel, we also recognize the significant distress that delayed decisions may cause to the parties. As a result of our efforts, the number of cases waiting significantly overdue decisions decreased between August 2019 and December 2019. We have also established a working group to develop strategies and guidelines to further reduce the number of overdue decisions.

Initiatives and Announcements

In January 2019, the Tribunal opened the Hamilton Hearing Centre. It is centrally located in downtown Hamilton and provides a modern facility with two dedicated hearing rooms and video conference capability.

The hearing centre in Hamilton was launched as a means of enhancing the service the Tribunal provides to the area and reducing the wait time to hearing. In 2019, the Tribunal reduced the volume of Hamilton appeals and successfully reduced the wait time to hearing. The Hamilton Hearing Centre serves a wide area that includes Niagara Falls, Fort Erie, Welland, Port Dover, and Simcoe. Later in 2020, the geographic area for the Hamilton Hearing Centre will be expanded to include Kitchener, ensuring the efficient and effective use of the space and shortened times to hearing for that region.

In 2019, the Tribunal also made ongoing progress toward its goal of reducing the use of paper and moving toward an increasingly digital environment. The reduced need to store paper freed up space in our premises, allowing for the creation of a modern conference space. In October 2019, this conference space was named the **Ian J. Strachan Conference Centre**, in recognition of the Tribunal's second Chair. The Ian J. Strachan Conference Centre is equipped for video recording and has proven invaluable for the delivery of our ongoing professional development programs at significant cost savings. When the Ian J. Strachan Conference Centre is not in use by the Tribunal, we have maximized its utility by sharing the space with other agencies in the Ministry of Labour, Training and Skills Development.

The Tribunal continued to build upon the process review that was described in last year's annual report. In November 2019, we hosted a stakeholder outreach session in the newly minted Ian J. Strachan Conference Centre. The session was well attended by dedicated stakeholders, who also had the opportunity to ask questions. Updates included the Tribunal's plans to eliminate the automatic two-year "dormant" period following the filing of a Notice of Appeal with the Tribunal. We also introduced the *WSIAT-Initiated Assistance for Medical Issues* guide and related Practice Directions, which support the Tribunal's commitment to adjudicative excellence.

In late 2019, the Tribunal cleared additional space that will be the future home of the **Ron Ellis Hearing Centre**, in honour of the Tribunal's founding Chair. Not only will the room be equipped to allow for fully paperless hearings, it will also accommodate five-member panels that are constituted under the 2018 amendment to section 174 of the WSIA. We thought it was particularly fitting to name the room for Ron Ellis, given that he was the Chair of the five-member Panel that heard the Pension Assessment Leading Case, resulting in the seminal *Decision No. 915*.

As noted in previous reports, the focus on reducing backlogs and the time to hearing does not imply any diminution of the quality of the Tribunal's adjudication. As a Vice-Chair, I was actively involved in the co-ordination of the Tribunal's internal professional development programs for OICs. I continue to be committed to enhancing the quality and variety of professional development programs for OICs to ensure that they are fully apprised of relevant legal and medical trends. Professional development programs are planned by a committee which includes the Counsel to the Chair, Tribunal General Counsel, the Medical Liaison Office, the Director of Appeal Services, the Manager of Scheduling Administration, and OICs. In addition, the OIC professional development and review program continues to provide valuable feedback on OIC performance and identify targeted areas of training.

In 2019, the Tribunal also continued to take the lead in organizing meetings of the Council of Canadian Workers' Compensation Appeals Tribunals to share information and best practices.

Looking Ahead to 2020 and Beyond: Challenge and Opportunity

Last year's annual report highlighted the Tribunal's operating model of sustainability, efficiency, and agility. These principles provide the framework for all of the Tribunal's new initiatives. In particular, we will focus on agility, a quality which will allow the Tribunal to adapt quickly to change.

After the fast—and, at times, frenetic—pace of effort that was required to reduce the Tribunal's caseload, we must guard against the perhaps natural tendency to assume any processing issues have been resolved and settle back into prior approaches without further analysis. Therefore, the decline in the caseload and the improved time to hearing presents both challenges and opportunities:

- How do we press forward to keep up the momentum in the reduction of the caseload and improved time to hearing?
- How do we take advantage of the stability in the number of incoming appeals to improve our processes and the level of service we provide to stakeholders?

In response to these challenges, we have ambitious plans:

Access to justice: We have established an Access to Justice Working Group that will look at innovative ways to convey information to users of the Tribunal's services, including both self-represented parties and representatives, and support the meaningful participation of all parties. This includes improvements to our website and the creation of tools in various languages to assist unrepresented parties.

Process review: We will improve our pre-hearing processes to decrease the time to hearing. We will experiment with new scheduling models in appropriate cases to further reduce the time to hearing. We will create new forms and procedures that are user-friendly and transparent. We will expand the Early Intervention Program (EIP) to broaden the scope of appeals that may be resolved without a hearing. These initiatives will serve our ultimate goal of processing most appeals within approximately one year, while ensuring access to justice.

E-filing of appeals and documents: The Tribunal will provide e-filing capabilities for those who wish to take advantage of an electronic process. At the same time, we understand the importance of cyber security, and we will proceed carefully in establishing a secure means for e-filing of appeals and documents. Stay tuned for updates.

Paperless processing of appeals and hearings: We have already started providing case materials in electronic form to parties and representatives who choose that option, and are in the process of building the Ron Ellis Hearing Centre to allow for fully electronic hearings.

We are very grateful for the continuing support of the Honourable Monte McNaughton, Minister of Labour, Training and Skills Development, for the Tribunal's ambitious modernization goals.

In 2019, we engaged in stakeholder consultation and communication on initiatives such as the *WSIAT-Initiated Assistance for Medical Issues* guide. We intend to continue to consult and communicate with our stakeholders both through in-person sessions and enhanced use of our website as a means of communication. Thank you to those stakeholders who have taken time out of their busy schedules to attend our information sessions. Our stakeholders' continued dedication to the workplace safety and insurance system is crucial to the success of our transformation efforts.

Final Note

As a newly appointed Chair of the Tribunal, I am mindful of the responsibility of the position and the importance of the Tribunal's work to our stakeholders. I am also deeply aware of the high expectations and standards set by my predecessors. Together with our excellent Tribunal team, we are fully committed to maintaining the high standards of service excellence that you expect and deserve.

Thank you,

A handwritten signature in black ink, reading "R. McCutcheon". The signature is fluid and cursive, with a long horizontal flourish at the end.

R. McCutcheon
Chair, Workplace Safety and Insurance Appeals Tribunal

HIGHLIGHTS OF THE 2019 CASES

This section reviews some of the many legal, factual and medical issues which the Tribunal considered in decisions released or summarized in 2019.

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 and post-traumatic stress disorder (PTSD) and include transitional provisions.

The wording of the 2002 and 2007 amendments to section 44 must be carefully analyzed to determine if a LOE review is permitted after 72 months.

Decision No. 1420/17R, 2019 ONWSIAT 1539, clarified that the Tribunal has jurisdiction under section 44 to review the worker's LOE benefits even though the Tribunal's decision issues more than 72 months after the accident. The appropriate date to consider is not the date when an appeal is determined but, rather, the effective date of the LOE determination in question. Where the application of a section 44(2.1) exemption is implicit in the ARO decision on appeal, **Decision No. 275/19, 2019 ONWSIAT 765**, found that the Tribunal has jurisdiction to consider entitlement to LOE benefits as of the final review point. In *Decision No. 275/19*, the worker was not suffering a wage loss at the final review date but had previously been notified as part of a transitional work plan that her wages would be reduced after the final review date. *Decision No. 275/19* found that the reduced wages reflected what the worker was able to earn performing accommodated work at the time of the final review date, and that the assessment should be based on what the worker is able to earn, or earning capacity,

rather than actual earnings at the time of final review. *Decision No. 275/19* also noted that the exception in section 44(2.1)(g), allowing review of LOE benefits after 72 months for co-operation in the ESRTW process, limits that review to 24 months after the expiry of the 72-month period.

Questions have arisen as to whether a worker is entitled to benefits when the worker suffers a significant temporary deterioration, such as surgery, after the 72-month period. **Decisions No. 2086/18, 2018 ONWSIAT 3895, and 1900/18, 2018 ONWSIAT 3709**, consider how LOE benefits should be calculated when the worker was not working or looking for work at the time of the surgery. While earlier decisions, such as **Decisions No. 3131/16, 2016 ONWSIAT 3519, and 1650/17, 2017 ONWSIAT 1750**, found that the WSIA requires a comparison of the post-injury earning capacity with pre-injury earnings so that earning capacity could be diminished following surgery even though the worker may have withdrawn from the workforce, *Decisions No. 2086/18 and 1900/18* found that the situation was analogous to Tribunal caselaw on assessment of LOE benefits for workers who develop occupational diseases subsequent to retirement. While there may be circumstances when entitlement to further LOE benefits is warranted, for example where there are compensable reasons why the worker did not return to work after expiry of the 72-month review period, the Tribunal's usual approach of significant contribution in determining causation should apply.

Another question which has arisen is whether Canada Pension Plan (CPP) disability benefits can be offset from a LOE award when the compensable condition deteriorates after 72 months. **Decision No. 1561/19, 2019 ONWSIAT 2442**, distinguished **Decision No. 3126/16, 2016 ONWSIAT 3450**, which found that review after 72 months to offset LOE benefits by CPP disability benefits was not allowed because deterioration in the worker's compensable condition resulting in the NEL increase occurred

before the final LOE review date. In *Decision No. 1561/19*, both the deterioration and determination dates for the NEL award occurred after 72 months, thus allowing the Board to review LOE benefits under section 44(2.1) and to offset the CPP disability benefits.

Decision No. 2266/16R, 2019 ONWSIAT 150, considered how the Ontario *Human Rights Code*, R.S.O. 1990, c. H.19, applies to entitlement to LMR plans. Board policy on LMR assessments provides that, in determining entitlement to LMR plans, the Board must have regard for workers' rights under the *Human Rights Code*. This means that, to be suitable, the LMR plan must accommodate both compensable and non-compensable conditions. *Decision No. 2266/16R* affirmed Tribunal caselaw that subsequently arising non-compensable impairments and post-accident degeneration of pre-existing conditions are generally not considered when developing a suitable occupation for the purpose of determining LOE benefits; however, they are considered when developing an LMR plan. The Board's obligation was to accommodate the worker's non-compensable knee conditions, to the extent possible, when developing and implementing the LMR plan.

As noted in previous Annual Reports, complicated issues may arise when the employment of an injured worker, who was provided with modified work by his employer, is dismissed. While one line of decisions focused on whether the termination was related to the injury, the 2018 Annual Report noted that the approach exemplified by **Decision No. 690/07, 2009 ONWSIAT 2087** (which adopted 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), appears to have become the prevailing approach. This approach continued to be adopted in decisions issued in

2019. In **Decision No. 290/19, 2019 ONWSIAT 884**, the injured worker had returned to modified work but started to lose time for unauthorized absences, and her employment was terminated. While the worker should have been in direct contact with the employer about her absences rather than relying on communication between her physiotherapist and the Board, her conduct did not warrant a conclusion that any wage loss experienced after termination was not the result of the workplace injury. An employer cannot end its own co-operation obligations by terminating a worker's employment for a short-term failure of the worker to co-operate in return to work activities. **Decisions No. 1549/18, 2019 ONWSIAT 1976**, and **2816/18, 2019 ONWSIAT 1266**, agreed with the analytical framework set out in **Decision No. 904/14, 2014 ONWSIAT 1597**, that the question was whether the worker's conduct was inconsistent with the responsibility to act reasonably to minimize post-injury wage loss and resulted in the loss of employment opportunity. Put another way, the question is whether the worker's conduct, which resulted in the termination of her employment, introduced an intervening event such that the worker was responsible for the loss of earnings and the loss of employment opportunity. In *Decision No. 1549/18*, breach of obligations in the employer's code of conduct to report abuse and breach of the employer's strict anti-harassment and anti-discrimination policy constituted conduct such that the worker should be held responsible for the loss of employment opportunity with the employer. See also **Decisions No. 1125/18, 2019 ONWSIAT 1263**, and **3107/18I, 2019 ONWSIAT 571**.

Since 2017, the WSIA has been amended to reflect a full adjustment for inflation, based on the Consumer Price Index (CPI). **Decision No. 3899/17R, 2019 ONWSIAT 1300**, considered the complicated question of how recalculations of LOE benefits should be indexed under the earlier version of the WSIA. In 2006, when the recalculation on appeal took place, there were three formulas to recognize the effects of inflation: the alternate indexing

formula, which is directly based on the CPI; the general indexing factor, commonly referred to as the Friedland formula, which provides for an inflation-related adjustment that is less than a full recognition of the initial CPI; and a more complex hybrid formula set out in section 43(5), which incorporates both the general indexing factor and the alternate indexing factor into different aspects of the formula. *Decision No. 3899/17R* considered background policy material and principles of statutory interpretation in concluding that the hybrid formula in section 43(5) applied.

As noted in prior Annual Reports, NEL appeals often require the Tribunal to interpret the *American Medical Association Guides to the Evaluation of Permanent Impairment* (3rd edition, revised) (AMA Guides), which is prescribed as the NEL rating schedule by O. Reg. 175/98. A worker is entitled to be assessed for a NEL award if the worker continues to have a permanent impairment after reaching maximum medical recovery (MMR). **Decision No. 21/19I, 2019 ONWSIAT 441**, contains an interesting discussion of Board policy on determining permanent impairment and the Board's Administrative Practice Document on determining MMR and permanent impairment. The Panel examined this document, the WSIA and Board policy and found that MMR is achieved when a plateau in recovery has been reached where medical evidence shows that the worker's condition has not recently changed and is not likely to change significantly even with more investigation or treatment. While there were several outstanding treatment recommendations, *Decision No. 21/19I* found that they did not need to be completed for the worker to have reached MMR as the worker's condition would not significantly change.

Interesting NEL cases in 2019 included ratings for a wrist injury, and whether an additional rating should be given for loss of grip and pinch strength. **Decision No. 2024/18R, 2019 ONWSIAT**

2336 disagreed with an earlier decision that an additional rating for loss of grip strength should only be granted in unusual circumstances. Loss of strength is given a separate rating when other factors have not adequately rated the extent of the impairment and it represents an additional impairing factor not taken into account. **Decision No. 2507/18, 2018 ONWSIAT 3726**, considered a claim for a separate rating for disfigurement due to amputation of three fingers, in addition to the rating for an impairment of the extremity under Chapter 3 of the AMA Guides. Disfigurements are rated as impairments of the skin under Chapter 13, where the definition of disfigurement is an altered or abnormal appearance. As there was no discolouration or abnormal appearance that could form the basis for a separate disfigurement rating, the worker was not entitled to a separate rating for disfigurement.

Decision No. 1643/18R, 2019 ONWSIAT 1511, considered whether the Tribunal had the jurisdiction to direct the Board to determine the worker's NEL award based on an independent medical assessment when the Tribunal found that there was insufficient health care information to enable an adequate assessment of the quantum of the worker's NEL award. While **Decision No. 1817/16R, 2018 ONWSIAT 1436**, indicated the Tribunal did not have the jurisdiction to make such an order, **Decision No. 1643/18R** noted that this decision did not consider prior Tribunal caselaw, which had clearly established that the Tribunal has such jurisdiction. A broad interpretation should be given to the Tribunal's jurisdiction to confirm, vary or reverse a Board decision. This was also consistent with practical considerations, as otherwise the Tribunal would be put in the position of having to rate a NEL award despite insufficient medical evidence or to use its section 134 authority to obtain a medical assessor's report, when there was no indication that section 134 should be used to perform NEL assessments.

As of January 1, 2018, sections 13(4) and (5) of the WSIA, which limited mental stress to "an acute reaction of 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. The 2018 Annual Report discussed Tribunal decisions which found that the common meaning of a "pending" claim is a claim in which the issue before the Tribunal has not been finally determined. **Decisions No. 3428/18I, 2019 ONWSIAT 3902, and 249/19I, 2019 ONWSIAT 1340**, held that this analysis also applied to employer appeals; the Legislature did not intend to carve out an exception for them. While the referral causes some delay and expense to workers and employers, it provides an opportunity to obtain the evidence necessary for decisions under the new statutory provisions, evidence the Board has the infrastructure and resources to obtain and which may also be considered by the Tribunal.

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 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 new section 126(4) referrals in 2019. Earlier proceedings in *Decision No. 2346/12* had considered a section 126(4) referral in relation to the Board's Fatal Claim Premium Adjustment policy and are discussed in prior Annual Reports. In 2019, **Decision No. 2346/12, 2019 ONWSIAT 616**, found that the Fatal Claim Premium Adjustment policy did not violate section 7 or section 11(h) of the *Canadian Charter of Rights and Freedoms* (Charter). Section 7 provides that everyone has the right to life, liberty and security of the person. Based on Supreme Court of Canada decisions, the Panel found that section 7 does not apply to corporations and does not apply to property rights. The Fatal Claim Premium Adjustment policy created a financial penalty affecting property; however, the employer did not argue that the imposition of such a penalty amounted to an interference with anyone's life, liberty or the security of the person. Section 11(h) provides that any person charged with an offence has the right, if the person is found guilty of the offence and punished for the offence, not to be tried or punished for it again. In this case, the employer pled guilty to a provincial offence under the *Occupational Health and Safety Act* (OHSA) and was fined \$375,000. While a corporation generally benefits from protection under section 11 of the Charter, Supreme Court of Canada decisions indicate that the proceeding has to be, by its very nature, a criminal proceeding or, if not, a conviction for the offence charged must lead to a true penal consequence. While proceedings under the OHSA meet these requirements, the increased premium costs under the WSIA do not. The premium increase occurs when there is a workplace fatality regardless of whether the employer was charged or convicted under the OHSA. An employer could be convicted but face no premium increase if it was not expecting an experience rating rebate. While the purpose of the OHSA is the promotion of health and safety at work through the enforcement of specific standards, the purpose of the Fatal Claim

Premium Adjustment policy is to avoid providing an experience rating rebate reflecting a reward for good health and safety practices to an employer who is responsible for a workplace fatality.

Decision No. 83/19, 2019 ONWSIAT 1156, discusses the modern rule of statutory interpretation as well as the importance of achieving consistency of interpretation, in the context of Board policy on travelling. The Tribunal has followed the Courts in adopting the modern rule of statutory interpretation, which requires that the words of an Act be read in their entire context and their grammatical and ordinary sense harmoniously with the scheme and object of the Act. *Shuchuk v. Alberta (Workers' Compensation Board, Appeals Commission)*, 2007 ABCA 213, also states that generally workers' compensation legislation is to be given a broad and liberal interpretation. *Decision No. 83/19* noted that Tribunal decisions have taken two main approaches to the policy on travelling: decisions adopting a straightforward interpretation of the Board policy, which generally results in broader coverage; and decisions emphasizing the 10 factors listed in the multi-factorial approach taken in **Decision No. 165/96 (April 10, 1996)** with less emphasis on the terms of Board policy. It is desirable to achieve a consistent approach for the sake of predictability for the parties and for cohesion in the Tribunal's jurisprudence. *Decision No. 83/19* found that the first approach should be adopted; it engages in the straightforward application of the terms of the relevant Board policy and results in broader coverage, consistent with the large interpretation that should be applied to remedial legislation such as the WSIA. This approach is also simpler, tends to produce consistent results and avoids anomalous distinctions.

Issues regarding the application of Board policy may arise when new policy is adopted for the first time. In **Decision No. 616/19, 2019 ONWSIAT 1527**, the Panel noted that the Board had published a

policy on cannabis for medical purposes just days prior to the hearing. The policy stated that it was effective March 1, 2019, for the purchase of medical cannabis in all claims. *Decision No. 616/19* determined that the new Board policy was not binding on the Tribunal for this appeal since it was not in place when the initial decision was made by the Board to deny entitlement for medical marijuana, nor was it in place at the time of the ARO decision confirming the initial decision. In the absence of Board policy, *Decision No. 616/19* applied the statutory provisions and Tribunal caselaw, but noted that the criteria applied in this appeal may not be applicable to new Board decisions with respect to entitlement to medical marijuana after March 1, 2019.

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 proceeding by analogy to general guidance provided in Board policy. See **Decisions No. 1601/18R, 2019 ONWSIAT 1016, 2475/18, 2018 ONWSIAT 3905, and 2988/18, 2019 ONWSIAT 21.**

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. 2793/18, 2019 ONWSIAT 1486, considered the interaction between provincial compensation schemes and the Interjurisdictional Agreement on Workers' Compensation. The plaintiff, a worker of a company based in Alberta, was injured in a motor vehicle accident in British

Columbia. He made a successful claim for workers' compensation benefits in Alberta and then sought to sue the company which owned the car in Ontario. *Decision No. 2793/18* dismissed the right to sue application, finding that the right to sue provisions in the WSIA apply in circumstances where a worker sustains an injury that entitles the worker to benefits under the WSIA. Exceptions for workers employed outside Ontario did not apply, since the employer's place of business is not Ontario. *Decision No. 2793/18* also found that, while the Tribunal would have jurisdiction to determine if a right to sue application itself is an abuse of process, it does not have the jurisdiction to determine whether a civil action constituted an abuse of process, and could not remove a right to sue on this ground. *Decision No. 2793/18* also noted that the Interjurisdictional Agreement on Workers' Compensation was designed to facilitate payment of benefits where an injured worker may be entitled to benefits in more than one jurisdiction, and administration of benefits when a worker moves from one jurisdiction to another, not to displace WSIA provisions governing entitlement.

In **Decision No. 1878/18, 2019 ONWSIAT 142,** the plaintiff was employed by the defendant as a crane operator at a construction site. The crane's brakes malfunctioned and a worker was killed. The plaintiff and defendant employer were both charged with criminal negligence under the *Criminal Code* and with endangering the safety of a worker under the OHSA. The charges against the plaintiff were ultimately withdrawn, and the plaintiff sued the defendant employer for reimbursement of his costs in defending the charges, as well as punitive damages. *Decision No. 1878/18* noted that section 26(2) of the WSIA does not take the nature of a civil claim into account, but only considers whether the action is due to an accident happening to the worker while in the employment of the employer. There was no suggestion that the employer's actions were outside of the employment context, nor was there evidence of wilful or

intentional recklessness by the employer. The legal cost of defending the charges was intrinsically related to the workplace accident that gave rise to the charges, and the right of action was removed. Since the right of action was removed, the right to claim punitive damages was also removed.

Decision No. 3473/18, 2018 ONWSIAT 3990, considered how the right to sue provisions applied to a municipality which had been a Schedule 2 employer, but had requested a transfer to Schedule 1 under section 74. The Board had confirmed the transfer in a letter, but it was argued that the Board letter was not sufficiently formal to constitute a declaration under section 74. Since the WSIA does not define “declaration,” *Decision No. 3473/18* considered the ordinary meaning of “declaration” – a statement by one party, intended to have legal effect, communicated to one or more parties. There was nothing in the WSIA indicating that “declaration” should be interpreted to mean an announcement made generally to the public or to any particular party or parties beyond the applicant under section 74. The Board’s letter met the ordinary meaning of “declaration.” The WSIA did not require that the Board give notice to the workers of a Schedule 2 employer for the transfer to Schedule 1 to be effective.

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 2019.

While the Tribunal frequently considers and applies the Board’s SIEF policy, several decisions in 2019 considered its provisions in detail. The quantum of SIEF relief is generally determined in accordance with the policy matrix, which is based

on the severity of the accident and the medical significance of the pre-existing condition. **Decision No. 2970/18, 2019 ONWSIAT 1533**, noted that a strict interpretation of the definitions of “pre-existing disability” and “pre-existing condition” in Board policy could create a gap in SIEF entitlement for prior symptomatic conditions/disabilities which have not disrupted employment. Given inconsistencies in the use of “pre-existing condition” and “pre-existing disability” in the policy, submissions were requested from the Board and the Tribunal Counsel Office (TCO). The Board declined to provide submissions, noting that the SIEF policy is on its list of policies to review. *Decision No. 2970/18* agreed with the employer and TCO submissions that the language used in the body of the SIEF policy requires a broader reading in order to achieve a fair and consistent result. The SIEF policy is best understood to have two distinct objectives: providing employers with financial relief when a pre-existing condition, broadly interpreted, enhances the extent of, or prolongs recovery from, a work-related injury; and encouraging employers to hire workers with disabilities. These goals can only be accomplished by reading “condition” in the body of the policy broadly, in its common use, to include both pre-existing conditions and disabilities as defined in the policy and also pre-existing symptomatic conditions/disabilities that have not disrupted employment.

Decision No. 1301/19, 2019 ONWSIAT 1747, addressed the interpretation of whether an accident is categorized as minor, moderate or major in severity. These categories are not discrete but form a continuum. An understanding of how the Tribunal generally interprets Board policy on SIEF cannot be achieved by relying only on cases that reflect the most generous or most restrictive application of the policy. In this case, the worker tripped and fell, sustaining a blow to her head which was sufficiently sharp to cause

concussion. The mechanics of the accident could reasonably be expected to result, and did result, in a disabling injury and should be categorized as of moderate severity.

When SIEF relief is granted after the experience rating window is closed, Tribunal decisions and Board practice have generally applied a test of due diligence in deciding whether to grant a retroactive experience rating adjustment. **Decision No. 2113/15R2, 2019 ONWSIAT 448**, departed from this approach, noting that it developed when there were no time limits on appeal, and held that a successful SIEF appeal should include a direction to re-open the experience rating window, if necessary, in order to provide an effective remedy to the employer.

There were also a number of interesting cost transfer decisions in 2019. **Decisions No. 1051/17, 2019 ONWSIAT 1990**, and **2972/18, 2019 ONWSIAT 251**, considered requests for cost transfers arising from accidents at construction sites. The Tribunal considered industry best practices and standards set by the OHS in determining standards of reasonable conduct and negligence. In both appeals, a portion of the costs was transferred where there was negligence, including a lack of co-ordination between the general contractor and other contractors on site. In **Decision No. 2149/18, 2018 ONWSIAT 3389**, the worker of the accident employer was deliberately struck by a worker of another employer. The other worker was the aggressor and was not acting in the course of his employment. A transfer of costs was denied as a transfer is only available if the worker's right of action against the other employer and its worker is taken away by section 28(1). **Decision No. 2149/18** also noted that even without considering section 28(1), a cost transfer would not have been available since the assault by the other worker was not an act of negligence as required by the WSIA and Board policy, but an intentional tort.

Decision No. 3245/18, 2019 ONWSIAT 624, considered an exception to the Board's general policy on employer premium adjustments, which provides that the Board generally makes debit or credit adjustments to employer accounts retroactive to January 1 of the second prior year. Exceptions to the two-year rule include lack of full disclosure, including failure to act on information provided to the employer by the Board that directly affects the employer's premiums. The Board had previously audited the employer, finding that its drivers were workers and not independent operators. The employer did not act on this information, and at the next audit, its drivers were considered to be workers and the premium debit adjustment was made retroactive to the time of the prior audit. The Tribunal upheld the retroactive premium adjustment and rejected arguments that the information that the Board provided was too complicated to understand. The Board's letter was seven pages in length and advised the employer to contact the Board with any questions. It contained the level of detail that would be expected in an audit of a substantial trucking company which had a professional bookkeeper and a director with business acumen and sophistication.

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.

Decision No. 3451/18, 2018 ONWSIAT 3855, is an example of an occupational disease case which required consideration of a statutory presumption, in that case, the rebuttable statutory presumption regarding firefighters and non-Hodgkin's lymphoma. While the Tribunal agreed with the Board that the worker did not meet the requirement in O. Reg 253/07 and Board policy for a minimum employment of 20 years for the presumption to apply, the Tribunal went on to consider the claim on its merits. Entitlement was granted as the worker had 18 years of employment as a firefighter, and there was medical evidence supporting occupational exposure as a significant factor. See also **Decision No. 862/18, 2018 ONWSIAT 3425**, which applied the irrebuttable presumption for asbestosis for workers involved in any mining, milling, manufacturing, assembling, construction, repair, alteration, maintenance or demolition processes involving the generation of airborne asbestos fibres.

Decision No. 36/19, 2019 ONWSIAT 156, is an example of an appeal involving an occupational disease, esophageal cancer, which is the subject of Board policy. While the Board adjudicator had denied entitlement and indicated that the scientific information on which the policy is based is outdated, *Decision No. 36/19* noted that the policy remained valid and in place. The Tribunal is required to apply applicable Board policy; the worker had entitlement for esophageal cancer since his asbestos exposure created a presumption under the policy that the cancer was caused by the asbestos exposure.

In 2019, chronic obstructive pulmonary disease (COPD) issues were considered in a number of different contexts. The Board has a binder which provides adjudicative advice on COPD. **Decision No. 2066/18, 2018 ONWSIAT 3844**, noted that there is a misapprehension that the COPD binder provides for a cumulative exposure threshold to

respirable dust in the range of 40-50 mg/m³ as an entitlement criterion for COPD. The binder does not identify the exposure level of 40 mg/m³ as a threshold; rather, it is drawn by inference from a table in the binder. The preface to the table includes a formula for calculation in cases that fall outside the table. The 40 mg/m³ guideline is an average exposure drawn from results set out in the literature; however, the literature demonstrates a wide variety of intensity and duration of exposure. This variability supports the use of the 40 mg/m³ exposure level as a guideline only to consider in the context of the individual circumstances of the case.

A question which has been noted in previous Annual Reports is whether a worker's entitlement for COPD 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, the 2018 Annual Report noted that it appeared established that entitlement should not be apportioned in the absence of unusual circumstances since COPD is an indivisible injury with multi-factorial causes. This approach was confirmed in 2019 by **Decision No. 891/19, 2019 ONWSIAT 1186**, which again emphasized the need for consistency in the Tribunal's analysis and adopted the approach in **Decision No. 865/92R4, 2006 ONWSIAT 569**, that COPD is generally not a divisible injury. However, as discussed in **Decision No. 931/19, 2019 ONWSIAT 1751**, where a worker has entitlement for both lung cancer and COPD, it is important to ensure that the rating for COPD is based on relevant measurements that do not overlap with the NEL rating for lung cancer.

Decision No. 3113/18, 2019 ONWSIAT 825, found that the WSIA does not allow cost apportionment among employers for COPD when a worker had dust exposure with two prior Schedule 1 employers and the appellant Schedule 2 employer. The appellant employer was the last exposure employer,

and WSIA section 22(8) states that notice must be given to the employer who most recently employed the worker in the employment to the nature of which the disease is due. There is no requirement for notice to be given to prior employers. While section 94 provides for sharing costs among multiple Schedule 2 employers, there is no similar provision for Schedule 1 employers or employers in both schedules.

Other interesting occupational disease appeals include **Decision No. 983/17, 2019 ONWSIAT 743**, (which provides a good discussion of the legal tests for causation and epidemiological evidence in the course of deciding a claim that pesticide exposure contributed to the development of Alzheimer's disease) and **Decision No. 3646/17, 2019 ONWSIAT 2400** (which discussed epidemiological evidence and the standard of proof in workers' compensation proceedings in the context of a claim for renal failure due to medication prescribed for workplace injuries).

Other Legal Issues

Decision No. 699/13, 2019 ONWSIAT 691, considered a challenge under the Charter, sections 7, 12 and 15(1), to section 48(23) of the WSIA, which provides that, in calculating compensation for a spouse's survivor benefits, the Board should have regard to any payments of survivor benefits for the death received under the Canada Pension Plan. In dismissing the Charter challenge, the Tribunal relied on the Supreme Court of Canada decision in *Siemens v. Manitoba (Attorney General)*, 2003 SCC 3, which held that life, liberty and security of the person under section 7 encompasses fundamental life choices, not pure economic interests. A legislative provision that reduces an individual's statutory benefits, especially when the total amount of benefits remains the same due to receipt of other benefits,

does not meet section 7 criteria. Section 12 of the Charter provides that everyone has the right not to be subjected to cruel and unusual treatment or punishment. This contemplates an active state process involving an exercise of state control over an individual, with intervention that is so excessive as to outrage standards of decency. The reduction of benefits to reflect receipt of benefits for the same disability from another jurisdiction fell well below that standard. Section 15 of the Charter deals with equality rights. *Decision No. 699/13* applied the test set out in **Decision No. 2157/09, 2014 ONWSIAT 938**, which considers whether the legislation creates a distinction based on an enumerated or analogous ground, and whether the distinction is substantively discriminatory in that it perpetuates a disadvantage or stereotyping. These criteria were also not met. The distinction in section 48(23) has the reasonable policy goal of ensuring that all recipients of survivor benefits receive the same quantum of benefits where the recipient was entitled to receive other benefits.

Decision No. 1992/18, 2019 ONWSIAT 1113, considered the definition of "spouse" in the WSIA, which includes a person with whom the person is living in a conjugal relationship outside marriage if the two persons have cohabited for at least one year. In concluding that the appellant was a "spouse" and entitled to survivor benefits, *Decision No. 1992/18* considered *Hodge v. Canada (Minister of Human Resources Development)*, 2004 SCC 65, which found that cohabitation is not synonymous with co-residence. Periods of time during which the parties were not under the same roof did not necessarily mean that they were no longer common law spouses unless there was evidence of a settled intention to end the relationship.

Since the 2007 amendments to the *Law Society Act* (LSA) introducing paralegal regulation, the Tribunal has taken steps to ensure that paralegals

meet the Law Society of Ontario's requirements. A person who provides legal services must be registered with the Law Society of Ontario unless exempted by section 1(8) of the LSA. One of the exemptions is for a class of persons prescribed by the by-laws. Section 30(4) of By-Law 4 authorizes representation by a "friend" who meets four criteria: the individual's profession does not include provision of legal services or the practice of law; the individual provides the legal services only for a friend or neighbour; the individual provides services in respect of not more than three matters per year; and the individual does not expect and does not receive any compensation.

Decision No. 819/19I, 2019 ONWSIAT 1583, considered the status of a representative who had previously been found not to be a "friend" in **Decision No. 2437/08ER, 2010 ONWSIAT 1246**. Such a finding in one case does not mean that the criteria would not be met in a different case with a different worker, as the nature of the relationship may be entirely different; however, the criteria were not met in this case. The representative was likely providing legal services in more than three matters, given that legal services includes drafting documents, completing forms and providing legal advice, and that the limit of three matters is not specific to any one tribunal. **Decision No. 624/19I, 2019 ONWSIAT 997**, found that a paralegal, whose status with the Law Society was listed as suspended administratively, could not represent the worker as a "friend" since, pursuant to By-Law 4, this exemption only applies to a person who is not a licensee.

Other 2019 appeals involving interesting procedural and legal issues include **Decision No. 548/18, 2018 ONWSIAT 3815**, which found that a widow was not entitled to represent

the estate when the worker did not leave a will, the widow had not applied for a Certificate of Appointment of Estate Trustee without a Will, had not made sufficient efforts to contact the worker's ex-wife or five children from his previous marriage, and had also failed to provide information requested by the Panel. However, this finding did not preclude the widow from reapplying if she met the requirements in future. **Decision No. 967/19, 2019 ONWSIAT 1847** discussed the Tribunal's *Practice Direction: Written Appeals* and denied the worker's request for an oral hearing where the circumstances met the criteria: there was a discrete issue; the facts were generally not in dispute; the medical evidence was complete; and testimony would not add to the information already in the case materials. Finally, **Decision No. 852/19I, 2019 ONWSIAT 2405** contains a good review of the test for admissibility of expert evidence as set out by the Supreme Court of Canada in *R. v. Mohan*, [1994] 2 S.C.R. 9, and *White Burgess Langille Inman v. Abbott and Haliburton Co.*, 2015 SCC 23. After reviewing these decisions, the Panel found that a toxicology report from a pharmacist was admissible as expert evidence.

APPLICATIONS FOR JUDICIAL REVIEW AND OTHER LITIGATION MATTERS

Since its creation in 1985, the Tribunal has released over 83,000 decisions. When considering applications for judicial review of Tribunal 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.

This Annual Report summarizes judicial review applications and other litigation matters where there has been significant activity during 2019.

General Counsel and lawyers from the Tribunal Counsel Office (TCO) 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 decision letters dated December 5, 2016 and July 24, 2019**

The worker, a kitchen helper, injured his neck in November 2004. He was granted loss of earning 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 (NEL) 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 was not entitled to benefits under the WSIA 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 in 2017 ONSC 2345. The Court found that the worker was attempting to reargue 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.

In May 2019, the worker submitted a fourth request for reconsideration of *Decisions No. 1791/07, 1791/07R and 1791/07R2*. In a decision letter dated July 24, 2019, the Tribunal Chair once again exercised his discretion to not assign the applicant's fourth reconsideration request for further review.

In August 2019, the worker initiated a third application for judicial review, referring to the July 2019 decision of the Tribunal Chair but also challenging *Decisions No. 1791/07, 1791/07R and 1791/07R2*.

In a decision dated October 17, 2019 [2019 ONSC 6007], the worker's third application for judicial review was dismissed pursuant to Rule 2.1 of the *Rules of Civil Procedure* by Justice Myers as an attempt to relitigate decisions that had been finally determined and an abuse of process.

In November 2019, the worker commenced a motion to seek leave to appeal the October 2019 decision of Justice Myers to the Ontario Court of Appeal. The Tribunal has filed its responding materials and is currently awaiting a decision.

2. Decision No. 2027/17, 2017 ONWSIAT 3263

The sole issue raised in this employer appeal was the worker's entitlement to future economic loss (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% non-economic loss 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 May 1, 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 was heard on January 18, 2019 by a Divisional Court Panel of Justices Aitken, MacLeod and Ryan Bell. The employer's application was dismissed [2019 ONSC 4898]. In the decision, the Court confirmed that the standard of review was reasonableness and that the Tribunal's decision was transparent, intelligible and justifiable, falling within the range of possible, acceptable outcomes.

3. 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 O.Reg. 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 denied 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 O.Reg. 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 trustee commenced an application for judicial review seeking, among other things, an order setting aside *Decisions No. 515/14* and *515/14R*.

The application was scheduled to be heard by the Divisional Court on February 26, 2019. At the beginning of the hearing, the Panel of Justices Mullins, Myers and Favreau considered the issue of whether the applicant could proceed in the matter without a lawyer. In a decision dated February 27, 2019 [2019 ONSC 1678], the Court determined that pursuant to Rule 15.01(1) of the *Rules of Civil Procedure* the applicant could not appear on behalf of the estate without a lawyer, and the application was adjourned to allow the estate trustee time to obtain legal representation. The Court also raised a concern about the Tribunal's role in the proceeding but did not make a decision about this issue. With assistance from the Tribunal's external legal counsel, the estate trustee obtained a lawyer and the application is scheduled to be heard in January 2020.

4. Decisions No. 87/03, 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 3241, 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 an 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 was not entitled to benefits 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 reconsideration threshold test.

In the third appeal, the worker appealed the determination that the suitable employment or business (SEB) identified, 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 both parties have filed factums. In September 2019, the applicant obtained a new representative.

5. 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 granted entitlement for chronic pain disability but denied entitlement to ongoing Loss of Earnings (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. Following a hearing addressing the LOE issue, 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 was heard on May 15, 2019. In a decision dated June 6, 2019, Justices Ellies, Sachs and Thorburn granted the application, determining that the Tribunal's initial decision was unreasonable and therefore the reconsideration decision could not stand. The Court ordered that both decisions be set aside and the matter be remitted back to a differently constituted panel of the Tribunal for new hearing in accordance with the Court's reasons.

6. Decisions No. 2712/18, 2018 ONWSIAT 3021, and 2712/18R, 2019 ONWSIAT 540

In a prior Tribunal decision [*Decision No. 396/10R*, 2012 ONWSIAT 53] the worker was granted entitlement to a permanent disability pension for a permanent right ear disability. In June 1998, while working as an operator for a new employer, the worker injured his right shoulder. The worker's claim for compensation was allowed by the WSIB, and the worker was granted a 14% NEL award.

The employer provided the worker with a series of different modified jobs following the worker injuring his right shoulder. While being provided with this modified work, the worker also developed non-work-related hearing loss in his left ear.

The worker resigned from his employment in August 2002. A September 2016 Tribunal decision [*Decision*

No. 2283/16, 2016 ONWSIAT 2457] determined that the worker had stopped working due to a combination of his compensable and non-compensable hearing loss and determined that the worker was entitled to a pension supplement.

In 2017, the worker requested entitlement for LOE benefits in relation to his right shoulder impairment as of August 2002, which was denied by the WSIB. The worker's appeal of this decision was denied by the Tribunal in *Decision No. 2712/18*, as it was determined that the worker's right shoulder impairment did not significantly factor into the worker resigning from his employment in August 2002. The worker subsequently made a request for reconsideration, which was denied in *Decision No. 2712/18R*.

In September 2019, the worker commenced an application for judicial review.

7. Decisions No. 178/17, 2017 ONWSIAT 3686, and 178/17R, 2018 ONWSIAT 2176

An individual employed as a poultry processor slipped in the parking lot adjacent to her place of employment on her way into work. Following the accident, the individual commenced a civil action in the Ontario Superior Court of Justice against two defendants, SF Limited and BCBR Limited. SF Limited owned the parking lot where the accident occurred.

SF Limited and BCBR Limited commenced a section 31 application on the ground that SF Limited was the plaintiff's actual employer, and, as the accident occurred in the employer's parking lot, the plaintiff's right to sue was taken away.

At the Tribunal hearing, the plaintiff argued that BCBR Limited was in fact her employer, and therefore the right to sue was not taken away. The Tribunal Vice-Chair acknowledged that there were some factors supporting that SF Limited was the plaintiff's

employer, while other factors supported that BCBR Limited was the plaintiff's employer. Ultimately, the Vice-Chair concluded that SF Limited was the plaintiff's employer, and, as SF Limited owned the parking lot where the fall occurred, the plaintiff was in the course of her employment when she slipped and her right to sue was taken away. The plaintiff made a request for reconsideration which was denied in *Decision No. 178/17R*.

In January 2019, the plaintiff commenced an application for judicial review and has recently served and filed her factum and materials.

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 back and mid-back, for a permanent impairment for his upper back, mid-back and neck, for labour market re-entry (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.

In the fall of 2019, the worker commenced an application for leave to appeal to the Supreme Court of Canada.

2. 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 judgments 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 WSIAT, 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 intervenor 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.

On December 19, 2019, the Supreme Court of Canada released two decisions relating to the three appeals, *Canada (Minister of Citizen and Immigration) v. Vavilov*, 2019 SCC 65 (Vavilov), and *Bell Canada v. Canada (Attorney General)*, 2019 SCC 66.

In the *Vavilov* decision, a seven member majority of the Court outlined a revised framework for judicial review. In a separate judgment that concurred in the result, Justices Abella and Karakatsanis strongly objected to the revised framework.

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 2019.

TRIBUNAL ORGANIZATION

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 2019 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 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 and co-ordinates all activities within the Executive Offices, including the recruitment, appointment and re-appointment process for Order in Council (OIC) appointed adjudicators. The Executive Offices 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.

2019 was a year of transition in the Executive Offices. In the second half of the year, the Executive Director, Susan Adams, assumed a temporary

assignment as Director, Office of the Worker Advisor, and the Tribunal Chair, David Corbett, was appointed Deputy Minister of Labour, Training and Skills Development. After Mr. Corbett's departure, the Tribunal was fortunate in the appointment of Rosemarie McCutcheon as Chair of the Tribunal. Prior to her appointment, Ms. McCutcheon was a long-standing, full-time Vice-Chair and the Alternate Chair-Registrar, as well as the co-ordinator of the Tribunal's professional development programs and orientation program for new appointees. In addition to these changes, the Manager, Executive Offices took on a senior management role, which included facilitating the planning, development, co-ordination and communication of operational reporting for the Tribunal.

In the face of change, 2019 proved to be another successful year in operations and administration, a true testament of the commitment and determination of the Tribunal's executive team, staff and the Order in Council appointees. With continuous efforts, the Tribunal continued to reduce its caseload and the time to hearing. The combined active and dormant caseload was reduced to 3,927 cases at the end of 2019, a decrease of 20% from the end of 2018, when the caseload was 4,904. Reducing the active and dormant caseload continued to be key to improving the timelines to hearing and case resolution. By the end of the year, the Tribunal achieved its goal of reducing the time to

hearing to 10 months or under, and continued to see an increase in cases resolved within nine months.

A related focus for improving the time to hearing and case resolution was the expansion and refinement of the Tribunal's Early Intervention Program, which was launched as a pilot project in 2018. The program reviews cases at an early stage in the appeal process to assess the possibility of resolving some cases without the need for an oral hearing.

In 2019 the Executive Offices continued to refine its Professional Development and Review program, in an effort to better support OIC appointees by recognizing contributions and identifying professional development opportunities, and supporting the Chair and the re-appointment process.

Facilities and technology projects were also at the forefront of the Tribunal's administration work in 2019, including electronic distribution of case material to designated parties, adjudicator access to electronic hearing materials, e-filing and e-hearings. The Tribunal also opened its satellite hearing centre in Hamilton, which continues to be the agency's busiest hearing centre after Toronto. The Hamilton Hearing Centre has two hearing rooms and is equipped to support hearings by video conference.

The Executive Offices' administration group and the Information and Technology Services department were instrumental in the launch of the Ian J. Strachan Conference Centre, a training room on the Tribunal's premises that supports on-site training programs for OIC appointees and staff, and outreach with our stakeholder community. The room is equipped with webinar and video conferencing capabilities to support our regionally based OIC appointees and stakeholder groups. The facility is also accessible to Ministry of Labour, Training, Skills and Development groups and partnering agencies in support of the government of Ontario's value for money initiatives and cost saving measures.

The community's ongoing dedication and commitment to resolving worker and employer appeals and improving timelines to hearing and appeal resolution at the final level of appeal in the workplace safety and insurance system is appreciated.

Human Resources and Administration Department

The Tribunal's Human Resources and Administration Department is a dedicated team of professionals led by the Director of Human Resources and Administration. 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.

Human Resources

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.

In 2019, key human resources initiatives were directed to support efforts to reduce the time to hearing and time to appeal resolution. Building organizational capacity continued through merit-based recruitment and investments in learning and development programs, such as the 360 assessment and coaching for senior managers. Enhancements in organizational efficiency was achieved through the ongoing review of workflow processes, practices and procedures, and the leveraging of technology, including enhancing the functionality of the 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 occupational health and safety, accident reporting, first aid training, and benefits and pensions.

Administration Services

The Administration Services team is responsible for the emergency management and security (EMS) program, space and facilities management, as well as capital projects, including completion of the Ian J. Strachan Conference Centre in Toronto and the Hamilton Hearing Centre in 2019. In addition, the team provides for the efficient delivery of administration services in support of Tribunal business operations, such as facility maintenance and repairs, office accommodations and moves, ergonomic furniture and equipment, asset management and surplus disposal, administration policies and guidelines, and the delivery of the general orientation program to new employees, Vice-Chairs and Members.

The Tribunal's commitment to the protection of physical health, well-being and security included ongoing investments in the Tribunal's EMS program in 2019, including a review and refresh of the business continuity framework, knowledge management and retention initiatives, as well as facility enhancements.

Finance Department

The Finance Department is responsible for the Tribunal's finances and is led by the Manager, Financial Management and Controllershship. The Department provides financial, budgetary and purchasing and procurement support, as well as 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 maintaining the Tribunal's financial systems; planning and developing the annual budget; producing and distributing monthly, quarterly, and annual financial reports to senior management and the Ministry of Labour, Training and Skills Development; planning and directing the financial audit; and preparing and completing the annual audited financial statements. The Department is also responsible for designing, implementing and maintaining 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 the Counsel to the Tribunal Chair, it is a small expert legal department which is separate from the Tribunal Counsel Office (TCO). The Tribunal's Publications Counsel is also a member of OCC.

OCC Lawyers

Draft review is one of the Tribunal's processes for fostering the quality, consistency and coherence of its decisions. The review process is the responsibility of the Counsel to the Chair and the Associate Counsels to the Chair, and is conducted in accordance with natural justice principles and the Tribunal's Guidelines for Review of Draft Decisions. Drafts referred by adjudicators are reviewed against the Tribunal's Hallmarks of Decision Quality. The Draft Review Guidelines and the Hallmarks are found in Appendices A and B of the *WSIAT Members' Code of Conduct*. 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 matters.

In 2019, the reconsideration process continued to be a priority. 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 delays in reconsideration assignments. By the end of 2018, the project was completed, the backlog in assignment reviews had been eliminated and assignments were being reviewed on a current basis. The progress made in 2017 and 2018 was consolidated in 2019; assignments were reviewed on a current basis throughout the year.

Another continuing priority was orientation training for newer Order in Council (OIC) appointees to support them in their role as expert decision-makers. This included updating the orientation materials for use by new OICs and in anticipation of further OIC appointments. OCC lawyers provided orientation training to one new Vice-Chair in 2019 and follow-up orientation training was provided to OICs in their first and second term appointments. An ongoing priority for OCC is professional development of staff and OICs, which ensure they are apprised of statutory and policy amendments, as well as developing case law from the Tribunal and the Courts. 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 also 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 2019, the Tribunal released 2,895 decisions (final, interim, special section and reconsideration). The Publications Counsel processed 3,199 decisions from late 2018 and 2019, of which he wrote summaries for 1,165. These decisions form part of the 83,850 decisions released since the Tribunal's creation in 1985. Given the reduction in the number of released decisions in 2019, Publications Counsel was able to increase significantly the percentage of summaries over last year from 31 percent to 36.5 percent, and to reduce significantly the interval between the release of a decision and its addition to the Tribunal's database from two months to five weeks.

All Tribunal decisions are published and available free of charge through the Tribunal's searchable databases on its 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 and the Thomson Reuters (WestlawNext Canada) website.

Since 2010, the Tribunal has also identified 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. OVCR 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

In 2019, Martha Keil stepped down as Vice-Chair Registrar after many years of dedicated service. The OVCR welcomed Joanna Smith, who now lends her expert adjudicative advice to the role.

The Vice-Chair Registrar provides adjudicative advice to OVCR staff and may make rulings on preliminary and pre-hearing matters such as hearing format, 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.

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

The Alternative Dispute Resolution Department

The Alternative Dispute Resolution (ADR) Department delivers the Tribunal's Early Intervention Program (EIP), which consists of a Lead, Dispute Resolution Officers (DROs) and Vice-Chairs selected by the Chair. The DROs are trained in communication and conflict resolution and review all incoming Notices of Appeal to determine if they are complete and identify any jurisdictional or evidentiary issues that would prevent the Tribunal from deciding a case. After initial review, DROs 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 parties through the EIP in an attempt to resolve the issues on appeal without a formal hearing, to simplify multi-issue appeals prior to proceeding to a hearing or to discuss significant challenges with the case, such as the absence of evidence or an alternative course of action. Where suitable, ADR services offered may include a formal mediation held by a staff Mediator or EIP Vice-Chair. Agreements reached by the parties that are supported by the evidence and consistent with law and Board policy are incorporated into a decision of the Tribunal. Issues that remain in dispute following ADR services are resolved by way of a hearing.

The focus for this department in 2019 was to refine and document the EIP processes and procedures. The department plans to create a new Practice Direction regarding the EIP and update existing Practice Directions in 2020. Results of the program to date have shown that substantive discussions with the parties early in the process may resolve a proportion of cases without the need for an oral hearing.

Intake Services

In 2019, the Support Services group merged with the Early Review department to create Intake Services.

Support Services is comprised of three areas: Records, Mail Room and the Print Shop. Combined, they provide operational support including records services, mail, courier, scanning and print services to the Tribunal and other agencies under the Shared Services Agreement (SSA). Records staff open and close all of the Tribunal's cases, order and receive files from the Workplace Safety and Insurance Board (Board), monitor aspects of Records and

Information Management (RIM) for the Tribunal and liaise with the Board to resolve issues relating to records.

The Early Review group is responsible for the initial processing of all appeals that proceed to hearing as well as 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. Staff in this group also monitor and manage the Tribunal's dormant caseload.

Together, these units provide Intake Services for the Tribunal.

In 2019, Intake Services processed 2,383 new cases and were instrumental in testing the Tribunal's ability to provide parties with electronic case records. In addition, they provided support to the Library by scanning a number of collections for preservation and access purposes.

Vice-Chair Registrar Teams

Pre-hearing Work

Before cases are released to the Tribunal's Scheduling Department, they are substantively reviewed to confirm the hearing format and ensure they are ready for a hearing. In 2019, the Tribunal continued to offer hearings via video conference for 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. Complex cases and appeals involving self-represented workers are assigned to senior legal workers.

In 2019, the legal workers continued to work on the speed of appeals. Legal workers reviewed and released 1,896 cases to the Scheduling Department.

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 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.

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

This department includes the Registrar Information Centre (RIC), the Tribunal's Call Centre and Reconsideration Services. 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.

Staff in the Appeal Services department also monitor 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.

In 2019, the Call Centre responded to over 12,000 telephone inquiries and the Tribunal received 208 applications for reconsideration of Tribunal decisions.

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 Tribunal's General Counsel and TCO Lawyers provide legal assistance with respect to both appeal and non-appeal related issues. All of the Tribunal's litigation is also managed by the Tribunal's 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 prehearing. 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 posthearing 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, 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 and post hearing. The General Counsel and TCO Lawyers also provide legal assistance with respect to general legal and procedural matters and projects pertaining to the Tribunal's appeals process.

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 Tribunal-related 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.

Information about the role of TCO lawyers can be found in the new *Practice Direction: The Role of Tribunal Counsel Office Lawyers in Appeals and Applications before the Tribunal*.

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 Coordinator, TCO Administrative Services, TCO support staff provide important support in relation to the medical and legal work of TCO, including litigation.

Medical Liaison Office

Medical issues arise in the majority of WSIAT appeals. In many appeals, the medical issues arising are relatively straightforward. However, in some appeals, the medical issues arising are quite complex. The Medical Liaison Office (MLO) plays a central role in providing assistance in relation to medical issues that arise in WSIAT appeals.

Some of the assistance that MLO provides includes:

- Providing guidance and direction to WSIAT staff with respect to medical issues arising in WSIAT appeals.

- Coordinating the WSIAT-initiated assistance obtained from the WSIAT's Medical Counsellors and Medical Assessors.
- Overseeing the creation and review of the WSIAT's Medical Discussion papers.
- Leading and supporting medically focused educational activities for WSIAT staff and adjudicators.

MLO is overseen by the Manager of MLO, who is assisted by MLO Officers.

More information about MLO and the roles of the WSIAT's Medical Counsellors and Medical Assessors can be found in the WSIAT guide *WSIAT-Initiated Assistance for Medical Issues*, which is available on the WSIAT's external website.

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 scheduling of hearing dates for oral hearings, mediations and video conference hearings. Sitting dates are also assigned for written appeals and reconsideration requests. The Tribunal conducts hearings in both English and French. The case volume in the Department decreased in 2019 and the focus continued to be on the reduction of the wait time to hearing in all regional hearing centers. The Tribunal schedules hearings in Hamilton, Kitchener, London, Oshawa, Ottawa, Sault Ste. Marie, Sudbury, Thunder Bay, Timmins, Toronto and Windsor. Hearing targets are set on a quarterly basis. Targets for the regional hearing centers and for written appeals are based on incoming appeal volumes and projections and adjudicative capacity. Adjudicative resources are allocated as needed based on appeal volumes.

The Tribunal opened its Hamilton Hearing Centre in January 2019. The Hamilton facility allowed the Tribunal to significantly reduce the volume of appeals and the wait time to hearing. It also provided a convenient and accessible location for parties in Hamilton and the surrounding area.

The Department uses a long-standing scheduling model that allows for consultation with parties in the setting of hearing dates. In addition to scheduling hearings, staff also secure interpreter services, regional boardrooms and service of summonses, schedule pre-hearing conferences, and facilitate accessibility needs of the parties to allow for full participation in hearings. Pre-hearing adjournment requests are decided by the Manager, Scheduling Administration. 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

The Tribunal's Information and Technology Services (ITS) Department provides and supports the information technology infrastructure and the information systems for the Tribunal. The main service lines within the department include: 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 OWTL is a shared resource of the Workplace Safety and Insurance Appeals Tribunal, 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

OWTL collections function as a regulatory archive, preserving and making available the client tribunals' decisions, superseded versions of relevant statutes, regulations, rules and policies, and 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 2019, OWTL staff answered over 723 reference questions concerning workplace safety, worker's 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, workers' compensation, legislative research, and searching the WSIAT decision database. Staff also administered the transfer of Tribunal decisions to legal vendors such as CanLII, LexisNexis and Thomson Reuters.

A print collection reduction project was undertaken with over 2,870 workers' compensation resource documents digitized. The OLRB collection was expanded with 550 new bargaining union certificates added to the existing collection of 36,000 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 2019 the Tribunal's translation staff produced 484 official translations, which totaled 334,000 English words. Translation staff also produced official French translations of decision documents, correspondence to appellants and representatives, web pages, decision summaries as well as official policy and business documents as required in day-to-day operations.

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

Systems Technology

This team develops, supports and protects the Tribunal's computing infrastructure. Throughout 2019, the team ensured that all information technology systems and services operated effectively, and that all digital activities were constantly monitored by the Tribunal's early warning network and intrusion detection/prevention systems. A number of technology procurements and equipment upgrades were acquired, including the upgrade to the Wi-Fi network to provide site-wide access for staff, OICs and guests to the Tribunal; the upgrade of the internet bandwidth in support of remote computing, video conferencing and Wi-Fi access requirements; the enrolment with the Ontario Public Service's email sanitation, advanced threat protection, and external email banner services via Microsoft Exchange Online Protection gateway; the expanded use of video conferences for hearings, as well as for other functional purposes such as virtual presence meetings and webcasting; the building of a large conference centre complete with robust audiovisual equipment; the replacement of eight multi-function floor printers; and the computer room service and maintenance contract renewal.

Database and Application Development

In 2019, the software development team made numerous upgrades and improvements to the Tribunal's websites, portals and case management software systems. As in prior years, the main focus of these efforts was to improve Tribunal workflow processing. Noteworthy projects in this regard were making modifications that facilitate the electronic distribution of case materials to designated parties; providing adjudicators with online access to hearing materials; facilitating online entry of hearing completion information by Tribunal Vice-Chairs; and, improving the Tribunal's "mission critical" backup workflow process.

User Support Services

Information and Technology Services staff ensure that information technology resources and services are available to all of the Tribunal's OICs and employees. As part of their regular duties, technicians provide access privileges, create and manage permissions profiles for applications and shared folders, and manage the Tribunal's information backup protocols. Staff also conduct new user orientation and topical seminars for adjudicators and staff. They partner with service providers to ensure that internet sites are effectively hosted, incoming email are effectively routed and filtered, and the Tribunal's computer room protection equipment is continually monitored and serviced at regular quarterly and annual service intervals.

In 2019, the ITS Department's regular hours of business were supplemented by four pre-scheduled weekend shutdowns when software patches and software updates were applied.

The ITS Department maintains a comprehensive IT Help Request service. This service is accessed electronically by staff and OICs from any computer workstation at the Tribunal and from any Tribunal-configured remote connection. In 2019, through this service, the Department handled on average 565 support service requests each month, including software application support, equipment servicing, network account management, equipment booking and room equipment.

In 2019, the statistical support technicians provided regular feedback to individuals, teams and the senior management team regarding caseload intake, caseload movement and productivity. As in previous years, they compiled and distributed statistical reports according to weekly, monthly and quarterly schedules.

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 2019, there were 3,927 cases within these two process stages. This total was 20 per cent lower than the total at the end of Year 2018. Chart 1 provides the Year 2019 caseload breakdown by processing stage, and Chart 2 shows how the Year 2019 volume compares with previous year-end volumes.

Incoming Appeals

The incoming caseload trend is shown in Chart 3. In 2019 the Tribunal's overall intake from new appeals and reactivations totaled 2,658, which represented a total decrease of 8 percent as compared with the 2018 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

CHART 1: Cases in Process December 31, 2019*

Preliminary (Notice of Appeal Stage)	1,576
Early Review Stage	48
Substantive Review	530
Hearing Ready	88
Scheduling and Post-hearing	1,229
WSIAT Decision Writing	456
	3,927

* Unlike previous years, this year we include both active and dormant cases in Chart 1. In previous years, we included dormant cases in a later section of the report.

CHART 2: Historical Comparison of Cases in Process

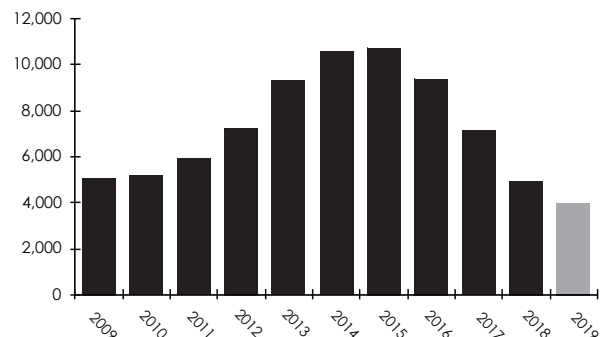
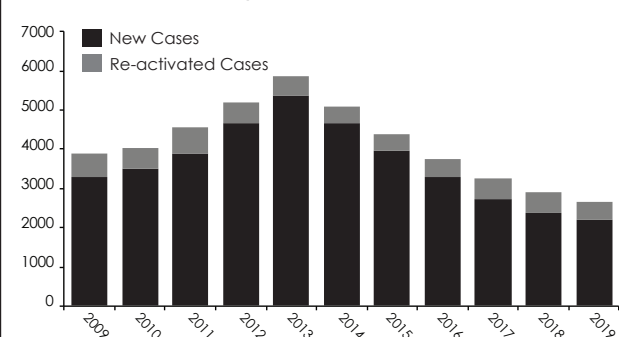


CHART 3: Incoming Cases



the Board or sought new representation. New appeals to the Tribunal are appeals of final decisions made by 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 include telephone discussions regarding issue agendas and evidence, and file reviews for jurisdiction issues or compliance with time limits. These methods are used primarily during the prehearing stage.

As shown in Chart 4, the Tribunal disposed of 3,635 cases in 2019. This included 951 "pre-hearing" and 2,684 "hearing" dispositions.

CHART 4: Cases Disposed of in 2019

Pre-hearing Dispositions

Made Inactive	425
Withdrawn	526
	951

Hearing Dispositions

Made Inactive	89
Withdrawn	26
Final Decisions	2,569
	2,684

TOTAL 3,635

Appeal Issues

Chart 5 shows the percentage breakdown of issues among the cases disposed of in Year 2019.

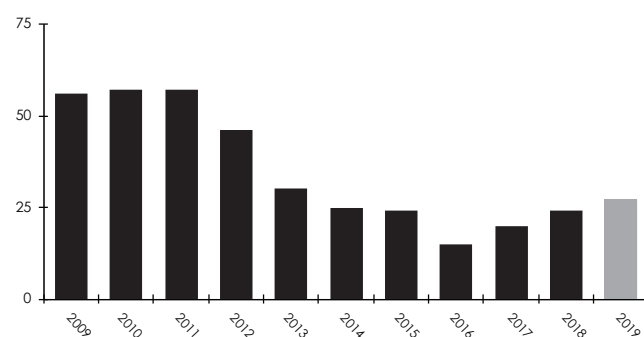
CHART 5: Issues in Dispositions

Loss of Earnings (LOE)	23%
Non-economic Loss (NEL) and NEL Quantum	14%
New Area of Injury	10%
Initial Entitlement	9%
Work Transition	7%
Ongoing Entitlement	6%
Health Care Benefits	5%
Other	4%
Psychotraumatic Disability	4%
Chronic Pain	4%
Recurrence	3%
Second Injury Enhancement Fund (SIEF)	3%
Permanent Disability (PD) and PD Quantum	2%
Labour Market Re-entry and Early and Safe Return to Work	1%
Future Economic Loss (FEL)	1%
Occupational Disease	1%
Mental Stress	1%
Earning Basis	1%
Supplementary Benefits	1%
Temporary Total Disability	1%

Timeliness of Appeal Processing

Chart 6 illustrates the Tribunal's performance in terms of time frame for completing cases. The time frame begins when the appellant confirms readiness to

CHART 6: Percent Disposed of Within 9 Months



proceed to a hearing and ends when the case is disposed. In 2019, the percent of cases resolved within 9 months was higher than it was in 2018. (In 2019, 28 percent of cases were resolved within 9 months, compared to 24 percent in 2018.)

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 in 2019 was shorter than it was in year 2018 (9.7 months in 2019, compared to 10.9 months in 2018).

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 2019, this target was achieved 87 percent of the time.

Hearing and Decision Activity

In 2019 the Tribunal conducted 2,587 hearings and issued 2,685 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 subsequent hearings before the same or different Vice-Chairs or Panels. Most cases require only a single hearing. Chart 9 depicts the Tribunal's decision production.

Hearing Type

In 2019 the percentage breakdown of hearing types was as follows. Oral hearings continued to be the most common hearing type at 69 percent, followed by written hearings at

CHART 7: Time to First Offered Hearing (Months)

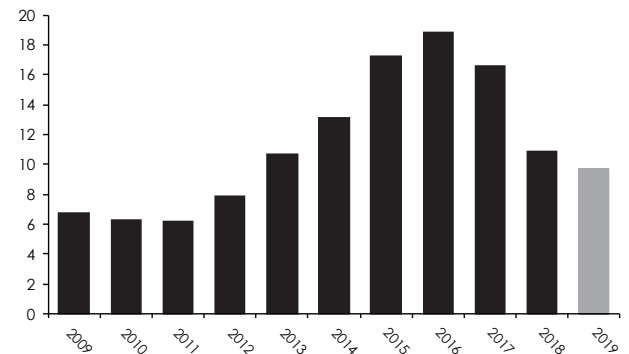


CHART 8: Final Decisions (Percent Released Within 120 Days)

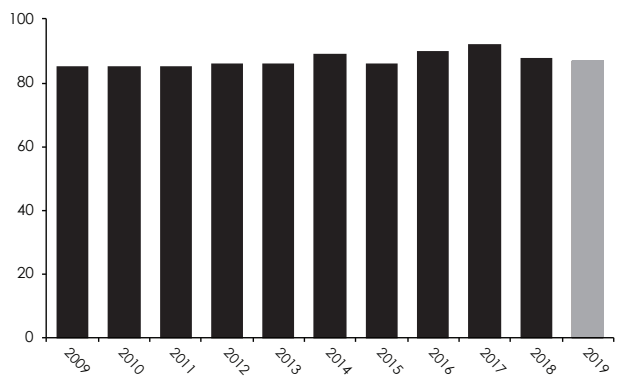
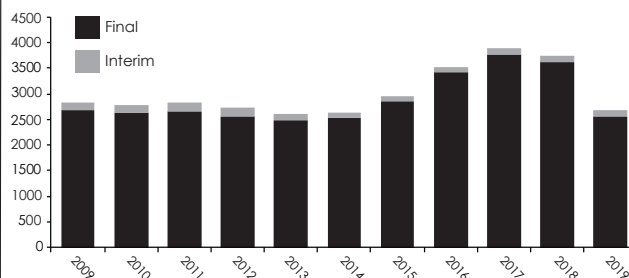
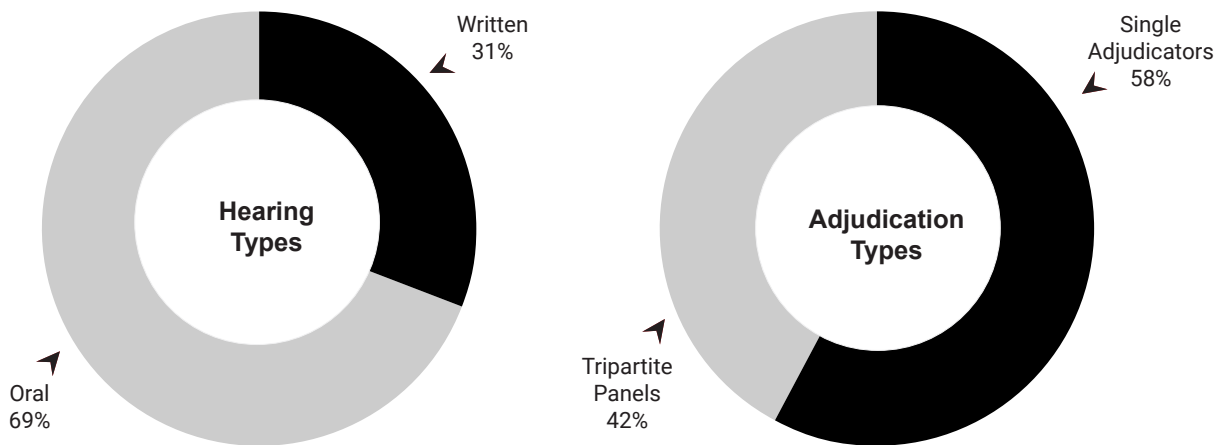


CHART 9: Decisions Trend



31 percent. 58 percent were decided by single adjudicators and 42 percent by tripartite hearing panels.

CHART 10: Hearing and Adjudication Types



Representation at Hearing

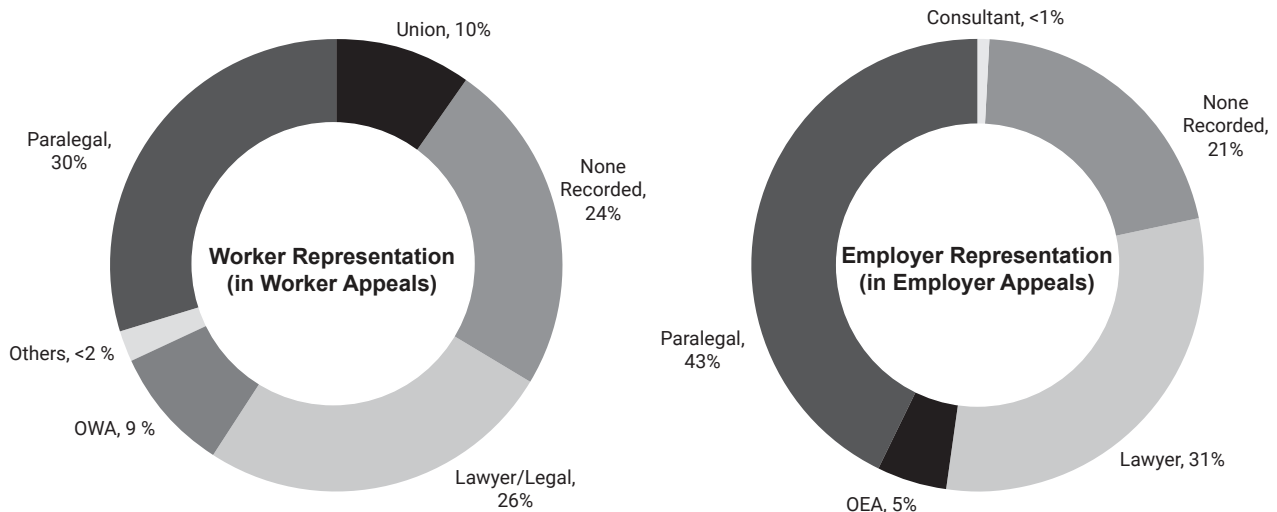
Tribunal statistics show that for injured workers, 30 percent were represented by paralegals; 26 percent by lawyers and legal aid; 9 percent by the Office of the Worker Advisor; and, 10 percent by union representatives. The remaining percentage is allocated among various non-categorized representatives, such as family friends, family members or MPP offices. Employers were represented before the Tribunal

as follows: 43 percent were represented by paralegals; 31 percent were represented by lawyers; 5 percent by the Office of the Employer Advisor; 1 percent by consultants. The remaining 21 percent are non-categorized.

Caseload by General Appeal Issue

In 2019, entitlement-related cases constituted the majority of cases (94 to 96 percent). Special section cases (right to sue and access)

CHART 11: Worker and Employer Representation



comprised typically small portions (4 to 6 percent). Charts 12 and 13 provide historical comparisons of incoming cases and cases disposed of in 2019.

Inactive Cases

At the Tribunal there are a number of cases described as 'inactive'. Cases are placed in the inactive category by request of the appellant or by a Tribunal Vice-Chair or Panel. 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 2019, the number of inactive cases decreased to 975 from 1,172.

CHART 12: Incoming Cases by Appeal Type

TYPE	2016		2017		2018		2019	
	No.	(%)	No.	(%)	No.	(%)	No.	(%)
Leave	0	0.0%	0	0.0%	0	0.0%	0	0.0%
Right to Sue	66	1.8%	62	1.9%	60	2.1%	47	1.8%
Medical Exam	0	0.0%	0	0.0%	0	0.0%	0	0.0%
Access	55	1.5%	97	3.0%	108	3.7%	112	4.2%
Total Special Section	121	3.3%	159	4.9%	168	5.8%	159	6.0%
Preliminary (not yet specified)	63	1.7%	24	0.7%	99	3.4%	22	0.8%
Pension	1	0.0%	21	0.6%	13	0.4%	11	0.4%
NEL/FEL	34	0.9%	213	6.6%	125	4.3%	70	2.6%
Commutation	0	0.0%	0	0.0%	0	0.0%	1	0.0%
Employer Assessment	88	2.3%	244	7.5%	178	6.2%	175	6.6%
Entitlement	3294	87.8%	2439	75.3%	2180	75.4%	2121	79.8%
Time Extension	125	3.3%	124	3.8%	117	4.0%	90	3.4%
Time Limit Jurisdiction	0	0.0%	2	0.1%	2	0.1%	0	0.0%
Reinstatement	0	0.0%	0	0.0%	0	0.0%	0	0.0%
Vocational Rehabilitation	2	0.1%	4	0.1%	0	0.0%	1	0.0%
Employer Classification	10	0.3%	9	0.3%	6	0.2%	8	0.3%
NEER Interest	0	0.0%	1	0.0%	1	0.0%	0	0.0%
Total Entitlement-related	3617	96.4%	3081	95.1%	2721	94.2%	2499	94.0%
Jurisdiction	14	0.4%	0	0.0%	1	0.0%	0	0.0%
	<u>3752</u>		<u>3240</u>		<u>2890</u>		<u>2658</u>	

This chart excludes the Tribunal's post-decision workload, such as requests for reconsiderations, Ombudsman investigations and judicial reviews.

CHART 13: Dispositions by Appeal Type

	2016		2017		2018		2019	
	No.	(%)	No.	(%)	No.	(%)	No.	(%)
Leave	0	0.0%	0	0.0%	0	0.0%	0	0.0%
Right to Sue	72	1.4%	76	1.4%	69	1.3%	62	1.7%
Medical Exam	0	0.0%	0	0.0%	0	0.0%	0	0.0%
Access	46	0.9%	79	1.4%	112	2.2%	84	2.3%
Total Special Section	118	2.3%	155	2.8%	181	3.5%	146	4.0%
Preliminary (not yet specified)	23	0.5%	16	0.3%	27	0.5%	20	0.6%
Pension	0	0.0%	0	0.0%	9	0.2%	20	0.6%
NEL/FEL	5	0.1%	43	0.8%	152	2.9%	146	4.0%
Commutation	2	0.0%	0	0.0%	0	0.0%	0	0.0%
Employer Assessment	299	5.9%	146	2.7%	218	4.2%	164	4.5%
Entitlement	4441	87.7%	4974	91.1%	4436	86.0%	3026	83.2%
Time Extension	162	3.2%	121	2.2%	124	2.4%	103	2.8%
Time Limit Jurisdiction	0	0.0%	0	0.0%	1	0.0%	2	0.1%
Reinstatement	0	0.0%	0	0.0%	0	0.0%	0	0.0%
Vocational Rehabilitation	1	0.0%	1	0.0%	2	0.0%	3	0.1%
Employer Classification	0	0.0%	4	0.1%	9	0.2%	5	0.1%
NEER Interest	0	0.0%	1	0.0%	0	0.0%	0	0.0%
Total Entitlement-related	4933	97.4%	5306	97.2%	4978	96.5%	3489	96.0%
Jurisdiction	15	0.3%	0	0.0%	1	0.0%	0	0.0%
	<u>5066</u>		<u>5461</u>		<u>5159</u>		<u>3635</u>	

This chart excludes the Tribunal's post-decision components of workload, such as requests for reconsiderations, Ombudsman investigations and judicial reviews.

Post decision Workload

The post-decision workload is derived from three sources: Ombudsman follow-ups,

reconsideration requests and judicial reviews. The post-decision workload is predominantly driven by reconsideration requests. In Year 2019, 212 reconsideration requests were received.

CHART 14: Reconsideration Requests, Activity and Inventory Summary

Pre-reconsideration Inquiries Remaining	21
Reconsideration Requests Received	212
Reconsideration Requests Resolved	197
Reconsiderations Remaining	146

FINANCIAL MATTERS

A Statement of Expenditures and Variances for the year ended December 31, 2019 (Chart 15) is shown below.

CHART 15: Statement of Expenditures and Variances for the Year Ending December 31, 2019 (in \$000s)

	2019 Budget	2019 Actuals	VARIANCE	
			\$	%
OPERATING EXPENSES				
Salaries and Wages	11 272	13 610	(2 338)	(20,7)
Employee Benefits	2 427	3 038	(611)	(25,2)
OTHER DIRECT OPERATING EXPENSES				
Transportation and Communication	909	831	78	8,5
Services	6 666	7 165	(499)	(7,5)
Supplies and Equipment	418	630	(212)	(50,7)
Total Other Direct Operating Expenditures	7 993	8 626	(633)	(7,9)
Total - WSIAT	21 692	25 274	(3 582)	(16,5)
Services - WSIB	530	555	(25)	(4,6)
Interest Revenue	0	(42)	42	n/a
TOTAL OPERATING EXPENSES	22 222	25 787	(3 565)	(16,0)
ONE-TIME EXPENSES				
Severance Payment	50	160	(110)	(219,8)
CRA 2010-2014 CPP & EI Re-Assessment	0	0	0	n/a
Active Caseload Reduction	6 950	0	6 950	100,0
TOTAL EXPENDITURES	29 222	25 947	3 275	11,2

Note:

The above 2019 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 (\$63) is comprised of the following:

CAPITAL FUND

Amortization	442	
Fixed Assets acquired	(165)	277

OPERATING FUND

Accrued Severance, Vacation Benefits, & HCSA	(175)	
Prepaid Expenses	(39)	(214)
		<u>63</u>

The accounting firm of Deloitte LLP has completed a financial audit on the Tribunal's financial statements for the year ended December 31, 2019. The Independent Auditor's Report is included as Appendix B.

APPENDIX A

VICE-CHAIRS AND MEMBERS IN 2019

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	Term end date	Annual Remuneration ¹
Chair			
McCutcheon, Rosemarie	August 16, 2019	February 15, 2020	\$161,726.82 ²
Vice-Chairs			
Baker, Andrew	June 28, 2006	December 31, 2020	\$155,750.28
Basa, Rosemary	February 18, 2016	February 7, 2020	\$136,259.17
Crystal, Melvin	May 3, 2000	May 2, 2022	\$155,750.28
Dee, Garth	June 17, 2009	February 18, 2022	\$154,026.04
Dimovski, Jim	November 19, 2014	February 23, 2021	\$146,004.68
Huras, Christina	February 10, 2016	August 28, 2021	\$135,184.95 ³
Iima, Katherine	January 7, 2015	February 20, 2020	\$136,259.17
Jepson, Kenneth	December 10, 2014	August 28, 2021	\$122,050.98 ³
Kalvin, Bernard	October 20, 2004	May 31, 2021	\$151,712.15
Keil, Martha	February 16, 1994	February 17, 2022	\$155,750.28
McCutcheon, Rosemarie	October 6, 1999	October 5, 2020	\$161,726.82 ²
Patterson, Angus	June 13, 2007	March 31, 2021	\$155,750.28
Perryman, Natalie	January 7, 2015	February 7, 2020	\$118,455.59
Petrykowski, Luke	October 3, 2012	December 31, 2021	\$146,004.68
Shime, Sandra	July 15, 2009	December 13, 2020	\$146,004.68
Smith, Joanna	August 28, 2013	December 31, 2021	\$146,004.68
Woodrow, Rebecca	June 22, 2016	February 20, 2020	\$136,259.17
Members representative of employers			
Christie, Mary	May 2, 2001	May 16, 2022	\$126,008.54
Sacco, Carmine	February 21, 2018	February 20, 2020	\$110,250.52
Thomson, David	May 18, 2017	May 17, 2022	\$114,796.36

¹ Not including expenses.

² Annual remuneration reflects both Chair and Vice-Chair appointment during 2019.

³ Annual remuneration reflects both part-time and full-time Vice-Chair appointment during 2019.

Full-time	Initial appointment	Term end date	Annual Remuneration
-----------	---------------------	---------------	---------------------

Members representative of workers

Ferrari, Mary	July 15, 2005	December 31, 2021	\$118,130.12
Hoskin, Kelly	June 13, 2007	September 30, 2020	\$126,008.54
Kosny, Agnieszka	January 8, 2018	January 7, 2020	\$110,250.52

Part-time	Initial appointment	Term end date	Annual Remuneration
-----------	---------------------	---------------	---------------------

Vice-Chairs

Allen, Paul	February 24, 2016	February 23, 2021	\$150,058.84
Brossard, Liane	February 21, 2018	February 20, 2020	\$8,077.00
Cappell, Barbara	February 24, 2016	February 23, 2021	\$88,983.93
Evans, Katharine	October 4, 2017	October 3, 2022	\$74,289.70
Frenschkowski, JoAnne	March 4, 2013	March 3, 2023	\$54,982.70
Gehrke, Linda	November 4, 2015	November 3, 2020	\$102,611.39
Hale, Donald	January 15, 2016	January 14, 2021	\$63,040.00
Hoare, Rhea	October 26, 2016	October 30, 2021	\$96,104.48
Hodis, Sonja	July 15, 2009	August 12, 2020	\$64,188.52
Horne, Ronald	May 10, 2017	May 9, 2022	\$66,684.50
Illion, Brian	July 11, 2017	July 10, 2020	\$0.00
Jacques, Karen	February 15, 2017	February 20, 2022	\$16,682.96
Kosmidis, Elizabeth	June 17, 2015	June 16, 2020	\$105,413.71
MacAdam, Colin	May 4, 2005	December 31, 2019	\$78,944.81
Mackenzie, Ian	October 9, 2013	October 30, 2023	\$87,862.00
Marafioti, Victor	March 11, 1987	February 20, 2021	\$124,380.88
McBey, Donald	June 22, 2016	December 31, 2019	\$115,209.55
McCaffrey, Grant	July 22, 2015	July 21, 2020	\$79,669.76
McGarvey, Matthew	July 22, 2015	July 22, 2020	\$14,775.00
McLoughlin, Michael	August 29, 2019	August 28, 2021	\$18,715.00
Mitchinson, Tom	November 10, 2005	November 9, 2020	\$87,369.50
Nairn, Rob	April 29, 1999	December 31, 2020	\$156,477.11
Onen, Zeynep	November 4, 2015	November 3, 2020	\$101,236.34
Peckover, Susan	October 20, 2004	October 19, 2020	\$96,431.50
Pollock, Bruce	February 15, 2017	February 20, 2022	\$63,110.92
Ramsay, Christopher	May 18, 2016	December 31, 2021	\$147,424.95
Revington, Dan	January 8, 2018	January 7, 2020	\$44,984.95
Salisbury, Robert	February 2, 2017	February 20, 2022	\$58,478.46
Samaras, Constantine	November 1, 2017	October 31, 2020	\$7,683.00

Part-time	Initial appointment	Term end date	Annual Remuneration
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Vice-Chairs (continued)

Smith, Eleanor	February 1, 2000	October 30, 2020	\$63,740.34
Somerville, Ann	October 4, 2017	October 3, 2022	\$66,171.32
Sutton, Wendy	May 27, 2009	July 8, 2020	\$36,796.65
Wales, Shirley	February 15, 2017	February 20, 2020	\$0.00
Zehr, Chantelle	October 4, 2017	October 3, 2022	\$85,767.89
Zigler, Robert	March 12, 2018	March 11, 2020	\$27,383.00

Members representative of employers

Blogg, John	November 14, 2012	November 13, 2021	\$25,842.00
Boshcoff, Kenneth	January 8, 2018	January 7, 2020	\$29,205.00
Burkett, Gary	February 2, 2017	February 20, 2022	\$46,804.70
Davis, Bill	May 27, 2009	August 12, 2020	\$40,266.91
Falcone, Mena	October 21, 2015	October 20, 2020	\$45,017.00
Greenside, Patricia	January 8, 2018	January 7, 2020	\$47,200.00
Lipton, Mary	February 24, 2016	February 23, 2021	\$26,776.56
Ouellette, Richard	April 26, 2017	April 25, 2022	\$45,697.27
Sahay, Sonya	August 29, 2019	August 28, 2021	\$11,224.75
Soden, Kristen	October 18, 2017	October 17, 2022	\$48,406.55
Trudeau, Marcel	April 16, 2008	December 31, 2020	\$25,560.57
Watters, Michelle	March 7, 2018	March 6, 2020	\$13,894.50

Members representative of workers

Agnidis, Zoe	February 21, 2018	February 20, 2020	\$45,851.85
Broadbent, Dave	April 18, 2001	April 17, 2021	\$36,179.80
Carlino, Gerry	October 3, 2012	October 2, 2022	\$31,506.00
O'Connor, Sean	January 8, 2018	January 7, 2020	\$48,701.66
Pernal, Nicholas	January 8, 2018	January 7, 2020	\$0.00
Roth, Stephen	February 24, 2016	February 23, 2021	\$42,143.70
Salama, Claudine	October 3, 2012	October 2, 2022	\$56,238.80
Signoroni, Antonio	September 29, 2010	January 6, 2021	\$44,226.40
Thompson, James	April 5, 2017	April 4, 2022	\$42,049.30
Tzaferis, Mary	December 7, 2016	December 6, 2021	\$58,119.01

SENIOR STAFF

Guylaine Mageau.....	Senior Manager, Executive Services
Michelle Alton.....	Tribunal General Counsel
David Bestvater	Director, Information and Technology Services
Nicole Bisson.....	Director, Appeal Services
Wesley Lee.....	Manager, Financial Planning and Controllershship
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

APPENDIX B



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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, 2019, 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, 2019, 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.

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
March 4, 2020

WORKPLACE SAFETY AND INSURANCE APPEALS TRIBUNAL

Statement of Financial Position

As at December 31, 2019

	<u>2019</u>	<u>2018</u>
ASSETS		
CURRENT		
Cash	\$ 2,675,053	\$ 4,293,808
Due from Workplace Safety and Insurance Board	643,607	-
Prepaid expenses and advances	468,106	429,213
Recoverable expenses (Note 3)	212,561	221,028
	3,999,327	4,944,049
CAPITAL ASSETS (Note 4)	670,576	947,129
	\$ 4,669,903	\$ 5,891,178
LIABILITIES		
CURRENT		
Accounts payable and accrued liabilities	\$ 1,732,798	\$ 1,980,645
Due to Workplace Safety and Insurance Board	-	735,752
Accrued severance benefits and vacation credits	2,585,622	2,760,499
Operating advance from Workplace Safety and Insurance Board (Note 5)	1,800,000	1,800,000
	6,118,420	7,276,896
FUND BALANCES		
OPERATING FUND (Note 6)	(2,119,093)	(2,332,847)
CAPITAL FUND	670,576	947,129
	(1,448,517)	(1,385,718)
	\$ 4,669,903	\$ 5,891,178

APPROVED ON BEHALF OF WORKPLACE
 SAFETY AND INSURANCE APPEALS TRIBUNAL

.....  Chair

**WORKPLACE SAFETY AND INSURANCE
APPEALS TRIBUNAL
Statement of Operations
Year ended December 31, 2019**

	<u>2019</u>	<u>2018</u>
OPERATING EXPENSES		
Salaries and wages	\$ 13,609,832	\$ 13,718,402
Employee benefits (Note 7)	3,023,053	3,159,799
Transportation and communication	831,448	1,277,324
Services and supplies	7,590,572	10,002,684
Amortization	441,728	423,518
	25,496,633	28,581,727
Services - Workplace Safety and Insurance Board ("WSIB") (Note 8)	554,614	521,385
TOTAL OPERATING EXPENSES	26,051,247	29,103,112
BANK INTEREST INCOME	(41,672)	(25,479)
NET OPERATING EXPENSES	26,009,575	29,077,633
FUNDS RECEIVED AND RECEIVABLE FROM WSIB	(25,946,776)	(29,538,028)
ANNUAL SURPLUS	\$ 62,799	\$ (460,395)

WORKPLACE SAFETY AND INSURANCE APPEALS TRIBUNAL

Statement of Changes in Fund Balances

Year ended December 31, 2019

	<u>Capital</u>	<u>Operating</u>	<u>Total</u>
BALANCE - January 1, 2018	\$ 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)
Additions to capital assets	165,175	-	165,175
Amortization of capital assets	(441,728)	-	(441,728)
Severance benefits, vacation credits, and Health Care Spending Account (Note a)	-	174,877	174,877
Prepaid expenses (Note b)	-	38,877	38,877
Annual Surplus	(276,553)	213,754	(62,799)
BALANCE - DECEMBER 31, 2019	\$ 670,576	\$ (2,119,093)	\$ (1,448,517)

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, 2019**

	<u>2019</u>	<u>2018</u>
NET (OUTFLOW) INFLOW OF CASH RELATED TO THE FOLLOWING ACTIVITIES		
OPERATING		
Funding revenue received from Workplace Safety and Insurance Board	\$ 24,567,418	\$ 31,214,895
Cash receipts for recoverable expenses	936,190	1,029,717
Bank interest received	41,672	25,479
Expenses, recoverable expenses net of amortization of \$441,728 (2018 - \$423,518)	(26,998,860)	(30,411,208)
	(1,453,580)	1,858,883
CAPITAL		
Acquisition of capital assets	(165,175)	(785,711)
NET (DECREASE) INCREASE IN CASH	(1,618,755)	1,073,172
CASH, BEGINNING OF YEAR	4,293,808	3,220,636
CASH, END OF YEAR	\$ 2,675,053	\$ 4,293,808

WORKPLACE SAFETY AND INSURANCE APPEALS TRIBUNAL

Notes to the Financial Statements

December 31, 2019

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, 2019

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, 2019

3. RECOVERABLE EXPENSES

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

	<u>2019</u>	<u>2018</u>
Shared services		
Ontario Labour Relations Board	\$ 95,414	\$ 100,176
Pay Equity Hearings Tribunal	4,582	6,018
Secondments		
Office of the Worker Adviser	14,899	-
Others		
Canada Revenue Agency HST rebate receivable	83,727	101,900
Employee amounts receivable	1,599	-
Miscellaneous	12,340	12,934
Total	\$ 212,561	\$ 221,028

4. CAPITAL ASSETS

			<u>2019</u>	<u>2018</u>
	Cost	Accumulated Amortization	Net Book Value	Net Book Value
Leasehold Improvements	\$ 4,107,778	\$ 3,701,729	\$ 406,049	\$ 571,399
Furniture and Equipment	563,941	466,401	97,540	103,457
Computer Equipment and Software	841,752	674,765	166,987	272,273
	\$ 5,513,471	\$ 4,842,895	\$ 670,576	\$ 947,129

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 \$2,119,093 as of December 31, 2019 (2018 - \$2,332,847) 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, 2019

7. EMPLOYEE BENEFITS OBLIGATIONS

(a) Pension plan costs

Contributions by the Tribunal on account of pension costs amounted to \$1,209,260 (2018 - \$1,182,564) 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 2019 amounted to a decrease of \$154,914 (2018 - \$57,478) 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 2019 amounted to a decrease in the accrual of \$24,563 (2018 - \$78,531 increase) 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 their health benefits. Unused amounts can be carried forward for up to one year. The net HCSA accrued in 2019 amounted to an increase of \$4,600 (2018 - \$6,572 decrease) over the prior year and is 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, 2019

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:

2020	408,501
2021	392,651
2022	23,075
2023	6,734
2024	3,791
Minimum payments	\$ 834,752

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:

2020	1,784,333
2021	1,804,871
2022	1,847,605
2023	1,903,033
2024	1,960,124
Minimum operating lease payments	\$ 9,299,966

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