

2021 Annual Report



ENHANCING **ACCESS TO JUSTICE**
MOVING FORWARD **TOGETHER**



Workplace Safety and Insurance
Appeals Tribunal

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

WSIAT 2021

Annual Report

Workplace Safety and Insurance Appeals Tribunal
505 University Avenue, 7th floor, Toronto, ON M5G 2P2
www.wsiat.on.ca, ISSN: 1480-5707 © 2022

Introduction

The Workplace Safety and Insurance Appeals Tribunal (the WSIAT or Tribunal) is a specialized, independent adjudicative agency within the Ontario administrative justice system which has exclusive jurisdiction to hear appeals from final decisions of the Workplace Safety and Insurance Board (the WSIB or Board). The WSIAT also has exclusive and original jurisdiction to determine whether a right of action has been taken away and to decide other matters assigned to it under the *Workplace Safety and Insurance Act, 1997* (WSIA). The Workers' Compensation Appeals Tribunal was established in 1985, and was continued as the Workplace Safety and Insurance Appeals Tribunal pursuant to section 173 of the WSIA.

This volume contains the WSIAT's annual report to the Minister of Labour, Training and Skills Development and to the WSIAT's various constituencies, together with a report of the Tribunal Chair. It is primarily a report on the WSIAT's operations for fiscal year 2021 and comments on some matters which may be of special interest or concern to the Minister or the WSIAT's constituencies.

Mandate

The mandate of the Workplace Safety and Insurance Appeals Tribunal (WSIAT) is to hear and decide appeals from final decisions of the Workplace Safety and Insurance Board (WSIB) and such other matters as are assigned under the *Workplace Safety and Insurance Act, 1997*.

Mission Statement

As an adjudicative agency within the Ontario administrative justice system, the WSIAT seeks to provide quality adjudication in workplace safety and insurance appeals in accordance with the principles of natural justice on a fair and timely basis. Its legislative interpretations should provide workers, employers, the WSIB, government and the public with a well-reasoned commentary on legislation in the workplace safety and insurance system.

Guiding Principles

The guiding principles of the WSIAT are:

- an accessible appeals system;
- superior quality service to workers, employers and other stakeholders;
- knowledgeable and experienced decision-makers who can provide well-reasoned decisions;
- timely and efficient case processing;
- easy access to information about processes and compensation law; and
- effective and efficient co-ordination with workplace safety and insurance system partners in the administration of this system.

TABLE OF CONTENTS

Introduction	iii
Mandate, Mission Statement and Guiding Principles	iv
CHAIR'S REPORT	
Chair's Message	
Reflections on 2021	1
Stakeholder Initiatives	2
Stakeholder Feedback	3
Accessibility Survey	4
The WSIAT's Vision for 2022	5
In Conclusion: Thanks and Gratitude	6
WSIAT 2021 Production and Activity Highlights	7
Highlights of the 2021 Cases	8
Initial Entitlement	8
LOE Entitlement Issues	8
NEL Ratings	9
Interpretation of WSIB Policy	10
Chronic Mental Stress	12
Occupational Disease	13
Employer Issues	15
Right to Sue Applications	16
COVID-19 and Limitation Periods	17
Other Legal Issues	17
Applications for Judicial Review	19
Ombudsman Reviews	20
TRIBUNAL REPORT	
Tribunal Organization	22
Vice-Chairs, Members and Staff	22
Executive Services	22
Office of the Counsel to the Chair	26
Office of the Vice-Chair Registrar	27
Tribunal Counsel Office	28
Scheduling	29
Information and Technology Services	29
Caseload Processing	32
Introduction	32
Caseload Inventory	32
Post-decision Case Processing – Reconsideration Requests	41
Electronic Filing of Submissions	41
Financial Matters	42
Appendix A	43
Vice-Chairs and Members in 2021	43
Senior Staff	45
Medical Counsellors	45
Appendix B	46
Independent Auditor's Report and Financial Statements	46

CHAIR'S REPORT



CHAIR'S MESSAGE

Rosemarie McCutcheon

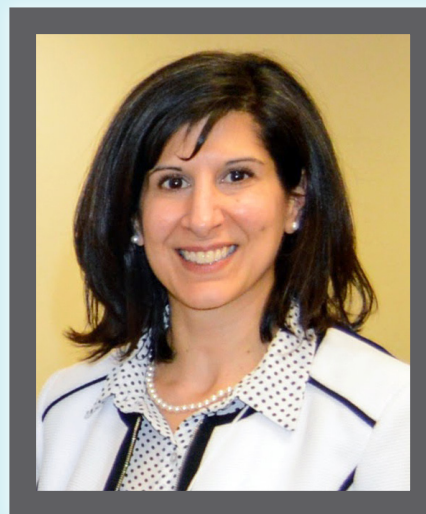
I am pleased to present the 2021 Annual Report of the Workplace Safety and Insurance Appeals Tribunal (WSIAT). 2021 was another challenging year, but also a year in which the WSIAT continued to adapt and innovate in response to the needs of our stakeholders.

Reflections on 2021

During the ongoing COVID-19 pandemic, the WSIAT has focused on keeping our staff, adjudicators, and stakeholders safe, while fulfilling our core mandate of timely access to justice and well-reasoned decisions. In 2021, in accordance with public health guidance, our staff primarily worked remotely and the WSIAT offered mainly remote virtual hearing methods.

In 2021, the WSIAT:

- reduced the wait time to hearing from 7.8 months to 6.3 months, in spite of a 41% increase in incoming appeals;
- issued 1,928 decisions, 92% of which were released within 120 days;
- launched the E-Share pilot project, and gathered feedback from the pilot project participants;
- received 11,083 documents by E-Filing and improved the E-Filing tool in response to stakeholder feedback;



“The gradual shift to the post-pandemic world offers an opportunity to craft a more deliberate and thoughtful approach to the future of justice at the WSIAT.”

Chair's Message

CHAIR'S REPORT

- safely conducted a small number of in-person hearings in cases which were not suitable for remote hearing methods;
- established the Diversity and Anti-Racism Office; and
- hosted the WSIAT's first Access to Justice Symposium in December 2021, which was attended by 194 participants.

The WSIAT has always been committed to excellence in providing access to justice, but the understanding of best practices is rapidly evolving. Accordingly, the WSIAT seeks to continually improve through a user-centric approach and a culture of responsiveness.

Stakeholder Initiatives

In 2021, the WSIAT maintained open lines of communication with stakeholders and fostered a culture of responsiveness through the following initiatives:

- 12 training sessions for representatives, which were attended by 500 participants;
- 3 stakeholder outreach sessions attended by approximately 440 participants;
- post-hearing surveys, which were made available on the WSIAT website;
- a stakeholder survey, which was launched in June 2021; and
- an accessibility survey, which was completed in October 2021.

We have received generally positive feedback about our stakeholder outreach and training sessions for representatives, and we intend to continue these initiatives into the future.

In 2021, the WSIAT responded to direct stakeholder feedback in a number of ways. Here are a few examples:

- The WSIAT has a decision database that has been in place since 1985. In early 2021 it was necessary to remove the decision database from the WSIAT website because it did not comply with standards set out in the *Accessibility for Ontarians with Disabilities Act, 2005* (AODA). However, after this action was taken, many stakeholders expressed their preference for performing legal research through the WSIAT's decision database. In response to this feedback, our Information Technology Services department worked tirelessly to develop a technological solution that complied with AODA standards and brought the decision search database back to the WSIAT website in July 2021.
- In September 2020 the WSIAT launched the E-Filing service. In response to stakeholder feedback we have worked to improve the service, including introducing an e-mail submission confirmation.
- Many stakeholders have expressed concern about removing facsimile (fax) as a means of communications with the WSIAT, noting that it may be the only means

of electronic communication in remote areas of the province. In response to this feedback, the WSIAT made the decision to retain fax as a mode of communication. However, we encourage professional representatives to shift to E-File and E-Share, as these are more modern modes of electronic transmission that produce better quality documents which are easier to read.

Stakeholder Feedback

The WSIAT regularly responds to comments and questions at our stakeholder outreach sessions.

In addition, the WSIAT stakeholder survey, launched in June 2021, sought feedback on remote hearing preferences, WSIAT stakeholder events, interest in remote hearings post pandemic, and the E-filing service.

We sent the survey to approximately 150 stakeholders and received 78 responses. Notable feedback included the following:

- Most respondents (67%) were able to work in a digital/paperless environment. Some respondents expressed their preference for working with paper files.
- Most respondents preferred videoconference hearings (49%) to teleconference hearings (18%), while approximately 21% had no preference.
- The main reason for preferring videoconference hearings is the ability to see the parties and the Vice-Chair or Panel ("read the room"), which can make it easier to interact and follow the proceedings.
- The main reasons for preferring a teleconference hearing over a videoconference hearing were the lack of technological knowledge and/or equipment. Holding a teleconference hearing resulted in reduced anxiety for participants who faced these barriers.
- 84% of respondents expressed an interest in participating in remote hearings after the COVID-19 health restrictions are lifted.
- Advantages of remote hearings included easier access to justice and less travel time; reduced anxiety/stress for some clients due to the ability to participate in the hearing in a familiar environment; efficiencies and cost savings; and avoiding stressful commutes, particularly in inclement weather.
- Reasons for preferring in-person hearings included the belief that remote hearings are less personal and cause parties to feel less supported, as well as technical difficulties that may disrupt the flow of proceedings.

A key takeaway from the survey is that many stakeholders have seen the significant benefits of remote hearings and working in a paperless environment, but one size does not fit all. The

WSIAT is mindful of this principle and seeks to provide services that are timely and individualized to the needs of our stakeholders.

Accessibility Survey

As a designated public sector organization under the *Accessibility for Ontarians with Disabilities Act, 2005*, the WSIAT has responsibilities to provide accessible services and consult with persons with disabilities. In support of the WSIAT's work providing access to justice and accessibility, the WSIAT sought feedback from stakeholders about various aspects of its adjudicative processes and resources.

The WSIAT received 105 responses to its accessibility survey. 61% of responses came from worker representatives; 29% from employer representatives; 6% from workers; and 3% from employers.

I am pleased to report that the WSIAT received largely positive feedback:

- Most respondents felt that the WSIAT staff responded in a timely manner.
- Most respondents felt that the WSIAT staff were polite, respectful, and helpful.
- Most respondents felt that the information on the WSIAT's website was easy to find and understand.
- Most respondents felt that remote hearings were easy to participate in and they did not face barriers to participating in a hearing.
- Most respondents who requested accommodation for a hearing felt their needs were met, or mostly met.

Positive comments included:

- "I am impressed by how responsive the staff at the Tribunal are and how approachable."
- "I think the WSIAT's customer service is fantastic! They are very helpful and candid about issues where they may not be able to provide an answer."
- "The WSIAT interactions with its stakeholders, employers, workers and advocates is exceptional in all aspects – professionalism, fairness, timeliness, courtesy and responsiveness."

The accessibility survey also identified opportunities for improvement. In response to a variety of questions, the barriers to accessing WSIAT services included:

- size restrictions on uploading documents through E-Filing;
- wait times for hearings;
- access to technology for remote hearings;

- technology issues during remote hearings;
- the need for plain language in WSIAT communications and forms;
- reluctance to request accommodations for disabilities due to fear of being perceived as difficult or being stigmatized.

A working group will be established in 2022 to carefully review the accessibility survey and quickly move to address areas where improvement is needed.

I was particularly concerned that any party or representative would hesitate to request an accommodation out of fear of being stigmatized. In 2022, I will personally ensure that the WSIAT clearly communicates its strong commitment to accommodating persons with disabilities; this is both a legal and a moral obligation.

The WSIAT's Vision for 2022

a) Innovate to Improve Timelines and Communication

Justice delayed is justice denied. This aphorism, though well worn, should be a guiding star to any adjudicative agency. The WSIAT has set a goal of processing appeals within a year from the time the appeal is filed to the release of the decision. In 2021, the WSIAT shortened the time to hearing even in the face of a 41% increase in incoming appeals. But we haven't reached our goal yet.

In 2022, the WSIAT will explore a new pre-hearing process that will eliminate the two-year dormant period upon filing appeals. The WSIAT also plans to launch pilot projects to expedite appeals in suitable cases and test a new scheduling model. The new pre-hearing process will be accompanied by new Practice Directions and forms that will undergo a plain language review to ensure they are understandable to the general reader.

We will collaborate with system partners, including the WSIB, to find ways to reduce overall wait times in the workplace safety and insurance system.

The WSIAT will also leverage advanced technological tools to improve efficiency in the best interest of our stakeholders.

b) Craft the Future of Administrative Justice

The COVID-19 pandemic necessitated rapid and major upheaval in how administrative agencies deliver access to justice. The response of the WSIAT, like many other adjudicative agencies, was guided by the ever-changing public health environment in which we operated. The gradual shift to the post-pandemic world offers an opportunity to craft a more deliberate and thoughtful approach to the future of justice at the WSIAT. We seek to keep the best of what we have gained during the pandemic, such as reduced travel time and cost savings, and also bring back what we have missed. To ensure that the WSIAT's post-

pandemic strategy is responsive to the needs of our stakeholders, we are launching focus groups and will seek feedback from stakeholders through surveys and other methods.

c) Promote Equity, Diversity, and Inclusion and Accessibility

The WSIAT is an adjudicative tribunal which focuses on its core mandate of timely access to justice and well-reasoned decisions in individual cases. The WSIAT also operates within the broader social environment of the diverse province of Ontario. In the province of Ontario, and around the world, the past two years have brought equity, diversity and inclusion to the forefront of our collective consciousness.

In this context, we are excited to announce the establishment of the Diversity and Anti-Racism Office, which will be responsible for establishing programs in support of the WSIAT's goal to build a diverse, inclusive, and accessible workplace that meets the needs of our diverse stakeholders.

In Conclusion: Thanks and Gratitude

The WSIAT is grateful for the continuing support of the Honourable Monte McNaughton, Minister of Labour, Training and Skills Development.

We thank our system partners and stakeholders for their co-operation. In order to achieve improvements for all stakeholders, we will continue to work with our system partners and stakeholders, including the WSIB, the Office of the Worker Adviser, the Office of the Employer Adviser, the Ontario Bar Association Workers' Compensation section, and all stakeholder groups.

Finally, it is important to recognize and thank the WSIAT's Order-in-Council (OIC) appointees, staff and the management team for their hard work over the past 12 months and their commitment to redouble their efforts to continue to deliver service excellence to our stakeholders despite the shifting changes of the ongoing pandemic. A special thanks to the staff who have worked onsite at the WSIAT's premises throughout the pandemic. These individuals include mailroom and support staff from the Office of the Vice-Chair Registrar, IT staff, and security personnel. Without their dedication, the WSIAT simply could not function. Our "Tribunal family" is deeply grateful for their commitment.

We look forward to continuing to work with you in 2022.



Rosemarie McCutcheon
Chair, Workplace Safety and Insurance Appeals Tribunal



WSIAT 2021 Production and Activity Highlights



699

Written
Hearings



5*

In-Person
Hearings



775

Videoconference
Hearings



730

Teleconference
Hearings



306

Resolved Cases



1,928

Final and Interim
Decisions Released



92%

Decisions Issued
in 120 Days



8,294

E-File
Submissions



HIGHLIGHTS OF THE 2021 CASES

This section reviews some of the many legal, factual and medical issues which the WSIAT considered in decisions released or summarized in 2021.

The WSIAT 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 Act have been amended a number of times since 1998. In addition, the WSIAT considers and applies policies adopted by the Workplace Safety and Insurance Board (WSIB). The substantive provisions and terminology contained in WSIB policies vary over time. This section uses the policy terms considered in the WSIAT decisions discussed.

Initial Entitlement

In order to be entitled to claim benefits, a claimant must:

- meet the definition of a “worker” under the WSIA;
- establish employment by an “employer” that was covered under the WSIA; and
- suffer a personal injury by accident under the WSIA.

Decision No. 571/21, 2021 ONWSIAT 638, found that a person injured on their first day of work while participating in a work trial was either a “worker” or alternatively a “learner” as defined under the WSIA and they were entitled to claim benefits under the WSIA.

Decision No. 306/19R3, 2021 ONWSIAT 956, examined whether the claimant was employed by an “employer” that was covered under the *Workers' Compensation Act* in force at the time of the workplace accident. Given that the claimed workplace accident occurred in 1949, this involved considering the principles of statutory interpretation in looking at the pre-1985 Act and concluding that the employer’s business fell within the type of businesses that were compulsorily covered.

LOE Entitlement Issues

The WSIA provides loss of earnings (LOE) benefits for workplace injuries. LOE benefits are reviewable on a material change in circumstances or annually at the WSIB’s discretion,

for 72 months following the accident. When the WSIA was initially enacted, LOE benefits generally could not be reviewed after 72 months unless certain limited exceptions applied; however, subsequent amendments to section 44 in 2002 and in 2007 added to the list of exceptions for review.

In *Decision No. 3503/18*, 2021 ONWSIAT 123, the worker's representative challenged section 44 of the WSIA and the fact that LOE benefits cannot generally be reviewed 72 months after the date of accident under the *Canadian Charter of Rights and Freedoms* (Charter). The Panel declined to hear the Charter challenge raised in this case. Due to the Supreme Court of Canada decision in *Nova Scotia (Workers' Compensation Board) v. Martin*, 2003 SCC 54, the constitutional remedies available to administrative tribunals are limited and do not include general declarations of invalidity to specific sections of an act. The interim decision, *Decision No. 3503/18I*, 2019 ONWSIAT 735, found that even if the worker's LOE benefits were reviewable after the 72-month limitation, the loss of earnings was not a result of his compensable injury. Thus, even if the Charter challenge was successful and the Panel found the 72-month limitation should not apply, the result in this case would not change. Accordingly, the Charter challenge was moot.

Decision No. 1218/21, 2021 ONWSIAT 1347, noted that a worker's dismissal from employment on its own would not entitle the worker to a review of his LOE entitlement after more than 72 months following the date of accident. However, once a basis to review the worker's LOE benefits after the 72-month date was established (in this case, a deterioration in the worker's compensable condition resulting in an increased non-economic loss (NEL) award), the factors surrounding the worker's termination were also examined.

NEL Ratings

The WSIA and the pre-1997 Act provide NEL benefits for permanent impairment. As mentioned in prior Annual Reports, NEL appeals often require the WSIAT 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).

In 2021, a number of WSIAT decisions analyzed the question of whether a NEL award should be reduced for a pre-existing condition which would not have resulted in a rating under the AMA Guides. In *Decision No. 60/21*, 2021 ONWSIAT 441, the WSIB had reduced a worker's NEL quantum by 10% due to pre-existing arthritis. The Vice-Chair found, however, that Table 40 of the AMA Guides, which is used to rate arthritis, ranges from zero to 20%. This meant that the proper rating would depend on the facts of the case and in some cases may be as low as zero. Given that the pre-existing arthritis was non-symptomatic or at most minimally symptomatic, *Decision No. 60/21* found a zero percent reduction for the pre-existing arthritis was appropriate. Similarly, *Decision No. 1358/20*, 2021 ONWSIAT 402, found that a worker's NEL award should not be reduced for pre-existing osteoarthritis in the knee as it would not have attracted a rating under the AMA Guides or WSIB policy as it was not symptomatic prior to the workplace accident.

A question which has arisen in a number of cases is whether a worker is entitled to a NEL award solely on the basis that pleural plaques have been discovered in the worker's lungs due to occupational exposure. *Decision No. 1591/21*, 2021 ONWSIAT 1811, noted that entitlement to permanent impairment awards for pleural plaques has been discussed in a number of WSIAT decisions and two lines of thought have emerged. The first line of thought concludes that once a determination has been made that there is a physical and permanent abnormality, a NEL award is in order. The second approach, however, is to grant a NEL award only when the physical abnormality causes a rateable breathing impairment. This second approach considers the effect of section 47(13) of the WSIA, which provides that a worker will be deemed not to have a permanent impairment where the degree of impairment is zero. *Decision No. 1591/21* found the second line of cases applying a two-part test was legally persuasive and in accordance with the AMA Guides. Section 47(13) was clear and unambiguous that there will be no deemed impairment where there is a zero rating. In this case, there was a rateable breathing impairment and a NEL award was granted.

An issue which has arisen in some NEL appeals is deciding whether the finding of the degree of permanent impairment can be determined by the health care information available on file or if an independent medical assessment is required under section 47(3) of the WSIA. *Decision No. 1502/20*, 2021 ONWSIAT 657, agreed that a medical assessment under section 47(3) may not be necessary before a NEL rating is determined; however, there must be sufficient medical evidence on file to adequately determine the degree of the worker's permanent impairment under the AMA Guides. In this instance, as the medical evidence was not sufficient, a further medical assessment under section 47(3) of the WSIA was required.

Interpretation of WSIB Policy

Subsection 126(1) of the WSIA states that if there is an applicable WSIB policy with respect to the subject matter of an appeal, the WSIAT shall apply it when making its decision. Section 126(2) provides that the WSIB is to notify the WSIAT of the applicable policy. Section 126(4) sets out a process for the WSIAT to refer policy back to the WSIB if the WSIAT concludes that the policy is inapplicable, unauthorized or inconsistent with the WSIA. Under section 126(8), the WSIB is then to issue a written direction with reasons. While section 126(4) referrals are rare, policy issues may arise in other circumstances; for example, it may be necessary for the WSIAT to interpret a WSIB policy or decide which version of a policy applies.

Decision No. 570/21, 2021 ONWSIAT 1206, considered a challenge under section 15 of the Charter to the definition of a "severely impaired" worker under the WSIB's independent living allowance (ILA) and personal care allowance (PCA) policies. In order to qualify for an ILA or PCA a worker must be "severely impaired." The worker submitted that the WSIB policies for ILAs and PCAs discriminated on the basis of disability because of the differential manner in which the policies defined a severely impaired worker based on whether the injury occurred before or after 1990. Workers injured prior to 1990 needed a permanent disability level of 100% for entitlement, while workers injured after 1990 needed a NEL of 60% in order to have entitlement under the policies. *Decision No. 570/21* found the definition of severe impairment

did not create a distinction between disabled workers and those who were not disabled, nor did it discriminate based on type of disability. The distinction in the policies was based on accident date, which was not an enumerated or analogous ground. Furthermore, there was no evidence that the different rating schedules resulted in a definition of severely impaired that amounted to a higher standard for one group than the other. There was no basis to find that the definition of severely impaired worker created inequality between workers injured prior to 1990 and those injured afterwards.

Decision No. 1028/21, 2021 ONWSIAT 1525, applied the modern principles of statutory interpretation in determining what constitutes “neuropathic pain,” which is listed as one of the “designated conditions” required for entitlement to medical marijuana under the WSIB’s policy on cannabis for medical purposes. *Decision No. 1028/21* found that even though the predominant source of the worker’s pain was psychological or from undetected organic sources, his doctor had diagnosed him with neuropathic pain and accordingly, he had a designated condition under the policy.

Decision No. 2418/15, 2021 ONWSIAT 1258, sought submissions from Tribunal Counsel on the interpretation of “principal residence” under the WSIB’s policy on home modification. *Decision No. 2418/15* applied the principles of statutory interpretation to find the term must be given its ordinary meaning. The ordinary meaning of “principal residence” should be understood as the place where the injured worker lives. Otherwise, a modification would not achieve the intended purpose of facilitating a severely injured worker’s ability to live independently.

Decision No. 659/21, 2021 ONWSIAT 789, interpreted the WSIB’s policy on providing return to work plans for surviving spouses of workers who died due to a workplace accident, and concluded that it should be construed permissively rather than restrictively. Read restrictively, the policy can be interpreted as indicating that work transition (WT) services will only be provided in circumstances where they are necessary to enable a spouse to enter or re-enter the workforce and not in any other circumstances. Read permissively, the policy can be interpreted as indicating that WT services will be provided in order to enable a spouse to enter or re-enter the workforce but without limiting the provision of services in other additional circumstances that are consistent with the provisions of the WSIA that govern WT services for surviving spouses.

WSIB policy often changes over time. The rights and obligations of the parties may vary quite significantly depending upon which version of a policy applies. Prior Annual Reports have noted that several decisions have held that section 126 policy is similar to legislation and the presumption against retroactivity applies. *Decision No. 725/21*, 2021 ONWSIAT 1449, applied the presumption against retroactivity and found that the applicable policy on work disruptions was the one in effect at the time of the initial WSIB decision. After determining which policy applied, *Decision No. 725/21* applied the list of factors in the policy on entitlement following work disruptions to determine the worker’s LOE benefits.

Chronic Mental Stress

As noted in prior Annual Reports, as of January 1, 2018, sections 13(4) and (5) of the WSIA, which limited mental stress to “an acute reaction to a sudden and unexpected traumatic event,” were repealed and replaced with new provisions. Transitional provisions in section 13.1(8) provide that claims “pending” at the WSIAT on January 1, 2018 must be referred back to the WSIB to be decided according to the new provisions. Following this direction, the WSIAT referred all pending claims back to the WSIB. Since then, a number of these claims have been appealed to the WSIAT and are being considered by WSIAT adjudicators.

Under the chronic mental stress (CMS) policy, interpersonal conflicts between workers and their supervisors, co-workers or customers are generally considered to be a typical feature of normal employment. Consequently, entitlement to CMS for interpersonal conflicts is not granted unless the conflict amounts to workplace harassment or results in conduct that a reasonable person would perceive as egregious or abusive. What type of behaviour would constitute egregious or abusive conduct or workplace harassment and would meet the exception to the interpersonal conflict rule has been discussed in several cases including *Decisions No. 485/21*, 2021 ONWSIAT 593; *1575/21*, 2021 ONWSIAT 2049; *1236/21*, 2021 ONWSIAT 1906; *490/21*, 2021 ONWSIAT 1906; *1759/18*, 2021 ONWSIAT 1381; and *891/21*, 2021 ONWSIAT 940.

The different standard of proof outlined in the CMS policy has also generated discussion in WSIAT decisions. The CMS policy indicates that the standard of proof in determining entitlement is that the substantial work-related stressor was the “predominant cause” of an appropriately diagnosed mental stress injury, which is a higher standard than the “significant contributing factor” test for determining entitlement for other personal workplace injuries. *Decision No. 693/20R*, 2021 ONWSIAT 1745, considered a reconsideration request from the WSIB on the basis that the original decision treated the predominant cause test as being identical to the significant contributing factor test. The WSIB raised the amendments to sections 159(2)(a.1-a.3) and 159(2.1), which were amended in 2017 in the same act that amended sections 13(4) and (5). The amendments to section 159 set out the WSIB’s powers to establish evidentiary requirements and adjudicative principles. The WSIB submitted that the government’s intention in enacting these provisions at the same time was to allow the WSIB to set different criteria concerning entitlement and adjudicative principles for CMS as compared to other injuries. The Chair found that while the WSIB’s reconsideration request appears to raise a substantial issue of statutory interpretation in CMS claims, the clarification of the issue would have no impact on the outcome of the appeal. The issue was moot as there was no live issue in dispute. Thus, it was not advisable to undertake a reconsideration process to address the issue in the present appeal. The Chair did note that the WSIB put forward substantial arguments that ought to be addressed in future WSIAT decisions in CMS appeals.

The worker’s representative in *Decision No. 1098/20*, 2021 ONWSIAT 1250, also advised that she would be raising a Charter challenge in the appeal in respect of the new WSIB policy

language, which requires the worker to be exposed to “substantial work stressors” that are the “predominant cause” of the mental stress injury in order for entitlement to benefits to be established. Given the worker was successful on the merits of the appeal, it was not necessary for the Panel to consider the Charter argument raised.

Occupational Disease

Occupational disease cases, which involve workplace exposures to harmful processes or substances, often raise complex legal, medical and factual issues. Occupational diseases are compensable if they fall within the statutory definition of “occupational disease” or “disablement.” The WSIA contains various rebuttable and irrebuttable presumptions for certain specified occupational diseases and exposures, and the WSIB has adopted policy on other diseases and exposures. There are also adjudicative advice documents that apply to some other occupational diseases. Occupational disease claims which are not subject to specific statutory or policy provisions are determined on their individual facts in accordance with the principles of causation.

Decision No. 905/21, 2021 ONWSIAT 1782, refers to an Adjudicative Support document published by the WSIB’s Occupational Disease Policy and Research Branch entitled “Herbicide 2,4,5-T and its Contaminant TCDD.” This document was based on findings of a Panel chaired by Dr. Ritter and submitted on June 13, 2013 (Ritter Report). The Vice-Chair interpreted the Executive Summary of the Ritter Report as meaning that information about the impact of exposure to 2,4,5-T or TCDD in the report did not provide scientific certainty in relation to the question of whether exposure to 2,4,5-T or TCDD would result in an adverse health effect. The Vice-Chair found that the relative risk of the worker developing lung cancer as a result of his smoking history was approximately equal to the relative risk of his developing lung cancer as a result of his occupational exposures. The Vice-Chair applied the benefit of the doubt provision, section 124(2) of the WSIA, to grant entitlement in this case.

Decision No. 2164/13, 2019 ONWSIAT 891, is another interesting occupational disease case that involved a claim for entitlement for bladder cancer and chronic lymphocytic leukemia (CLL) as a result of the worker’s duties in the paint department of a manufacturer of automotive products. The Panel accepted the opinion of a WSIAT medical assessor that it was medically more likely than not that the worker’s occupational exposure contributed to his diagnosis of bladder cancer, given the type of products the worker was exposed to, his young age at the time of diagnosis, and the fact that the worker was diagnosed with a second cancer (CLL), which would suggest the possibility of an environmental exposure to a carcinogen.

Section 48 of the WSIA sets out certain benefits which are available to a worker’s survivors if a worker’s death results from a compensable injury or disease. *Decision No. 9/21*, 2021 ONWSIAT 57, examined the question of whether a worker died as a result of his compensable lung cancer when the immediate cause of death was an acute myocardial

infarction. The Vice-Chair reviewed the death certificate and found that while the worker's lung cancer was not the immediate cause of death, it was a significant condition which unfavourably influenced the course of the morbid process and thus contributed to the fatal outcome. The Vice-Chair also noted it was the WSIB's practice to award a 100% NEL award where it can be demonstrated that a worker's compensable condition was the primary cause of death. Given the worker had a 100% NEL award and also given the findings in the section of the death certificate related to cause of death, entitlement to survivor benefits was granted.

A question which has been noted in previous Annual Reports is whether a worker's entitlement for chronic obstructive pulmonary disease (COPD) should be apportioned or reduced where it is established that the worker has both occupational dust exposure and a smoking history. In the past WSIAT decisions have taken different approaches, but 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. *Decision No. 1011/16R*, 2020 ONWSIAT 2011, involved a reconsideration request which was granted on the basis that the original decision found apportionment was appropriate but did not address two leading cases on the issue, which found entitlement should not be apportioned. *Decision No. 1011/16R* acknowledged that a WSIAT decision will not be re-opened simply on the basis that a contrary line of decisions exists. In this case, however, there were exceptional circumstances that met the threshold test. This was a situation where there were two leading decisions that reconciled conflicting approaches, to ensure that the conflicting approaches did not occur over the long term. The leading decisions were released just a week prior to the release of this decision, and those cases were not drawn to the attention of the Vice-Chair and the parties. This was an exceptional circumstance that constituted an error of law that would likely have affected the outcome of the decision. Following the release of *Decision No. 1011/16R*, the parties reached a proposed resolution through the WSIAT's alternative dispute resolution program, which confirmed a full NEL award without apportionment for smoking history. This resolution was confirmed in *Decision No. 1011/16R2*, 2021 ONWSIAT 656.

The WSIB's policy related to Lung Cancer – Asbestos Exposure indicates lung cancer claims are favorably considered if there is a clear and adequate history of at least 10 years of occupational exposure to asbestos and there is at least 10 years between the first exposure to asbestos and the appearance of lung cancer. *Decision No. 1696/19*, 2021 ONWSIAT 1259, examined the WSIB's current practice, which is to apply a two year guideline for pre-1975 asbestos exposure and a five year guideline for 1976-1983 asbestos exposure. At the Panel's request, Tribunal Counsel Office contacted the WSIB regarding its practice. The WSIB confirmed that the shorter duration thresholds reflected the WSIB's current, accepted practice. The basis for this practice was evidence that workers employed in industries that generated airborne asbestos had heavy exposure prior to 1975 and moderate exposure between 1976 and 1983. This practice was not a modification of the policy, but rather conformed to the policy's statement that claims that did not meet the 10-year guideline would be individually judged on their own merits.

Employer Issues

One key employer issue adjudicated at the WSIAT is to what extent and to which employer the costs of an accident are attributable. For occupational disease cases, section 94(2) indicates that the Schedule 2 employer who last employed the worker in the employment in which the disease occurs is the worker's employer for the purposes of the insurance plan and would be liable to pay the benefits. *Decision No. 1224/20*, 2021 ONWSIAT 207, examined whether a school board was the last employer under section 94(2) in a noise-induced hearing loss case. The Vice-Chair reviewed all the sources of noise within the school board and found the resulting average from all noise exposure was below the threshold for entitlement. Accordingly, the hearing loss did not result from exposure with the Schedule 2 employer school board, and the school board was not responsible for the costs of the claim.

The quantum of Second Injury and Enhancement Fund (SIEF) cost relief for employers is determined using the applicable policy matrix, which is based on the severity of the accident and the medical significance of the pre-existing condition. However, there are exceptional situations where the matrix does not apply, such as claims for 100% relief based on circumstances where a prior, non-work-related condition was the cause of the accident. *Decision No. 1505/21*, 2021 ONWSIAT 1625, found an employer was entitled to 100% cost relief when a worker died after falling down stairs. The evidence established, on a balance of probabilities, that the worker's pre-existing cardiac condition likely precipitated or triggered the fall. There was no evidence of a tripping hazard on the stairs and the worker did not have a history of falls or losing his balance. There were no injuries to the worker's hands, wrists, elbows or shoulders, which indicated that the worker did not reflexively extend his arms and hands to protect himself, likely because he was unconscious. The autopsy report indicated that the pre-existing cardiac condition may have led to the fall by causing a syncopal episode in which the worker was unconscious just before the fall.

When SIEF relief is granted after the experience rating window is closed, WSIAT decisions have historically applied a test of due diligence in deciding whether to grant a retroactive experience rating adjustment. As noted in the 2019 Annual Report, more recent decisions have followed *Decision No. 2113/15R2*, 2019 ONWSIAT 448, and held that a successful SIEF appeal should include a direction to re-open the experience rating window in order to provide an effective remedy to the employer. *Decision No. 991/21*, 2021 ONWSIAT 1040, distinguished *Decision No. 2113/15R2*, 2019 ONWSIAT 448, on the basis that the employer in that case did not request SIEF relief until after the experience rating window was closed. The Vice-Chair found that there must be exceptional circumstances to warrant a retroactive experience rating adjustment where an employer requests SIEF relief after the closure of the experience rating window.

Decision No. 1386/20, 2021 ONWSIAT 1387, examined whether the WSIA and the fatal claim premium adjustment policy applied to an employer which owned the factory where a worker died. The worker was employed by a temporary employment agency which supplied workers to the factory. Under section 72 of the WSIA, an employer that temporarily lends

or hires out the services of another worker is deemed to be the employer of the worker. Accordingly, the factory employer was not the deceased worker's employer at the time of the accident although the accident occurred at their premises. *Decision No. 1386/20* found that section 82 of the WSIA, which provides for the increase of premiums for a "particular employer," did not authorize the WSIB to characterize the factory employer as the employer or the "particular employer." Section 83 was recently amended to allow the attribution of accident costs from a temporary help agency to the employer with whom the worker had been placed. At the time of the accident, the amendments had been passed but were not in force, and no regulations had yet been made. However, the Panel found these amendments were significant because there would have been no need for the amendments if the injury and accident costs could already have been attributed to the factory employer as the employer or the particular employer. The purpose provision in section 1 could not be read so broadly as to change the meaning of the substantive provisions of section 72 or section 82, so as to take away the factory employer's premium rebate through the experience rating program. Furthermore, the fatal claim premium adjustment policy states that a premium increase as a result of a fatal claim is to be applied to the employer of the deceased worker. The employer of the worker was the agency. A contextual, grammatical and ordinary reading of the policy led to the conclusion that a fatal injury to a worker of the agency did not authorize taking away an experience rating rebate from the factory employer.

Right to Sue Applications

The workplace insurance scheme in Ontario is premised on the "historic trade-off," in which workers gave up the right to sue in exchange for statutory, no-fault benefits. The WSIAT has exclusive jurisdiction to decide whether a worker's right to sue has been removed.

Section 11(2) of the WSIA confirms that subject to sections 12 and 12.2, the insurance plan does not apply to workers who are executive officers of a corporation. While executive officers may not be able to claim entitlement to workers' compensation benefits, *Decisions No. 626/19R2*, 2021 ONWSIAT 180 and *1514/19R*, 2021 ONWSIAT 595, confirm that section 11 does not imply that executive officers who do not obtain optional coverage forfeit or otherwise are exempt from the civil action protection provided by section 28(1). If that were the case, section 28(1) would refer to such a requirement. As section 28(1) does not refer to optional coverage, there was no basis to impute such a requirement for the purpose of coverage under section 28(1).

In 2021, WSIAT decisions on actions for wrongful dismissal found that if a civil claim is inextricably linked to the compensable accident, the right of action with respect to this portion of the claim is removed. *Decision No. 616/21*, 2021 ONWSIAT 848, preferred WSIAT case law that interpreted the WSIA in such a way that no rights of action are removed from workers against their employers unless those rights of action are based upon the presence of injury. *Decision No. 616/21* noted that the wording of section 26(2) of the WSIA does not describe circumstances that will result in the barring of a civil action unless the action seeks damages in respect of a personal injury that has been sustained as a result of the accident. It is only when the damages claimed in the civil action result from the existence of a work-

related personal injury that the right to bring a civil action is barred. While a reconsideration was requested following the Divisional Court's decision in *Morningstar v. WSIAT*, 2021 ONSC 5576 (*Morningstar*), *Decision No. 616/21R*, 2021 ONWSIAT 1891, denied the reconsideration request as the Vice-Chair found that *Decision No. 616/21* was consistent with *Morningstar*. See also *Decision No. 1197/19*.

Decision No. 320/21, 2021 ONWSIAT 358, found the right of action for wrongful dismissal was not taken away in a situation where the worker was not claiming damages in respect of injuries suffered prior to the suspension of his employment. It also found that he was not permitted to claim workers' compensation benefits in respect of his suspension as the exclusion for employer's actions under section 13(5) of the WSIA would apply.

COVID-19 and Limitation Periods

On March 20, 2020 the Government of Ontario made an order suspending limitation periods due to the COVID-19 pandemic, retroactive to March 16, 2020. Effective September 14, 2020 the limitation period and timelines resumed. The WSIA imposes various time limits, including six months to appeal a final WSIB decision to the WSIAT under section 125(2) of the WSIA. The suspension of time limits due to COVID-19 has been considered in determining whether a request to extend the time to appeal should be granted. *Decisions No. 1289/21E*, 2021 ONWSIAT 1440, and *1495/21E*, 2021 ONWSIAT 1620, both subtracted the suspended limitation period to calculate the length of delay in appealing and granted the time extension since the period of time was insignificant as a result.

Other Legal Issues

Discussion of procedural issues and rules of evidence continued in 2021, including the issue of notifying parties of a potential downside risk. *Decision No. 1729/18R*, 2021 ONWSIAT 1221, found that in most instances, a party to the WSIAT has a right of notice of the downside risk if a Panel or Vice-chair determines that the benefits already granted by the WSIB are in issue. There may be some instances where the particular circumstances of the case provide adequate notice so that additional notice is not necessary, but that is not the usual case. Unless it is clear that the party is aware of the downside risk, explicit notice is required as a matter of natural justice. Providing notice is also in keeping with the WSIB's practice as outlined in the WSIB's *Appeals Services Division Practice and Procedures* document.

The issue of burden or onus of proof also generated discussion. *Decision No. 790/19*, 2021 ONWSIAT 541, found there is no formal onus of proof on a party at the WSIB or in proceedings before the WSIAT, subject to certain statutory exceptions. WSIAT jurisprudence and WSIB policy demonstrate that the system is meant to be inquisitorial, rather than place a formal legal burden on the parties. *Decision No. 790/19* did provide the caution that the WSIAT's inquisitorial powers do not extend to making a party's case for them or marshalling evidence on a party's behalf. Parties and their representatives have a responsibility to present the evidence that is within their control to produce.

The scope of the WSIAT's jurisdiction was also considered in several cases. *Decision No. 1998/19R*, 2020 ONWSIAT 2071, confirmed that a final decision of the WSIB ought to be construed broadly and purposively to determine the scope of the WSIAT's jurisdiction, and affirmed that the WSIAT has jurisdiction to address sequential issues. *Decision No. 1998/19R* also clarified that there is a distinction between jurisdiction and issue setting, and while the WSIAT has jurisdiction to consider sequential issues, the WSIAT may decide to refer sequential issues back to the WSIB due to various factors. *Decision No. 39/20R*, 2021 ONWSIAT 133, found that the WSIAT does not have jurisdiction over the WSIB's determination of whether a representative is authorized to represent a party at the WSIB. Administrative matters, such as the authorization of a representative, are not included in the list of issues within the WSIAT's jurisdiction in section 123 of the WSIA. There are sound policy reasons for the WSIAT's consistently held principle that it does not have jurisdiction over administrative decisions of the WSIB.

Providing quality adjudication in a fair and timely manner is part of the WSIAT's mission and the use of alternative dispute resolution such as the early intervention program (EIP) assists the WSIAT in this endeavour. Section 130 of the WSIA provides that the WSIAT may provide mediation services in such circumstances as it considers appropriate. Section 131(2) provides that the WSIAT shall determine its own practice and procedure in relation to applications, proceedings and mediation. *Decision No. 154/21*, 2021 ONWSIAT 339, explains in some detail the EIP at the WSIAT, including the benefits of EIP, the role of the dispute resolution officers who staff the EIP, what cases are selected for EIP, and that participating is voluntary, without prejudice and strictly confidential.

While section 130 of the WSIA encourages mediations, section 16 of the WSIA indicates that an agreement between a worker and his or her employer to waive or to forego any benefit to which the worker or his or her survivors may become entitled under the insurance plan is void. *Decision No. 407/21*, 2021 ONWSIAT 1050, discusses the scope of the WSIAT's jurisdiction when parties reach an agreement between themselves prior to a hearing and the impact of section 16. The agreement was not an agreement providing for entitlement to a specific benefit for a particular period of time. The Panel found the WSIAT had no capacity to make binding enforceable orders on either of the parties or the WSIB for an agreement that was not anchored to specific findings of statutory benefit entitlement. The WSIAT's authority was restricted to the worker's request to withdraw his appeal. Regarding the enforceability of the agreement under section 16 of the WSIA, the Panel noted that if the worker pursued benefit entitlement under the WSIA, the WSIAT would presumably have the jurisdiction to determine whether the agreement was void under the WSIA. However, any other disputes such as compliance with the agreement would not fall within the WSIAT's jurisdiction and would likely need to be resolved by the courts. After the Panel notified the parties of the scope of the WSIAT's jurisdiction in the interim decision, the worker confirmed his intent to withdraw his appeal. The withdrawal was endorsed in *Decision No. 407/21*, 2021 ONWSIAT 1118.



APPLICATIONS FOR JUDICIAL REVIEW

This section summarizes activity with respect to judicial review applications in 2021.

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

In 2021:

- Four new judicial review applications were initiated concerning the following WSIAT decisions:
 - *Decisions No. 136/17, 136/17R and 136/17R2*
 - *Decision No. 1011/20*
 - *Decision No. 117/19*
 - *Decisions No. 3397/18, 3397/18R, 3397/18R2 and 3397/18R3*
- Three applications were heard:
 - The application concerning *Decisions No. 178/17 and 178/17R* was heard in February 2021. In *Chen v. Workplace Safety and Insurance Appeals Tribunal*, 2021 ONSC 1149, the Divisional Court dismissed the application.
 - The application concerning *Decisions No. 1227/19 and 1227/19R* was heard in June 2021. In *Morningstar v. WSIAT*, 2021 ONSC 5576, the Divisional Court granted the application. The employer respondent has filed a motion seeking leave to appeal at the Ontario Court of Appeal, which was refused (January 20, 2022).
 - The application concerning *Decisions No. 3144/18I and 3144/18* was heard in November 2021. In *Chen v. Ontario (Workplace Safety and Insurance Appeals Tribunal)*, 2021 ONSC 7625, the Divisional Court dismissed the application. The applicant has initiated a motion seeking leave to appeal at the Ontario Court of Appeal.
- Several applications, including the judicial review applications concerning *Decision No. 930/19 and Decisions No. 1865/19 and 1865/19R* have been scheduled to be heard in 2022.



OMBUDSMAN REVIEWS

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

When the Ombudsman's Office receives a complaint about a WSIAT decision, the Ombudsman's 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 WSIAT will be notified of the Ombudsman's Office intent to investigate.

The WSIAT has not received any intent to investigate notifications from the Ombudsman's Office since 2012. There were no outstanding intent to investigate files in 2021.

TRIBUNAL REPORT





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 can be found in Appendix A.

Executive Services

The Executive Services department is led by the WSIAT Chair, who is responsible for the overall strategic direction and performance of the WSIAT. The Chair also directs the preparation of business planning and reporting.

Executive Services includes the Director, Executives Services and Strategic Initiatives, who supports the Chair and the management team in meeting strategic and business objectives. The Senior Manager, Executive Services, manages and coordinates activities within the offices; leads a small group of Executive Offices staff; and supports the Chair in achieving the WSIAT's strategic objectives through various programs, services and day-to-day operations, with a particular focus on supporting Order in Council (OIC) appointees and facilitating OIC recruitment, re-appointment and training. The Executive team also includes the Counsel, Special Projects and the Adjudication Support Group, which is responsible for processing all decisions prepared by OIC appointees.

In December 2021, Executive Services welcomed the WSIAT's new Diversity and Anti-Racism Office, which is tasked with the development and implementation of the WSIAT's multi-year Equity, Diversity and Inclusion and Anti-Racism programs.

In 2021, the Executive Services team:

- continued to support the WSIAT's response to the COVID-19 pandemic and business continuity planning initiatives, including the implementation of a COVID-19 Safe Workplace Policy and a return-to-office plan that facilitates the gradual, coordinated and safe return to the office once public health restrictions allowed it;
- facilitated the resumption of limited in-person hearings at the WSIAT's Toronto location, in accordance with public health guidelines, to provide access to justice to appellants who could not participate in a digital hearing;
- enhanced the practices, procedures and supporting technologies that enable alternative hearing methods, improving the digital hearing experience for all hearing

participants, decreasing the need for technical assistance and strengthening the privacy and confidentiality of digital hearings;

- supported OIC appointees and stakeholders through several outreach and training sessions on topics such as best practices for remote hearings, E-Filing, searching for WSIAT decisions, alternative dispute resolution and videoconference processing, including Zoom audio;
- supported modernization initiatives in line with “digital first” strategies and promoted customer service excellence by ensuring that staff, OIC appointees and stakeholders can work in a secure digital and paperless environment;
- enhanced and expanded online services to include a new secure filing platform;
- kept the stakeholder community informed and engaged in WSIAT’s operations through quarterly information sessions, external outreach, feedback surveys and numerous training opportunities on technical and procedural topics;
- carried out eight merit-based competitions that led to the appointment of six OIC appointees, as well as recruitment of appointments anticipated in early 2022 to address natural attrition of the OIC roster and the rise in incoming appeals; and
- provided administrative support to OIC appointees.

Human Resources and Administration

The Human Resources and Administration department is a dedicated team of professionals led by the Director of Human Resources and Administration.

Human Resources

Human Resources is responsible for strengthening organizational capacity through talent management strategies and the promotion of positive labour relations; leveraging organizational efficiencies through modernization and organizational development; and cultivating an inclusive, accessible and healthy work environment.

In 2021, key Human Resources initiatives were directed primarily at supporting the WSIAT’s COVID-19 response efforts while continuing to deliver core human resources services without interruption, both in the physical office and remotely. Specifically, the Human Resources team:

- contributed to the development of policies and practice documents for remote work;
- provided support, wellness tools and self-care resources to staff and Order in Council (OIC) appointees to help them navigate through the challenges of the COVID-19 pandemic and working remotely;

- provided remote recruitment processes and virtual training and development programs to maximize organizational capacity while protecting the health and safety of all candidates and employees; and
- enhanced human resources information system processes, including the employee self-serve and time-off portal, to support remote work.

Equity, Diversity and Inclusion

In 2021, Human Resources continued its commitment to a diverse, inclusive, accessible and healthy workplace. During this period, the WSIAT's strategic equity, diversity and inclusion (EDI) achievements included:

- completion of a comprehensive gap analysis which identified current policies and programs, as well as opportunities for improvements to the EDI framework;
- creation of an EDI communications committee to increase awareness of EDI and anti-racism issues;
- establishment of corporate-wide EDI goals through the performance planning cycle; and
- delivery of EDI, anti-racism, cultural competency and accessibility training to staff and OIC appointees.

“ In Q4 2021, the WSIAT Chair announced the creation of a Diversity and Anti-Racism Office...responsible for the development and implementation of multi-year Equity, Diversity and Inclusion and Anti-Racism programs...”

In Q4 2021, the WSIAT Chair announced the creation of a Diversity and Anti-Racism Office which will be responsible for the development and implementation of multi-year Equity, Diversity and Inclusion and Anti-Racism programs, with a goal of establishing the WSIAT as a workplace that promotes fairness and equity for its staff, OIC appointees and stakeholders. This new Office is led by a Director, Diversity and Anti-Racism to champion the achievement of EDI goals within the agency.

Administration Services

Administration Services supports the WSIAT's business operations. The Administration team is responsible for the emergency management and security (EMS) program, space and facilities management, and capital projects.

In 2021, the Administration Services team:

- supported the WSIAT's efforts to control the risk of transmission of COVID-19 through elimination controls, engineering controls and administration controls;
- procured medical masks, gloves, hand sanitizer, and cleaning and sanitizing supplies for the Toronto offices and the Hamilton Hearing Centre;
- enhanced the WSIAT's online administration services by converting to a new format and creating new content such as frequently asked questions;
- supported the WSIAT's return to office efforts by delivering OIC and staff information sessions, developing active screening assessment tools and reporting processes, and procuring and distributing rapid antigen tests; and
- completed a review of the WSIAT's security, emergency management and business continuity programs in an effort to enhance and safeguard the health and safety of staff, OIC appointees, stakeholders and visitors during COVID-19 pandemic and beyond.

Finance

The Finance department is responsible for the financial operations of the WSIAT. Finance staff provide financial, budgeting and procurement advice and support to the WSIAT's senior management, staff and Order in Council (OIC) appointees. The Finance department also completes monthly remuneration and payroll activities for all part-time OIC appointees.

Other key responsibilities include:

- maintaining the WSIAT's financial systems;
- planning, developing and monitoring the annual budget;
- establishing and maintaining banking relationships and overseeing the WSIAT's cash flow requirements;
- maintaining relationships with external auditors and overseeing the year-end statutory audit; and
- developing, implementing and maintaining internal financial controls.

In 2021, the Finance department team:

- leveraged efficient digitized systems to process financial transactions, including billings, payment of invoices and purchase orders, and staff expenses;
- set up 143 additional vendors for electronic funds transfers (ETF) and converted the process for reimbursing worker expenses from manual cheques to ETF payments;

- introduced departmental credit cards to increase procurement and payment efficiencies;
- provided 2021 quarterly budget forecast reports; and
- contributed to the 2022-2024 Business Plan and budget.

Office of the Counsel to the Chair

The Office of the Counsel to the Chair (OCC) is an expert legal department that provides advice to the Chair and the Chair's Office, particularly with respect to complex reconsideration requests, post-decision inquiries, Ombudsman inquiries and other complaints. OCC reviews drafts of WSIAT decisions submitted for review and is responsible for facilitating compliance with the *Freedom of Information and Protection of Privacy Act* (FIPPA), including responding to FIPPA complaints and appeals. OCC lawyers also conduct research and participate in training and professional development. OCC is led by the Counsel to the Chair, and includes lawyers and administrative staff.

In 2021, OCC was able to continue its core functions despite the ongoing challenges caused by the COVID-19 pandemic. The Counsel to the Chair and the Associate Counsels to the Chair continued to review draft decisions in a timely fashion and in accordance with natural justice principles and the WSIAT's *Guidelines for Review of Draft Decisions*. OCC also supported the goals of agency renewal and modernization, which are outlined in the WSIAT's 2021-23 Business Plan. OCC supported these goals, particularly in relation to excellence in adjudication and stakeholder relations, by:

- presenting professional development programs remotely to staff and Order in Council (OIC) appointees to ensure they were apprised of statutory and policy amendments, as well as developing case law from the WSIAT and the courts;
- providing remote orientation sessions to newly appointed OICs;
- providing training to staff and OIC appointees on best practices to protect privacy while working remotely;
- helping to create and update the WSIAT's best practices documents and training representatives on participating in teleconference and videoconference hearings;
- developing knowledge management resources that facilitate access to information on law, policy and procedure through electronic means; and
- providing outreach and training for stakeholders, including providing case law updates at the various stakeholder events throughout 2021.

The WSIAT's Legal Writer/Editor is also a member of OCC. Despite only joining the WSIAT in April 2021, the Legal Writer/Editor and their predecessor processed and assigned keywords

to 2,053 decisions and summarized 811 decisions. In 2021, 39.5% of all decisions were summarized, exceeding the goal of having at least 30% of WSIAT decisions summarized.

Office of the Vice-Chair Registrar

The Office of the Vice-Chair Registrar (OVCR) staff is the primary point of contact for appellants, respondents and representatives with an appeal or application at the WSIAT. 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 complete any post-hearing work.

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

In 2021, the OVCR's key focus was maintaining service and production levels during the ongoing COVID-19 pandemic, and contributing to the WSIAT's modernization initiatives by facilitating electronic communication between parties and the WSIAT.

In 2021, the OVCR:

- maintained and operationalized its centralized printing and mailing process, which allowed most other staff to continue working remotely;
- recruited and trained new staff from multiple departments within the OVCR to assist with the increase in appeal volumes, in order to ensure timely processing of appeals;
- reduced reactivation processing times from 128 to 57 days, meeting the goal of processing reactivations within 60 days and further supporting the WSIAT's goal of timely processing of appeals;
- increased production in the Early Intervention Program (EIP), which resolved 26% more appeals than in 2020 (306 resolved cases in 2021 compared with 242 resolved cases in 2020);
- worked with the Information and Technology Services department to develop the practices and procedures for E-Share, the WSIAT's new secure file sharing platform;
- participated in outreach efforts such as EIP sessions, the WSIAT's Access to Justice Symposium and stakeholder events, as well as surveying representatives following teleconference and videoconference hearings; and
- supported the WSIAT's objective of providing access to justice for all parties by introducing Hearing Ambassadors, who support in-person hearings and ensure that visitors to the WSIAT premises follow COVID-19 health care measures.

Tribunal Counsel Office

The Tribunal Counsel Office (TCO) is a center of legal and medical expertise at the WSIAT. Under the direction of the WSIAT'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.

The General Counsel and TCO lawyers provide legal assistance with respect to the WSIAT's own adjudication and act as the in-house counsel, providing advice and support in relation to corporate issues. All of the WSIAT's litigation is also managed by the General Counsel with assistance from TCO lawyers and occasionally external legal counsel. More information about the role of TCO lawyers can be found in the *Practice Direction: The Role of Tribunal Counsel Office Lawyers in Appeals and Applications before the Tribunal*.

The Medical Liaison Office (MLO) plays a central role in providing assistance in relation to medical issues that arise in WSIAT appeals. Under the direction of the MLO Manager, the important assistance that MLO provides includes coordinating the WSIAT-initiated assistance obtained from Medical Counsellors and Medical Assessors, and leading and supporting medically-focused educational activities for staff and adjudicators. More information about the MLO and the roles of Medical Counsellors and Medical Assessors can be found in the *WSIAT Guide to Medical Information and Medical Assessors*.

All of the work of TCO is supported by a dedicated team of administrative staff, led by the Coordinator, TCO Administrative Services.

In 2021, the TCO's accomplishments included the following:

- TCO continued to lead and support the work of the WSIAT's Access to Justice Working Group. TCO's contributions included developing resources such as generic submissions, which will be introduced in 2022, and participating in the WSIAT's Access to Justice Symposium in December 2021 to promote understanding of access to justice issues.
- TCO led the implementation of a survey focused on accessibility, accommodation, and customer service.
- TCO continued to provide assistance in appeals and right to sue applications. TCO lawyers provided support, including making submissions and questioning participants, in approximately 550 matters in 2021.
- MLO oversaw the update of one Medical Discussion Paper in 2021, the "Neck and Arm Pain and Related Symptoms: Cervical Spine Disorders" paper, which was prepared by Dr. Joel A. Finkelstein. Several other papers are also in the process of being revised.

- MLO continued its efforts to retain qualified Medical Assessors to provide assistance in appeals. In 2021, MLO recruited new Medical Assessors in the areas of orthopaedics (knee, shoulder, hand, and wrist) and gastrointestinal/internal medicine.

Scheduling

The Scheduling department co-ordinates the scheduling of hearing dates for pre-hearing conferences, mediations, written hearings, oral in-person hearings and oral hearings by teleconference and videoconference. Scheduling staff also assign written appeals and reconsideration requests; secure interpreter services, regional boardrooms and the service of summonses; and make arrangements for parties with accessibility needs, allowing them to fully participate in WSIAT proceedings. The Scheduling department is led by the Manager, Scheduling Administration.

In 2021, the Scheduling team scheduled:

- 699 written hearings, including time extensions, access cases and proposed resolutions;
- 5 oral in-person hearings;
- 730 oral hearings by teleconference; and
- 775 oral hearings by videoconference.

Thanks to the efforts of the Scheduling team, the wait time from the date an appeal was ready to proceed to the first proposed hearing was reduced from 7.8 months in 2020 to 6.3 months in 2021. For oral hearings, the wait time was reduced from 9.3 months in 2020 to 7.3 months in 2021. For written appeals, the wait time was reduced from 6.6 months in 2020 to 4.6 months in 2021. Throughout 2021 the Scheduling department also managed adjournments, which occur when a hearing participant's circumstances change. New hearing dates were provided on a priority basis whenever possible.

In 2022, the Scheduling department plans to continue making progress towards the goal of reducing the wait time to hearing for all appeals and meeting monthly hearing targets, which are based on incoming appeal volumes, projections and adjudicative capacity. The Scheduling staff also plan to continue scheduling timely hearings while ensuring that their services are responsive, flexible and respect the needs and preferences of the parties.

Information and Technology Services

The Information and Technology Services (ITS) department maintains the WSIAT's information technology infrastructure and information systems. The ITS department also develops the WSIAT's information strategy, enables technology solutions, and monitors system infrastructure.

The ITS department is divided into four teams:

1. Information Services
2. Business Solutions
3. Technical Support Services
4. Cyber Security

Information Services

The Information Services team's primary role is to operate the Ontario Workplace Tribunals Library and provide French translations, web content development, and records information management.

In 2021, the Information Services team:

- answered 710 reference questions concerning workplace safety, worker's compensation, labour relations, union certification, pay equity matters, and legal and legislative research;
- delivered training programs to adjudicators and other staff on topics such as protecting online information;
- translated 332,000 words, for a total of 537 official translations;
- developed a records information management program; and
- adopted the Archives of Ontario Function-Based Common Record Series.

Business Solutions

The Business Solutions team develops applications and supports and protects the WSIAT's computing infrastructure.

In 2021, this team:

- redesigned the WSIAT's decision database to be accessible and compliant with the WCAG 2.0 Level AA standard, as required by the *Accessibility for Ontarians with Disabilities Act, 2005*;
- re-modelled case management systems to fully support digital hearings;
- created and streamlined an E-Share platform to securely deliver encrypted case documents to WSIAT stakeholders; and
- enhanced the E-File application to provide secure confirmation emails.

Technical Support Services

Technical Support Services ensures that information technology resources and services are available to WSIAT staff and OIC appointees. This team also conducts new user orientation and topical seminars.

In 2021, the Technical Support Services team:

- installed two-factor authentication on WSIAT laptops and LCD equipment;
- provided mobile communication devices to staff and OIC appointees, allowing the WSIAT to eliminate most landline phones;
- introduced digital signatures;
- supported in-person hearings by installing audio visual equipment; and
- provided devices to assist with internet connectivity issues, enhanced the security of teleconference recordings, and bridged OPS telephone lines.

Cyber Security

The Cyber Security team ensures the technical environment and systems processing activities conform to the WSIAT's Information Technology Security Framework.

In 2021, the Cyber Security team:

- enhanced the security of the WSIAT's website by implementing a DigiCert SSL/TLS certificate;
- introduced procedures to protect servers and devices against zero day security threats;
- delivered training programs to staff and OIC appointees on cyber security awareness;
- launched the WSIAT's Cyber Security Awareness Month; and
- deployed a secure cloud file sharing application using TitanFile to allow digital sharing of case materials.



CASELOAD PROCESSING

Introduction

Appeals are processed 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 (NOA) form. Appeals remain at the notice stage while preliminary information is gathered. When the appellant is ready to proceed to an appeal hearing, they indicate readiness by filing a Confirmation of Appeal (COA) form. Once a COA form is received, the appeal enters the resolution processing stage.

If an appellant does not respond to the WSIAT's communications or is not ready to proceed while in the notice stage, the case is placed into dormant status. The appellant has up to two years to file a COA form to advance their appeal. If an appellant does not file the COA form by the required time limit, the case is closed as abandoned. The WSIAT notifies the appellant twice of the two-year time limit before the case is closed as abandoned.

Caseload Inventory

At the end of 2021, there were 3,977 cases. The 2021 total inventory was 6% higher than the 2020 total inventory (3,748 cases). This increase is consistent with the significant increase in the intake of new incoming appeals in 2021 (explained below).

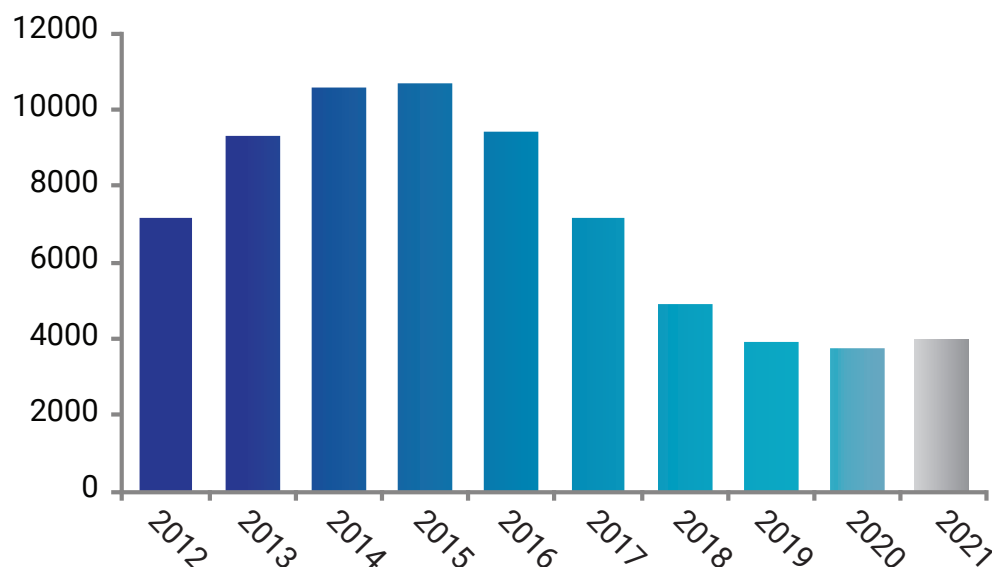
Chart 1 provides the 2021 caseload breakdown by processing stage. Chart 2 shows how the 2021 volume compares with previous year-end volumes.

CHART 1: Active Cases in Process (on December 31, 2021)

TYPES OF CASES IN PROCESS	NUMBER OF CASES
Notice of Appeal Stage	2,213*
Early Review Stage	39
Substantive Review	530
Hearing Ready	97
Scheduling and Post-hearing	981
Decision Writing	117
TOTAL CASES IN PROCESS	3,977

*Includes 529 Dormant cases.

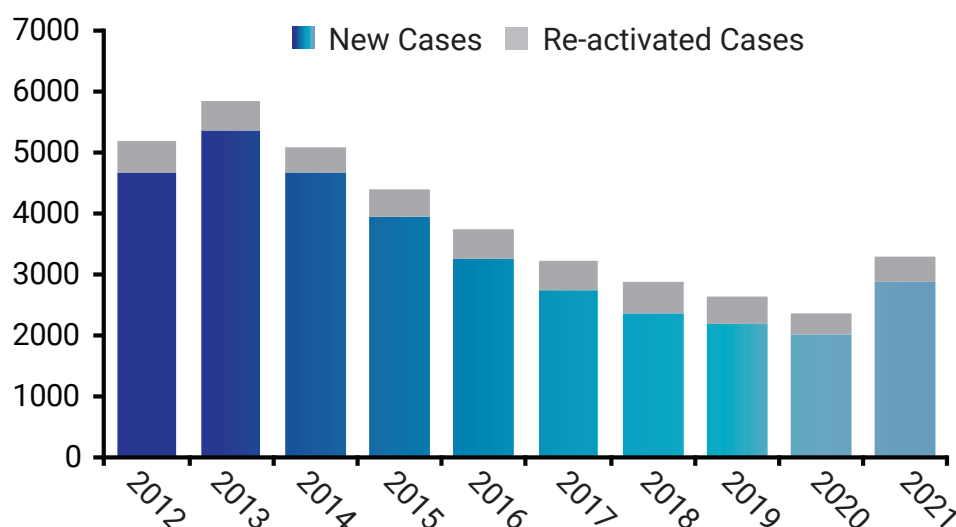
CHART 2: Historical Comparison of Cases in Process



Incoming Appeals

The trend of incoming new and reactivated appeals is shown in Chart 3. In 2021, the WSIAT's intake from new appeals and reactivated appeals totalled 3,315 cases, which represented an increase of 39% compared to 2,383 cases in 2020. New appeals were 41% higher in 2021 than 2020 (2,872 in 2021 compared to 2,034 in 2020). New appeals are cases that are coming to the WSIAT for the first time. Reactivated appeals are appeals in which the appellant has indicated a readiness to proceed with the appeal following an inactive period, during which the appellant may have acquired new medical evidence, received another final decision from the WSIB, or sought new representation.

CHART 3: Incoming Appeals



Closing Dispositions

Closing Dispositions (also known as case resolutions) can take place either pre-hearing or post-hearing. A pre-hearing closing occurs when the appellant has withdrawn their appeal or achieved a mediated settlement through alternative dispute resolution. A post-hearing closing occurs after a hearing when the Vice-Chair has released their decision. (A case made Inactive is also a disposition and will be discussed in the annual report section "Inactive Cases Inventory.")

The majority of dispositions are appeals closed by a decision following an oral or written hearing. In 2021, 1,899 of the WSIAT's closing dispositions were closed by a decision, compared to 1,760 in 2020.

Chart 4 shows that the WSIAT achieved closing dispositions totalling 2,656 cases in 2021 compared to 2,195 cases in 2020. Closing dispositions in 2021 were 21% higher than in 2020. This positive result illustrates the WSIAT's continued efforts to respond to the significant increase in the volume of new incoming appeals while ensuring appropriate access to justice for all appellants and respondents.

CHART 4: Closing Dispositions in 2021

CLOSING DISPOSITIONS	NUMBER	PERCENT OF TOTAL DISPOSITIONS
Decision Following Hearing*	1,899	71%
Withdrawn, Abandoned	757	29%
TOTAL DISPOSITIONS	2,656	100%

* "Decision following hearing" dispositions may not equal the number of decisions released in a year due to administrative constraints at year end, which preclude the appeal from being disposed immediately following the decision.

Inactive Cases

Cases are placed in the inactive status by a request of the appellant or by a Vice-Chair or Panel. The most common reasons are to allow an appellant to obtain additional medical reports or other relevant evidence; retain a representative; or obtain a final ruling from the WSIB related to an issue before the WSIAT. While the case is in the inactive status, it is the appellant's responsibility to resolve the matter that led to the inactive status and to notify the WSIAT of their intention to proceed with their appeal.

In 2021, 430 cases were made inactive, compared to 365 cases made inactive in 2020. At the end of 2021, there were 708 cases in the inactive cases inventory. The 708 inactive cases were moved to inactive status either in 2021 or in previous years and were inactive at the end of 2021. The inactive cases inventory at the end of 2021 was 22% lower than the inactive cases inventory at the end of 2020 (905).

Appeal Disposition by Issue

Chart 5 shows the percentage breakdown of appeal issues among the appeals disposed of in 2021.

CHART 5: Disposition by Issue

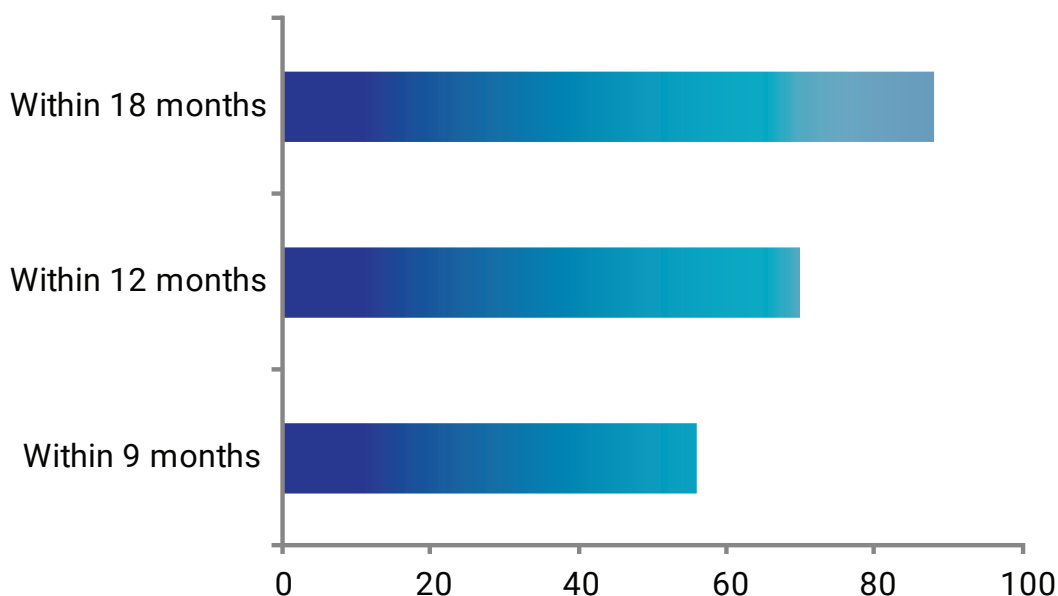
ISSUE TYPE	ISSUE PERCENTAGE
Loss of earnings	25%
New area of injury	10%
Initial entitlement	10%
Non-economic loss entitlement	7%
Non-economic loss quantum	6%
Second Injury and Enhancement Fund	6%
Work transition	6%
Ongoing entitlement	6%
Health care benefits	5%
Multiple issues each totaling less than 1% of total	4%
Psychotraumatic disability	3%
Recurrence	3%
Other	3%
Chronic pain	2%
Chronic and traumatic stress	1%
Early and safe return to work	1%
Earnings basis	1%
Permanent disability quantum (for accident dates prior to January 2, 1990)	1%
Occupational disease	<1% (0.5%)
Future economic loss (for accident dates between January 2, 1990 and December 31, 1997)	<1% (0.5%)

Timeliness of Appeal Processing from Case Readiness

Section 125 of the WSIA requires the appellant to file a notice of appeal within six months. The appellant then has up to two years to proceed with the appeal. Some appellants take longer to proceed with the appeal because they are pursuing additional entitlement issues with the WSIB and/or additional evidence to present to the WSIAT. The WSIAT has little control over how quickly an appellant moves to the readiness stage.

Chart 6 illustrates the time frame for completing cases from the point the appellant confirms readiness to proceed with the appeal to when the case is disposed of. In 2021, the percentage of appeals disposed of within 9 months was 56%, compared to 39% in 2020. The percentage of appeals disposed of within 12 months was 70%, compared to 60% in 2020. The percentage of appeals disposed of within 18 months was 88%, compared to 86% in 2020. These results illustrate that despite the challenges of the pandemic and the ongoing increase in appeal volumes, the WSIAT has improved significantly in the timeliness of appeal dispositions.

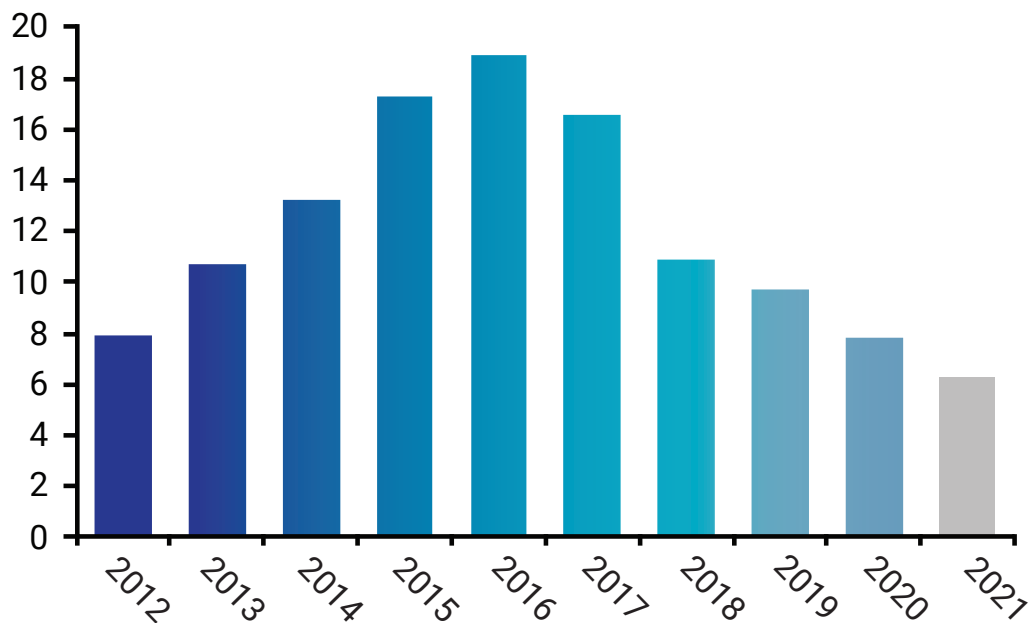
CHART 6: Percent Disposed of Within 9, 12 and 18 Months



The WSIAT also measures the median interval of the 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.

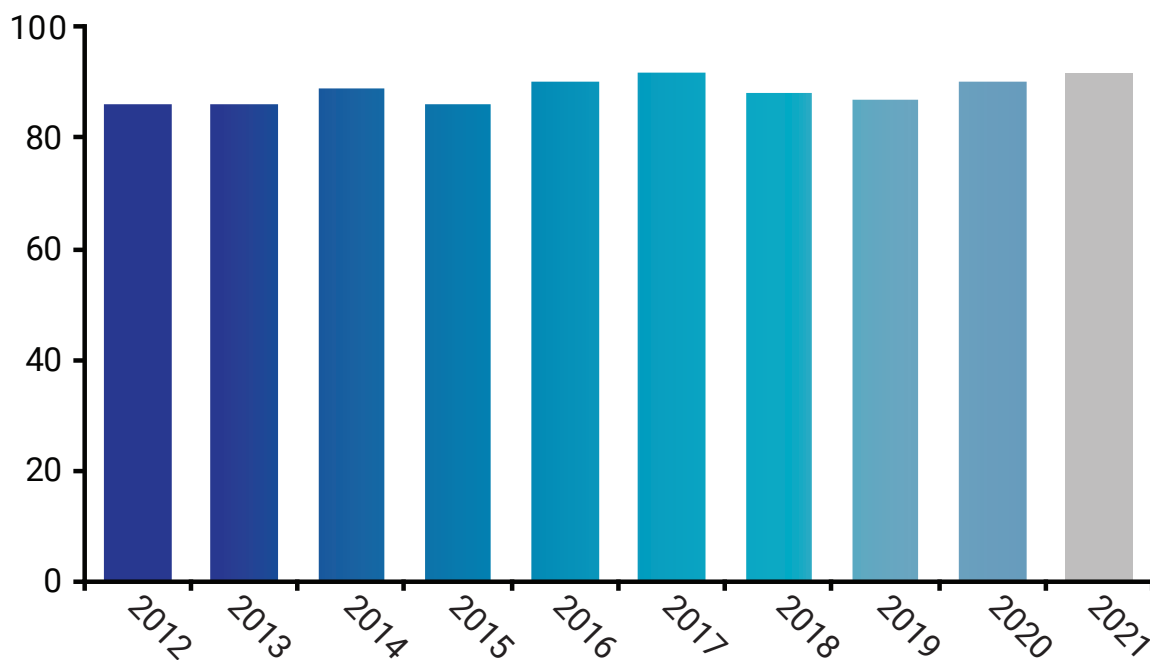
Chart 7 shows that in 2021, the time to hearing was 6.3 months, an improvement compared to 7.8 months in 2020. The time saved in the time to first offered hearing contributes to the overall timeliness of appeal dispositions.

CHART 7: Time to First Offered Hearing (Months)



Section 127 of the WSIA requires the WSIAT to release decisions within 120 days of a hearing, or such longer time as the WSIAT may permit. As shown in Chart 8, in 2021 this target was achieved 92% of the time, compared to 90% in 2020.

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

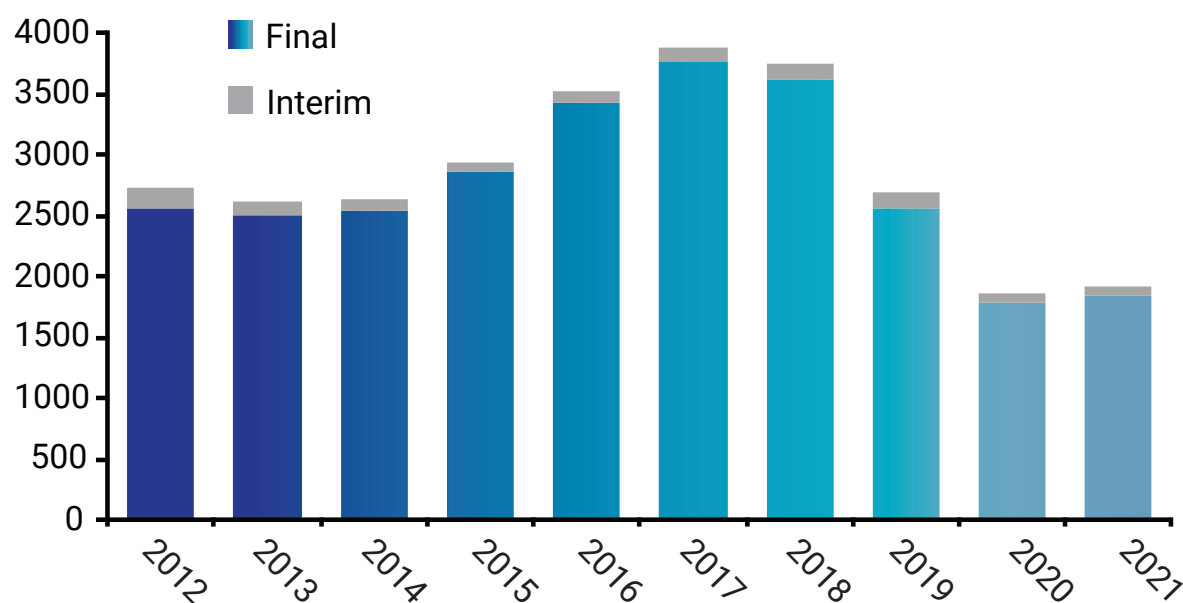


Hearing and Decision Activity

Chart 9 depicts the WSIAT's decision production.

In 2021, the WSIAT conducted 2,209 hearings and issued a total of 1,928 decisions (1,842 final decisions and 86 interim decisions). In 2020, the WSIAT conducted 1,745 hearings and issued a total of 1,864 decisions (1,786 final decisions and 78 interim decisions). In 2021, 27% more hearings were conducted and 3% more decisions were issued than in 2020. Also, more oral hearings were conducted in 2021 (1,510) compared to 2020 (806). The increase in hearings conducted and decisions released in 2021 demonstrated that the WSIAT successfully responded to the significant increase in incoming new appeals.

CHART 9: Decisions Type



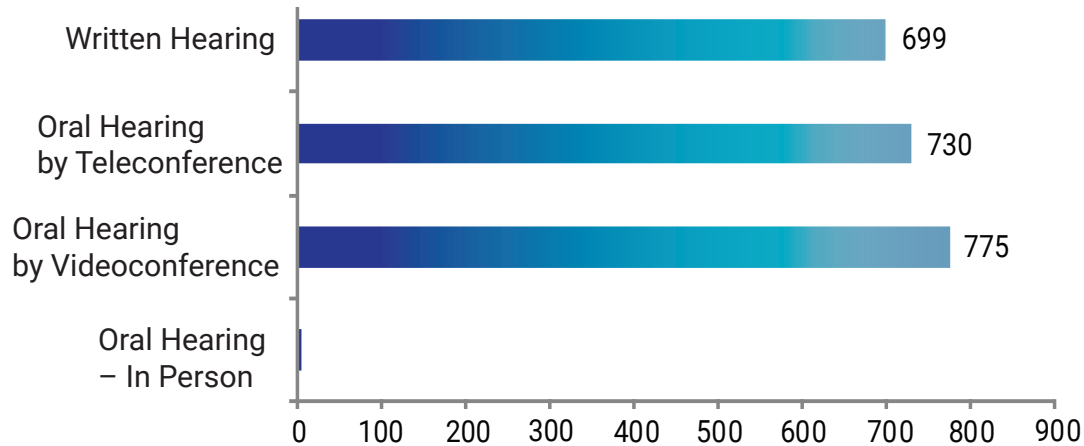
Hearing and Adjudication Types

There are two major hearing types: oral and written. In 2021, written hearings represented 32% (699) of total appeal hearings and oral hearings represented 68% (1510). This ratio of written to oral hearings is consistent with historical numbers. In 2020, written hearings represented 54% (939) of appeal hearings and oral hearings represented 46% (806).

Due to ongoing COVID-19 restrictions, only five (5) in-person hearings were conducted in 2021. These in-person hearings were necessary to ensure access to justice for appellants that could not participate by teleconference or videoconference.

Chart 10(A) shows the hearing type characteristics in 2021.

CHART 10(A): Hearing Type

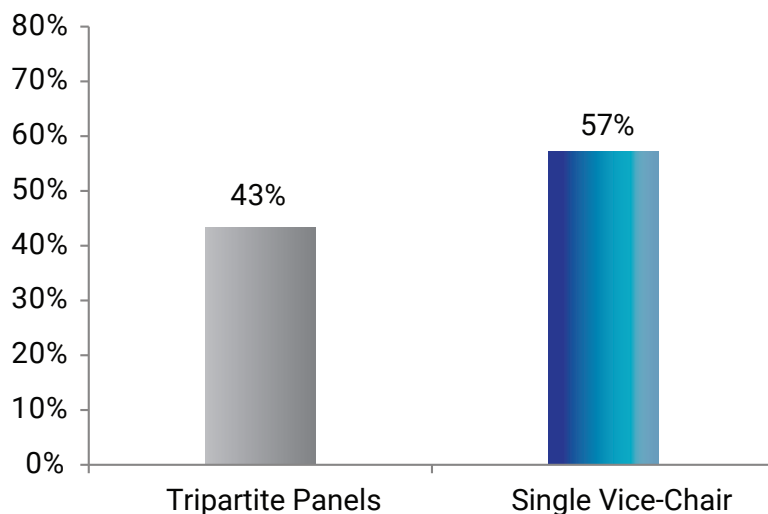


Subsection 174(2) of the WSIA provides that, subject to subsection 174(3), a Chair or Vice-Chair assigned by the Chair, sitting alone, shall hear and decide appeals and such other matters as are conferred upon the WSIAT. Subsection 174(3) sets out exceptions in which the Chair may appoint a Panel of three or five members to hear and decide an appeal or other matter conferred upon the WSIAT under the WSIA.

Chart 10(B) shows the adjudication types at WSIAT hearings. In 2021, 57% of WSIAT hearings were heard by single Vice-Chairs, compared to 75% in 2020. In 2021, tripartite Panels heard 43% of WSIAT hearings, compared to 25% in 2020. There were no hearings by five-member Panels in 2021.

Chart 10(B) shows percent cases adjudicated by a tripartite Panel and by a single Vice-Chair in 2021.

CHART 10(B): Adjudication Type



Representation Type at Hearings in 2021

Parties may retain professional representation for proceedings at the WSIAT, choose to represent themselves, or be represented by a friend or family member. Party representation type at hearings in 2021 is shown in Charts 11(A) and (B).

CHART 11(A): Worker Representation in Worker Appeals

REPRESENTATIVE TYPE	PERCENT OF TOTAL REPRESENTATION
Paralegal	36%
Lawyer/Legal aid	32%
Office of the Worker Adviser	12%
Union	10%
Self-represented	9%
Others	1%

CHART 11(B): Employer Representation in Employer Appeals

REPRESENTATIVE TYPE	PERCENT OF TOTAL REPRESENTATION
Paralegal	53%
Lawyer	30%
Firm Personnel	9%
Office of the Employer Adviser	8%

Post-decision Case Processing – Reconsideration Requests

WSIAT decisions are final. However, the WSIAT has the statutory discretion to reconsider a decision at any time if it considers it advisable to do so. In 2021, the WSIAT received 104 reconsideration requests, compared to 131 in 2020. The WSIAT issued 126 reconsideration decisions in 2021, compared to 214 in 2020.

The WSIAT processing of reconsideration requests in 2021 is shown in Chart 12.

CHART 12: Reconsideration Processing Activity in 2021

RECONSIDERATION REQUESTS	PROCESS COUNT
Requests Received	104
Decisions Issued	126
Requests Pending Resolution	54

Note: Reconsideration processing is excluded from all other charts and statistical references in the Caseload Processing section.

Electronic Filing of Submissions

The WSIAT launched its electronic submissions filing (E-Filing) application on September 8, 2020. This system allows stakeholders to E-File forms and other documents relating to their appeal or application. The E-Filing portal is accessed from the WSIAT's public website. In 2021, 8,294 submissions were received through the E-Filing application.

FINANCIAL MATTERS

A Statement of Expenditures and Variances for the year ended December 31, 2021 (Chart 13) is shown below.

CHART 13: Statement of Expenditures and Variances for the Year Ending December 31, 2021 (in \$000s)

EXPENSE TYPE	2021	2021	VARIANCE	
	Budget	Actuals	\$	%
OPERATING EXPENSES				
Salaries and Wages	15,283	15,455	(172)	(1.1)
Employee Benefits	3,444	3,256	188	5.5
OTHER DIRECT OPERATING EXPENSES				
Transportation and Communication	977	403	574	58.7
Services	7,318	6,671	647	8.8
Supplies and Equipment	1,141	1,045	96	8.4
Total Other Direct Operating Expenditures	9,436	8,119	1,317	13.9
Total - WSIAT	28,163	26,830	1,333	4.7
Services - WSIB	530	615	(85)	(16.0)
Interest Revenue	(12)	0	(12)	100.0
TOTAL OPERATING EXPENSES	28,681	27,445	1,236	4.3
ONE-TIME EXPENSES				
Severance Payment	125	83	42	33.5
Capital Expenditures	500	0	500	100.0
TOTAL EXPENDITURES	29,306	27,528	1,778	6.1

Note:

The above 2021 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 (\$42) is comprised of the following:

CAPITAL FUND

Amortization	411	
Fixed Assets acquired	<u>(481)</u>	(70)

OPERATING FUND

Accrued Severance, Vacation Benefits, & HCSA	54	
Prepaid Expenses	<u>58</u>	112
Difference		<u><u>42</u></u>

The accounting firm of Deloitte LLP has completed a financial audit on the WSIAT's financial statements for the year ended December 31, 2021. The Independent Auditor's Report is included as Appendix B.

APPENDIX A

Vice-Chairs and Members in 2021

This is a list of Vice-Chairs and Members whose Order in Council appointments were active during 2021 and their annual remuneration.¹

Full-time	Initial appointment	Term end date	Annual Remuneration ²
Chair			
McCutcheon, Rosemarie	August 16, 2019	January 8, 2025	\$177,640.00
Vice-Chairs			
Baker, Andrew	June 28, 2006	December 31, 2023	\$155,542.92
Crystal, Melvin	May 3, 2000	May 2, 2022	\$155,542.92
Dee, Garth	June 17, 2009	February 18, 2024	\$155,542.92
Dimovski, Jim	November 19, 2014	March 4, 2026	\$153,334.37
Huras, Christina	February 10, 2016	August 28, 2024	\$138,885.24
Iima, Katherine	January 5, 2015	February 20, 2023	\$145,810.34
Jepson, Kenneth	December 10, 2014	August 28, 2024	\$138,885.24
Kalvin, Bernard	October 20, 2004	May 31, 2024	\$155,542.92
Keil, Martha	February 16, 1994	February 17, 2024	\$155,542.92
Kosny, Agnieszka	January 8, 2018	June 10, 2022	\$136,077.76
Lai, Martha	December 22, 2021	December 21, 2023	\$0
Patterson, Angus	June 13, 2007	March 31, 2024	\$155,542.92
Perryman, Natalie	January 5, 2015	February 7, 2023	\$145,810.34
Petrykowski, Luke	October 3, 2012	April 19, 2026	\$152,136.52
Ryan, Sean	May 28, 2020	May 27, 2022	\$155,542.92
Shime, Sandra	July 15, 2009	December 13, 2025	\$155,542.92
Smith, Joanna	August 28, 2013	May 17, 2026	\$151,350.42
Members representative of employers			
Sacco, Carmine	February 21, 2018	February 20, 2023	\$117,972.92
Sahay, Sonya Toni	August 12, 2021	August 11, 2023 ³	\$39,475.56
Thomson, David	May 18, 2017	May 17, 2022	\$117,972.92
Members representative of workers			
Agnidis, Zoe	August 19, 2021	August 18, 2023 ³	\$34,725.11
Ferrari, Mary	July 15, 2005	July 14, 2026	\$121,210.85
Hoskin, Kelly	June 13, 2007	September 30, 2023	\$125,840.78

¹ List also includes individuals completing post-appointment responsibilities pursuant to section 175 of the WSIA.

² Not including expenses.

³ Annual remuneration reflects both part-time and full-time Member appointments during 2021.

Part-time	Initial appointment	Term end date	Annual Remuneration²
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Vice-Chairs

Ahlfeld, Pamila	September 16, 2021	September 15, 2023	\$13,051.25
Allen, Paul	February 24, 2016	February 23, 2026	\$128,542.50
Bayefsky, Eban	July 30, 2020	July 29, 2022	\$29,796.25
Cappell, Barbara	February 24, 2016	February 23, 2021	\$47,968.41
Darvish, Sherry	July 30, 2020	July 29, 2022	\$42,355.00
Evans, Katharine	October 4, 2017	October 3, 2022	\$134,570.72
Ferguson, Nancy	July 30, 2020	July 29, 2022	\$19,641.91
Frenschkowski, JoAnne	March 4, 2013	March 3, 2023	\$65,665.05
Gehrke, Linda	November 4, 2015	November 3, 2025	\$92,023.64
Hoare, Rhea	October 26, 2016	October 30, 2026	\$110,123.00
Hodis, Sonja	July 15, 2009	August 12, 2022	\$95,234.75
Horne, Ronald	May 10, 2017	May 9, 2022	\$67,792.63
Jacques, Karen	February 15, 2017	February 20, 2027	\$79,942.60
Kosmidis, Elizabeth	June 17, 2015	June 16, 2025	\$109,581.25
MacKenzie, Ian	October 9, 2013	September 27, 2021	\$61,739.81
Marafioti, Victor	March 11, 1987	February 20, 2023	\$147,833.73
McCaffrey, Grant	July 22, 2015	July 21, 2022	\$76,411.38
McLoughlin, Michael	August 29, 2019	August 28, 2024	\$54,711.83
Mitchinson, Tom	November 10, 2005	November 9, 2023	\$66,586.01
Morrow, Bernard	July 30, 2020	July 29, 2022	\$40,360.39
Nairn, Rob	April 29, 1999	December 31, 2020	\$37,873.25
Onen, Zeynep	November 4, 2015	November 3, 2025	\$77,839.63
Patel, Vandana	December 10, 2020	February 16, 2024	\$50,161.14
Peckover, Susan	October 20, 2004	October 19, 2022	\$57,154.65
Perlin, Tatiana	September 29, 2021	September 28, 2023	\$10,884.25
Pollock, Bruce	February 15, 2017	February 20, 2027	\$70,133.00
Ramsay, Christopher	May 18, 2016	May 17, 2026	\$141,002.75
Revington, Dan	January 8, 2018	November 9, 2021	\$42,749.00
Salisbury, Robert	February 2, 2017	February 20, 2027	\$66,093.50
Smith, Eleanor	February 1, 2000	October 30, 2023	\$64,449.80
Somerville, Ann	October 4, 2017	October 3, 2022	\$70,502.07
Walsh, (Hedy) Anna	October 7, 2021	October 6, 2023	\$2,314.75
Wong, Anita	July 30, 2020	July 29, 2022	\$61,050.30
Zehr, Chantelle	October 4, 2017	October 3, 2022	\$118,052.27

Members representative of employers

Burkett, Gary	February 2, 2017	February 20, 2027	\$101,716.00
Davis, Bill	May 27, 2009	December 12, 2021	\$40,769.00
Falcone, Mena	October 21, 2015	October 20, 2023	\$63,779.00
Greenside, Patricia	January 8, 2018	January 7, 2023	\$100,432.75
Kesler, Marlene	January 7, 2021	January 6, 2023	\$57,539.75

Part-time	Initial appointment	Term end date	Annual Remuneration
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Members representative of employers (continued)

Lipton, Mary	February 24, 2016	February 23, 2021	\$250.00
Ouellette, Richard	April 26, 2017	April 25, 2022	\$107,217.75
Sahay, Sonya Toni	August 29, 2019	August 11, 2023 ³	\$48,616.00
Soden, Kristen	October 18, 2017	October 17, 2022	\$72,348.75
Trudeau, Marcel	April 16, 2008	December 31, 2023	\$46,029.44

Members representative of workers

Agnidis, Zoe	February 21, 2018	August 18, 2023 ³	\$69,162.75
Broadbent, David	April 18, 2001	April 17, 2021	\$26,904.00
Carlino, Gerry	October 3, 2012	October 2, 2022	\$59,177.00
Crocker, Jim	August 1, 1999	October 31, 2019	\$295.00
Provato, Joseph	December 10, 2020	December 9, 2022	\$61,950.00
Roth, Stephen	February 24, 2016	February 23, 2026	\$91,391.00
Salama, Claudine	October 3, 2012	October 2, 2022	\$100,506.50
Signoroni, Antonio	September 29, 2010	January 6, 2024	\$60,357.00
Thompson, James	April 5, 2017	April 4, 2022	\$58,852.50
Tzaferis, Mary	December 7, 2016	December 6, 2026	\$80,623.50

Senior Staff

Slavica Todorovic	Director, Executive Services and Strategic Initiatives
Guyline Mageau	Senior Manager, Executive Services
Michelle Alton.....	Tribunal General Counsel
Sarah Schumacher.....	Counsel to the Chair
Lynn Telalidis	Director, Human Resources and Administration
Justin Huang	Director, Information and Technology Services
Nicole Bisson	Director, Appeal Services
Wesley Lee.....	Manager, Financial Planning and Controllershship
Noela Oliveira	Manager, Scheduling Administration

Medical Counsellors

Medical Counsellors are a group of highly qualified medical specialists who serve as consultants to the WSIAT, working closely with the Medical Liaison Office. Currently there are five Medical Counsellors:

Dr. John Duff	General Surgery (Chair of the Medical Counsellors)
Dr. Paul Cooper	Neurology
Dr. Marvin Tile	Orthopaedic Surgery
Dr. Emmanuel Persad	Psychiatry
Dr. Ronald House	Occupational 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, 2021, 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, 2021, 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 Deloitte LLP"

Chartered Professional Accountants
Licensed Public Accountants
March 3, 2022

WORKPLACE SAFETY AND INSURANCE APPEALS TRIBUNAL

Statement of Financial Position

As at December 31, 2021

ACCOUNT DESCRIPTION	2021	2020
ASSETS		
CURRENT		
Cash	\$ 2,982,210	\$ 2,294,289
Due from Workplace Safety and Insurance Board	1,302,699	1,535,953
Prepaid expenses and advances	476,337	534,403
Recoverable expenses (Note 3)	200,616	312,244
Total Current Assets	4,961,862	4,676,889
CAPITAL ASSETS (Note 4)	509,115	439,247
Total Current and Capital Assets	\$ 5,470,977	\$ 5,116,136
LIABILITIES		
CURRENT		
Accounts payable and accrued liabilities	\$ 2,686,125	\$ 2,343,086
Accrued severance benefits and vacation credits	2,567,591	2,513,631
Operating advance from Workplace Safety and Insurance Board (Note 5)	1,800,000	1,800,000
Total Current Liabilities	7,053,716	6,656,717
FUND BALANCES		
OPERATING FUND (Note 6)	(2,091,854)	(1,979,828)
CAPITAL FUND	509,115	439,247
Total Fund Balances	(1,582,739)	(1,540,581)
Total Liabilities and Fund Balances	\$ 5,470,977	\$ 5,116,136

APPROVED ON BEHALF OF WORKPLACE
 SAFETY AND INSURANCE APPEALS TRIBUNAL

 Chair

WORKPLACE SAFETY AND INSURANCE

APPEALS TRIBUNAL

Statement of Operations

Year ended December 31, 2021

ACCOUNT DESCRIPTION	2021	2020
OPERATING EXPENSES		
Salaries and wages	\$ 15,454,932	\$ 14,428,153
Employee benefits (Note 7)	3,392,806	3,398,670
Transportation and communication	403,174	449,468
Services and supplies	7,293,264	6,304,095
Amortization	411,465	444,968
Sub-total of Operating Expenses	26,955,641	25,025,354
Services - Workplace Safety and Insurance Board ("WSIB") (Note 8)	614,973	557,252
TOTAL OPERATING EXPENSES	27,570,614	25,582,606
BANK INTEREST INCOME	-	(7,121)
NET OPERATING EXPENSES	27,570,614	25,575,485
FUNDS RECEIVED AND RECEIVABLE FROM WSIB	(27,528,456)	(25,483,421)
ANNUAL DEFICIT	\$ 42,158	\$ 92,064

WORKPLACE SAFETY AND INSURANCE APPEALS TRIBUNAL

Statement of Changes in Fund Balances

Year ended December 31, 2021

CHANGES IN FUND BALANCES	Capital	Operating	Total
BALANCE - January 1, 2020	670,576	(2,119,093)	(1,448,517)
Additions to capital assets	213,639	-	213,639
Amortization of capital assets	(444,968)	-	(444,968)
Severance benefits, vacation credits, and Health Care Spending Account (Note a)	-	71,991	71,991
Prepaid expenses (Note b)	-	67,274	67,274
Annual Surplus	(231,329)	139,265	(92,064)
BALANCE - DECEMBER 31, 2020	439,247	(1,979,828)	(1,540,581)
Additions to capital assets	481,333	-	481,333
Amortization of capital assets	(411,465)	-	(411,465)
Severance benefits, vacation credits, and Health Care Spending Account (Note a)	-	(53,960)	(53,960)
Prepaid expenses (Note b)	-	(58,066)	(58,066)
Annual Surplus/(Deficit)	69,868	(112,026)	(42,158)
BALANCE - DECEMBER 31, 2021	509,115	(2,091,854)	(1,582,739)

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, 2021

CASH FLOWS	2021	2020
NET INFLOW/(OUTFLOW) OF CASH RELATED TO THE FOLLOWING ACTIVITIES		
OPERATING		
Funding revenue received from Workplace Safety and Insurance Board	\$ 27,761,710	\$ 24,591,075
Cash receipts for recoverable expenses	864,004	696,370
Bank interest received	-	7,121
Expenses, recoverable expenses net of amortization of \$411,465 (2020 - \$444,968)	(27,456,460)	(25,461,691)
Sub-total Increase/(Decrease) in Cash	1,169,254	(167,125)
CAPITAL		
Acquisition of capital assets	(481,333)	(213,639)
NET INCREASE/(DECREASE) IN CASH	687,921	(380,764)
CASH, BEGINNING OF YEAR	2,294,289	2,675,053
CASH, END OF YEAR	\$ 2,982,210	\$ 2,294,289

WORKPLACE SAFETY AND INSURANCE APPEALS TRIBUNAL

Notes to the Financial Statements

December 31, 2021

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, Training and Skills Development.

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, 2021

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, 2021

3. RECOVERABLE EXPENSES

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

Recoverable Expenses From	2021	2020
Shared services		
Ontario Labour Relations Board	\$ 90,657	\$ 188,297
Pay Equity Hearings Tribunal	5,857	10,586
Others		
Canada Revenue Agency HST rebate receivable	95,005	99,218
Miscellaneous	9,097	14,143
Total	\$ 200,616	\$ 312,244

4. CAPITAL ASSETS

Type of Capital Asset	Cost	Accumulated Amortization	2021 Net Book Value	2020 Net Book Value
Leasehold Improvements	\$ 4,166,947	\$ 4,105,300	\$ 61,647	\$ 212,067
Furniture and Equipment	452,571	433,554	19,017	37,409
Computer Equipment and Software	1,470,320	1,041,869	428,451	189,771
Total	\$ 6,089,838	\$ 5,580,723	\$ 509,115	\$ 439,247

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 \$2,091,854 as of December 31, 2021 (2020 - \$1,979,828) 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, 2021

7. EMPLOYEE BENEFITS OBLIGATIONS

a) Pension plan costs

Contributions by the Tribunal on account of pension costs amounted to \$1,303,692 (2020 - \$1,278,561) 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 severance benefits paid in 2021 totaled \$81,435 (2020 – \$308,418) resulting in a corresponding decrease in the severance benefits accrual balance.

c) Vacation credit entitlement

Vacation entitlements are accrued in the year when vacation credits are earned. The net vacation credits accrued in 2021 amounted to an increase in the accrual of \$117,518 (2020 - \$228,627) 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 2021 amounted to an increase of \$17,877 (2020 - \$7,800 increase) 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, 2021

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 remaining terms from 1-4 years. The minimum payments under these commitments are as follows:

<u>Year</u>	<u>Payments</u>
2022	45,850
2023	8,459
2024	5,551
2025	1,189
Minimum payments	\$ 61,049

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

<u>Year</u>	<u>Payments</u>
2022	1,745,890
2023	1,798,266
2024	1,852,214
2025	1,577,983
Minimum payments	\$ 6,974,353

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